2011-2012

LEGISLATIVE RESEARCH COMMISSION

MINUTES

LEGISLATIVE RESEARCH COMMISSION
MEMBERSHIP LIST

Senator Tom Apodaca, Chair
1504 Fifth Ave. West
Hendersonville, NC 28739
Tom.Apodaca@ncleg.net
(828) 696-0574 (828) 696-3004 (F)

Representative Tim Moore, Chair
305 East King St.
Kings Mountain, NC 28086
Tim.Moore@ncleg.net
704-739-1221 704-739-5051 (F)

Senator Philip Berger, Co-Chair
P.O. Box 1309
Eden, NC 27289-1309
Phil.Berger@ncleg.net
(336) 623-5210 (336) 623-6313 (F)

Speaker Thom Tillis, Co-Chair
P. O. Box 488
Cornelius, NC 28031
Thom.Tillis@ncleg.net
704-248-2980 (919) 754-3281 (F)

Senator Pete Brunstetter
One West Fourth Street
Winston-Salem, NC 27101
Peter.Brunstetter@ncleg.net
(336) 747-6604 (919) 754-3264 (F)

Representative John Blust
P. O. Box 8146
Greensboro, NC 27419
John.Blust@ncleg.net
336-274-4658 336-274-4540 (F)

Senator Linda Garrou
3910 Camerille Farm Road
Winston-Salem, NC 27106
Linda.Garrou@ncleg.net
(336) 922-4192 (919) 754-3257 (F)

Representative Justin Burr
125 South Third St.
Albemarle, NC 28001
Justin.Burr@ncleg.net
704-983-4663 704-982-0144 (F)

Senator Martin Nesbitt
29 N. Market Street, 7th Floor
Asheville, NC 28801
Martin.Nesbitt@ncleg.net
(828) 252-8114 (828) 252-0511 (F)

Representative Mike Hager
342 Walking Horse Trail
Rutherfordton, NC 28139
Mike.Hager@ncleg.net
828-748-2378 (919) 754-3308 (F)

Senator Richard Stevens
132 Lochwood West Drive
Cary, NC 27518
Richard.Stevens@ncleg.net
(919) 851-0228 (919) 754-3349 (F)

Representative Edith Warren
P. O. Box 448
Farmville, NC 27828
Edith.Warren@ncleg.net
252-753-4198 252-753-5603 (F)

COUNSEL:
Kory Goldsmith
Room 545, LOB
koryg@ncleg.net
(919) 733-2578 (919) 715-5460 (F)

CLERKS:
Carolyn Gooden
Room 2010, LB
Apodacala@ncleg.net
(919) 733-5745 (919) 715-1179

Walker Reagan
Room 545, LOB
walker@ncleg.net
(919) 733-2578 (919) 715-5460 (F)

Nancy Garriss
Room 1326, LB
Moorela@ncleg.net
(919) 733-4838 (919) 754-3142

NORTH CAROLINA GENERAL ASSEMBLY

Raleigh, North Carolina 27601

September 6, 2011

MEMORANDUM

TO: Members, Legislative Research Commission

FROM: Senator Tom Apodaca, Chair
Representative Tim Moore, Chair

SUBJECT: Meeting Notice

DAY	DATE	TIME	ROOM
Wednesday	September 14, 2011	30 minutes after the Senate and House adjourn	1228/1327 LB

Parking for non-legislative members of the committee/commission is available in the visitor parking deck #75 located on Salisbury Street across from the Legislative Office Building. Parking is also available in the parking lot across Jones Street from the State Library/Archives. You can view a map of downtown by visiting http://www.ncleg.net/graphics/downtownmap.pdf.

If you are unable to attend or have any questions concerning this meeting, please contact Nancy Garriss at 919-733-4838

cc: Committee Record _X_
Interested Parties _X_

Legislative Research Commission

Wednesday, September 14, 2011

Agenda for Initial Meeting

1. Overview of Legislative Research Commission Process Presented by Legislative Research Division

2. Overview of Study Subcommittee Process Presented by Legislative Research Division

3. Consideration and Adoption of Revised Rules of Legislative Research Commission

4. Consideration and Adoption of Recommended Studies and Appointments of Study Subcommittees

5. Charge to Study Subcommittee Chairmen

MINUTES
LEGISLATIVE RESEARCH COMMISSION
September 14, 2011

The Legislative Research Commission's inaugural meeting was held in Room 1228 of the State Legislative Building on Wednesday, September 14, at 11:00 a.m. The following members were present: Chairs Tim Moore; and Senator Tom Apodaca; Senator Pete Brunstetter; Senator Richard Stevens; Representative John Blust; Representative Justin Burr; and Representative Mike Hager. The meeting's Process and Procedure documents are attached (Attachment A).

Senator Apodaca called the meeting to order, and requested Chairman Moore to make opening comments. Senator Apodaca then turned the meeting over to Mr. Walker Reagan.

Mr. Walker Reagan, Director of Research, was recognized to explain the Legislative Research Commission Processes and Procedure documentation. He talked briefly about the history and purpose of the LRC. Reagan then spoke about the lack of an LRC since 2000. He addressed proposed changes to the 1999-2000 LRC Rules to bring them current with present laws and legislation. The members voted on the amended rules for the LRC which passed without any naysayers (Attachment B & C).

The commission then discussed committee changes:

- The Committee for the retitling of manufactured homes removed from property
    - Hilton to Chair the committee in place of Moore
- The Committee for criminal record expunctions
    - Randleman and Spear are to be added to the committee

Mr. Andrew Tripp then spoke about the Study Subcommittees. Mr. Tripp said the Study Subcommittees existed under the framework of the LRC. He addressed the fact that subcommittees are limited to four meetings but are allowed to hold more contingent to approval by the Pro Temp or the Speaker. The subcommittees are to consult with central staff to schedule their first meeting.

Senator Apodaca then stated that the agenda had been concluded and moved that the meeting be adjourned.

The meeting adjourned at 11:25 a.m.

Prepared by:

Carolyn Gooden
Legislative Assistant

Approved by:

Tom Apodaca, Cochair
Senator

Tim Moore, Cochair
Representative

MINUTES
LEGISLATIVE RESEARCH COMMISSION
September 14, 2011

The Legislative Research Committee met on September 14, 2011 at 11:00 a.m.in room 1228 of the Legislative Building. Eight members of were present.

Senator Tom Apodaca presided and called the meeting to order. The meeting's agenda is attached as Appendix A. Mr. Walker Reagan, Research Division, was recognized to give an overview of the Legislative Commission Process and the Study Subcommittee Process, this is Appendix B.

Item three of the agenda, Rules for the Legislative Research Commission, was also explained by Mr. Reagan. He stated that the old rules were from the 1999-2000 Session and that new rules needed to be adopted for the 2011-2012 Session. The explanations of these rules are Appendix C and D. Questions were asked regarding the last lines on page 4 subsection (d) which had to do with copies, printing, distribution, and summaries of reports. Senator Brunstetter requested that these lines be deleted and moved for the adoption of the Rules as amended. Motion carried.

Representative Tim Moore, Co-Chair, explained the House studies approved in conjunction with the Senate these are Appendix E and F. Senator Brunstetter moved that the letters for authorization of appointment of subcommittees from both the Speaker and President Pro Tempore under the guidance of Representative Moore, Co-Chair, LRC and Senator Apodaca, Co-Chair, LRC be adopted. Motion carried.

Meeting adjourned at 12:15 p.m.

Senator Tom Apodaca, Co-Chair

Carolyn Gooden, Committee Clerk

Attachment A

NORTH CAROLINA GENERAL ASSEMBLY
Legislative Services Office

George R. Hall, Legislative Services Officer

arch Division
00 N. Salisbury Street, Suite 545
Raleigh, NC27603-5925
Tel. 919-733-2578 Fax 919-715-5460

O. Walker Reagan
Director

To: Senator Phil Berger, Cochair, Legislative Research Commission
Representative Thom Tillis, Cochair, Legislative Research Commission
Senator Tom Apodaca, Legislative Research Commission
Representative Tim Moore, Legislative Research Commission
From: O. Walker Reagan, Director, Research Division
Date: September 14, 2011
Re: **Legislative Research Commission - Process and Procedure**

The Legislative Research Commission (LRC) is a statutory body created by the General Assembly to "make or cause to be made such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner." The topics to be studied are those authorized by the General Assembly, by either house individually, or by the LRC cochairmen. The LRC is directed to report to the General Assembly the results of the studies. These reports may be accompanied by recommendations.

The LRC is composed of 12 legislators. The President Pro Tempore of the Senate (PPT) and the Speaker of the House of Representatives (Speaker) are ex officio members and serve as cochairs. The PPT and the Speaker each appoint five legislators from their respective chambers. The term of office for LRC members begins upon appointment and terminates on January 15 of the next odd-numbered year. The first meeting is called by the PPT. In the past, by LRC rule, the Speaker presides in odd-numbered years and the PPT presides in even-numbered year. Eight members constitute a quorum.

At its first meeting, the LRC has historically adopted rules for its operation, adopted10 topic areas ("Groupings") to be studied, assigned studies to the Groupings, assigned one LRC member to each Grouping (the "LRC member in charge"), referred some studies to other interim committees or agencies, and adopted a budget. The Groupings in 1995 were: Budget and Revenue, Civil and Criminal Law, Education and Energy Conservation, Election Laws Reform, Environment, Family and Juveniles Law, Insurance Laws and Financial Institutions, Labor and Personnel, Property Issues, and Regulation. One or more specific studies would be assigned to each Grouping. The Speaker and the PPT would appoint legislators to committees to conduct the authorized studies. Also in 1995, the LRC authorized two additional study committees; the State Government Reorganization and Privatization Committee and the Executive Budget Act Revision Committee.

Prior to the Short Session or the next Long Session, some or all of the committees would adopt reports, including recommended legislation, that were then transmitted to the LRC for consideration. The LRC could accept the transmittal with whatever modifications the LRC deemed appropriate. The LRC then transmitted the reports to the General Assembly for its consideration. The LRC rules specifically provided that these transmittals did not constitute endorsements of the recommendations. Under the adjournment resolutions governing eligible bills for the Short Session, bills recommended by the LRC were eligible for consideration.

Chapter 120

Article 6B.

Legislative Research Commission.

§ 120-30.10. Creation; appointment of members; members ex officio.

(a) There is hereby created a Legislative Research Commission to consist of five Senators to be appointed by the President pro tempore of the Senate and five Representatives to be appointed by the Speaker of the House. The President pro tempore of the Senate and the Speaker of the House shall be ex officio members of the Legislative Research Commission. Provided, that when the President of the Senate has been elected by the Senate from its own membership, then the President of the Senate shall make the appointments of the Senate members of the Legislative Research Commission, shall serve ex officio as a member of the Commission and shall perform the duties otherwise vested in the President pro tempore by G.S. 120-30.13 and 120-30.14.

(b) The cochairmen of the Legislative Research Commission may appoint additional members of the General Assembly to work with the regular members of the Research Commission on study committees. The terms of the additional study committee members shall be limited by the same provisions as apply to regular commission members, and they may be further limited by the appointing authorities.

(c) The cochairmen of the Legislative Research Commission may appoint persons who are not members of the General Assembly to advisory subcommittees. The terms of advisory subcommittee members shall be limited by the same provisions as apply to regular Commission members, and they may be further limited by the appointing authorities. (1965, c. 1045, s. 1; 1975, c. 692, s. 1.)

§ 120-30.11. Time of appointments; terms of office.

Appointments to the Legislative Research Commission shall be made not earlier than the close of each regular session of the General Assembly held in the odd-numbered year nor later than 15 days subsequent to the close. The term of office shall begin on the day of appointment, and shall end on January 15 of the next odd-numbered year. No moneys appropriated to the Legislative Research Commission may be expended for meetings of the Commission, its committees or subcommittees held after January 15 of the next odd-numbered year and before the appointment of the next Legislative Research Commission. (1965, c. 1045, s. 2; 1975, c. 692, s. 2; 1977, c. 915, s. 4; 1981, c. 688, s. 19; 1983, c. 63, s. 1; 1983 (Reg. Sess., 1984), c. 1034, s. 178; 1991 (Reg. Sess., 1992), c. 900, s. 16.)

§ 120-30.12. Vacancies.

Vacancies in the appointive membership of the Legislative Research Commission occurring during a term shall be filled for the unexpired term by appointment by the officer who made the original appointment. Vacancies in the ex officio membership shall be filled for the unexpired term by election by the remaining members of the Commission. Every vacancy shall be filled by a member of the same house as that of the person causing the vacancy.

If for any reason the office of President pro tempore of the Senate becomes vacant, the five Senate members of the Legislative Research Commission shall elect one of their own number to perform and exercise the duties imposed and powers granted pursuant to this Article, and such Senator so elected shall serve until the Senate shall elect a President pro tempore. If for any reason the office of Speaker of the House of Representatives becomes vacant, the five members of the House of Representatives of the Legislative Research Commission shall elect one of their own number to perform and exercise the duties imposed and powers granted

pursuant to this Article, and such member of the House of Representatives so elected shall serve until the House of Representatives shall elect a Speaker. (1965, c. 1045, s. 3; 1969, c. 1037.)

§ 120-30.13. Cochairmen; rules of procedure; quorum.

The President pro tempore of the Senate and the Speaker of the House shall serve as cochairmen of the Legislative Research Commission. The Commission shall adopt rules of procedure governing its meetings. Eight members, including ex officio members, shall constitute a quorum of the Commission. (1965, c. 1045, s. 4.)

§ 120-30.14. Meetings.

The first meeting of the Legislative Research Commission shall be held at the call of the President Pro Tempore of the Senate in the State Legislative Building or in another building designated by the Legislative Services Commission. Thereafter the Commission shall meet at the call of the chairmen. Every member of the preceding General Assembly has the right to attend all sessions of the Commission, and to present his views at the meeting on any subject under consideration. (1965, c. 1045, s. 5; 1981, c. 772, s. 1.)

§ 120-30.15. Repealed by Session Laws 1969, c. 1184, s. 8.

§ 120-30.16. Cooperation with Commission.

The Legislative Research Commission may call upon any department, agency, institution, or officer of the State or of any political subdivision thereof for such facilities and data as may be available, and these departments, agencies, institutions, and officers shall cooperate with the Commission and its committees to the fullest possible extent. (1965, c. 1045, s. 7.)

§ 120-30.17. Powers and duties.

The Legislative Research Commission has the following powers and duties:

(1) Pursuant to the direction of the General Assembly or either house thereof, or of the chairmen, to make or cause to be made such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner.

(2) To report to the General Assembly the results of the studies made. The reports may be accompanied by the recommendations of the Commission and bills suggested to effectuate the recommendations.

(3), (4) Repealed by Session Laws 1969, c. 1184, s. 8.

(5), (6) Repealed by Session Laws 1981, c. 688, s. 2.

(7) To obtain information and data from all State officers, agents, agencies and departments, while in discharge of its duty, pursuant to the provisions of G.S. 120-19 as if it were a committee of the General Assembly.

(8) To call witnesses and compel testimony relevant to any matter properly before the Commission or any of its committees. The provisions of G.S. 120-19.1 through G.S. 120-19.4 shall apply to the proceedings of the Commission and its committees as if each were a joint committee of the General Assembly. In addition to the other signatures required for the issuance of a subpoena under this subsection, the subpoena shall also be signed by the members of the Commission or of its committee who vote for the issuance of the subpoena.

(9) For studies authorized to be made by the Legislative Research Commission, to request another State agency, board, commission or committee to conduct the study if the Legislative Research Commission determines that the other body is a more appropriate vehicle with which to conduct the study. If the other body agrees, and no legislation specifically provides otherwise, that body shall conduct the study as if the original authorization had assigned the study to that body and shall report to the General Assembly at the same time other studies to be conducted by the Legislative Research Commission are to be reported. The other agency shall conduct the transferred study within the funds already assigned to it. (1965, c. 1045, s. 8; 1969, c. 1184, s. 8; 1977, c. 915, s. 3; 1981, c. 688, s. 2; 1983, c. 905, s. 7; 1985, c. 790, s. 7.)

§ 120-30.18. Facilities; compensation of members; payments from appropriations.

The facilities of the State Legislative Building, and any other State office building used by the General Assembly, shall be available to the Commission for its work. Members of the General Assembly serving on the Legislative Research Commission or its study committees shall be reimbursed for travel and subsistence expenses at the rates set out in G.S. 120-3.1. Advisory subcommittee members shall be reimbursed and compensated at the rates set out in G.S. 138-5 (public members) and G.S. 138-6 (State officials or employees). All expenses of the Commission shall be paid from funds appropriated for the Commission. (1965, c. 1045, s. 9; 1975, c. 692, s. 3; 1981, c. 772, s. 2.)

§§ 120-30.19 through 120-30.23. Reserved for future codification purposes.

RULES FOR THE
~~1999-2000~~2011-12 LEGISLATIVE RESEARCH COMMISSION

[Adopted on ~~August 25, 1999~~September 14, 2011]

1. **Legislative Research Commission; member; cochairmen; terms.**—As provided by statute, the Legislative Research Commission (hereinafter referred to as "Commission") shall consist of five Senators appointed by the President Pro Tempore of the Senate and five Representatives appointed by the Speaker of the House. The President Pro Tempore and the Speaker shall be ex officio members of the Commission and shall serve as the Cochairmen of the Commission. Each Cochairman, respectively, may appoint an acting chairman to act in his stead in all respects under these Rules, subject to applicable law (each, an "Acting Chairman"). Where applicable law requires the action of the Chairmen, the Acting Chairmen shall make nonbinding recommendations to the respective Chairmen for final action. The Cochairmen, or the Acting Chairmen as the case may be, shall set the agenda for the Commission's meetings and shall have the authority, in the absence of a Commission meeting, to allocate funds, to modify allocations of funds to the Commission's advisory committees (hereinafter referred to as "committees"), to direct studies to be conducted, and to request another State agency, board, commission or committee to undertake a study authorized by the Commission.

2. **Areas of study, duties of Commission members.**—The Commission shall determine which of the subjects it is authorized to study shall be funded and which the Commission shall request a more appropriate Study agency to study pursuant to G.S. 120-30.17(9). The subjects that the Commission decides to study shall be apportioned by the Cochairmen into ten areas of study, and each Commission member shall be designated by the Cochairmen to be responsible for the committees that are appointed to study the subjects in his study area. In this context, the duties of each Commission member include:

~~(a) Calling the first meeting of the committees for which the member is responsible;~~

~~(b)~~(a) Assuring that each study is conducted within its budget and within the timetables set forth in these rules;

~~(c)~~(b) Requesting that additional funds be allocated by the Commission Cochairmen or the full Commission if the funds are necessary to complete a study;

~~(d) Voting as an ex officio member of the committee on all questions before the committee for which the member is responsible;~~

~~(e) In the absence of both committee cochairmen, signing travel and subsistence reimbursement forms of committee members;~~

~~(f)~~(c) Presenting to the Commission at its meetings a review of the progress and financial condition of the committees under the member's charge and the reports of those committees;

~~(g)~~(d) Generally serving as a liaison between the Commission and the committees for which the member is responsible.

3. **Committees; committee cochairmen; members.**—As provided by statute, the Cochairmen may appoint committees to conduct the studies that the Commission is authorized to undertake. ~~Each committee shall consist of at least eight members, four appointed by the Speaker and four appointed by the President Pro Tempore.~~ The composition of each committee is at the discretion of the Commission Cochairmen, as advised by the Acting Chairmen. ~~The President Pro Tempore and the Speaker shall name a cochair from each of their respective appointments to the committee.~~ Upon agreement between the cochairmen, either or both of them shall call the meetings ~~following the first meeting~~ of their committee, set the agendas for the meetings, and preside over the meetings. Other duties of the cochairmen include voting on all questions before their committees and signing and transmitting all reports of their committee to the Commission Cochairmen. The cochairmen should develop their agenda to insure that each committee meeting lasts not less than four hours.

4. **Procedure before the Commission and its committees.—**

(a) **Commission meetings and presiding officer.** Commission meetings shall be called by both ~~cochairmen~~Cochairmen. The Speaker, or the Speaker's Acting Chairman, shall preside over Commission meetings in odd-numbered years, and the President Pro Tempore, or President Pro Tempore's Acting Chairman, shall preside in even-numbered years.

(b) **Scheduling and notice of meetings.** The scheduling of meetings of the Legislative Research Commission and its committees wherever held, shall be coordinated through the Legislative Services Office. Notice of meetings of the Commission and its committees shall be posted on the press room door and delivered to the Legislative Services Office as early as possible prior to the meeting. The Legislative Services Office shall publish the official notice for meetings of this Commission and its committees. Any modification to the meeting schedule, as published, shall be made through that Office as soon as possible. Committees shall limit the number of meetings to no more than four (4) prior to the reconvening of the 2012 Session of the 2011 General Assembly, unless additional meetings are approved in advance by the Commission Cochairmen. The Commission Cochairmen shall direct the Acting Chairmen as to the number of committee meetings that may be held after the adjournment sine die of the 2011 General Assembly.

(c) **Quorum.** As provided by statute, eight members, including ex officio members, shall constitute a quorum of the Commission. With respect to any committee a majority of the committee shall constitute a quorum of the committee. ~~The Commission member responsible for the committee shall be counted towards that majority.~~

(d) **Voting.** All questions before the Commission or any committee shall be determined by a simple majority of the members present and voting. A two- thirds (2/3) vote of the members present shall by necessary to sustain any appeal from a ruling by the presiding officer.

(e) **Closed sessions.** The Commission or any committee can hold an ~~executive~~ closed session only as provided by law.

(f) **Review of Committees' progress.** The Commission members shall review for the Commission the progress and financial condition of the committees under each member's charge. These reviews shall occur at the Commission meetings upon the call of the cochairs.

5. **Members' terms, compensation, and duties.**—As provided by statute, Commission and committee members' terms shall begin on the day of appointment and shall end on January 15, ~~2001~~2013. The Commission shall hold its final meeting prior to that date. As provided by statute, Commission and committee members shall be compensated as follows: All Commission and committee members who are members of the General Assembly are eligible to receive a travel allowance of twenty-nine (29¢) per mile for transportation by privately owned automobile and actual fare for any other conveyance. All others will receive ~~twenty-five cents (25¢) per mile~~ mileage at the rate approved by the Office of State Budget and Management. The reimbursement to Commission and committee members for any mode of travel in-State shall not exceed the cost of travel by privately-owned automobile plus cost not exceeding one extra day per diem.

Members of the General Assembly shall receive a subsistence allowance of one hundred and four dollars ($104.00) per day. Committee members who are not members of the General Assembly or State officers or employees shall receive compensation at the rate of fifteen dollars ($15.00) per day. All non-legislator committee members shall receive a maximum subsistence allowance for each day of service of eighty-one dollars ($81.00) when travelling in-State and ninety-three dollars ($93.00) a day when travelling out-of-State. Costs of overnight lodging must be documented. All members, including committee members who are not legislators, shall vote on all questions before the Commission or committee. When attending a meeting each member should sit with the Commission or committee for at least three quarters of the time during which the Commission or committee is in session.

6. **Staff.**—Clerical assistance for the Commission and committees shall be determined and assigned by the Commission Cochairmen. The Director of Research shall coordinate the professional staffing of the committees by Legislative Services Office personnel or outside consultants, subject to the approval of the Commission Cochairmen. The costs of travel by a staff member on behalf of a committee shall be paid from the appropriate committee budget as approved by the cochairmen ~~and the Commission member responsible for the study~~of the Commission. Committee clerks shall be authorized to work up to five days for each committee meeting, including the day of the meeting; provided that the Commission member responsible for the study shall be authorized, after consultation with either Commission Cochairman, to approve additional work time as the member deems to be necessary. Committee clerks shall remain under the supervision and control of the supervisor of clerks of the respective house.

7. **Reports of committees.—**

(a) **Adoption by committee.** If a committee is to make recommendations to the Commission, the committee cochairmen shall insure that a draft of the committee report

is sent to the committee members and the Commission member responsible for the study at least seven (7) days before the committee's meeting at which the report is to be approved. The actual text of the final report shall be adopted by the committee at its meeting prior to transmittal of the report to the Commission and shall include all recommended legislation. With the approval of the committee cochairmen, typographical errors may thereafter be corrected, but no other change may be made in the report by any individual or committee.

(b) **Transmittal to Commission.** Reports to the ~~2000~~2012 Session of the ~~1999~~2011 General Assembly shall be submitted to the Commission Cochairmen not later than Friday, April ~~28~~27, ~~2000~~2012. Final reports to the ~~2001~~2013 General Assembly shall be transmitted to the Commission Cochairmen not later than Friday, January ~~54~~, ~~2001~~2013. The committee cochairmen shall provide thirty (30) copies of each report to the Commission Cochairmen for distribution to the Commission members.

(c) **Action by the Commission and transmittal to the General Assembly.** The Commission may accept for transmittal to the General Assembly the reports of its committees with whatever modifications to those reports the Commission deems to be appropriate. Such transmittals to the General Assembly are for its consideration of the recommendations of the committees and do not amount to endorsements of those recommendations.

(d) **Printing, distribution, and summaries of reports.** At least three hundred copies of each report that the Commission accepts for transmittal to the General Assembly shall be printed. Each member of the General Assembly, upon request, shall be entitled to one copy of each report. The Director of Research shall prepare a publication summarizing the activities and recommendations of the committees that are contained in the reports that are transmitted to the General Assembly. Copies of this summary shall be distributed to all members of the General Assembly as soon as practicable after its printing.

RULES FOR THE
2011-12 LEGISLATIVE RESEARCH COMMISSION

[Adopted on September 14, 2011]

1. **Legislative Research Commission; member; cochairmen; terms.**—As provided by statute, the Legislative Research Commission (hereinafter referred to as "Commission") shall consist of five Senators appointed by the President Pro Tempore of the Senate and five Representatives appointed by the Speaker of the House. The President Pro Tempore and the Speaker shall be ex officio members of the Commission and shall serve as the Cochairmen of the Commission. Each Cochairman, respectively, may appoint an acting chairman to act in his stead in all respects under these Rules, subject to applicable law (each, an "Acting Chairman"). Where applicable law requires the action of the Chairmen, the Acting Chairmen shall make nonbinding recommendations to the respective Chairmen for final action. The Cochairmen, or the Acting Chairmen as the case may be, shall set the agenda for the Commission's meetings and shall have the authority, in the absence of a Commission meeting, to allocate funds, to modify allocations of funds to the Commission's advisory committees (hereinafter referred to as "committees"), to direct studies to be conducted, and to request another State agency, board, commission or committee to undertake a study authorized by the Commission.

2. **Areas of study, duties of Commission members.**—The Commission shall determine which of the subjects it is authorized to study shall be funded and which the Commission shall request a more appropriate Study agency to study pursuant to G.S. 120-30.17(9). The subjects that the Commission decides to study shall be apportioned by the Cochairmen into ten areas of study, and each Commission member shall be designated by the Cochairmen to be responsible for the committees that are appointed to study the subjects in his study area. In this context, the duties of each Commission member include:

   (a) Assuring that each study is conducted within its budget and within the timetables set forth in these rules;

   (b) Requesting that additional funds be allocated by the Commission Cochairmen or the full Commission if the funds are necessary to complete a study;

   (c) Presenting to the Commission at its meetings a review of the progress and financial condition of the committees under the member's charge and the reports of those committees;

   (d) Generally serving as a liaison between the Commission and the committees for which the member is responsible.

3. **Committees; committee cochairmen; members.**—As provided by statute, the Cochairmen may appoint committees to conduct the studies that the Commission is authorized to undertake. The composition of each committee is at the discretion of the Commission Cochairmen, as advised by the Acting Chairmen. Upon agreement between the cochairmen, either or both of them shall call the meetings of their committee, set the agendas for the meetings, and preside over the meetings. Other duties

of the cochairmen include voting on all questions before their committees and signing and transmitting all reports of their committee to the Commission Cochairmen. The cochairmen should develop their agenda to insure that each committee meeting lasts not less than four hours.

4. **Procedure before the Commission and its committees.—**

(a) **Commission meetings and presiding officer.** Commission meetings shall be called by both Cochairmen. The Speaker, or the Speaker's Acting Chairman, shall preside over Commission meetings in odd-numbered years, and the President Pro Tempore, or President Pro Tempore's Acting Chairman, shall preside in even-numbered years.

(b) **Scheduling and notice of meetings.** The scheduling of meetings of the Legislative Research Commission and its committees wherever held, shall be coordinated through the Legislative Services Office. Notice of meetings of the Commission and its committees shall be posted on the press room door and delivered to the Legislative Services Office as early as possible prior to the meeting. The Legislative Services Office shall publish the official notice for meetings of this Commission and its committees. Any modification to the meeting schedule, as published, shall be made through that Office as soon as possible. Committees shall limit the number of meetings to no more than four (4) prior to the reconvening of the 2012 Session of the 2011 General Assembly, unless additional meetings are approved in advance by the Commission Cochairmen. The Commission Cochairmen shall direct the Acting Chairmen as to the number of committee meetings that may be held after the adjournment sine die of the 2011 General Assembly.

(c) **Quorum.** As provided by statute, eight members, including ex officio members, shall constitute a quorum of the Commission. With respect to any committee a majority of the committee shall constitute a quorum of the committee.

(d) **Voting.** All questions before the Commission or any committee shall be determined by a simple majority of the members present and voting. A two- thirds (2/3) vote of the members present shall by necessary to sustain any appeal from a ruling by the presiding officer.

(e) **Closed sessions.** The Commission or any committee can hold an closed session only as provided by law.

(f) **Review of Committees' progress.** The Commission members shall review for the Commission the progress and financial condition of the committees under each member's charge. These reviews shall occur at the Commission meetings upon the call of the cochairs.

5. **Members' terms, compensation, and duties.**—As provided by statute, Commission and committee members' terms shall begin on the day of appointment and shall end on January 15, 2013. The Commission shall hold its final meeting prior to that date. As provided by statute, Commission and committee members shall be compensated as follows: All Commission and committee members who are members of the General Assembly are eligible to receive a travel allowance of twenty-nine (29¢) per mile for

transportation by privately owned automobile and actual fare for any other conveyance. All others will receive mileage at the rate approved by the Office of State Budget and Management. The reimbursement to Commission and committee members for any mode of travel in-State shall not exceed the cost of travel by privately-owned automobile plus cost not exceeding one extra day per diem.

Members of the General Assembly shall receive a subsistence allowance of one hundred and four dollars ($104.00) per day. Committee members who are not members of the General Assembly or State officers or employees shall receive compensation at the rate of fifteen dollars ($15.00) per day. All non-legislator committee members shall receive a maximum subsistence allowance for each day of service of eighty-one dollars ($81.00) when travelling in-State and ninety-three dollars ($93.00) a day when travelling out-of-State. Costs of overnight lodging must be documented. All members, including committee members who are not legislators, shall vote on all questions before the Commission or committee. When attending a meeting each member should sit with the Commission or committee for at least three quarters of the time during which the Commission or committee is in session.

6. **Staff.**—Clerical assistance for the Commission and committees shall be determined and assigned by the Commission Cochairmen. The Director of Research shall coordinate the professional staffing of the committees by Legislative Services Office personnel or outside consultants, subject to the approval of the Commission Cochairmen. The costs of travel by a staff member on behalf of a committee shall be paid from the appropriate committee budget as approved by the cochairmen of the Commission. Committee clerks shall be authorized to work up to five days for each committee meeting, including the day of the meeting; provided that the Commission member responsible for the study shall be authorized, after consultation with either Commission Cochairman, to approve additional work time as the member deems to be necessary. Committee clerks shall remain under the supervision and control of the supervisor of clerks of the respective house.

7. **Reports of committees.—**

(a) **Adoption by committee.** If a committee is to make recommendations to the Commission, the committee cochairmen shall insure that a draft of the committee report is sent to the committee members and the Commission member responsible for the study at least seven (7) days before the committee's meeting at which the report is to be approved. The actual text of the final report shall be adopted by the committee at its meeting prior to transmittal of the report to the Commission and shall include all recommended legislation. With the approval of the committee cochairmen, typographical errors may thereafter be corrected, but no other change may be made in the report by any individual or committee.

(b) **Transmittal to Commission.** Reports to the 2012 Session of the 2011 General Assembly shall be submitted to the Commission Cochairmen not later than Friday, April 27, 2012. Final reports to the 2013 General Assembly shall be transmitted to the Commission Cochairmen not later than Friday, January 4, 2013. The committee cochairmen shall

provide thirty (30) copies of each report to the Commission Cochairmen for distribution to the Commission members.

(c) **Action by the Commission and transmittal to the General Assembly.** The Commission may accept for transmittal to the General Assembly the reports of its committees with whatever modifications to those reports the Commission deems to be appropriate. Such transmittals to the General Assembly are for its consideration of the recommendations of the committees and do not amount to endorsements of those recommendations.

(d) **Printing, distribution, and summaries of reports.** At least three hundred copies of each report that the Commission accepts for transmittal to the General Assembly shall be printed. Each member of the General Assembly, upon request, shall be entitled to one copy of each report. The Director of Research shall prepare a publication summarizing the activities and recommendations of the committees that are contained in the reports that are transmitted to the General Assembly. Copies of this summary shall be distributed to all members of the General Assembly as soon as practicable after its printing.

NORTH CAROLINA GENERAL ASSEMBLY
SENATOR PHILIP E. BERGER
PRESIDENT PRO TEMPORE
NORTH CAROLINA SENATE

September 1, 2011

Senator Tom Apodaca
Chairman
Legislative Research Commission
North Carolina State Senate
16 W. Jones Street, Room 2010
Raleigh, NC 27601-2808

Dear Senator Apodaca:

As you prepare your agenda for the Legislative Research Commission (the "Commission"), pursuant to G.S. 120-30.17, I hereby authorize the Commission to appoint subcommittees to study the following matters during the interim. Senate appointees to each study committee are also identified. Please restrict each study committee to a maximum of four meetings unless additional meetings are pre-approved by my office.

Studies Approved in Conjunction with the House:

- **North Carolina Alcoholic Beverage Control System** – Study the following aspects of the current State and local alcoholic beverage control (ABC) in North Carolina:

  (1) Whether the involvement in the distribution and sale of spirituous liquor is a core government function of State and local government.
  (2) The privatization and divestiture of the ABC system, including potential recurring and nonrecurring revenue from the divestiture of the ABC system's current assets.
  (3) A comparison of the North Carolina ABC system with other similarly situated states that have recently privatized or studied the privatization of their ABC systems, including the states of Ohio and Virginia.
  (4) The impact that privatizing the wholesale and retail components of the distribution of spirituous liquor would have on:

    a. State and local revenues used for providing core services;
    b. Mental health and substance abuse services;
    c. Underage drinking;
    d. Consumer access to spirituous liquor in both urban and rural areas; and
    e. Product availability.

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(5) The potential for phasing out of local governments from the operation of the retail distribution of spirituous liquor.

(6) An analysis of local ABC Boards and local governments that may benefit from divestiture of the ABC system.

(7) A comparison of the current excise taxes and bailment fees applied to spirituous liquor in North Carolina versus other states.

Chair: Hunt (Boles)
Members: Meredith, Jenkins, East (Starnes, H. Warren, McLawhorn)

- **Efficiencies in State Government** – Study additional uses of analytics to increase efficiencies across all areas of State government, including performance management; waste, fraud, and abuse; outcome management; and outsourcing.

Chair: Hise (Blackwell)
Members: Brock, Atwater, Soucek (Crawford, Hager, Avila)

- **in Home and Community Based Mental Health Services for Youth** – Study the development and implementation of a demonstration program for mental health providers providing in home and community based services to youth up to age 20 under the State Medicaid program, the purpose of which is to establish reimbursement and regulatory flexibility for providers that demonstrate beneficial outcomes for Medicaid recipients served.

Chair: Hartsell (Hollo)
Members: Nesbitt, Allran, Tucker, Bingham (Hurley, Burr, Insko, Brisson)

- **Retitling of Manufactured Homes Removed from Property** – Study ways to clarify the retitling of a manufactured home that is removed from real property after the original title has been cancelled.

Chair: Goolsby (T. Moore)
Members: Rabon, Harrington, Daniel, Walters (Gillespie, Hilton, Mobley)

- **Property Insurance Rate Making** – Study the adequacy of citizen input in property insurance rate making and the manner in which property insurance rates are proposed, reviewed, approved, and appealed. Specifically, the subcommittee may study the following:

(1) The feasibility and advisability of replacing the North Carolina Rate Bureau with a market based rate-setting system or with a regulatory commission similar to the North Carolina Utilities Commission.
(2) The adequacy under current law of legislative oversight of the Rate Bureau, the North Carolina Joint Underwriting Association, and the North Carolina Insurance Underwriting Association.

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(3) The adequacy under current law of Commissioner of Insurance duties pertaining to protection of policyholders and the public against the adverse effects of excessive, inadequate, or unfairly discriminatory rates.

(4) Whether North Carolina citizens and policyholders should be given a voice in rate appeals under G.S. 58-2-80 through creation of a board or office independent of the Commissioner with standing to advocate on behalf of citizens and policyholders.

(5) The adequacy of the review process afforded by G.S. 58-36-1(2) to persons affected by a rate or loss costs made by the Rate Bureau.

(6) Whether information provided to the public by the Commissioner and the Rate Bureau is adequate to allow reasoned review by interested citizens of the assumptions, modeling, and processes used in setting rates.

Chair: Brown
Members: Apodaca, Meredith, Hise, White

- **Municipal Power Agency Relief** – Study potential options to provide relief to customers of the joint municipal power agencies from high electric rates, including:

(1) The feasibility of refinancing or restructuring the debt of the power agencies.

(2) The feasibility of selling assets of the municipalities or the power agencies to lower electric rates or the total amount of debt.

Chair: Newton
Members: Brock, Rucho, Meredith, Mansfield

- **Marine Fisheries** – Study issues relating to marine fisheries. Specifically, the subcommittee may study the following:

(1) The potential impact to both the State's fisheries resources and the State's economy related to the designation of Red Drum (Sciaenops ocellatus), Spotted Sea Trout (Cynoscion nebulosus), and Striped Bass (Morone saxatilis) as coastal game fish.

(2) Changes to the appointment process and qualification for membership on the North Carolina Marine Fisheries Commission.

(3) Creation of a hook and line commercial fishery.

(4) Elimination of the trawl boat fishery in North Carolina.

(5) Entering into reciprocal agreements with other jurisdictions with regard to the conservation of marine and estuarine resources; and regulating placement of nets and other sports or commercial fishing apparatus in coastal fishing waters with regard to navigational and recreational safety as well as from a conservation standpoint.

(6) Entering into agreements regarding the delegation of law enforcement powers from the National Marine Fisheries Service over matters within the jurisdiction of the Service.

(7) Potential modification of the Fisheries Reform Act of 1997.

(8) Whether Marine Fisheries should be a division of the Coastal Resources Commission or the Wildlife Resources Commission.

(8) Other findings that promote the allocation of the State's resources to the optimum use.

Chair: Brown
Members: Preston, White, Goolsby, Rabon, Tucker, East

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- **Automobile Insurance Modernization** – (a) Study issues relating to the method and manner of establishing automobile insurance rates in North Carolina, to ensure consumers are receiving the fullest possible benefit from marketplace competition among insurers on pricing, product, and coverage options. The study may include, but is not limited to, review of the insurance regulatory systems in other states; model laws and recommendations of the National Association of Insurance Commissioners and the National Conference of Insurance Legislators, the North Carolina Rate Bureau, the North Carolina Reinsurance Facility, and the Safe Driver Incentive Program; current and proposed restrictions and regulations on automobile insurance pricing, underwriting, and related issues; the method and effectiveness of assuring voluntary and involuntary automobile insurance markets; and the effect of modernizing the automobile insurance regulatory system upon the revenues, expenses, and operations of the Department of Insurance and the State of North Carolina; and the use of electronic verification systems by law enforcement agencies and officers to electronically identify motor vehicles operating on the public streets and public vehicular areas without financial responsibility as required pursuant to G.S. 20-309.

  (b) Study issues related to enforcement and administration of safety and emissions inspection requirements set forth G.S. 20-183.2, et seq. The study may include, but is not limited to, review of current penalties assessed against motor vehicle owners, safety inspection station licensees and emission inspection licensees; review of new technologies available to increase the efficiency and effectiveness of the Department of Motor Vehicles' enforcement of inspection requirements; and review of the appeals processes governing the issuance, suspension and revocation of any of safety and/or emissions licenses issued by the Division and any fines assessed thereby.

  Chair: Apodaca
  Members: Rucho, Kinnaird, Gunn

- **Pretrial Release** – Study methods for achieving increased efficiencies and outcomes in the pretrial release process and procedures.

  Chair: Rucho
  Members: Goolsby, Brown, D. Berger

- **Mechanics Liens on Real Property** - Study issues related to mechanic's liens on real property in North Carolina, including ways to address "hidden" liens in real estate transactions, and any other issues the subcommittee deems relevant to the study.

  Chair: Brunstetter (Stevens)
  Members: Goolsby, Harrington, Stein (Stam, Blackwell, Faison)

- **Transition to Federal and Local Funding for Local Mass Transit** – Study issues related to the utilization of federal and local funding sources for local mass transit projects and the elimination of State funding for such projects.

  Chair: Rucho (Avila)
  Members: Rabon, Harrington, Jenkins, Hunt (Brawley, R. Moore, T. Moore, Murry)

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- **Consolidation of Elections, Ethics and Lobbyist Registration Functions** – Study transfer of the authority, powers, duties and functions, records, personnel, property and budgets of the State Ethics Commission and the lobbying registration and lobbying enforcement authority, functions and budget of the Secretary of State to a new State Board of Elections and Ethics Enforcement.

  Chair: Brock (Lewis)
  Members: Rucho, Brunstetter, Nesbitt, Gunn (Stam, T. Moore, Martin, Howard)

Studies Approved for the Senate:

- **Retirement Benefits for Teachers and State Employees** – Study retirement and health benefits for teachers and State employees. As a part of its study, the Commission may examine issues related to:

  (1) Whether the changing demographics among State employees require changes to the current defined benefit plan.
  (2) Whether there is a need to establish a normal retirement age when retirement benefits are to begin.
  (3) Whether the retirement plan should have a defined contribution component.
  (4) Whether the current retirement plan serves the need to recruit and retain the best teachers and State employees.
  (5) Any other issues the Subcommittee deems relevant to improvement of the retirement system.

  Chair: Apodaca
  Members: Garrou, Hise, Meredith, Brunstetter

- **Consolidated Environmental Commission**– Study the desirability and the feasibility of consolidating the State's environmental policy making, rulemaking, and quasi-judicial functions into one comprehensive fulltime environmental commission, perhaps to be modeled after the North Carolina Utilities Commission. As part of this study, the subcommittee shall evaluate all issues that pertain to a consolidation of the roles and duties that the current multiple environmental boards, commissions, and councils have. The subcommittee shall also consider any one or more of the following issues:

  (1) Whether a consolidated environmental commission should have its own fulltime staff.

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(2) Whether a consolidated environmental commission would enhance the efficiency, objectivity, or fairness of environmental policymaking and regulation in North Carolina or reduce any unnecessary duplication.

(3) How a consolidated environmental commission would access the scientific expertise it would need to address the broad range of environmental subjects under its purview.

(4) What should be the number of commissioners to serve on such a commission, their qualifications, and their term length; how such commissioners should be appointed; and what should be the commission's duties.

(5) How such a commission and its staff would be funded.

(6) What is a reasonable timetable for creating and phasing in such a commission.

Chair: East
Members: Clodfelter, Jackson, Rouzer

- **Reclaimed Water Issues** – Study issues regarding the use of reclaimed water, the current permitting requirements for the discharge of wastewater and reclaimed water, and possible revisions to the permitting system that shall help to accommodate and encourage the beneficial use of reclaimed water while protecting against any potential threat to the environment or public health resulting from the use, overflow, or discharge of reclaimed water.

Chair: Stevens
Members: Hunt, Stein, Jackson

- **Energy Policy Issues** – Study strategies that will increase energy production and efficiency within the State to develop a secure, stable, and predictable energy supply in order to facilitate economic growth, job creation, and expansion of business and industry opportunities in a way that protects and preserves the State's natural resources, cultural heritage, and quality of life. In doing so, the subcommittee may consider the following issues:

1. Development of a regional, interstate offshore energy commission and/or compact between North Carolina, Virginia, South Carolina and other coastal states deemed relevant to accelerate geophysical exploration of the outer continental shelf, amend the US Department of the Interior's Five Year Leasing Plan to include the Atlantic coast, advocate proactively for federal revenue sharing for royalties and revenues generated from offshore leasing, exploration, and production (and how these monies should be allocated within the State); and recommend the reinstatement of the US Department of the Interior's Offshore Policy Committee that shall include members of the commission and/or compact discussed above .
2. Potential legislative actions that can encourage or require the federal government to decrease or eliminate spent nuclear fuel stored on site within the State by using the funds collected from North Carolina electricity ratepayers through the Nuclear Waste Policy Act of 1982 to open the Yucca Mountain central nuclear waste repository in Nevada.
3. The feasibility of developing a limited pilot project for shale gas exploration in Chatham, Lee, and Moore counties that shall include information gathered by the Department of Environment and Natural Resources as required in H242 and S709 if it becomes law;

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4. Review of the process(es) within North Carolina and other relevant states for the development of agronomic rates for nutrient application to non-edible, high-yield energy grasses and study potential options to increase the efficiency and regulatory consistency of these rates.
5. Studying the feasibility of development of a market for clean natural gas (CNG) vehicles within the State that includes expansion of natural gas production, expansion of natural gas delivery infrastructure, conversion of a portion of the State motor fleet to CNG, flat motor fuel tax rates for CNG (and other alternative fuel) vehicles, encouragement of local government and industry to open fleet CNG fueling stations to public, and the development of tax or regulatory incentives for fleet conversions, refueling stations (home- or fleet-based), dedicated vehicle purchases, or CNG-related industry expansion within the State.
6. Other potential pilot projects as the subcommittee finds relevant to the goals set forth above for traditional, renewable and alternative energy to increase exploration, development, production, and/or utilization.

Chair: Rucho
Members: Goolsby, Blake, Rabon, Walters

I will look forward to reviewing the Commission's report regarding the study results, as well as any recommended legislation, prior to convening of the 2012 short session. Please let me know if my staff or I may be of assistance.

Thank you for your service.

Sincerely,

Philip E. Berger

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Office of the Speaker
North Carolina House of Representatives
Raleigh, NC 27601-1096

September 1, 2011

Representative Tim Moore
Chairman
Legislative Research Commission
North Carolina House of Representatives
16 W. Jones Street, Room 1326
Raleigh, NC 27601-1096

Dear Representative Moore:

As you prepare your agenda for the Legislative Research Commission (the "Commission"), pursuant to G.S. 120-30.17, I hereby authorize the Commission to appoint subcommittees to study the following matters during the interim. House appointees to each study committee are also identified. Please restrict each study committee to a maximum of four meetings unless additional meetings are pre-approved by my office.

Studies Approved in Conjunction with the Senate:

- <u>North Carolina Alcoholic Beverage Control System</u> – Study the following aspects of the current State and local alcoholic beverage control (ABC) in North Carolina:

  (1) Whether the involvement in the distribution and sale of spirituous liquor is a core government function of State and local government.
  (2) The privatization and divestiture of the ABC system, including potential recurring and nonrecurring revenue from the divestiture of the ABC system's current assets.
  (3) A comparison of the North Carolina ABC system with other similarly situated states that have recently privatized or studied the privatization of their ABC systems, including the states of Ohio and Virginia.
  (4) The impact that privatizing the wholesale and retail components of the distribution of spirituous liquor would have on:

    a. State and local revenues used for providing core services;

b. Mental health and substance abuse services;
c. Underage drinking;
d. Consumer access to spirituous liquor in both urban and rural areas; and
e. Product availability.

(5) The potential for phasing out of local governments from the operation of the retail distribution of spirituous liquor.

(6) An analysis of local ABC Boards and local governments that may benefit from divestiture of the ABC system.

(7) A comparison of the current excise taxes and bailment fees applied to spirituous liquor in North Carolina versus other states.

Chair: Boles (Hunt)
Members: Starnes, H. Warren, McLawhorn (Meredith, Jenkins, East)

- Efficiencies in State Government – Study additional uses of analytics to increase efficiencies across all areas of State government, including performance management; waste, fraud, and abuse; outcome management; and outsourcing.

  Chair: Blackwell (Hise)
  Members: Crawford, Hager, Avila (Brock, Atwater, Soucek)

- In Home and Community Based Mental Health Services for Youth – Study the development and implementation of a demonstration program for mental health providers providing in home and community based services to youth up to age 20 under the State Medicaid program, the purpose of which is to establish reimbursement and regulatory flexibility for providers that demonstrate beneficial outcomes for Medicaid recipients served.

  Chair: Hollo (Hartsell)
  Members: Hurley, Burr, Insko, Brisson (Nesbitt, Allran, Tucker, Bingham)

- Retitling of Manufactured Homes Removed from Property – Study ways to clarify the retitling of a manufactured home that is removed from real property after the original title has been cancelled.

  Chair: T. Moore (Goolsby)
  Members: Gillespie, Hilton, Mobley, Saine (Rabon, Harrington, Daniel, Walters)

- Property Insurance Rate Making – Study the adequacy of citizen input in property insurance rate making and the manner in which property insurance rates are proposed, reviewed, approved, and appealed. Specifically, the subcommittee may study the following:

  (1) The feasibility and advisability of replacing the North Carolina Rate Bureau with a market based rate-setting system or with a regulatory commission similar to the North Carolina Utilities Commission.
  (2) The adequacy under current law of legislative oversight of the Rate Bureau, the North Carolina Joint Underwriting Association, and the North Carolina Insurance Underwriting Association.
  (3) The adequacy under current law of Commissioner of Insurance duties pertaining to protection of policyholders and the public against the adverse effects of excessive, inadequate, or unfairly discriminatory rates.

(4) Whether North Carolina citizens and policyholders should be given a voice in rate appeals under G.S. 58-2-80 through creation of a board or office independent of the Commissioner with standing to advocate on behalf of citizens and policyholders.
(5) The adequacy of the review process afforded by G.S. 58-36-1(2) to persons affected by a rate or loss costs made by the Rate Bureau.
(6) Whether information provided to the public by the Commissioner and the Rate Bureau is adequate to allow reasoned review by interested citizens of the assumptions, modeling, and processes used in setting rates.

Chair: Dockham (Brown)
Members: McElraft, Iler, Wray, Jordan (Apodaca, Meredith, Hise, White)

- Municipal Power Agency Relief – Study potential options to provide relief to customers of the joint municipal power agencies from high electric rates, including:

(1) The feasibility of refinancing or restructuring the debt of the power agencies.
(2) The feasibility of selling assets of the municipalities or the power agencies to lower electric rates or the total amount of debt.

Chair: Collins (Newton)
Members: Brawley, Owens, Dixon, Stam (Brock, Rucho, Meredith, Mansfield)

- Marine Fisheries – Study issues relating to marine fisheries. Specifically, the subcommittee may study the following:

(1) The potential impact to both the State's fisheries resources and the State's economy related to the designation of Red Drum (Sciaenops ocellatus), Spotted Sea Trout (Cynoscion nebulosus), and Striped Bass (Morone saxatilis) as coastal game fish.
(2) Changes to the appointment process and qualification for membership on the North Carolina Marine Fisheries Commission.
(3) Creation of a hook and line commercial fishery.
(4) Elimination of the trawl boat fishery in North Carolina.
(5) Entering into reciprocal agreements with other jurisdictions with regard to the conservation of marine and estuarine resources; and regulating placement of nets and other sports or commercial fishing apparatus in coastal fishing waters with regard to navigational and recreational safety as well as from a conservation standpoint.
(6) Entering into agreements regarding the delegation of law enforcement powers from the National Marine Fisheries Service over matters within the jurisdiction of the Service.
(7) Potential modification of the Fisheries Reform Act of 1997.
(8) Whether Marine Fisheries should be a division of the Coastal Resources Commission or the Wildlife Resources Commission.
(8) Other findings that promote the allocation of the State's resources to the optimum use.

Chair: McCormick (Brown)
Members: Ingle, Samuelson, McComas, Spear, Holloway, McElraft (Preston, White, Goolsby, Rabon, Tucker, East)

- Automobile Insurance Modernization – (a) Study issues relating to the method and manner of establishing automobile insurance rates in North Carolina, to ensure consumers are receiving the fullest possible benefit from marketplace competition among insurers on pricing, product,

and coverage options. The study may include, but is not limited to, review of the insurance regulatory systems in other states; model laws and recommendations of the National Association of Insurance Commissioners and the National Conference of Insurance Legislators, the North Carolina Rate Bureau, the North Carolina Reinsurance Facility, and the Safe Driver Incentive Program; current and proposed restrictions and regulations on automobile insurance pricing, underwriting, and related issues; the method and effectiveness of assuring voluntary and involuntary automobile insurance markets; and the effect of modernizing the automobile insurance regulatory system upon the revenues, expenses, and operations of the Department of Insurance and the State of North Carolina; and the use of electronic verification systems by law enforcement agencies and officers to electronically identify motor vehicles operating on the public streets and public vehicular areas without financial responsibility as required pursuant to G.S. 20-309.

(b) Study issues related to enforcement and administration of safety and emissions inspection requirements set forth G.S. 20-183.2, et seq. The study may include, but is not limited to, review of current penalties assessed against motor vehicle owners, safety inspection station licensees and emission inspection licensees; review of new technologies available to increase the efficiency and effectiveness of the Department of Motor Vehicles' enforcement of inspection requirements; and review of the appeals processes governing the issuance, suspension and revocation of any of safety and/or emissions licenses issued by the Division and any fines assessed thereby.

Chair: Steen (Apodaca)
Members: H. Warren, Burr, Hamilton (Rucho, Kinnaird, Gunn)

- Pretrial Release – Study methods for achieving increased efficiencies and outcomes in the pretrial release process and procedures.

  Chair: Daughtry (Rucho)
  Members: Guice, Spear, Stevens (Goolsby, Brown, D. Berger)

- Mechanics Liens on Real Property - Study issues related to mechanic's liens on real property in North Carolina, including ways to address "hidden" liens in real estate transactions, and any other issues the subcommittee deems relevant to the study.

  Chair: Stevens (Brunstetter)
  Members: Stam, Blackwell, Faison (Goolsby, Harrington, Stein)

- Transition to Federal and Local Funding for Local Mass Transit – Study issues related to the utilization of federal and local funding sources for local mass transit projects and the elimination of State funding for such projects.

  Chair: Avila (Rucho)
  Members: Brawley, R. Moore, T. Moore, Murry (Rabon, Harrington, Jenkins, Hunt)

- Consolidation of Elections, Ethics and Lobbyist Registration Functions – Study transfer of the authority, powers, duties and functions, records, personnel, property and budgets of the State

Ethics Commission and the lobbying registration and lobbying enforcement authority, functions and budget of the Secretary of State to a new State Board of Elections and Ethics Enforcement.

Chair: Lewis (Brock)
Members: Stam, T. Moore, Martin, Howard (Rucho, Brunstetter, Nesbitt, Gunn)

Studies Approved for the House:

1. **Third Party Sale of Electricity (HB 906 – Samuelson, Avila)**

The Legislative Research Commission shall study the feasibility and the desirability of authorizing sales of electricity by any third party that owns or operates the equipment of a renewable energy facility with two megawatts or less capacity when the renewable energy facility is located on a customer's property. This study shall focus on the obstacles that currently prevent these third-party sales of electricity from renewable energy resources and the possible solutions that address these obstacles. One major obstacle the Commission shall consider is whether the third party that owns or operates the equipment of a renewable energy facility is subject to being regulated as a public utility under Chapter 62 of the General Statutes unless legislation is enacted to exclude the third-party owner or operator of the on-site generating equipment from such regulation. In its study, the Commission may consider all of the following issues:

(1) Whether these third-party sales of electricity have the potential to substantially assist North Carolina in gaining greater energy security and energy independence through the use of indigenous resources available within the State.

(2) Whether these third-party sales of electricity have the potential to sufficiently address on-peak demand loads to result in lowering costs for utility customers and avoiding the need to build additional generating facilities.

(3) Whether the development of renewable energy in the State through third-party sales of electricity is likely to encourage private investment in new small scale generating facilities, thereby creating new property tax bases and creating new energy-related jobs throughout the State.

(4) Whether these third-party sales of electricity would promote the development of renewable energy in North Carolina by allowing competition in markets that heretofore have been closed to competition and served exclusively by an energy supplier assigned to serve such market.

(5) Any other issue the Commission considers relevant to its study.

Chair: Samuelson
Members: Avila, Goodman, Hager, Steen

2. **Metropolitan Sewerage/Water System (HB 925 – Moffitt)**

The Legislative Research Commission shall study whether requiring large cities that have a municipal water system and that are located entirely within a Metropolitan Sewerage District to convey that water system to the district will improve the efficiency of providing public services.

The Commission shall specifically examine House Bill 925, First Edition, 2011 Regular Session, and the following issues:

(1) Financial stability of the current independent systems on a historic basis and the anticipated financial stability of a combined system.

(2) Cost-benefit analysis of a combined system, including a review of assets and liabilities; personnel needs; equipment and infrastructure replacement schedules; facilities leased and owned; and fee schedules.

(3) Debt obligation.

(4) Taxpayer investments in the systems.

(5) Audit of current financials.

(6) Comparative analysis of the current system to existing public and private systems.

(7) Conservation and water efficiency practices.

(8) Best management practices.

(9) The disposition of property in Article 12 of Chapter 160A of the General Statutes as it relates to a conveyance of a water system.

(10) The transfer of permits when a water system is conveyed.

(11) Any local acts applicable to the city or metropolitan sewerage district.

(12) Other items the Commission deems relevant to the study.

Chair: Moffitt

Members: McGrady, Brawley, Murry, Brisson

3. **Make Manufacture While Using Stolen IT an Unfair Act (HB 672 – Steen, T. Moore, Wilkins)**

Chair: T. Moore

Members: Starnes, Mills, Avila, Pridgen

4. **Orderly and Expeditious Removal by Landlord of Personal Property of Deceased (HB 493 – Howard)**

The Committee may recommend changes to the General Statutes to provide for the orderly and expeditious removal by a landlord of the personal property of a decease tenant where the heirs are not readily identifiable or available to take possession of that personal property.

Chair: Howard

Members: T. Moore, Blust, Hastings, Stevens

5. **Incapacity to Proceed (HJR 612 – Randleman, Hurley)**

The Legislative Research Commission may study the adequacy of the involuntary commitment process for a criminal defendant who lacks the capacity to proceed to trial. In its study, the Commission may consider the impact of current law on the limited resources of local law enforcement, hospitals, mental health facilities, and the State's court system while balancing the rights of the accused, victims, and the safety and the general welfare of the public. The Commission may also consider options for determining whether a defendant is likely to attain the capacity to proceed to trial in the foreseeable future and at what point in the process that determination should be made. The Commission shall evaluate the statutory option of taking

dismissals in these types of cases for defendants who are charged with nonviolent crimes and for defendants who are charged with violent crimes, how often that option is used, and at what point and under what circumstances that option should be used. In addition, the Commission may consider all of the following: issues related to transportation, including the frequency, distance, and cost associated with the required psychiatric evaluations; duration of involuntary commitment for defendants found incapable of proceeding to trial pursuant to Article 56 of Chapter 15A of the General Statutes and involuntarily committed pursuant to Part 7 of Article 5 of Chapter 122C of the General Statutes; and any other issues the Commission considers relevant to this topic.

Chair: Randleman

Members: Burr, Hurley, McGuirt, Faircloth

6. **Life Cycle Cost Analysis (Murry)**

The Commission may study the implementation of revised policies on life cycle cost analysis including material cost indexing, open bidding for alternate pavement designs for all TIP projects that exceed $500,000 in pavement costs, and the 30 year design periods and 45 year analysis periods based upon actual historic schedules and costs.

Chair: Torbett

Members: Murry, Killian, Hilton, Iler, Mills

7. **Feasibility of Requiring Certain Reports to Be Filed Electronically (HB 346- Randleman)**

The Commission may study the feasibility and applicability of requiring electronic filing of all reports required to be filed with the State Board of Elections under G.S. 163-278.9, regardless of the amount.

Chair: Lewis

Members: Randleman, Blust, Jones, Ross

8. **Criminal Record Expunctions (HJR 760- Rules)**

The Legislative Research Commission may study whether current law strikes an appropriate balance between an employer's need for access to accurate criminal history information about potential employees and the need for a person who committed a relatively minor offense in the distant past to obtain employment in spite of the person's criminal history. If the Legislative Research Commission finds that it may be possible to achieve a better balance between these interests, then the Legislative Research Commission may further consider what type of expunction procedure may be developed and implemented that addresses the interests and concerns of employers, but also affords some appropriate relief to persons with a relatively minor past criminal conviction. In its study, the Commission may consider all of the following:

(1) The effect of a person's criminal record with regard to a person's ability to obtain employment.

(2) The reasons that an employer may need to know about a potential employee's criminal record.

(3) What types of criminal records may or may not be relevant with regard to 24 certain types of employment.

(4) What criminal offenses, if any, it may be reasonable to allow to be expunged from a person's record, the time period or other criteria that should be used to determine whether it is appropriate to allow the expunction, and whether the offense should be completely erased from the criminal record so that the person has no criminal record, or retained but limit the accessibility of the record only for certain purposes.

(5) Any other issues the Commission considers relevant to this topic.

Chair: Daughtry

Members: Blust, T. Moore, Stevens, Glazier

9. **Contracting for Maintenance Services at Prison Facilities (HB 335- Guice, Horn, Burr, Daughtry)**

The Commission may study the potential benefits and costs of contracting for maintenance services at prison facilities and report its findings to the 2013 Session of the General Assembly.

Chair: Guice

Members: Burr, Horn, Daughtry, Spear

10. **Designating Director of AOC as Custodian of Court Records (HB 859- Boles)**

The Legislative Research Commission may study the issue of making the Director of the Administrative Office of the Courts a custodian of court records for public records purposes and making court records public records and available to third parties upon request and payment of the reproduction costs. As a part of its study, the Commission shall review the issues raised by the first edition of House Bill 859, 2011 Regular Session.

Chair: Boles

Members: Stevens, Blust, Spear, Randleman

11. **Drivers Education Requirements (Boles)**

The Legislative Research Commission shall study the desirability of requiring all drivers to complete an approved driver education course before being issued a North Carolina drivers license. The study shall also consider how the requirement would apply to a person moving into this State with a valid driver's license issued by another state.

Chair: Boles

Members: Jackson, Blust, McCormick, Carney

12. **Automatic Renewal Credit Card Contracts (Starnes)**

The Commission may study automatic renewal provisions in contracts that provide credit card or other payment system processing for merchants. The Commission is authorized to review current practices in the formation of these contracts, determine whether the current practices should be amended by law, and examine any other issue the Commission deems relevant to this study.

VISITOR REGISTRATION SHEET

LRC — 9-14-2011

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kari Barbuss	DENR
Andrew Cagle	NC Sheriffs' Asso.
Patrick Buffkin	NCASC
Chris Agnew	DOA
Tom Bean	EDF, NCSEA, NCWF
Mary Maclean Asbill	Southern Env. Law Center
Matt Farrell	NCSBA
Kim Colvin	NCBA
Sara Fender	IFNC
Michelle Frazier	MF+S
Butch Gunnells	NC Bev

VISITOR REGISTRATION SHEET

LRC — 9-14-2011

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
David Stallon	STATE FARM
BD [illegible]	McGuireWoods
Elizabeth Taylor	Kuchanek Law Group
Lavonia Strickland	NCACC
Drew Saunders	ElectriCities
Robbie Roberts	WakeMed
Christie Craig	WakeMed
BJ Miller	Cove Health
Gretchen Kelly	FirstHealth
Breeden Blackwell	Cumberland Co. Hosp. Sys.

VISITOR REGISTRATION SHEET

LRC — 9/14/11

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Robert Paschal	Young Moore
[illegible] Burico	NWC
Rick Zechini	Progress Energy
Lisa Martin	NC Home Builders Assoc
Elizabeth Robinson	NCRMA
Andy Ellen	NCRMA
Cody Thomas	NC AIR
David Ferrell	NCCTA
Marcia Trant	NCALL
Daniel Ambrose	NCAM
Jake Cashion	NCCC

VISITOR REGISTRATION SHEET

LRC — 9-14-2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bruce Thompson	Parker Poe
Bob Ford	NC Poultry Fed
Tim Kent	NC Beer & Wine
Katherine Joyce	NCAST
Leanne Winner	NCSBA
Rose Williams	NCDOT
Solari	DST
Jake Cashion	NC Chamber
Sam Sabo	UNC
Lu-Ann Cheney	CSS

VISITOR REGISTRATION SHEET

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Meredith Swindell	The Policy Group
Allison Capen	Bailey & Dixon
Chris Kukla	CMC
[illegible]	NC JC
[illegible]	Bryans City NC
[illegible]	WM
Matthew Eastley	Smith Anderson
[illegible]	CWC
[illegible]	NCRMA

VISITOR REGISTRATION SHEET

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Doug Henry	NCPCM
Thomas Wayne	[illegible]
[illegible]	[illegible]
Chip Bryant	NCMS
DAVID BARNES	Poyner Spruill
[illegible]	[illegible]
Erica Nelson	
[illegible]	VMRS
[illegible]	NCARICF
Dean Plunkett	PS
C S Hollis	TSS

VISITOR REGISTRATION SHEET

LRC — Name of Committee

9-14-2011 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Paul Thomas	NCSB
Gary Harris	NC Petroleum & Convenience

House Committee Pages / Sergeants at Arms

NAME OF COMMITTEE LRC

DATE: 9-14-2011 **Room:** 1228

***Name:** _____

County: _____

Sponsor: _____

***Name:** _____

County: _____

Sponsor: _____

***Name:** _____

County: _____

Sponsor: _____

***Name:** _____

County: _____

Sponsor: _____

***Name:** _____

County: _____

Sponsor: _____

***Name:** _____

County: _____

Sponsor: _____

House Sgt-At Arms:

1. **Name:** Fred Hines
2. **Name:** John Brandon
3. **Name:** _____
4. **Name:** _____
5. **Name:** _____
6. **Name:** _____

MINUTES
LEGISLATIVE RESEARCH COMMISSION
May 16, 2012

The Legislative Research Committee met on Wednesday, May 16, 2012 at 9:18 a.m. in Room 643 of the Legislative Office Building. The following members were present: Senator Tom Apodaca, Co-Chair, Representative Tim Moore, Co-Chair, Senators Brunstetter, Nesbitt, Stevens, and Representatives Blust, Burr, Hager, and Warren. The meeting's agenda is attached as Appendix A.

Representative Tim Moore presided and called the meeting to order. Representative Moore recognized the Sergeant-of-Arms and his Co-Chair, Senator Apodaca. Representative Moore gave a brief explanation of the Legislative Research Commission and how it works.

Representative Moore then recognized the following 13 LRC Study Committees to present reports to the Commission:

Energy Policy Issues — Appendix B
(Senator Rucho presented. Senator Rucho explained the Committee on Energy Policy Issues recommended not to include in the report the third part, Energy Jobs from Biofuel Crops. Representative Hager was recognized for a motion to amend the report to omit the third piece of the legislation. The vote was called, and the motion was adopted.)

Automobile Insurance Modernization — Appendix C
(Senator Apodaca presented)

Criminal Records Expunction — Appendix D
(Susan Sitze, Staff, presented)

Efficiencies in State Government — Appendix E
(Senator Hise presented)

In-Home and Community Based Mental Health Services For Youth — Appendix F
(Representative Hollo presented)

Incapacity to Proceed — Appendix G
(Jan Paul, Staff, presented)

Life Cycle Cost Analysis — Appendix H
(Representative Torbett presented)

Marine Fisheries — Appendix I
(Senator Brown presented)

Mechanics Lien on Real Property — Appendix J
(Representative Stevens presented)

Metropolitan Sewerage/Water System — Appendix K
(Rep. McGrady presented)

Municipal Power Agency Relief — Appendix L
(Senator Newton presented)

Orderly and Expeditious Removal by Landlord of Personal Property of Deceased — Appendix M

(Barbara Riley, Staff, presented)

Property Insurance Rate Making Appendix N

(Tim Hovis, Staff, presented)

The Committees made their presentations of recommendations, and each committee was accepted for transmittal to the 2012 General Assembly upon presentation. Senator Rucho

The meeting adjourned at 9:56 a.m.

Senator Tom Apodaca, Co-Chair

Nancy Garriss, Committee Clerk

Representative Tim Moore, Co-Chair

MINUTES
LEGISLATIVE RESEARCH COMMISSION
May 16, 2012

The Legislative Research Committee met on May 16, 2012 at 9:00 a.m.in room 643 of the Legislative Office Building. Nine members of were present.

Representative Tim Moore presided and called the meeting to order. The meeting's agenda is attached as Appendix A. Representative Moore explained to the members that the LRC would review and make recommendations of the Committee Reports. Representative Moore told the committee that Sen. Rucho's report (d) energy Policy Issues, would be taken first as Senator Rucho had to attend another meeting.

d. Energy Policy Issues, Senator Rucho, Chair, reported that 3 part bill was passed, but the recommendation was to omit 1 of the 3 and recommend that 2 parts of the bills be transmitted to the General Assembly for filing in both Chambers. Energy Jobs Bill from Bio Crops is omitted from the report. Representative Hager made the motion to omit the 3rd piece of the bill from the report. Carried. A motion to transmit the report from the LRC to the General Assembly by adopting the first 2 pieces of the report without the 3rd piece was made by Senator Stevens. Motion carried.

a. Automobile Insurance Modernization, Senator Apodaca, Chair, reported that the Committee did not come to any conclusion. He then made a motion that the report be transmitted to the General Assembly without the legislation. Motion carried.

b. Criminal Record Expunctions, Representative Daughtry, Chair. Representative Daughtry was absent, but Susan Sitze, Research Division reported that the Committee was proposing transmittal of 1 piece of legislation in their report. Senator Nesbitt made a motion that this report be transmitted to the General Assembly. Motion carried.

c. Efficiencies in State Government, Senator Hise, Chair, explained the report by saying that the Committee looked at 3 areas to report back to the General Assembly. Senator Apodaca made a motion that the report be transmitted from the LRC to the General Assembly. Motion carried.

e. In-Home and Community Based Mental Health Services for Youth, Representative Hollo, Chair, said the Committee had 5 recommendation to the General Assembly. Representative

Burr made a motion that these 5 recommendations be transmitted to the General Assembly. Motion carried.

f. Incapacity to Proceed, Representative Randleman, Chair, could not attend the meeting, but Janice Paul, Research Division, would make the presentation. The Committee's task was to discuss and propose changes to make more progress with the incapacity to proceed. Senator Nesbitt made a motion that the report be transmitted from the LRC to the General Assembly. Motion carried.

g. Life Cycle Cost Analysis, Representative Torbett, Chair, explained the report by say 2 pieces of legislation came from this Committee. Representative Hager moved that this report be transmitted from the LRC to the General Assembly. Motion carried.

h. Marine Fisheries, Senator Brown, Chair, said the Committee had recommended 4 pieces of legislation from this study. Senator Apodaca moved the report be transmitted from the LRC to the General Assembly. Motion carried.

i. Mechanics Lien on Real Property, Representative Stevens, Co-Chair, said that the Committee proposed 1 piece of legislation for filing in both the House and Senate. Representative Hager made a motion that the report be transmitted from the LRC to the General Assembly. Motion carried.

j. Metropolitan Sewerage/Water System, Representative Moffitt, Chair, was not available so Representative McGrady explained the finding of the Committee. He said 1 piece of legislation from the study was recommended. Senator Apodaca moved that this recommendation by transmitted from the LRC to the General Assembly. Motion carried.

k. Municipal Power Agency Relief, Senator Newton, Co-Chair reported that 1 piece of legislation was recommended. Senator Apodaca moved that this recommendation be transmitted from the LRC to the General Assembly. Motion carried.

l. Orderly and Expeditious removal by Landlord of Personal Property of Deceased, Representative Howard, Chair, was absent. Barbara Riley, Research Division, explained the action of the Committee. Ms. Rilely said the Committee met three times and the Committee recommended 1 piece of legislation. Representative Hager moved the

m. Property Insurance Rate Making, Senator Brown, Co-Chair, was absent, but Mr. Tim Hovis, Research Division, explained that the Committee recommended 7 pieces of legislation to the General Assembly. Senator Brunstetter moved that the recommendations be transmitted from the LRC to the General Assembly. Motion carried.

Senator Apodaca made a motion that the meeting adjourn. Motion was seconded by Senator Brunstetter.

Meeting adjourned at 10:00 a.m.

Senator Tom Apodaca, Co-Chair

Carolyn Gooden, Committee Clerk

Appendix A

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE RESEARCH COMMISSION

STATE LEGISLATIVE BUILDING
RALEIGH, NORTH CAROLINA

SENATOR PHIL BERGER, COCHAIR
LEGISLATIVE BUILDING, ROOM 2008
16 WEST JONES STREET
RALEIGH, NORTH CAROLINA 27601-2808

REPRESENTATIVE THOM TILLIS, COCHAIR
LEGISLATIVE BUILDING, ROOM 2304
16 WEST JONES STREET
RALEIGH, NORTH CAROLINA 27601-1096

AGENDA

May 16, 2012, 9:00 a.m.
Legislative Office Building, Room 643
Representative Tim Moore, House Acting Cochair, Presiding

1. Call to Order and Introductory Remarks
2. Commission Review and Recommendation of Committee Reports
   a. Automobile Insurance Modernization, Sen. Apodaca and Rep. Steen, Cochairs
   b. Criminal Record Expunctions, Rep. Daughtry, Chair
   c. Efficiencies in State Government, Sen. Hise and Rep. Blackwell, Cochairs
   d. Energy Policy Issues, Sen. Rucho, Chair
   e. In-Home and Community Based Mental Health Services for Youth, Sen. Hartsell and Rep. Hollo, Cochairs
   f. Incapacity to Proceed, Rep. Randleman, Chair
   g. Life Cycle Cost Analysis, Rep. Torbett, Chair
   h. Marine Fisheries, Sen. Brown and Rep. McCormick, Cochairs
   i. Mechanics Lien on Real Property, Sen. Brunstetter and Rep. Stevens, Cochairs
   j. Metropolitan Sewerage/Water System, Rep. Moffitt, Chair
   k. Municipal Power Agency Relief, Sen. Newton and Rep. Collins, Cochairs
   l. Orderly and Expeditious Removal by Landlord of Personal Property of Deceased, Rep. Howard, Chair
   m. Property Insurance Rate Making, Sen. Brown and Rep. Dockham, Cochairs
3. Adjourn

Appendix B

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE RESEARCH COMMISSION

STATE LEGISLATIVE BUILDING
RALEIGH, NC 27601

April 18, 2012

TO THE MEMBERS OF THE LEGISLATIVE RESEARCH COMMISSION:

Attached for your consideration is the report to the 2012 Regular Session of the 2011 General Assembly. This report was prepared by the Legislative Research Commission's Committee on Energy Policy Issues, pursuant to G.S. 120-30.17(1).

Senator Robert Rucho
Chair

Chair
Committee on Energy Policy Issues
Legislative Research Commission

LEGISLATIVE RESEARCH COMMISSION

ENERGY POLICY ISSUES COMMITTEE

NORTH CAROLINA GENERAL ASSEMBLY

REPORT TO THE
2012 SESSION
of the
2011 GENERAL ASSEMBLY
OF NORTH CAROLINA

APRIL 18, 2012

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RALEIGH, NORTH CAROLINA 27603-5925
TELEPHONE: (919) 733-9390

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TRANSMITTAL LETTER

April 18, 2012

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TO THE MEMBERS OF THE 2012 REGULAR SESSION
OF THE 2011 GENERAL ASSEMBLY

The Legislative Research Commission herewith submits to you for your consideration its report and recommendations to the 2012 Regular Session of the 2011 General Assembly. The report was prepared by the Legislative Research Commission's Committee on Energy Policy Issues, pursuant to G.S. 120-30.70(1).

Respectfully submitted,

Senator Philip E. Berger President Pro Tempore of the Senate	Representative Thomas R. Tillis Speaker of the House of Representatives

Co-Chairs
Legislative Research Commission

LEGISLATIVE RESEARCH COMMISSION MEMBERSHIP

[Back to Top]

2011 – 2012

President Pro Tempore of the Senate
Senator Philip E. Berger
Co-Chair

Senator Thomas M. Apodaca
Acting Co-Chair

Senator Peter S. Brunstetter
Senator Linda D. Garrou
Senator Martin L. Nesbitt, Jr.
Senator Richard Y. Stevens

Speaker of the House of Representatives
Representative Thomas R. Tillis
Co-Chair

Representative Timothy K. Moore
Acting Co-Chair

Representative John M. Blust
Representative Justin P. Burr
Representative Mike D. Hager
Representative Edith D. Warren

PREFACE

[Back to Top]

The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is the general purpose study group in the Legislative Branch of State Government. The Commission is co-chaired by the President Pro Tempore of the Senate and the Speaker of the House of Representatives and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigation into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

The Legislative Research Commission authorized the study of Energy Policy Issues, under authority of G.S. 120-30.17(1). The Committee was chaired by Senator Robert Rucho, Chair of the Committee. The full membership of the Committee is listed under Committee Membership. A committee notebook containing the committee minutes and all information presented to the committee will be filed in the Legislative Library by the end of the **2011-2012** biennium.

Copies of the presentations made and handouts distributed to the Committee are available at the Committee website:
http://www.ncleg.net/gascripts/Committees/Committees.asp?sAction=ViewCommittee&sActionDetails=Non-Standing_6549

COMMITTEE PROCEEDINGS

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The Legislative Research Commission's Committee on Energy Policy Issues met four times after the 2011 Regular Session. The Committee's charge can be found here. The Committee conducted a thorough review of energy policy issues during the 2011-2012 legislative interim including the receipt of over 25 presentations from many different local, State, and national expert speakers. The following is a brief summary of the Committee's proceedings. Detailed minutes and information from each Committee meeting are available in the Legislative Library.

AGENDA

1:00 p.m. Wednesday, January 18, 2012

Room 544 Legislative Office Building

Raleigh, North Carolina

1. Call to order
   Senator Robert A. Rucho, Presiding

2. Introductory remarks by Chair (5 minutes)
   Senator Robert A. Rucho, Presiding

3. Introduction of Members and Staff (5 minutes)

4. Presentation of the Committee Charge (5 minutes)
   Jeff W. Hudson, Committee Counsel
   Research Division

5. Adoption of the Committee budget (5 minutes)

6. Presentation on shale gas in North Carolina's Triassic Basin (30 minutes)
   Dr. Kenneth B. Taylor, Assistant State Geologist
   Division of Land Resources, Department of Environment and Natural Resources (DENR)

7. Presentation on existing State oil and gas statutes (10 minutes)
   Jennifer L. McGinnis, Committee Counsel
   Research Division

8. Presentation of potential economic impacts of shale gas in North Carolina (30 minutes)

Jon Williams, Assistant Secretary for Energy
Department of Commerce

9. Update on the Department of Environment and Natural Resources' shale gas study (Section 4, S.L. 2011-276) (20 minutes)
Robin W. Smith, Assistant Secretary for Environment
DENR

10. Exploration and production of shale gas – an industry perspective (1 hour)
James E. Erb, P.E.
Former Director of the Pennsylvania Bureau of Oil and Gas Management

Michael Yount, Senior Vice President and Chief Utility Operations Officer
Piedmont Natural Gas

11. Committee discussion and announcements

12. Adjourn

January 18, 2012

The first meeting of the Committee was held on Wednesday, January 18 at 1:00 p.m. in Room 544 of the Legislative Office Building. Senator Bob Rucho presided.

Dr. Ken Taylor, Assistant State Geologist in the Division of Land Resources in the Department of Environment and Natural Resources (Department), made a presentation to the Committee on the presence of shale gas in North Carolina's Triassic Basin. Dr. Taylor provided an overview of the North Carolina Geologic Survey and a brief geologic history of North Carolina's shale gas formation located in the Sanford Sub-Basin of the Deep River Basin. Dr. Taylor outlined the history of resource exploration in the Deep River Basin dating back to the late 18th century. Dr. Taylor explained the two key indicators of recoverable shale gas (1) Total Organic Carbon (TOC) content of greater than 1.4% and (2) Thermal Alteration Data (TAI) which indicates the thermal maturity of the rock. Dr. Taylor reported that some of the existing test wells in the Sanford Sub-Basin appear to meet these criteria.

Ms. Jennifer McGinnis, Counsel to the Committee, made a presentation on the existing State oil and gas statutes. Ms. McGinnis explained that the governing State laws on oil and gas (Article 23 of Chapter 113 of the General Statutes) were enacted in 1945 and have not been substantially amended since. These statutes address oversight of oil and gas activities, provisions for taxation of resources, requirements for drilling, and prohibit horizontal drilling. Ms. McGinnis also explained that G.S. 143-214.2(b) prohibits the discharge of any waste in wells. Ms. McGinnis further clarified that this provision, combined with the prohibition on horizontal drilling in Chapter 113, essentially bans the use hydraulic fracturing technology for shale gas resources in the State. Ms. McGinnis also described some of the recent legislative changes that were enacted by S.L. 2011-276 (House Bill 242) to: increase the amount of the bond required to drill for resources; increase the amount of fees applicable to drilling new wells or

abandoning wells; require the Department of Environment and Natural Resources, with the Consumer Protection Division of the Department of Justice, and the Department of Commerce to jointly study issues related to hydraulic fracturing; and enact consumer protection provisions. Lastly, Ms. McGinnis identified rules in the North Carolina Administrative Code that are applicable to horizontal drilling and injection wells.

Mr. Jon Williams, Assistant Secretary for Energy in the Department of Commerce, presented the potential economic impacts of a shale gas industry in North Carolina. Mr. Williams discussed the Department's role in the shale gas study and the State's potential shale gas play in the Deep River basin which, he stated, is difficult to compare to the Marcellus play (50,000 acres versus 16 million acres respectively). Mr. Williams explained that in order for the shale gas product to be marketable, it must either be virgin or processed to be of a certain quality grade. There are presently no natural gas processing plants located in North Carolina. Mr. Williams reported that North Carolina is the third lowest per capita consumer of natural gas in the nation and that presently there is limited infrastructure in the State to support transmission of product to areas of the country with higher demand. Mr. Williams stated that the natural gas industry is "boom and bust" with prices reflecting the changes in supply and demand. Mr. Williams also pointed out that several of the coal-fired power generating plants in the State have converted, or are in the process or converting, to natural gas, in part to comply with the new federal Cross-State Air Pollution rule requirements. Mr. Williams stated that long-term benefits could be realized from the natural gas industry if a processing plant was constructed and operated in the State.

Ms. Robin Smith, Assistant Secretary for Environment in the Department of Environment and Natural Resources (Department), provided the Committee with an update on the Department's shale gas study. Ms. Smith distributed a draft of the study outline and explained that the study would only focus on the potential gas reserves within the Triassic Basin. The Department will largely rely on information from the United States Geologic Survey (USGS) regarding the State's shale gas resource. Ms. Smith provided an overview of the various sections of the shale gas study and how the Department is working with Commerce and the Consumer Protection Division of the Department of Justice to address certain issues in the study. One of the issues under evaluation is forced pooling, or compelling landowners to participate in a lease plan in situations where they do not want to participate. Ms. Smith reported the Department held one meeting in the fall to solicit input on the draft study outline and that two more meetings are scheduled in March to receive public comment on the draft report.

Mr. James Erb, former director of the Pennsylvania Bureau of Oil and Gas Management, provided an on-the-ground perspective of experiences related to resource exploration and production for the Committee to consider. Mr. Erb made the following recommendations to the Committee:

- Keep risks in perspective, maintain balance.
- Rely on sound science and peer-reviewed articles.
- Involve advisory committees.
- Borrow from organizations (such as the American Petroleum Institute, Groundwater Protection Council, Interstate Oil and Gas Compact Commission, and STRONGER (State Review of Oil and Natural Gas Environmental

Regulation)) to incorporate industry standards of practice and training opportunities.

In evaluating the shale gas industry, Mr. Erb recommended the State also consider the following program areas: severed subsurface estates; surface owner rights and damages; correlative rights; well spacing; pooling/unitization; public lands; State versus local controls; taxes; and the organizational structure of the agency or agencies regulating the resources program. Lastly, Mr. Erb shared some statistics on the oil and gas industry in the Marcellus Basin.

Mr. Michael Yount, Senior Vice-President and Chief Utility Operations Officer for Piedmont Natural Gas (PNG), presented an industry perspective on natural gas, the economy, and the environment. Mr. Yount provided an overview of PNG's fiscal year statistics, service area, and infrastructure. Mr. Yount reported that natural gas supplies 25% of the U.S. energy economy serving 76 million homes and businesses and provides source fuel to 24% of electric power generation. Furthermore, 89% of the natural gas supplies in the U.S. are produced domestically and all of North Carolina's natural gas is imported. Mr. Yount stated that, according to data compiled by the U.S. Energy Information Administration, there appears to be a 90 to 100 year supply of domestic natural gas based on present demand. As to its environmental benefits, natural gas produces less carbon dioxide than other traditional fuels and those emissions have remained relatively constant despite more homes and businesses using natural gas largely due to improved standards for energy efficiency for new building construction.

AGENDA

1:00 p.m. Wednesday, February 15, 2012

Room 643 Legislative Office Building

Raleigh, North Carolina

1. Call to order
   Senator Robert A. Rucho, Presiding

2. Introductory remarks by the Chair *(5 minutes)*
   Senator Robert A. Rucho

3. Adoption of the minutes from the January 18, 2012 Committee meeting

4. Exploration for and extraction of shale gas in North Carolina *(30 minutes)*
   Tom Hassenboehler, Vice President, Policy Development and Legislative Affairs
   America's Natural Gas Alliance

5. Environmental and natural resource issues related to the exploration for and extraction of shale gas in North Carolina *(30 minutes)*
   Joe Rudek, Senior Scientist
   Environmental Defense Fund

   Will Morgan, Director of Government Relations
   North Carolina Chapter of the Sierra Club

6. Recommendations concerning exploration for and extraction of shale gas in North Carolina *(15 minutes)*
   Robert B. Jackson, Nicholas Chair of Global Environmental Change
   Nicholas School of the Environment, Duke University

7. Landowner and property rights issues related to the exploration for and extraction of shale gas in North Carolina *(1 hour and 15 minutes)*
   Jordan Treakle, Mineral Rights Project Coordinator *(20 minutes)*
   Rural Advancement Foundation International-USA

   W. Daniel Amburn, Legislative Specialist *(7½ minutes)*
   North Carolina League of Municipalities

   Amy Bason, Legislative Counsel *(7½ minutes)*
   North Carolina Association of County Commissioners

   Jim Womack, Commissioner *(20 minutes)*
   Lee County Board of Commissioners

Dan Butler, Property Owner *(10 minutes)*
Lee County

Ray Covington, Property Owner *(10 minutes)*
Lee County

8. Economics of shale gas exploration and extraction in North Carolina *(30 minutes)*
Sara Banaszak, Vice President and Chief Economist
America's Natural Gas Alliance

9. Committee discussion and announcements

10. Adjourn

February 15, 2012

The second meeting of the Committee was held on Wednesday February 15 at 1:00 p.m. in Room 643 of the Legislative Office Building. Senator Bob Rucho presided.

Mr. Tom Hassenboehler, Vice President of Policy Development and Legislative Affairs, for America's Natural Gas Alliance, presented the Committee with a presentation on the exploration for and extraction of shale gas in the State. Mr. Hassenboehler forecasted future energy demand and the role of renewable energy resources. Mr. Hassenboehler reiterated some of the information on the State's shale gas potential that was presented to the Committee at the January meeting. He stated that natural gas is used across sectors and is a cleaner fuel for power generation and fueling transportation needs. Mr. Hassenboehler stated that there is a risk-benefit calculus in shale gas extraction using hydraulic fracturing and showed the Committee a brief video that illustrates how shale gas extraction is done with hydraulic fracturing. Mr. Hassenboehler explained the differences between traditional (vertical) well extraction and horizontal wells and the environmental footprint required for extraction operations. Mr. Hassenboehler discussed the composition of hydraulic fracturing fluids, the volume of water typically required to conduct hydraulic fracturing activities (5 million gallons), and the regulatory regimes to which hydraulic fracturing activities are subject.

Dr. Ken Rudek, Senior Scientist with the Environmental Defense Fund, and Will Morgan, Director of Government Relations for the North Carolina Chapter of the Sierra Club presented the Committee with issues to consider regarding the exploration for and extraction of shale gas in North Carolina. Dr. Rudek identified the following issues related to exploration for and extraction of shale gas:

- Well construction – require strong regulation, inspection, and enforcement to ensure proper construction and operation to prevent groundwater contamination.
- Chemical disclosure – unknown impact of hydraulic fracturing in the shallow shale deposits found in the State, and the potential for vertical fissures to allow the migration of hydraulic fracturing fluids into overlying groundwater.
- Water resources – hydraulic fracturing requires large volumes of water to operate each well and the Deep River region of the State is one where water resources are more scarce.

- Wastewater treatment – many gallons of wastewater are generated (consisting of hydraulic fracturing fluids and produced fluids) in the process and municipal wastewater treatment plants are not designed to manage these wastes. The State's current prohibition on deep well injection further complicates where these fluids can be disposed.
- Air pollutants – hydraulic fracturing for shale gas can result in the release of volatile organic compounds (VOCs) and heavy metals. There is also the potential for methane release.
- Land use, land quality, and cumulative impacts – standard well pads can exceed seven acres and must be served by new roads and other necessary, and often new, infrastructure.

In addition to echoing some of the issues Dr. Rudek outlined, Mr. Morgan presented the Committee with the following policy considerations related to shale gas production:

- Importance of State regulation of shale gas exploration and production activities as there exists a lack of federal regulation for the industry.
- Consider lessons learned from other states engaged in this activity recognizing the inherent challenges of bringing and regulating this new industry to North Carolina.
- Consider the pending studies (Department of Environment and Natural Resources, USGS, EPA drinking water studies, and various states) as resources to draw from in policy development.

Dr. Robert Jackson, Nicholas Chair of Global Environment Change in the Nicholas School of the Environment at Duke University, presented the Committee with recommendations concerning the exploration and production of shale gas in North Carolina. Dr. Jackson's initial recommendation to the Committee is "don't rush" as scientific studies on the impacts of shale gas extraction are currently underway. Dr. Jackson also recommended comprehensive baseline testing, social and environmental safeguards, and impact fees that will benefit all citizens of North Carolina. Dr. Jackson reported that there is a wide diversity of views regarding hydraulic fracturing and shared the results of Duke University study that found a relationship between the concentration of methane in drinking water wells and proximity to gas wells. Dr. Jackson reiterated some of the comments made by the earlier presenters in that concerns regarding shale gas activities lie in possible groundwater contamination and air quality impacts. Some of Dr. Jackson's recommendations for North Carolina include:

- Collect extensive pre-and post-drilling water and air quality data.
- Use aggressive zoning and setbacks to protect property owners.
- Plan now for large water withdrawals and wastewater disposal.
- Require full disclosure of the chemicals in the hydraulic fracturing fluids.
- Ensure fees cover long-term costs for monitoring.
- Provide landowners with better information.

Mr. Jordan Treakle, Mineral Rights Project Coordinator for the Rural Advancement Foundation International-USA, presented the Committee with information on mineral rights leasing in North Carolina. Mr. Treakle explained that the mineral rights contract defines the relationship between the landowner and the drilling company and determines all payment terms, drilling phases, and activities of the company on the property. Mr. Treakle identified numerous concerns with the mineral rights contracts or leases, the first

being compensation. Mr. Treakle stated that leases offer landowners very little compensation in terms of per acre bonus payments and royalty payments compared to other states. The leases also provide for abnormally long drilling phases. Other lease concerns that Mr. Treakle addressed include: landowner liability (few protections that limit landowner financial risk and legal liability) and land impacts resulting from drilling or ancillary activities (lack of compensation for impacts to land and water resources, no setback requirements for drilling infrastructure, no compensation for water withdrawals on landowner's property, no reclamation requirements). Mr. Treakle expressed concern for landowners who do not own their mineral rights in a split estate and identified a number of potential impacts of hydraulic fracturing activity on farmlands.

Mr. Daniel Amburn, Legislative Specialist for the North Carolina League of Municipalities, provided the Committee with an update on the League's position on hydraulic fracturing. Mr. Amburn stated that the League currently has no position on hydraulic fracturing; where some municipalities see the activity as a positive, others view it as a negative. The League has facilitated educational programs to help municipalities make their own decisions on hydraulic fracturing. The League is also working with the North Carolina Association of County Commissioners, the North Carolina State Offices of Cooperative Extension, and Duke University to develop a guide with tools to address shale gas exploration and production for its members.

Ms. Amy Bason, Legislative Counsel for the North Carolina Association of County Commissioners, provided the Committee with an update of the Association's position on hydraulic fracturing. Ms. Bason stated that the Association is working collaboratively with the League and other entities to identify issues. What the Association is hearing from the counties is that a study should be pursued and that the counties are participating in all manner of ways. The Association, according to Ms. Bason, has no formal position on hydraulic fracturing and is presently in a research and information-gathering phase working with the counties that are directly involved. Some of the issues the Association is dealing with include: hydraulic fracturing is good for jobs and economic growth, concerns about the demands that come with population growth, demands for services and recovery of those costs for meeting new demand, safeguards for landowners, and potential environment impacts.

Mr. Jim Womack, Commissioner, Lee County Board of Commissioners, presented a local government perspective on the potential for natural gas extraction. Mr. Womack, however, did not speak on behalf of the Lee County Board of Commissioners. Mr. Womack provided facts and figures about Lee County and listed the following reasons why a burgeoning shale gas industry could help the county: potential for job creation; diversify industrial base; expand secondary and tertiary markets; reduce tax rates; and potentially improve water quality. Mr. Womack stated that the other 16 states that have pursued shale gas extraction have operational experience that North Carolina can draw from. Mr. Womack recommended that the General Assembly consider the following policy recommendations as they pertain to shale gas extraction: apply American National Standards Institute (ANSI) and American Petroleum Institute (API) standards for hydraulic fracturing, pipelines, and refinery operations; conduct baseline water quality and seismic evaluations (also recommended by the Lee County Environmental Affairs Board); and give local governments discretion to protect local interests including establishing noise ordinances and drill-free zones. Mr. Womack also recommended that

any tax revenues and impact fees be disbursed in the areas where resource extraction is taking place and not redistribute the wealth to fund other programs across the State.

Mr. Dan Butler, a property and mineral rights owner in Lee County, provided his perspective and experience with resource extraction. Mr. Butler stated that landowners want to move forward with shale gas extraction and that North Carolina can look to Pennsylvania and New York as examples of how to pursue the activity. Mr. Butler is a third-generation oil and gas developer and landowner. He stated that two wells were drilled on his property (he owns 2,750 acres in Lee County and has purchased mineral rights from several surface property owners) that revealed high potential for recoverable resources. Mr. Butler stated that he had been approached by a number of industry representatives to lease his property and that there is presently only one company in Lee County in the oil and gas business. Mr. Butler said that he had no knowledge of low-dollar amount per-acre leases and disputed Mr. Treakle's earlier statement that a 12.5% bonus payment is not predatory. Mr. Butler explained that bonus payments are negotiable and that North Carolina needs some oil and gas attorneys with experience in this industry to assist lease holders to ensure the terms are fair.

Dr. Ray Covington, a property and mineral rights owner in Lee County, provided his perspective and experience with resource extraction. Dr. Covington stated that he represented North Carolina Oil and Gas, LLC, a consortium of Lee County property owners interested in pursuing shale gas exploration. Dr. Covington explained that the State will know more about how much of the resource is commercially recoverable once hydraulic fracturing activities commence. Dr. Covington's recommendations for landowner and mineral rights legislation include:

- Protections for landowners who do not own the mineral rights.
- Address voluntary and forced pooling.
- Address unilateral transfer of existing leases to different or multiple companies without land or mineral rights owners' knowledge or consent.
- Compensation to landowners for damages resulting from drilling activities or accidents.
- Arbitration clauses that deny land and mineral rights owners the right to trial-by-jury.
- Impacts from gas flaring and noise pollution.
- Property rights of neighbors.

While stressing the need for the State to adopt a deliberate plan for shale gas extraction, Dr. Covington also addressed the leases and stated that they should be land- and mineral-owner rights-friendly and provide the citizens the best bonus and royalty payments possible, not prey on the uneducated and the elderly; adequately describe and compensate for impacts; and adequately restore the land to its pre-drilling state once activities have ceased on the property.

Ms. Sara Banaszak, Vice President and Chief Economist for America's Natural Gas Alliance (ANGA), presented the economic opportunities of shale gas exploration and production in the State. Ms. Banaszak explained that North Carolina presently benefits from the increased production of shale gas around the United States as the price of natural gas has dropped over the past three years and has experienced increased divergence from the price of oil over the same period of time. Ms. Banaszak provided data derived from the U.S. Energy Information Agency forecasting the reduced need for

imports of liquefied natural gas due to the increased domestic resource supply. Industry research indicates that "unconventional" onshore gas production will make up more of the U.S. and Canadian natural gas supply for the next 20 years. Ms. Banaszak identified the various types of employment either directly, indirectly, or induced by the natural gas industry that include: manufacturing, leisure and other services, information and other professional services, wholesale and retail services, construction, transportation and utilities, and natural resources. Ms. Banaszak reported the following statistics from an ANGA paper documenting the economic impacts of shale gas in the United States:

- 600,000 jobs in 2010, 1.6 million jobs projected in 2035.
- $930 billion in tax revenues (cumulative in 2035).
- ~$1.9 trillion in capital expenditure (2010-2035).
- Lower energy prices for consumers with anticipated household savings of approximately $926 per year in 2015.

AGENDA

1:00 p.m. Wednesday, March 21, 2012
Room 643 Legislative Office Building
Raleigh, North Carolina

1. Call to order
   Senator Robert A. Rucho, Presiding

2. Introductory remarks by the Chair *(5 minutes)*
   Senator Robert A. Rucho

3. Adoption of the minutes from the February 15, 2012 Committee meeting

DISCUSSION OF COMPRESSED NATURAL GAS (CNG) VEHICLES

4. Presentation on CNG vehicles *(20 minutes)*
   Jeffrey Clarke, General Counsel
   NGVAmerica

5. Overview of school bus acquisition, cost, and operation in North Carolina *(15 minutes)*
   Derek Graham, Chief
   Transportation Services Section, Department of Public Instruction

6. Briefing on research on CNG bus opportunities in North Carolina *(15 minutes)*
   Kris Nordstrom, Analyst
   Fiscal Research Division

7. Presentation on CNG school buses: efficiencies; sales; and market *(20 minutes)*
   Kelley Platt, President and CEO
   Thomas Built Buses

   Jed Routh, Manager of Product Planning
   Thomas Built Buses

8. Presentation on the opportunities for CNG with the State Department of Transportation (DOT) fleet and federal funding opportunities to build public and private refueling infrastructure. *(20 minutes)*
   Jim Trogdon, COO
   DOT

DISCUSSION OF CELLULOSIC ETHANOL FROM ENERGY GRASSES FOR BIOFUEL APPLICATIONS

9. Presentation on Project Alpha in Clinton, North Carolina and the regulatory hurdles with nitrogen application rates on sprayfields *(20 minutes)*
   Mark Conlon, Vice President of Sector Development
   Biofuels Center of North Carolina

10. Discussion of the "1217" process and the proposed pilot program for energy grasses *(20 minutes)*
    Richard Reich, Assistant Commissioner for Agricultural Services
    Department of Agriculture and Consumer Services

11. Briefing on the scientifically justifiable nitrogen application rates based on other state and national data *(20 minutes)*
    Ron Gehl, Assistant Professor and Extension Specialist
    Department of Soil Science, North Carolina State University

12. Committee discussion of recommendations to be considered in the Committee's final report *(20 minutes)*

13. Adjourn

March 21, 2012

The third meeting of the Committee was held on Wednesday March 21 at 1:00 p.m. in Room 643 of the Legislative Office Building. Senator Bob Rucho presided.

Mr. Jeffrey Clarke, General Counsel for NGVAmerica presented the status of the U.S. natural gas vehicle (NGV) market. Mr. Clarke reported that the U.S. presently ranks 14th in the world NGV market (120,000 out of 250 million vehicles nationwide). The target market for NGVs includes heavy-duty freight trucks, transit vehicles, metropolitan fleets, vocational work trucks, commercial and delivery service trucks, and service vehicles. The NGV market is being propelled by numerous factors including significant domestic resource and existing deployable technology. Developing the NGV market can result in increased numbers of domestic jobs, air quality benefits, and greenhouse gas reductions. Mr. Clarke cited numerous examples of state and federal legislation promoting the use of NGVs. While NGVs cost more to purchase new or convert than comparable petroleum-fueled vehicles, they cost less to operate and on a life-cycle cost analysis, can save money for high fuel-use fleets.

Mr. Derek Graham, Chief of the Transportation Services Section in the Department of Public Instruction, provided an overview of school bus acquisition, parking, and fueling in North Carolina. Mr. Graham reported that there are 13,700 yellow school buses on the road daily in the State and an additional 1,400 spare buses available when route buses are out on maintenance. School buses utilize 27 million gallons of diesel fuel per year and the State contract for fuel (presently $3.40/gallon) amounts to nearly $92 million per year. The total State appropriation for school bus fuel, drivers, maintenance, and contracts is $395 million. Buses are replaced by DPI and Local Education Agencies (LEA) in accordance with criteria prescribed in the General Statutes. Mr. Graham explained that fuel trucks are the primary source of fuel distribution to the bus fleet.

Lastly, Mr. Graham described the spectrum of school bus parking across the State ranging from secure, fenced lots to open access lots on school grounds.

Mr. Kris Nordstrom, Fiscal Analyst in the Fiscal Research Division of the General Assembly, briefed the Committee on compressed natural gas (CNG) bus opportunities in the State. Mr. Nordstrom stated that there is a $50,000 to $55,000 price difference between diesel and CNG buses. Mr. Nordstrom described the 1996 Charlotte CNG bus pilot program during which maintenance costs were found to be nearly double that of diesel buses. Installation of natural gas fueling stations can cost between $1 million and $2.5 million depending on the size of the fleet, however, Mr. Nordstrom pointed out that there may be opportunities for shared cost through public-private partnerships. Mr. Nordstrom outlined the differences in the emissions of diesel and CNG buses and listed the following criteria to consider before purchasing CNG buses:

- Ability to use CNG fueling stations.
- Public-private partnerships for fueling stations.
- Ability to share fueling stations with transit or other fleet vehicles.
- Centralized parking locations.
- Greatest bus replacement needs.
- Location in a non-attainment county.

Ms. Kelley Platt, President and CEO of Thomas Built Buses, presented an overview of CNG school buses. Ms. Platt listed some of the *pros* and *cons* to CNG vehicles. *Pros* included CNG is a domestic fuel with vast resources, CNG vehicles have lower operating costs, and the fuel cleaner burning. The *cons* Ms. Platt identified included high initial equipment cost, required fueling infrastructure, time for refuel, and the fact that CNG is considered a "new" technology. Ms. Platt provided the Committee with calculations for potential cost savings for CNG over diesel. Ms. Platt also suggested the State first embark upon a pilot program.

Mr. Jim Trogdon, the Chief Operating Officer in the Department of Transportation presented opportunities for CNG within the DOT fleet and opportunities for federal funding to build public and private fueling infrastructure. Mr. Trogdon also touched on the potential impacts on roads from hydraulic fracturing activities in the State. Mr. Trogdon reported that there are presently no CNG vehicles in the State motor fleet. The fleet has 1,450 half-ton pickup trucks, 573 of which are located in nonattainment areas. At $12,000 a conversion, it would cost $17.4 million to convert the entire fleet of pickup trucks to run on CNG. The associated costs to add CNG fuel to the existing 112 fueling sites would range from $1 to $1.8 million per station. 150 new half-ton pickup trucks are purchased every year, and CNG-only trucks cost an additional $8,000 per unit. Mr. Trogdon listed some of the limitations of using CNG-only vehicles in the DOT fleet, but explained that the limitations do not extend to the use of bi-fuel (diesel and CNG) vehicles. Mr. Trogdon provided an overview of the federal Congestion Mitigation Air Quality Program (CMAQ), program, funding eligibility, and distribution of those funds. Lastly, Mr. Trogdon outlined the Departments concerns with heavy equipment used in conjunction with hydraulic fracturing operations on the State's roads, especially secondary roads and bridges and listed some of the solutions employed by other states that are engaged in hydraulic fracturing activities.

Mr. Mark Conlon, Vice-President for Sector Development for the Biofuels Center of North Carolina, presented on *Project Alpha* in Clinton, North Carolina and the regulatory

hurdles with nitrogen application rates on sprayfields. Mr. Conlon explained that the sprayfields located adjacent to swine waste lagoons offer a great opportunity to grow energy–rich cellulosic grasses. According to the Department of Agriculture and Consumer Services, there are 3,343 swine waste lagoons and over 200,000 sprayfield acres in the State. With estimated yields from 6 to 30 tons per acre, Mr. Conlon stated that energy grass sprayfields would be a higher value to growers compared to the current practice of planting Coastal Bermuda grass. Mr. Conlon described the proposed Chemtex International facility - *Project Alpha* - in Clinton and explained that the schedule for construction and development is dependent on the U.S. Department of Agriculture's impending decision on a loan guarantee. Mr. Conlon also described the proposed mixed feed stock for the Chemtex facility and explained that the mixed crops would ensure year-round harvest. Mr. Conlon also discussed the application rates of effluent on energy grass sprayfields and stated that the interim rates developed by the "1217" Interagency Group are too low for viable introduction for some of the stocks.

Dr. Richard Reich, Assistant Commissioner for Agriculture Services in the Department of Agriculture and Consumer Services, presented an overview of the 1217 Interagency Group. Dr. Reich provided the history and background of the Interagency Group and explained that the Group's purpose is to provide uniform interpretations of animal waste management rules and to address questions and publish guidance for technical specialists. The Interagency Nutrient Management Committee (INM Committee) was established in 2002 by the member agencies to investigate and research specific nutrient management issues at the Interagency Group's request. S.L. 2011-198 directed the Interagency Group to establish agronomic rates for specific biomass energy crops, rates that would not cause or contribute to a violation of groundwater standards. The Interagency Group tasked the INM Committee with providing recommendations for rates and to provide ongoing support and review of the data as it becomes available, in cooperation with the Energy Grasses Task Force. Dr. Reich reviewed the interim agronomic rates as recommended by the Interagency Group for the energy crops and stated that next steps include continued data review to refine the proposed agronomic rates and consideration of a pilot program with limited acreage.

Dr. Ron Gehl, Assistant Professor and Extension Specialist in the Department of Soil Science at North Carolina State University, presented an overview of the scientifically justifiable nitrogen application rates for energy grasses. Dr. Gehl explained that the goal of cropping systems for sprayfields is to maximize both yield and nitrogen removal. Dr. Gehl and his staff conducted an extensive literature review and preliminary biomass studies to assist the INM Committee in developing the interim agronomic rates for Switchgrass, Fiber Sorghum, Sweet Sorghum, Giant Miscanthus, and Arundo Donax (Giant Reed).

April 18, 2012

The fourth meeting of the Committee was held on Wednesday April 18, 2012 at 1:00 p.m. in Room 643 of the Legislative Office Building. Senator Bob Rucho presided.

COMMITTEE MEMBERSHIP

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2011-2012

President Pro Tempore of the Senate Appointments:

Senator Robert Rucho, Co-Chair

Senator Harris Blake
Senator Thom Goolsby
Senator William Rabon
Senator Michael Walters

COMMITTEE CHARGE

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Energy Policy Issues – Study strategies that will increase energy production and efficiency within the State to develop a secure, stable, and predictable energy supply in order to facilitate economic growth, job creation, and expansion of business and industry opportunities in a way that protects and preserves the State's natural resources, cultural heritage, and quality of life. In doing so, the subcommittee may consider the following issues:

1. Development of a regional, interstate offshore energy commission and/or compact between North Carolina, Virginia, South Carolina and other coastal states deemed relevant to accelerate geophysical exploration of the outer continental shelf, amend the US Department of the Interior's Five Year Leasing Plan to include the Atlantic coast, advocate proactively for federal revenue sharing for royalties and revenues generated from offshore leasing, exploration, and production (and how these monies should be allocated within the State); and recommend the reinstatement of the US Department of the Interior's Offshore Policy Committee that shall include members of the commission and/or compact discussed above .
2. Potential legislative actions that can encourage or require the federal government to decrease or eliminate spent nuclear fuel stored on site within the State by using the funds collected from North Carolina electricity ratepayers through the Nuclear Waste Policy Act of 1982 to open the Yucca Mountain central nuclear waste repository in Nevada.
3. The feasibility of developing a limited pilot project for shale gas exploration in Chatham, Lee, and Moore counties that shall include information gathered by the Department of Environment and Natural Resources as required in H242 and S709 if it becomes law;
4. Review of the process(es) within North Carolina and other relevant states for the development of agronomic rates for nutrient application to non-edible, high-yield energy grasses and study potential options to increase the efficiency and regulatory consistency of these rates.
5. Studying the feasibility of development of a market for clean natural gas (CNG) vehicles within the State that includes expansion of natural gas production, expansion of natural gas delivery infrastructure, conversion of a portion of the State motor fleet to CNG, flat motor fuel tax rates for CNG (and other alternative fuel) vehicles, encouragement of local government and industry to open fleet CNG fueling stations to public, and the development of tax or regulatory incentives for fleet conversions, refueling stations (home- or fleet-based), dedicated vehicle purchases, or CNG-related industry expansion within the State.
6. Other potential pilot projects as the subcommittee finds relevant to the goals set forth above for traditional, renewable and alternative energy to increase exploration, development, production, and/or utilization.

STATUTORY AUTHORITY

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NORTH CAROLINA GENERAL STATUTES
ARTICLE 6B.

Legislative Research Commission.

§ 120-30.17. Powers and duties.

The Legislative Research Commission has the following powers and duties:

(1) Pursuant to the direction of the General Assembly or either house thereof, or of the chairmen, to make or cause to be made such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner.

(2) To report to the General Assembly the results of the studies made. The reports may be accompanied by the recommendations of the Commission and bills suggested to effectuate the recommendations.

(3), (4) Repealed by Session Laws 1969, c. 1184, s. 8.

(5), (6) Repealed by Session Laws 1981, c. 688, s. 2.

(7) To obtain information and data from all State officers, agents, agencies and departments, while in discharge of its duty, pursuant to the provisions of G.S. 120-19 as if it were a committee of the General Assembly.

(8) To call witnesses and compel testimony relevant to any matter properly before the Commission or any of its committees. The provisions of G.S. 120-19.1 through G.S. 120-19.4 shall apply to the proceedings of the Commission and its committees as if each were a joint committee of the General Assembly. In addition to the other signatures required for the issuance of a subpoena under this subsection, the subpoena shall also be signed by the members of the Commission or of its committee who vote for the issuance of the subpoena.

(9) For studies authorized to be made by the Legislative Research Commission, to request another State agency, board, commission or committee to conduct the study if the Legislative Research Commission determines that the other body is a more appropriate vehicle with which to conduct the study. If the other body agrees, and no legislation specifically provides otherwise, that body shall conduct the study as if the original authorization had assigned the study to that body and shall report to the General Assembly at the same time other studies to be conducted by the Legislative Research Commission are to be reported. The other agency shall conduct the transferred study within the funds already assigned to it.

LEGISLATIVE PROPOSALS

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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S **D**

BILL DRAFT 2011-LGz-159B [v.3] (03/29)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
4/18/2012 2:58:57 PM

Sponsors: Senator.

Referred to:

A JOINT RESOLUTION EXPRESSING THE OPINION OF THE GENERAL ASSEMBLY THAT THERE SHOULD BE A NATIONAL ENERGY POLICY THAT SUPPORTS THE RESPONSIBLE EXPLORATION FOR AND DEVELOPMENT OF DOMESTIC ENERGY RESOURCES, AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMITTEE ON ENERGY POLICY ISSUES.

Whereas, economic recovery, job creation, effective global competitiveness, and national security depend upon developing our nation's diverse energy resources; and

Whereas, the identification and utilization of abundant supplies of affordable and reliable energy is vital to the prosperity of North Carolina and our nation; and

Whereas, the production of unconventional natural gas deposits in North America, including shale, is forecasted to increase to 64 percent of all domestic natural gas production by 2020. The United States is estimated to have a future natural gas supply of over 2,000 trillion cubic feet, which is enough gas at current consumption rates to supply the nation for the next 100 years. This increase is attributable to increased unconventional gas plays, largely from shale gas development; and

Whereas, the U.S. Department of Energy reports a shale gas potential of three to four trillion cubic feet of production per year may be sustainable for decades, and the Interstate Natural Gas Association of America reports that to achieve forecasted results, industry must have land access for drilling, a reasonable permitting process, and adequate prices and demand for natural gas; and

Whereas, the President of the United States, the Governor of North Carolina, and the North Carolina Department of Environment and Natural Resources have in recent months stated their support for environmentally responsible shale gas development; and

Whereas, the North Carolina Geological Survey reports 785,000 acres of Triassic basin formations that hold potential shale gas; and

Whereas, the U.S. Environmental Protection Agency is reviewing and considering new regulations regarding the practice of hydraulic fracturing used to recover natural gas from horizontal wells, often into shale formations that hold previously unavailable reserves of natural gas, to supply the nation for decades at low cost, a practice that has been used for decades and is well within the regulatory expertise of the states, pursuant to delegation by the Clean Water Act responsibilities by U.S. Environmental Protection Agency; and

Whereas, North Carolina's more than 60 million acres of federally managed waters on the Atlantic Outer Continental Shelf is the largest along the Atlantic coast and the fourth largest in the United States; and

Whereas, the U.S. Department of the Interior failed to include the Atlantic Outer Continental Shelf in its leasing plan for 2012 through 2017; and

Whereas, the North Carolina General Assembly authorized the creation of the Legislative Research Commission's Advisory Subcommittee on Offshore Energy Exploration in 2008 to study offshore hydrocarbon and other energy resources; and

Whereas, the findings in the April 2010 final report of the Legislative Research Commission's Advisory Subcommittee on Offshore Energy Exploration noted that potentially significant energy resources exist offshore North Carolina that include quantifiable estimates from the federal government of almost 30 trillion cubic feet of natural gas; and

Whereas, the Legislative Research Commission's Advisory Subcommittee on Offshore Energy Exploration recommended that production of fossil fuel and alternative energy resources in North Carolina's outer continental shelf should include provisions for revenue and royalty sharing directed to the State of North Carolina; and

Whereas, the Legislative Research Commission's Advisory Subcommittee on Offshore Energy Exploration heard testimony from the Southeast Energy Alliance that estimated production of natural gas and associated hydrocarbons offshore North Carolina would create more than 6,700 new jobs and add more than $659 million annually to the State's Gross Domestic Product over three decades, during which time this energy production could generate almost $10 billion in revenue sharing of government revenues at an average of $484 million per year to North Carolina; and

Whereas, the Legislative Research Commission's Advisory Subcommittee on Offshore Energy Exploration recommended that production of fossil fuel and alternative energy resources in North Carolina's outer continental shelf should include provisions for revenue and royalty sharing directed to the State of North Carolina; and

Whereas, the U.S. Environmental Protection Agency has proposed New Source Performance Standards for oil and natural gas production that would significantly slow down drilling, resulting in less oil and natural gas production, lower royalties to the federal government, and lower tax payments to state governments; and

Whereas, the President and the Congress have not approved a pipeline project to transport oil extracted in Canada to the Gulf of Mexico for environmentally responsible refining and marketing, a project that is expected to create 13,000 construction jobs and 7,000 jobs in manufacturing for Americans in several states, generate substantial revenues to support state and local needs, and decrease the potential from supply disruptions from the Gulf of Mexico that have created recent price spikes and supply shortages to the citizens and businesses of North Carolina; and

Whereas, commercial nuclear power plants provide base load electricity generation to and are an important component of a reliable, safe, and secure electric power supply for the citizens of North Carolina;

Whereas, North Carolina receives approximately forty percent (40%) of its electricity from nuclear energy, is one of the top nuclear power producers in the country, and nuclear energy continues to be a safe, reliable, and clean resource;

Whereas, the Nuclear Waste Policy Act of 1982 mandates that generators of nuclear power are responsible for paying the costs associated with establishing a permanent repository for the disposal of nuclear fuel from commercial reactors;

Whereas, the United States government failed to begin accepting commercial nuclear fuel by 1998 as required by the Nuclear Waste Policy Act of 1982 and there have been ongoing and extensive delays caused by the government's failure to reasonably implement a waste management program and develop a disposal facility; and

Whereas, the President has unilaterally halted development by the U.S. Department of Energy of a planned national repository for spent nuclear fuel at Yucca Mountain, a repository that was required by federal law to be in place by 1998, and the Department of Energy continues to collect the fees authorized by the Nuclear Waste Policy Act of 1982 to fund the required repository, fees that are paid by utilities that own nuclear power generation facilities and recovered from the purchasers of electricity generated by those facilities; and

Whereas, the Secretary of U.S. Department of Energy has now taken action to terminate the current waste disposal program approved by the Yucca Mountain Repository Site Approval Act of 2002 and therefore, there is currently no centralized waste management and disposal program being implemented and against which a fee can be assessed; and

Whereas, despite the absence of an ongoing waste management and disposal program, the Secretary is continuing to collect over $750 million per year from reactor licensees, including those serving the citizens of North Carolina; and

Whereas, the citizens of North Carolina, through the rates charged, have contributed $897.3 million in fees to fund the federal government's waste management and disposal program as prescribed in the Nuclear Waste Policy Act of 1982; and

Whereas, the Nuclear Waste Policy Act of 1982 requires the Secretary of the U.S. Department of Energy to collect fees only in an amount sufficient to offset the costs of the federal government's waste management and disposal program and provides that the Secretary is to request a fee adjustment if "excess or insufficient" revenues are being collected, and the current balance of the fund is more than $25 billion and grows by approximately $1 billion annually solely from the addition of investment income; and

Whereas, the recent report by the United States Secretary of Energy's Blue Ribbon Commission on America's Nuclear Future described the federal government's program to manage and dispose of used nuclear fuel as "... one of broken promises and unmet commitments" and recommended fundamental changes in the program, but the federal government has yet to act on any of the Blue Ribbon Commission's recommendations; and

Whereas, the U.S. Environmental Protection Agency has developed and proposed numerous significant new rules, regulations, and policy guidelines that will impact energy generation and utilization, including the Clean Water Act, Section 316(b)

rules; the Cross-State Air Pollution Rule; the Cooling Water Intake Structures rules; Title I of the Clean Air Act, Utility Maximum Achievable Control Technology (MACT) Standards and new Boiler MACT Standards; National Ambient Air Quality Standards for Sulfur Dioxide and Ozone; and the Coal Combustion Residuals rule; and

Whereas, the U.S. Environmental Protection Agency has not considered the combined impact of these new rules, regulations, and policy guidelines on citizens, states, and businesses, and the compliance with this array of new regulatory requirements, separately and together, particularly in the short time-frames provided, will be extraordinarily expensive, directing available business capital to regulatory compliance rather than economic growth; and

Whereas, the U.S. Environmental Protection Agency has not considered the combined impact of these new and proposed rules and regulations on citizens, states, and businesses, and if compliance can be accomplished at all, it is certain to increase the cost and reliability of electricity to residential, commercial, and industrial users at a time when no citizen or business can afford to pay more for energy without cutting back on other expenses, inhibiting economic growth, and posing a serious risk to the reliability of the electric grid; and

Whereas, the foregoing information regarding federal policies and their effect on energy issues provides an incoherent, indefensible, and unsustainable energy policy that risks North Carolina's and the nation's economic recovery, global competitiveness, and energy security; and

Whereas, these federal activities are driving up the cost and driving down the reliability of energy at a time when economic recovery, business development, and job creation should be the top priorities of our leaders; Now, therefore,

Be it resolved by the Senate, the House of Representatives concurring:

SECTION 1. The General Assembly understands the urgency and importance of adopting a national energy policy that supports the responsible exploration for and development of this nation's diverse energy resources in order to secure abundant supplies of affordable, reliable energy for the economic recovery and future prosperity of North Carolina and the nation.

SECTION 2. The General Assembly advocates that the federal 2012-2017 five-year leasing plan be amended to include at least North Carolina's more than 60 million acres of federally managed waters on the Atlantic Outer Continental Shelf and expedite studies and permits to accelerate exploration, production, and development of the natural gas and hydrocarbon resources thereunder. The General Assembly also advocates that the federal government include revenue sharing provisions for North Carolina's federally managed waters on the Atlantic Outer Continental Shelf similar, if not identical, to those included in the gulf of Mexico Energy Security Act of 2006.

SECTION 3. It is the opinion of the General Assembly that ratepayers in North Carolina and throughout the nation could be protected by the immediate suspension of the collection of Nuclear Waste Fund fees because the continued collection cannot be justified under the Nuclear Waste Policy Act of 1982 given the unlawful termination of the waste management and disposal program at the Yucca Mountain site.

SECTION 4. It is also the opinion of the General Assembly that the collection fee should not be resumed until the long-term final repository program is revived or another waste management and disposal program is established based on the

final recommendations of the President's Blue Ribbon Commission on America's Nuclear Future.

SECTION 5. The federal government should put in place immediately the governance and financial reforms recommended by the Blue Ribbon Commission in order to make real progress toward disposal of used nuclear fuel in a geologic repository and to ensure that monies paid by electricity customers toward that end are used for the purpose of fuel management.

SECTION 6. In compliance with the mandates of the Nuclear Waste Policy Act of 1982 and the Yucca Mountain Repository Site Approval Act of 2002, it is the opinion of the General Assembly that the United States Department of Energy should resume work on the license application for the Yucca Mountain long-term spent nuclear fuel and high-level radioactive waste repository to the United States Nuclear Regulatory Commission to complete the environmental and technical review of the proposed repository.

SECTION 7. The General Assembly endorses the following:

(1) Providing statutory oversight and direction to implement a responsible energy policy in light of the Executive Branch's failure to implement such a policy.

(2) Having access to a cumulative regulatory impact assessment of all of the major regulations under consideration under the Clean Air Act and Clean Water Act, including the cumulative effect of all of these regulations on the economy, jobs, and energy affordability and reliability, drawing on the expertise of other federal agencies and the private sector.

(3) Providing additional oversight of the U.S. Environmental Protection Agency, considering the current encroachment of state enforcement powers and duties, air quality and water quality policy planning, and economic growth impacts due to regulatory uncertainty created by the Agency's recent actions regarding rules, regulations, and policy guidelines.

SECTION 8. The Secretary of State shall transmit certified copies of this resolution to each member of the North Carolina Congressional delegation, the Secretary of the United States Department of Energy, the Secretary of the United States Department of the Interior, the Administrator of the United States Environmental Protection Agency, the President of the United States, and the legislatures of the states so that they may be apprised of the opinions of the North Carolina General Assembly in these matters.

SECTION 9. This resolution is effective upon ratification.

BILL DRAFT 2011-RIxfz-28 [v.17] (03/19)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
4/18/2012 3:31:14 PM

Short Title:	Clean Energy and Economic Security Act.	(Public)
Sponsors:	Senator.	
Referred to:		

A BILL TO BE ENTITLED

AN ACT TO: (1) ESTABLISH AN OIL AND GAS BOARD WITH JURISDICTION AND AUTHORITY OVER MATTERS RELATED TO OIL AND GAS EXPLORATION AND DEVELOPMENT IN THE STATE, INCLUDING THE USE OF HORIZONTAL DRILLING AND HYDRAULIC FRACTURING FOR THAT PURPOSE, AND TO DIRECT THE BOARD TO CREATE A MODERN REGULATORY PROGRAM FOR MANAGEMENT OF OIL AND GAS EXPLORATION AND DEVELOPMENT IN THE STATE, INCLUDING THE USE OF HORIZONTAL DRILLING AND HYDRAULIC FRACTURING FOR THAT PURPOSE; (2) AUTHORIZE THE PROCESSES OF HORIZONTAL DRILLING AND HYDRAULIC FRACTURING FOR THE PURPOSE OF OIL AND GAS EXPLORATION AND DEVELOPMENT IN THE STATE, AND PLACE A MORATORIUM ON PERMITTING RELATED TO THOSE PROCESSES UNTIL JULY 1, 2014; (3) ENACT VARIOUS OTHER PROVISIONS RELATED TO MANAGEMENT OF OIL AND GAS EXPLORATION ACTIVITIES, INCLUDING PROVISIONS RELATED TO LOCAL GOVERNMENT AUTHORITY OVER THESE ACTIVITIES; (4) ESTABLISH THE JOINT LEGISLATIVE COMMISSION ON ENERGY POLICY WITH LEGISLATIVE OVERSIGHT OF ALL MATTERS RELATED TO OIL AND GAS EXPLORATION AND DEVELOPMENT IN THE STATE, AND OTHER ENERGY-RELATED ISSUES; (5) DIRECT THE DEPARTMENT OF PUBLIC INSTRUCTION TO PURCHASE SCHOOL BUSES THAT OPERATE ON COMPRESSED NATURAL GAS (CNG); (6) DIRECT THE DEPARTMENT OF TRANSPORTATION TO PURCHASE NEW THREE-QUARTER (3/4) TON PICK UP TRUCKS AND NEW ONE-HALF (1/2) TON PICK UP TRUCKS THAT OPERATE ON COMPRESSED NATURAL GAS (CNG) OR COMPRESSED NATURAL GAS (CNG) AND GASOLINE; (7) CREATE AN INTERAGENCY TASK FORCE TO ESTABLISH PUBLIC-PRIVATE PARTNERSHIPS FOR THE CONSTRUCTION AND DEVELOPMENT OF COMPRESSED NATURAL GAS (CNG) FUELING INFRASTRUCTURE; (8) ESTABLISH CRITERIA FOR THE OPERATION OF ELECTRIC VEHICLE CHARGING STATIONS LOCATED AT STATE-OWNED REST STOPS ALONG THE HIGHWAYS; (9) ENSURE THE USE OF FUEL EFFICIENT AND COST EFFICIENT RETREAD TIRES ON STATE VEHICLES; AND (10) AMEND THE ENERGY JOBS ACT OF 2011 IF THE ENERGY JOBS

ACT OF 2011 BECOMES LAW, AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION ENERGY ISSUES POLICY COMMITTEE.

PART I. LEGISLATIVE FINDINGS AND INTENT

Whereas, in S.L. 2011-276, the General assembly directed the Department of Environment and Natural Resources and other entities to study the issue of oil and gas exploration in the State and the use of horizontal drilling and hydraulic fracturing for that purpose, including study of: (i) oil and gas resources present in the Triassic Basins and in any other areas of the State; (ii) methods of exploration and extraction of oil and gas, including directional and horizontal drilling and hydraulic fracturing; (iii) potential environmental, economic, and social impacts arising from such activities, as well as impacts on infrastructure; and (iv) appropriate regulatory requirements for management of oil and gas exploration activities with particular attention to regulation of horizontal drilling and hydraulic fracturing for that purpose; and,

Whereas, pursuant to S.L. 2011-276 the Department of Environment and Natural Resources (DENR), in conjunction with the Department of Commerce, the Department of Justice, and the Rural Advancement Foundation (RAFI–USA), issued a draft report on oil and gas resources in March 2012; and,

Whereas, DENR's draft report set forth a number of recommendations, including recommendations concerning all of the following:

(1) Development of a modern oil and gas regulatory program, taking into consideration the processes involved in hydraulic fracturing and horizontal drilling technologies, and long-term prevention of physical or economic waste in developing oil and gas resources.

(2) Collection of baseline data for areas near proposed drill-sites concerning air quality and emissions, as well as groundwater and surface water resources and quality.

(3) Requirements that oil and gas operators prepare and have approved water management plans that limit water withdrawals during times of low-flow conditions and droughts.

(4) Enhancements to existing oil and gas well construction standards to address the additional pressures of horizontal drilling and hydraulic fracturing.

(5) Development of setback requirements and identification of areas where oil and gas exploration and development activities should be prohibited.

(6) Development of a State stormwater regulatory program for oil and gas drilling sites.

(7) Development of specific standards for management of oil and gas wastes.

(8) Requirements for disclosure of hydraulic fracturing chemicals and constituents to regulatory agencies and the public.

(9) Prohibitions on use of certain chemicals or constituents in hydraulic fracturing fluids.

(10) Improvements to data management capabilities and development of a coordinated electronic permitting program for oil and gas exploration and development activities.

(11) Development of protocols to ensure that State agencies, local first responders, and industry are prepared to respond to a well blowout, chemical spill, or other emergency.

(12) Appropriate distribution of revenues from any taxes or fees that may be imposed on oil and gas exploration and development activities to support a modern regulatory program for the management of all aspects of oil and gas exploration and development activities using the processes of horizontal drilling and hydraulic fracturing in the State, and to support local governments impacted by the activities, including, but not limited to, sufficient funding for improvements to and repair of roads subject to damage by truck traffic and heavy equipment from these activities.

(13) Clarifications needed to address local government regulatory authority over oil and gas exploration and development activities, and use of horizontal drilling and hydraulic fracturing for that purpose.

(14) Additional research required on impacts to local governments and local infrastructure, as well as potential economic impacts from oil and gas exploration and development activities.

(15) Development of provisions to address liability of the oil and gas industry for environmental contamination caused by exploration and development activities, particularly with regard to groundwater contamination.

(16) Establishment of a process that affords additional public participation in connection with development of a modern oil and gas regulatory program; and,

Whereas, it is the intent of the General Assembly to move forward with development of a modern regulatory program for the management of oil and gas exploration and development in the State and the use of horizontal drilling and hydraulic fracturing for that purpose in an environmentally responsible manner; and

Whereas, it is also the intent of the General Assembly to incorporate the recommendations included in the draft study issued by DENR as outlined above; Now, therefore,

The General Assembly of North Carolina enacts:

PART II. ESTABLISH OIL AND GAS BOARD

SECTION 1.(a) Article 27 of Chapter 113 of the General Statutes is amended by adding a new Part to read:

"Part 4. Oil and Gas Board.

"**§ 113-430. Oil and Gas Board – creation; powers and duties.**

(a) There is hereby established the North Carolina Oil and Gas Board with the power and duty to promulgate rules governing the management of oil and gas exploration and development activities in the State.

(b) The Board shall have jurisdiction and authority concurrent with that of the Department of Environment and Natural resources established under G.S. 113-391 and over all persons and property necessary to administer and enforce effectively the provisions of this Article and all other laws relating to oil and gas exploration and development activities in the State.

(c) The Board shall have authority concurrent with that of the Department of Environment and Natural resources established under G.S. 113-391 and it shall be the Board's duty to make such inquiries as it may think proper to determine whether or not waste over which it has jurisdiction exists or is imminent. In the exercise of such power the Board shall have the authority to collect data; to make investigations and inspections; to examine properties, leases, papers, books and records; to examine, check, test and gauge oil and gas wells, tanks, refineries, and means of transportation; to hold hearings; and to provide for the keeping of records and the making of reports; and to take such action as may be reasonably necessary to enforce this Articles and rules promulgated thereunder.

(d) In the exercise of its authority over oil and gas exploration and development activities, the Board shall have access to all data, records, and information related to such activities, including, but not limited to, seismic surveys, stratigraphic testing, geologic cores, proposed well bore trajectories, hydraulic fracturing fluid chemicals and constituents, drilling mud chemistry, and geophysical borehole logs. With the exception of information designated as a trade secret, as defined in G.S. 66-152(3) and that is designated as confidential or as a trade secret under G.S. 132-1.2, the Board shall make such information available to the public as provided by G.S. 132-11. The State Geologist shall serve as the custodian of all data, information, and records received pursuant to this subsection and shall ensure that: (i) the information shall be maintained securely as provided in G.S. 132-7; and (ii) access to information designated as a trade secret, as defined in G.S. 66-152(3) and that is designated as confidential or as a trade secret under G.S. 132-1.2, is limited to only those members of the Board and State employees who have executed a confidentiality agreement with the owner of such information.

(e) The Board shall promulgate rules for the management of oil and gas exploration and development in the State and the use of horizontal drilling and hydraulic fracturing for that purpose, including rules for all of the following purposes:

(1) To govern pre-drilling exploration activities, including seismic and other geophysical and stratigraphic surveys and testing, as well as drilling, operation, casing plugging, completion, and abandonment of wells; to prevent the pollution of water supplies by oil, gas, or other fluids used in oil and gas exploration and development, or to protect the quality of the water, air, soil or any other environmental resource against injury or damage or impairment; and to require reasonable bond conditions deemed necessary by the Board in connection with oil and gas exploration and development activities. Such rules shall specifically regulate the processes of horizontal drilling and hydraulic

fracturing for the purpose of oil and gas exploration, and shall, at a minimum, include standards or requirements related to the following:

a. Appropriate well construction and siting standards, including setback requirements.

b. Limits on water use.

c. Prohibitions on use of certain chemicals and constituents in hydraulic fracturing fluids

d. Management of wastes produced in connection with oil and gas exploration and development and use of horizontal drilling and hydraulic fracturing for that purpose.

e. Stormwater control at sites.

f. Installation of appropriate safety devices, and development of protocols for response to well blowouts, chemical spills, and other emergencies.

g. Full disclosure of hydraulic fracturing chemicals and constituents.

h. Proper well closure and site reclamation.

i. Any other matter the Board deems necessary.

(2) To require surveys upon application of any owner who has reason to believe that a well has been unlawfully drilled by another into land of the owner without permission. In the event such surveys are required, the costs thereof shall be borne by the owner making the request.

(3) To require the making of reports showing the location of oil and gas wells, and the filing of logs and drilling records.

(4) To prevent "blow-outs," "caving" and "seepage" as such terms are generally understood in the oil and gas industry.

(5) To prevent fires and other emergency events potentially resulting from oil and gas exploration and development activities.

(6) To identify the ownership of all oil or gas wells, producing leases, refineries, tanks, plants, structures and all storage and transportation equipment and facilities.

(7) To regulate the "shooting," perforating, and chemical treatment of wells.

(8) To regulate secondary recovery methods, including the introduction of gas, air, water or other substances into producing formations.

(9) To limit and prorate the production of oil or gas, or both, from any pool or field for the prevention of waste as defined in this Article and rules promulgated thereunder.

(10) To require, either generally or in or from particular areas, certificates of clearance or tenders in connection with the transportation of oil or gas.

(11) To regulate the spacing of wells and to establish drilling units.

(12) To prevent, so far as is practicable, reasonably avoidable drainage from each developed unit which is not equalized by counter-drainage.

(13) To regulate and, if necessary in its judgment for the protection of unique environmental values, to prohibit the location of wells in the

interest of protecting the quality of the water, air, soil or any other environmental resource against injury, or damage or impairment.

(f) The Oil and Gas Board shall submit quarterly written reports as to its operation, activities, programs, and progress to the Joint Legislative Commission on Energy Policy. The Oil and Gas Board shall supplement the written reports required by this subsection with additional written and oral reports as may be requested by the Joint Legislative Commission on Energy Policy. The Oil and Gas Board shall submit the written reports required by this subsection whether or not the General Assembly is in session at the time the report is due.

"**§113-431. Oil and Gas Board – quasi-judicial powers; procedures.**

(a) With respect to those matters within its jurisdiction, the Oil and Gas Board shall exercise quasi-judicial powers in accordance with the provisions of Chapter 150B of the General Statutes. This section and any rules adopted by the Oil and Gas Board shall govern such proceedings:

(1) Exceptions to recommended decisions in contested cases shall be filed with the Board within 30 days of the receipt by the Board of the official record from the Office of Administrative Hearings, unless additional time is allowed by the Chair of the Board.

(2) Oral arguments by the parties may be allowed by the Chair of the Board upon request of the parties.

(3) Deliberations of the Board shall be conducted in its public meeting unless the Board determines that consultation with its counsel should be held in a closed session pursuant to G.S. 143-318.11.

(b) The final agency decision in contested cases that arise from civil penalty assessments made pursuant to this Article and rules adopted thereunder shall be made by the Board. In the evaluation of each violation, the Board shall recognize that harm to the natural resources of the State arising from the violation of standards or limitations established to protect those resources may be immediately observed through damaged resources or may be incremental or cumulative with no damage that can be immediately observed or documented. Penalties up to the maximum authorized may be based on any one or combination of the following factors:

(1) The degree and extent of harm to the natural resources of the State, to the public health, or to private property resulting from the violation.

(2) The duration and gravity of the violation.

(3) The effect on ground or surface water quantity or quality or on air quality.

(4) The cost of rectifying the damage.

(5) The amount of money saved by noncompliance.

(6) Whether the violation was committed willfully or intentionally.

(7) The prior record of the violator in complying or failing to comply with programs over which the Oil and Gas Board has regulatory authority.

(8) The cost to the State of the enforcement procedures.

(c) The Chair shall appoint a Committee on Civil Penalty Remissions from the members of the Board. No member of the Board on Civil Penalty Remissions may hear or vote on any matter in which the member has an economic interest. The Committee on Civil Penalty Remissions shall make the final agency decision on remission requests. In

determining whether a remission request will be approved, the Committee shall consider the recommendation of the Secretary or the Secretary's designee and all of the following factors:

(1) Whether one or more of the civil penalty assessment factors in subsection (b) of this section were wrongly applied to the detriment of the petitioner.

(2) Whether the violator promptly abated continuing environmental damage resulting from the violation.

(3) Whether the violation was inadvertent or a result of an accident.

(4) Whether the violator had been assessed civil penalties for any previous violations.

(5) Whether payment of the civil penalty will prevent payment for the remaining necessary remedial actions.

(d) The Committee on Civil Penalty Remissions may remit the entire amount of the penalty only when the violator has not been assessed civil penalties for previous violations, and when payment of the civil penalty will prevent payment for the remaining necessary remedial actions.

(e) If any civil penalty has not been paid within 30 days after the final agency decision or court order has been served on the violator, the Secretary or the Secretary's designee shall request the Attorney General to institute a civil action in the Superior Court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment.

(f) For purposes of this section, "Secretary" shall mean the Secretary of Environment and Natural Resources.

"**§ 113-432. Oil and Gas Board – members; selection; terms; vacancies; compensation; meetings; quorum; staff.**

(a) Members, Selection. – The Oil and Gas Board shall consist of nine members appointed by as follows:

(1) One appointed by the Governor who shall be a licensed geologist with experience in oil and gas exploration and development.

(2) One appointed by the Governor who shall be an employee or officer of an investor-owned natural gas company.

(3) One appointed by the Governor who shall be a licensed attorney with experience in mineral leasing.

(4) One appointed by the President Pro Tempore of the Senate who shall be an environmental scientist with experience in environmental restoration, remediation, and mitigation of contamination resulting from industrial activities.

(5) One appointed by the President Pro Tempore of the Senate who shall be a licensed engineer with experience in oil and gas exploration and development.

(6) One appointed by the President Pro Tempore of the Senate who shall be a private owner of land located in the Sanford sub-basin of the Triassic basin of North Carolina.

(7) One appointed by the Speaker of the House of Representatives who shall, at the time of the initial appointment, be a member of a County

Board of Commissioners of a county located in the Sanford sub-basin of the Triassic basin of North Carolina.

(8) One appointed by the Speaker of the House of Representatives who shall, at the time of the initial appointment, be a representative of a municipal government of a municipality located in the Sanford sub-basin of the Triassic basin of North Carolina.

(9) One appointed by the Speaker of the House of Representatives who shall be an economist with particular experience in or familiarity with energy markets.

(b) Terms. – The term of office of members of the Board is three years. A member may be reappointed to any number of successive three-year terms. Upon the expiration of a three-year term, a member shall continue to serve until a successor is appointed and duly qualified. The term of members appointed under subdivisions (1), (4), and (7) of subsection (a) of this section shall expire on June 30 of years evenly divisible by three. The term of members appointed under subdivisions (2), (5), and (8) of subsection (a) of this section shall expire on June 30 of years that precede by one year those years that are evenly divisible by three. The term of members appointed under subdivisions (3), (6), and (9) of subsection (a) of this section shall expire on June 30 of years that follow by one year those years that are evenly divisible by three.

(c) Vacancies, removal from office. –

(1) Any appointment by the Governor to fill a vacancy on the Board created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term. The Governor shall have the power to remove any member of the Board from office for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

(2) Members appointed by the President Pro Tempore of the Senate and the Speaker of the House of Representatives shall be made in accordance with G.S. 120-121, and vacancies in those appointments shall be filled in accordance with G.S. 120-122. In accordance with Section 10 of Article VI of the North Carolina Constitution, a member may continue to serve until a successor is duly appointed.

(d) Compensation. – The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

(e) Meetings. – The Board shall meet at least once in each quarter and may hold special meetings at any time and place within the State at the call of the Chair or upon the written request of at least five members.

(f) Quorum. – A majority of the Commission shall constitute a quorum for the transaction of business.

(g) Staff. – All staff support required by the Board shall be supplied by the Division of Energy, Mineral, and Land Resources, and the North Carolina Geological Survey.

"**§ 113-433. Oil and Gas Board – officers; organization; seal.**

(a) Election of Chair and Vice-Chair. – The Commission shall elect one of its members to serve as Chair, and one of its members to serve as Vice-Chair. The Chair and Vice-Chair shall serve one-year terms beginning August 1 and ending July 31 of the following year. The Chair and Vice-Chair may serve any number of terms, but not more than two terms consecutively.

(b) Responsibilities of Chair. – The Chair shall guide and coordinate the activities of the Board in fulfilling its duties as set out in this Article. The Chair shall report to and advise the Governor and the Joint Legislative Commission on Energy Policy as provided in G.S. 113-430 on the activities of the Board.

(c) Procedure and organization. –The Board shall determine its organization and procedure in accordance with the provisions of this Article. The provisions of the most recent edition of Robert's Rules of Order shall govern any procedural matter for which no other provision has been made.

(d) Adoption of seal. – The Board may adopt a common seal and may alter it as necessary."

SECTION 1.(b) Chapter 132 of the General Statutes is amended by adding a new section to read:

"**§ 132-11. Qualified exception for information pertaining to oil and gas exploration and development activities.**

(a) Except as provided in subsection (b) of this section, data, records, and other information related to oil and gas exploration and development activities obtained by the North Carolina Oil and Gas Board pursuant to G.S. 113-430 and the Department of Environment and Natural Resources pursuant to G.S. 113-391 shall be made available for public inspection and examination after a period of two years from the date the data, records, and other information were received by the Board.

(b) Information designated as a trade secret, as defined in G.S. 66-152(3) and that is designated as confidential or as a trade secret under G.S. 132-1.2, shall be maintained as such by the Board and the Department, and shall not be made available to the public."

SECTION 1.(c) The Oil and Gas Board established under Section 1.(a) of this act shall create a modern regulatory program for the management of all aspects of oil and gas exploration and development activities including the processes of horizontal drilling and hydraulic fracturing in the State. The Board shall adopt rules governing these activities as quickly as practicable, but no later than December 31, 2013. The Board shall also consult and coordinate with the Department of Environment and Natural Resources, the Environmental Management Commission, and the Mining Commission to identify changes required to all existing rules and statutes governing these activities, including repeal or modification of the rules and statutes. The Board shall report to the Joint Legislative Commission on Energy Policy created under Section 8.(a) of this act on the progress of development of a modern regulatory program, and any statutory and rule changes required, on or before May 1, 2013. From the effective date of this act the Oil and Gas Board shall have concurrent authority and jurisdiction with the Department of Environment and Natural Resources to administer and enforce the provisions of Article 27 of Chapter 113 of the General Statutes and rules adopted thereunder in compliance with the provisions of this act.

PART III. STATUTORY AND RULE CHANGES TO AUTHORIZE HORIZONTAL DRILLING AND HYDRAULIC FRACTURING; MORATORIUM ESTABLISHED

SECTION 2.(a) 113-389 reads as rewritten:

"**§ 113-389. Definitions.**

Unless the context otherwise requires, the words defined in this section shall have the following meaning when found in this law:

(1) "Board" shall mean the "North Carolina Oil and Gas Board."

(1a) "Department" shall mean the "Department of Environment and Natural ~~Resources," as created by this law.~~Resources."

(1b) "Division" shall mean the "Division of Energy, Mineral, and Land Resources" of the Department of Environment and Natural Resources.

...

(3a) "Hydraulic fracturing fluid" shall mean the base fluid type utilized in a particular hydraulic fracturing treatment.

(3b) "Hydraulic fracturing treatment" shall mean stimulating a well by the application of hydraulic fracturing fluids and additives with force in order to create artificial fractures in the formation for the purpose of improving the capacity to produce hydrocarbons.

..."

SECTION 2.(b) 113-391 reads as rewritten:

"**§ 113-391. Jurisdiction and authority; rules and orders.**

(a) The Department shall have jurisdiction and authority concurrent with that of the Oil and Gas Board established pursuant to G.S. 113-430 ~~of and~~ over all persons and property necessary to administer and enforce effectively the provisions of this law and all other laws relating to the conservation of oil and gas.

(b) The Department shall have ~~the~~ authority concurrent with that of the Oil and Gas Board established pursuant to G.S. 113-430 and it shall be ~~its~~ the Department's duty to make such inquiries as it may think proper to determine whether or not waste over which it has jurisdiction exists or is imminent. In the exercise of such power the Department shall have the authority to collect data; to make investigations and inspections; to examine properties, leases, papers, books and records; to examine, check, test and gauge oil and gas wells, tanks, refineries, and means of transportation; to hold hearings; and to provide for the keeping of records and the making of reports; and to take such action as may be reasonably necessary to enforce this law.

(b1) In the exercise of its authority over oil and gas exploration and development activities, the Department shall have access to all data, records, and information related to such activities, including, but not limited to, seismic surveys, stratigraphic testing, geologic cores, proposed well bore trajectories, hydraulic fracturing fluid chemicals and constituents, drilling mud chemistry, and geophysical borehole logs. With the exception of information designated as a trade secret, as defined in G.S. 66-152(3) and that is designated as confidential or as a trade secret under G.S. 132-1.2, the Department shall make any information it receives available to the public pursuant to G.S. 132-11.. The State Geologist shall serve as the custodian of all data, information, and records received by the Department pursuant to this subsection and shall ensure that: (i) the information is

maintained securely as provided in G.S. 132-7; and (ii) access to information designated as a trade secret, as defined in G.S. 66-152(3) and that is designated as confidential or as a trade secret under G.S. 132-1.2, is limited to only those staff of the Department who have executed a confidentiality agreement with the owner of such information.

(c) The Department may ~~make rules and~~ issue orders as may be necessary from time to time in the proper administration and enforcement of this ~~law,~~law and rules promulgated by the Oil and Gas Board pursuant to G.S. 113-430, including ~~rules or~~ orders for the following purposes:

(1) To require the drilling, operation, casing and plugging of wells ~~to be done in such manner as to prevent the escape of oil or gas out of one stratum to another; to prevent the intrusion of water into an oil or gas stratum from a separate stratum; to prevent the pollution of freshwater supplies by oil, gas or salt water, or~~ to protect the quality of the water, air, soil or any other environmental resource against injury or damage or impairment; and to require reasonable bond ~~condition~~ conditions for the performance of the duty to plug each dry or abandoned well.

(2) To require ~~directional~~ surveys upon application of any owner who has reason to believe that a well ~~or wells of others has or have~~has been unlawfully drilled by another into land of the owner without permission. ~~the lands owned by him or held by him under lease.~~ In the event such surveys are required, the costs thereof shall be borne by the ~~owners~~ owner making the request.

(3) To require the making of reports showing the location of oil and gas wells, and the filing of logs and drilling records.

~~(4) To prevent the drowning by water of any stratum or part thereof capable of producing oil or gas in paying quantities, and to prevent the premature and irregular encroachment of water which reduces, or tends to reduce, the total ultimate recovery of oil or gas from any pool.~~

(5) To require the operation of wells with efficient gas-oil ratios, and to fix such ratios.

(6) To prevent "blow-outs," "caving" and "seepage" in the sense that conditions indicated by such terms are generally understood in the oil and gas business.

(7) To prevent fires.

(8) To identify the ownership of all oil or gas wells, producing leases, refineries, tanks, plants, structures and all storage and transportation equipment and facilities.

(9) To regulate the "shooting," perforating, and chemical treatment of wells.

(10) To regulate secondary recovery methods, including the introduction of gas, air, water or other substances into producing formations.

(11) To limit and prorate the production of oil or gas, or both, from any pool or field for the prevention of waste as herein defined.

(12) To require, either generally or in or from particular areas, certificates of clearance or tenders in connection with the transportation of oil or gas.

(13) To regulate the spacing of wells and to establish drilling units.

(14) To prevent, so far as is practicable, reasonably avoidable drainage from each developed unit which is not equalized by counter-drainage.

(15) To prevent where necessary the use of gas for the manufacture of carbon black.

(16) To regulate and, if necessary in its judgment for the protection of unique environmental values, to prohibit the location of wells in the interest of protecting the quality of the water, air, soil or any other environmental resource against injury, or damage or impairment."

SECTION 2.(c) G.S. 113-393 reads as rewritten:

"**§ 113-393. Development of lands as drilling unit by agreement or order of Department.**

(a) Integration of Interests and Shares in Drilling Unit. – When two or more separately owned tracts of land are embraced within an established drilling unit, the owners thereof may agree validly to integrate their interests and to develop their lands as a drilling unit. Where, however, such owners have not agreed to integrate their interests, the Department shall, for the prevention of waste or to avoid drilling of unnecessary wells, require such owners to do so and to develop their lands as a drilling unit. All orders requiring such integration shall be made after notice and hearing, and shall be upon terms and conditions that are just and reasonable, and will afford to the owner of each tract the opportunity to recover or receive his just and equitable share of the oil and gas in the pool without unnecessary expense, and will prevent or minimize reasonably avoidable drainage from each developed unit which is not equalized by counter-drainage. The portion of the production allocated to the owner of each tract included in a drilling unit formed by an integration order shall, when produced, be considered as if it had been produced from such tract by a well drilled thereon.

In the event such integration is required, and provided also that after due notice to all the owners of tracts within such drilling unit of the creation of such drilling unit, and provided further that the Department has received no protest thereto, or request for hearing thereon, whether or not 10 days have elapsed after notice has been given of the creation of the drilling unit, the operator designated by the Department to develop and operate the integrated unit shall have the right to charge to each other interested owner the actual expenditures required for such purpose not in excess of what are reasonable, including a reasonable charge for supervision, and the operator shall have the right to receive the first production from the well drilled by him thereon, which otherwise would be delivered or paid to the other parties jointly interested in the drilling of the well, so that the amount due by each of them for his shares of the expense of drilling, equipping, and operating the well may be paid to the operator of the well out of production; with the value of the production calculated at the market price in the field at the time such production is received by the operator or placed to his credit. After being reimbursed for the actual expenditures for drilling and equipping and operating expenses incurred during the drilling operations and until the operator is reimbursed, the operator shall thereafter pay to the owner of each tract within the pool his ratable share of the production calculated at the market price in the field at the time of such production less the reasonable expense of operating the well. In the event of any dispute relative to such costs, the Department shall determine the proper costs.

(b) When Each Owner May Drill. – Should the owners of separate tracts embraced within a drilling unit fail to agree upon the integration of the tracts and the drilling of a well on the unit, and should it be established that the Department is without authority to require integration as provided for in subsection (a) of this section, then, subject to all other applicable provisions of this law, the owner of each tract embraced within the drilling unit may drill on his tract, but the allowable production from each tract shall be such proportion of the allowable for the full drilling unit as the area of such separately owned tract bears to the full drilling unit.

(c) Cooperative Development Not in Restraint of Trade. – Agreements made in the interests of conservation of oil or gas, or both, or for the prevention of waste, between and among owners or operators, or both, owning separate holdings in the same oil or gas pool, or in any area that appears from geological or other data to be underlaid by a common accumulation of oil or gas, or both, or between and among such owners or operators, or both, and royalty owners therein, of a pool or area, or any part thereof, as a unit for establishing and carrying out a plan for the cooperative development and operation thereof, when such agreements are approved by the Department, are hereby authorized and shall not be held or construed to violate any of the statutes of this State relating to trusts, monopolies, or contracts and combinations in restraining of trade.

(d) Variation from Vertical. – Whenever the Department fixes the location of any well or wells on the surface, the point at which the maximum penetration of such wells into the producing formation is reached shall not unreasonably vary from the vertical drawn from the center of the hole at the surface, provided, that the Department shall prescribe rules and orders governing the reasonableness of such variation. This subsection shall not apply to wells drilled for the purpose of exploration or development of natural gas through use of horizontal drilling in conjunction with hydraulic fracturing treatments."

SECTION 2.(d) G.S. 143-214.2 reads as rewritten:

"**§ 143-214.2. Prohibited discharges.**

(a) The discharge of any radiological, chemical or biological warfare agent or high-level radioactive waste to the waters of the State is prohibited.

(b) The discharge of any wastes to the subsurface or groundwaters of the State by means of wells is prohibited. This section shall not be construed to ~~prohibit~~ prohibit: (i) the operation of closed-loop groundwater remediation systems in accordance with ~~G.S. 143-215.1A.~~ G.S. 143-215.1A, or (ii) injection of hydraulic fracturing fluid for the exploration or development of natural gas resources.

(c) Unless permitted by a rule of the Commission, the discharge of wastes, including thermal discharges, to the open waters of the Atlantic Ocean over which the State has jurisdiction are prohibited."

SECTION 3.(a) With regard to wells that are drilled for the purpose of exploration or development of natural gas through use of horizontal drilling in conjunction with hydraulic fracturing treatments, notwithstanding subsection (e) of 15A NCAC 05D .0107 (Drilling and Completion), from the effective date of this act the Department of Environment and Natural Resources shall not prohibit the drilling of wells where the vertical deviation of the hole exceeds three degrees between the bottom of the hole and the top of hole.

SECTION 3.(b) With regard to wells that are drilled for the purpose of exploration or development of natural gas through use of hydraulic fracturing treatments, notwithstanding subsection (b) of 15A NCAC 02C 0209 (Classification of Injection Wells), from the effective date of this act the Department of Environment and Natural Resources shall not prohibit the construction, use, or operation of oil or gas production and storage related injection wells.

SECTION 3.(c) With regard to wells that are drilled for the purpose of exploration or development of natural gas through use of hydraulic fracturing treatments, notwithstanding subsection (b) of 15A NCAC 02C 0213 (Additional Criteria and Standards Applicable to Class 5 Wells), from the effective date of this act the Department of Environment and Natural Resources shall allow the use of hydraulic fracturing fluid for the exploration or development of natural gas resources, provided that such additives do not cause surrounding groundwaters to become non-potable.

SECTION 3.(d) With regard to wells that are drilled for the purpose of exploration or development of natural gas through use of hydraulic fracturing treatments, notwithstanding subdivision (1) of subsection (e) of 15A NCAC 02C 0213 (Additional Criteria and Standards Applicable to Class 5 Wells), from the effective date of this act the Department of Environment and Natural Resources shall not limit pressure at a well head to a maximum such that the pressure in the injection zone would not initiate new fractures or propagate existing fractures in the injection zone, initiate fractures in the confining zone, or cause the migration of injected or formation fluids outside the injection zone or area.

SECTION 3.(e) With regard to wells that are drilled for the purpose of exploration or development of natural gas through use of horizontal drilling and hydraulic fracturing treatments, the Department shall not enforce any rule that would have the effect of prohibiting such activities.

SECTION 4. There is hereby established a moratorium on the issuance of permits for oil and gas exploration and development activities using the processes of horizontal drilling and hydraulic fracturing in the State. The purpose of this moratorium is to allow the Oil and Gas Board established under Section 1.(a) of this act to create a modern regulatory program to govern all aspects of such activities. No agency of the State, including the Department of Environment and Natural Resources, the Environmental Management Commission, the Mining Commission, or the Oil and Gas Board established under Section1.(a) of this act, shall issue a permit for oil or gas exploration or development activities using the processes of horizontal drilling and hydraulic fracturing for a period beginning from the effective date of this act and ending on July 1, 2014.

PART IV. MISCELLANEOUS PROVISIONS RELATED TO MANAGEMENT OF OIL AND GAS EXPLORATION AND DEVELOPMENT ACTIVITIES

SECTION 5. Article 27 of Chapter 113 of the General Statutes is amended by adding a new section to read:

"**§ 113-388A. Impact fee imposed on oil and gas exploration and development activities:**

(a) A city or town in which oil and gas exploration and development activities are occurring may levy a one-time impact fee on operators of such sites that are located within the city or town's jurisdiction only in accordance with this section. This fee shall not exceed $30,000 for each oil or gas well drilled by the operator within the city or town's jurisdiction.

(b) A county in which oil and gas exploration and development are occurring may levy a one-time impact fee on operators of such sites that are located within unincorporated areas of the county only in accordance with this section. This fee shall not exceed $30,000 for each oil or gas well drilled by the operator within the county's jurisdiction.

(c) The rate or rates of a fee imposed under authority of this section shall be in an amount calculated to compensate the city, town, or county, as applicable, for the additional costs incurred by it from having a site on which oil and gas exploration and development activities are occurring located in its jurisdiction to the extent to which compensation for such costs is not otherwise provided, which costs may include the loss of ad valorem property tax revenues from the property on which a facility is located, the cost of providing any additional emergency services, the cost of monitoring air, surface water, groundwater, and other environmental media to the extent other monitoring data is not available, the cost to improve or repair roads impacted by truck traffic and heavy equipment from the activities, and other costs associated with the activities and for which the city, town, or county is not otherwise compensated.

(d) Any person or firm on which a fee is imposed pursuant to this section may appeal the fee to the Oil and Gas Board established by G.S. 113-430, but shall pay the fee when due, subject to a refund when the appeal is resolved by the Board or in the courts."

SECTION 6. Article 27 of Chapter 113 of the General Statutes is amended by adding a new section to read:

"**§ 113-415A. Local ordinances prohibiting oil and gas exploration and development activities invalid; petition to preempt local ordinance.**

(a) It is the intent of the General Assembly to maintain a uniform system for the management of oil and gas exploration and development activities, and the use of horizontal drilling and hydraulic fracturing for that purpose, and to place limitations upon the exercise by all units of local government in North Carolina of the power to regulate the management of oil and gas exploration and development activities by means of special, local, or private acts or resolutions, ordinances, property restrictions, zoning regulations, or otherwise. Notwithstanding any authority granted to counties, municipalities, or other local authorities to adopt local ordinances, including but not limited to those imposing taxes, any fees except as authorized by G.S. 113-388A, or charges or regulating health, environment, or land use, any local ordinance that prohibits or has the effect of prohibiting oil and gas exploration and development activities that the Oil and Gas Board has preempted pursuant this section, shall be invalid to the extent necessary to effectuate the purposes of this Article. To this end, all provisions of special, local, or private acts or resolutions are repealed that:

(1) Prohibit the siting of wells for oil and gas exploration and development within any county, city, or other political subdivision.

(2) Prohibit the use of horizontal drilling or hydraulic fracturing for the purpose of oil or gas exploration or development within any county, city, or other political subdivision.

(3) Place any restriction or condition not placed by this Article upon oil and gas exploration and development activities and use of horizontal drilling or hydraulic fracturing for that purpose within any county, city, or other political subdivision.

(4) In any manner are in conflict or inconsistent with the provisions of this Article.

(b) No special, local, or private act or resolution enacted or taking effect hereafter may be construed to modify, amend, or repeal any portion of this Article unless it expressly provides for such by specific references to the appropriate section of this Article. Further to this end, all provisions of local ordinances, including those regulating land use, adopted by counties, municipalities, or other local authorities that prohibit or have the effect of prohibiting oil and gas exploration and development activities and use of horizontal drilling or hydraulic fracturing for that purpose within the jurisdiction of a local government are invalidated to the extent preempted by the Board pursuant to this section.

(c) When oil and gas exploration and development activities would be prevented from construction or operation by a county, municipal, or other local ordinance, the operator of the of the proposed activities may petition the Oil and Gas Board to review the matter. After receipt of a petition, the Board shall hold a hearing in accordance with the procedures in subsection (d) of this section and shall determine whether or to what extent to preempt the local ordinance to allow for the proposed oil and gas exploration and development activities.

(d) When a petition described in subsection (c) of this section has been filed with the Oil and Gas Board, the Board shall hold a public hearing to consider the petition. The public hearing shall be held in the affected locality within 60 days after receipt of the petition by the Board. The Board shall give notice of the public hearing by:

(1) Publication in a newspaper or newspapers having general circulation in the county or counties where the activities are to be conducted, once a week for three consecutive weeks, the first notice appearing at least 30 days prior to the scheduled date of the hearing; and

(2) First class mail to persons who have requested notice. The Board shall maintain a mailing list of persons who request notice in advance of the hearing pursuant to this section. Notice by mail shall be complete upon deposit of a copy of the notice in a post-paid wrapper addressed to the person to be notified at the address that appears on the mailing list maintained by the Board, in a post office or official depository under the exclusive care and custody of the United States Postal Service.

(e) Any interested person may appear before the Oil and Gas Board at the hearing to offer testimony. In addition to testimony before the Board, any interested person may submit written evidence to the Board for the Board's consideration. At least 20 days shall be allowed for receipt of written comment following the hearing.

(f) A local zoning or land-use ordinance is presumed to be valid and enforceable to the extent the zoning or land-use ordinance imposes requirements, restrictions, or

conditions that are generally applicable to development, including, but not limited to, setback, buffer, and stormwater requirements, unless the Oil and Gas Board makes a finding of fact to the contrary. The Board shall determine whether or to what extent to preempt local ordinances so as to allow for the establishment and operation of the facility no later than 60 days after conclusion of the hearing. The Board shall preempt a local ordinance only if the Board makes all of the following findings:

(1) That there is a local ordinance that would prohibit or have the effect of prohibiting oil and gas exploration and development activities, or use of horizontal drilling or hydraulic fracturing for that purpose.

(2) That all legally required State and federal permits or approvals have been issued by the appropriate State and federal agencies or that all State and federal permit requirements have been satisfied and that the permits or approvals have been denied or withheld only because of the local ordinance.

(3) That local citizens and elected officials have had adequate opportunity to participate in the permitting process.

(4) That the oil and gas exploration and development activities, and use of horizontal drilling or hydraulic fracturing for that purpose, will not pose an unreasonable health or environmental risk to the surrounding locality and that the operator has taken or consented to take reasonable measures to avoid or manage foreseeable risks and to comply to the maximum feasible extent with applicable local ordinances.

(g) If the Oil and Gas Board does not make all of the findings under subsection (f) of this section, the Board shall not preempt the challenged local ordinance. The Board's decision shall be in writing and shall identify the evidence submitted to the Board plus any additional evidence used in arriving at the decision.

(h) The decision of the Oil and Gas Board shall be final unless a party to the action files a written appeal under Article 4 of Chapter 150B of the General Statutes, as modified by G.S. 7A-29 and this section, within 30 days of the date of the decision. The record on appeal shall consist of all materials and information submitted to or considered by the Board, the Board's written decision, a complete transcript of the hearing, all written material presented to the Board regarding the location of the oil and gas exploration and development activities, the specific findings required by subsection (f) of this section, and any minority positions on the specific findings required by subsection (f) of this section. The scope of judicial review shall be that the court may affirm the decision of the Board, or may remand the matter for further proceedings, or may reverse or modify the decision if the substantial rights of the parties may have been prejudiced because the Board's findings, inferences, conclusions, or decisions are:

(1) In violation of constitutional provisions;

(2) In excess of the statutory authority or jurisdiction of the Board;

(3) Made upon unlawful procedure;

(4) Affected by other error of law;

(5) Unsupported by substantial evidence admissible under G.S. 150B-29(a) or G.S. 150B-30 in view of the entire record as submitted; or

(6) Arbitrary or capricious.

(i) If the court reverses or modifies the decision of the Oil and Gas Board, the judge shall set out in writing, which writing shall become part of the record, the reasons for the reversal or modification.

(j) In computing any period of time prescribed or allowed by this procedure, the provisions of Rule 6(a) of the Rules of Civil Procedure, G.S. 1A-1, shall apply."

SECTION 7.(a) The Division of Land Resources of the Department of Environment and Natural Resources is hereby renamed the Division of Energy, Mineral, and Land Resources.

SECTION 7.(b) The Revisor of Statutes shall make the conforming statutory changes necessary to reflect the changes made under subsection (a) of this section. The Codifier of Rules shall make the conforming rule changes necessary to reflect the changes made under subsection (a) of this section.

PART V. CREATE ENERGY POLICY OVERSIGHT COMMISSION

SECTION 8.(a) Chapter 120 of the General Statutes is amended by adding a new Article to read:

"Article 33.
Joint Legislative Commission on Energy Policy.

"**§ 120-285. Creation and membership of Joint Legislative Commission on Energy Policy.**

(a) The Joint Legislative Commission on Energy Policy is established.

(b) The Commission shall consist of 10 members as follows:

(1) Five members of the Senate appointed by the President Pro Tempore of the Senate, at least one of whom is a member of the minority party.

(2) Five members of the House of Representatives appointed by the Speaker of the House of Representatives, at least one of whom is a member of the minority party.

(c) Terms on the Commission are for two years and begin on the convening of the General Assembly in each odd-numbered year. Members may complete a term of service on the Commission even if they do not seek reelection or are not reelected to the General Assembly, but resignation or removal from service in the General Assembly constitutes resignation or removal from service on the Commission. A member continues to serve until the member's successor is appointed.

"**§ 120-286. Purpose and powers and duties of Commission.**

(a) The Joint Legislative Commission on Energy Policy shall exercise legislative oversight over energy policy in the State. In the exercise of this oversight, the Commission may do any of the following:

(1) Monitor and evaluate the programs, policies, and actions of the Oil and Gas Board established pursuant to G.S. 113-430, the Energy Policy Council established pursuant to G.S. 113B-2, the Energy Division in the Department of Commerce, the Utilities Commission and Public Staff established pursuant to Chapter 62 of the General Statutes, and of any other board, commission, department, or agency of the State or local government with jurisdiction over energy policy in the State.

(2) Review and evaluate existing and proposed State statutes and rules affecting energy policy and determine whether any modification of these statutes or rules is in the public interest.

(3) Monitor changes in federal law and court decisions affecting energy policy.

(4) Monitor and evaluate energy related industries in the State and study measures to promote these industries.

(5) Study any other matters related to energy policy that the Commission considers necessary to fulfill its mandate.

(b) The Commission may make reports and recommendations, including proposed legislation, to the General Assembly from time to time as to any matter relating to its oversight and the powers and duties set out in this section.

"**§ 120-287. Organization of Commission.**

(a) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Joint Legislative Commission on Energy Policy. The Commission may meet at any time upon the call of either cochair, whether or not the General Assembly is in session.

(b) A quorum of the Commission is six members.

(c) While in the discharge of its official duties, the Commission has the powers of a joint committee under G.S. 120-19 and G.S. 120-19.1 through 120-19.4. The Commission may contract for consultants or hire employees in accordance with G.S. 120-32.02.

(d) From funds available to the General Assembly, the Legislative Services Commission shall allocate monies to fund the Joint Legislative Commission on Energy Policy. Members of the Commission receive subsistence and travel expenses as provided in G.S. 120-3.1. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Commission in its work. Upon the direction of the Legislative Services Commission, the Supervisors of Clerks of the Senate and of the House of Representatives shall assign clerical staff to the Commission. The expenses for clerical employees shall be borne by the Commission."

SECTION 8.(b) Notwithstanding G.S. 120-285(c), as enacted by Section 8.(a) of this act, the President Pro Tempore of the Senate and the Speaker of the House of Representatives may appoint members to the Joint Legislative Commission on Energy Policy to terms that begin prior to the convening of the 2013 General Assembly. The terms of members appointed pursuant to this Section shall end upon the convening of the 2013 General Assembly. Members appointed pursuant to this Section who are otherwise qualified to serve on the Commission may be reappointed to the Commission upon the convening of the 2013 General Assembly.

PART VI. DIRECT THE DEPARTMENT OF PUBLIC INSTRUCTION TO PURCHASE SCHOOL BUSES THAT OPERATE ON COMPRESSED NATURAL GAS (CNG)

SECTION 9.(a) Notwithstanding any other provision of law and with funds available, beginning July 1, 2013 the Department of Public Instruction shall purchase only passenger school buses (Types A and B) and transit-style school buses (Type D) that

operate on compressed natural gas (CNG) to replace school buses due to the age, mileage, condition, unique circumstances, or other condition necessitating replacement of a school bus.

SECTION 9.(b) Notwithstanding any other provision of law and with funds available, beginning July 1, 2015, the Department of Public Instruction shall purchase only passenger school buses (Types A and B), transit-style school buses (Type D), and conventional-style school buses (Type C) that operate on compressed natural gas (CNG) to replace school buses due to the age, mileage, condition, unique circumstances, or other condition necessitating replacement of a school bus.

SECTION 9.(c) No later than December 1, 2012, the Department of Public Instruction, in consultation with local school administrative units, shall develop a plan for the deployment of compressed natural gas (CNG)-fueled buses purchased in accordance with subsections (a) and (b) of this section to local school administrative units based on the following considerations:

(1) The availability of centralized fueling infrastructure.

(2) The ability of a local school administrative unit to operate and maintain compressed natural gas (CNG)-fueled buses.

(3) The characteristics of a local school administrative unit such as the geographic size, the density of the student population, and the number and average length of bus routes.

(4) Any other criteria the Department of Public Instruction deems necessary and applicable to implement this section.

SECTION 9.(d) This section shall not apply to non-instructional activity school buses purchased by a local school administrative unit with local or community funds.

SECTION 9.(e) Beginning January 1, 2013 and annually thereafter, the Department of Public Instruction shall report to the Joint Legislative Commission on Energy Policy, the Joint Legislative Education Oversight Committee, the House Appropriation Subcommittee on Education, and the Senate Appropriations Subcommittee on Education/Higher Education on the implementation of this section.

PART VII. DIRECT THE DEPARTMENT OF TRANSPORTATION TO PURCHASE NEW THREE-QUARTER (3/4) TON PICK UP TRUCKS AND NEW ONE-HALF (1/2) TON PICK UP TRUCKS THAT OPERATE ON COMPRESSED NATURAL GAS (CNG) OR COMPRESSED NATURAL GAS (CNG) AND GASOLINE

SECTION 10.(a) Notwithstanding any other provision of law and with funds available, beginning July 1, 2013, fifty percent (50%) of the new three-quarter (3/4) ton pick-up trucks purchased by the Department of Transportation shall be manufactured by an original equipment manufacturer or a qualified vehicle manufacturer offering a full factory warranty and be capable of operating on compressed natural gas (CNG) or compressed natural gas (CNG) and gasoline.

SECTION 10.(b) Notwithstanding any other provision of law and with funds available, beginning July 1, 2015, one hundred percent (100%) of the new three-quarter

(3/4) ton pick-up trucks purchased by the Department of Transportation shall be manufactured by an original equipment manufacturer or a qualified vehicle manufacturer offering a full factory warranty and be capable of operating on compressed natural gas (CNG) or compressed natural gas (CNG) and gasoline.

SECTION 10.(c) Notwithstanding any other provision of law and with funds available, beginning July 1, 2014, fifty percent (50%) of the new one-half (1/2) ton pick-up trucks purchased by the Department of Transportation shall be manufactured by an original equipment manufacturer or a qualified vehicle manufacturer offering a full factory warranty and be capable of operating on compressed natural gas (CNG) or compressed natural gas (CNG) and gasoline.

SECTION 10.(d) Notwithstanding any other provision of law and with funds available, beginning July 1, 2016, one hundred percent (100%) of the new one-half (1/2) ton pick-up trucks purchased by the Department of Transportation shall be manufactured by an original equipment manufacturer or a qualified vehicle manufacturer offering a full factory warranty and be capable of operating on compressed natural gas (CNG) or compressed natural gas (CNG) and gasoline.

SECTION 10.(e) Notwithstanding any other provision of law and with funds available, the Department of Transportation shall ensure that at least fifty percent (50%) of the fuel used annually by the Department's three-quarter (3/4) ton pick-up trucks and one-half (1/2) ton pick-up trucks that are capable of operating on both compressed natural gas (CNG) and gasoline shall be compressed natural gas (CNG).

SECTION 10.(f) Beginning January 1, 2014, and annually thereafter, the Department of Transportation shall report to the Joint Legislative Commission on Energy Policy, the Joint Legislative Transportation Oversight Committee, the House Appropriations Subcommittee on Transportation, and the Senate Appropriations Subcommittee on Department of Transportation on the implementation of this section.

PART VIII. CREATE AN INTERAGENCY TASK FORCE TO ESTABLISH PUBLIC-PRIVATE PARTNERSHIPS FOR THE CONSTRUCTION AND DEVELOPMENT OF COMPRESSED NATURAL GAS (CNG) FUELING INFRASTRUCTURE

SECTION 11.(a) The Department of Public Instruction, the Department of Transportation, the Department of Commerce, and the Department of Administration, in consultation with other agencies as applicable, shall create an interagency task force responsible for establishing public-private partnerships with the compressed natural gas (CNG) industry to develop compressed natural gas (CNG) fueling infrastructure to support the operation of the vehicles purchased pursuant to Sections 9 and 10 of this act. The task force, together with private industry, shall evaluate the feasibility and efficacy of the construction and operation of centralized public-private fueling stations and any other fueling options that may be necessary to support the operation of each Department's compressed natural gas (CNG) vehicles.

SECTION 11.(b) Beginning January 1, 2013 and annually thereafter, the task force shall report to the Joint Legislative Commission on Energy Policy, the Joint Legislative Transportation Oversight Committee, the Joint Legislative Education Oversight Committee, the House Appropriations Subcommittee on Transportation, the

Senate Appropriations Subcommittee on Department of Transportation, the House Appropriation Subcommittee on Education, the Senate Appropriations Subcommittee on Education/Higher Education, a the House Appropriations Subcommittee on General Government, and the Senate Appropriations Subcommittee General Government and Information Technology on the implementation of this section.

PART IX. ESTABLISH CRITERIA FOR THE OPERATION OF ELECTRIC VEHICLE CHARGING STATIONS LOCATED AT STATE-OWNED REST STOPS ALONG THE HIGHWAYS

SECTION 12.(a) The Department of Transportation may operate an electric vehicle charging station at State-owned rest stops along the highways only if all of the following conditions are met:

(1) The electric vehicle charging station is accessible by the public.

(2) The Department has developed a mechanism to charge the user of the electric vehicle charging station a fee in order to recover the cost of electricity consumed, the cost of processing the user fee, and a proportionate cost of the operation and maintenance of the electric vehicle charging station.

SECTION 12.(b) If the cost of the electricity consumed at the electric vehicle charging stations cannot be calculated as provided by subsection (a) of this section, the Department shall develop an alternative mechanism, other than electricity metering, to recover the cost of the electricity consumed at the vehicle charging station.

SECTION 12.(c) The Department may consult with other State agencies and industry representatives in order to develop the mechanisms for cost recovery required pursuant to subsection (a) of this section.

SECTION 12.(d) Beginning January 1, 2013 and annually thereafter, the Department of Transportation shall report to the Joint Legislative Commission on Energy Policy, the Joint Legislative Transportation Oversight Committee, the House Appropriations Subcommittee on Transportation, and the Senate Appropriations Subcommittee on Department of Transportation on the implementation of this section.

PART X. ENSURE THE USE OF FUEL EFFICIENT AND COST EFFICIENT RETREAD TIRES ON STATE VEHICLES

SECTION 13.(a) G.S. 115C-249.1 reads as rewritten:

"**§ 115C-249.1. Purchase of tires for school buses; repair or refurbishment of tires for school buses.**

(a) Definitions. – The following terms apply in this section:

(1) Critical tire information. – Tire brand name, tire line name, tire identification numbers, load and pressure markings, tire size designation, service descriptions such as load and speed ratings, and other information and specifications placed on the original tire sidewall by the original tire manufacturer.

(2) School bus. – A vehicle as defined in G.S. 20-4.01(27)d3. and G.S. 20-4.01(27)d4. that is owned, rented, or leased by a local board of education.

(b) Forensic Tire Standards. – In order to preserve critical tire information, a local board of education shall procure and install for school buses only tires that possess the original, unaltered, and uncovered tire sidewall. Furthermore, a local board of education shall not execute a contract for the repair or refurbishment of tires for school buses that provides for the removal, covering, or other alteration in any manner of the critical tire information contained on the original tire sidewall.

(b1) Retread Rubber Formulation Specifications. – Contracts for school bus tires executed on or after July 1, 2012 shall not include any specification for retread rubber formulations.

(b2) Use of Pre-Cure Fuel Efficient Rated Retread Tires.- Contracts for school bus tires executed on or after July 1, 2012 shall include specifications requiring pre-cure fuel efficient rated retreaded tires, as certified by the retread rubber manufacturer.

(c) Tire Purchase and Contract Standards Applicability. – All contracts for the purchase, repair, or refurbishment of tires for school buses, or contracts for the purchase of products or services related to the repair or refurbishment of tires for school buses, executed on or ~~after the date this section becomes effective~~ July 1, 2011 shall comply with the provisions of this section.

(d) Exemption. – Notwithstanding the provisions of this section, a local board of education that owns or has a legally binding contract in place for the future purchase of tires having altered or covered sidewalls prior to ~~the date that this section becomes effective~~July 1, 2011 shall perform its existing contractual obligations related thereto and may continue to use those tires on school buses for the useful life of the retreaded tire."

SECTION 13.(b) G.S. 143-63.2 reads as rewritten:

"**§ 143-63.2. Purchase of tires for State vehicles; repair or refurbishment of tires for State vehicles.**

(a) Definitions. – The following terms apply in this section:

(1) Critical tire information. – Tire brand name, tire line name, tire identification numbers, load and pressure markings, tire size designation, service descriptions such as load and speed ratings, and other information and specifications placed on the original tire sidewall by the original tire manufacturer.

(2) State vehicle. – Any vehicle owned, rented, or leased by the State, or an institution, department, or agency of the State, that is driven on a public road consistently at speeds greater than 30 miles per hour.

(b) Forensic Tire Standards. – In order to preserve critical tire information, the Secretary of Administration and any institution, department, or agency of the State shall only procure and install tires for State vehicles that possess the original, unaltered, and uncovered tire sidewall. Furthermore, neither the Secretary of Administration nor any institution, department, or agency of the State shall execute a contract for the repair or refurbishment of tires for State vehicles that provides for the removal, covering, or other alteration in any manner of the critical tire information contained on the original tire sidewall.

(c) Tire Purchase and Contract Standards Applicability. – All contracts for the purchase, repair, or refurbishment of tires for State vehicles, or contracts for the purchase of products or services related to the repair or refurbishment of tires for State vehicles, executed on or after ~~the date this section becomes effective~~July 1, 2011 shall comply with the provisions of this section.

(d) Exemption. – Notwithstanding the provisions of this section, the State or any institution, department, or agency of the State that owns or has a legally binding contract in place for the future purchase of tires having altered or covered sidewalls prior to ~~the date that this section becomes effective~~July 1, 2011 shall perform its existing contractual obligations related thereto and may continue to use those tires on State vehicles for the useful life of the retreaded tire."

SECTION 13.(c) The Division of Purchase and Contract shall not extend its current contract for retreading of tires beyond the 90 day time period allowed under the contract.

PART XI. AMEND THE ENERGY JOBS ACT OF 2011 IF THE ENERGY JOBS ACT OF 2011 BECOMES LAW

SECTION 14.(a) If Senate Bill 709 of the 2011 Regular Session becomes law, Sections 2.(a), 2.(b), and 2.(c) of Senate Bill 709 are rewritten to read:

"**SECTION 2.(a)** Development of ~~Governors'~~ Regional Interstate Offshore Energy Policy Compact. – The Governor ~~is directed to commence~~shall lay the groundwork for development of a regional energy ~~compact~~strategy by working with the governors of South Carolina and Virginia ~~in order~~ to develop recommendations for creation and implementation of a unified regional strategy for the exploration, development, and production of all commercially viable federal and state offshore energy resources within the three-state region. The Governor shall develop recommendations for the General Assembly to consider for the development of a statutory regional compact, and these recommendations shall reflect the collective agreement of all three governors in the three-state region in order to provide common language for consideration by each state's General Assembly. During the development of these compact recommendations, the Governor is authorized to work directly with each of the three states' General Assemblies, Congressional delegations, the United States Department of the Interior, the United States Environmental Protection Agency, and other appropriate federal agencies on behalf of the State of North Carolina to develop appropriate strategies to be considered in the development of the three-state compact for increasing domestic energy exploration, development, and production within each state in the three-state region and their adjacent state and federal waters. The compact negotiations and recommendations shall address at least all of the following:

(1) Ensure a timely review and consideration of permits and proposals at both the state and federal level for both state and federal waters adjacent to each state in the three-state region for seismic and other marine geophysical exploration to identify and quantify natural gas and related hydrocarbon resources along the continental margin.

(2) Amend the Five Year Leasing Plan of the United States Department of the Interior to include leasing federal waters adjacent to the State and

the three-state region for the exploration, quantification, and development of natural gas and related hydrocarbon energy resources.

(3) Advocate proactively with each state's Congressional delegation and appropriate federal agencies to ensure direct sharing of royalties and revenues related to energy leasing, exploration, development, and production of all offshore energy resources in federal waters adjacent to the State and the three-state region.

(4) Request the United States Department of the Interior to reinstate the federal Offshore Policy Committee with new members and new alternate members to be nominated by the governor of the state represented on the Offshore Policy Committee and appointed by the Secretary of the Interior, six of whom are to be one member and one alternate member from each of North Carolina, Virginia, and South Carolina.

"**SECTION 2.(b)** No later than three months after the effective date of this act, and at least every three months thereafter, the Governor shall report to the General Assembly on the progress of the Governor and others in complying with the requirements under this section, to include providing copies of correspondence and other relevant materials to or from the Office of the Governor when the correspondence or materials pertain to the subject under this section or to any requirement under this section. The Governor shall report ~~her~~ the Governor's final recommendations for the ~~three-state energy compact~~regional energy strategy to the ~~Joint Regulatory Reform Committee no later than May 1, 2012.~~ President Pro Tempore of the Senate and the Speaker of the House of Representatives no later than December 31, 2012.

"**SECTION 2.(c)** In addition to the provisions in Sections 2(a) and 2(b) of this act, the Governor is strongly encouraged to join the Governors of Alaska, Texas, Louisiana, Mississippi, and Virginia and any others who may sign on to the Outer Continental Shelf Governors Coalition announced on May 3, 2011, to promote a constructive dialogue among the coastal state governors and the federal government on offshore energy issues important to the future of North Carolina and the United States."

SECTION 14.(b) If Senate Bill 709 of the 2011 Regular Session becomes law, Sections 3.(a) and 3.(b) of Senate Bill 709 are repealed.

SECTION 14.(c). If Senate Bill 709 of the 2011 Regular Session becomes law, G.S. 113B-3, as amended by Senate Bill 709, reads as rewritten:

"**§ 113B-3. Composition of Council; appointments; terms of members; qualifications.**

(a) The Energy Jobs Council shall consist of 12 members to be appointed as follows:

(1) Repealed.

(2) Repealed.

(2a) The Secretary of Commerce.

(3) Eleven public members who are citizens of the State of North Carolina and who are appointed in accordance with subsection (c) of this section.

(b) Appointments to the Energy Jobs Council shall be made by ~~October 1, 2011,~~September 1, 2012, and the appointed members shall serve four-year terms.

Appointments made by the President Pro Tempore of the Senate and the Speaker of the House of Representatives shall be allowed when the General Assembly is not in session.

(c) The public members of the Energy Jobs Council shall have the qualifications and shall be appointed as follows:

(1) One member shall be a representative of an investor-owned electric public utility, to be appointed by the Governor.

(2) One member shall be a geologist experienced in ~~offshore~~ natural gas and associated hydrocarbon exploration, development, and production, to be appointed by the Governor.

(3) One member shall be a representative of an investor-owned natural gas public utility, to be appointed by the President Pro Tempore of the Senate.

(4) One member shall be an energy economist or a person with experience in the financing or business development or an energy-related business, to be appointed by the President Pro Tempore of the Senate.

(5) One member shall be a geologist with experience in hydrocarbon resource evaluation and geophysical data acquisition, to be appointed by the President Pro Tempore of the Senate.

(6) One member shall be an industrial energy consumer, to be appointed by the Speaker of the House of Representatives.

(7) One member shall be knowledgeable of alternative and renewable sources of energy, other than wind energy, to be appointed by the Speaker of the House of Representatives.

(8) One member who has experience in trucking, rail, or shipping transportation, to be appointed by the Speaker of the House of Representatives.

(9) Repealed by Session Laws 2009-446, s. 4, effective August 7, 2009.

(10) One member shall be a representative with experience in wind energy, to be appointed by the Governor.

(11) One member shall be a representative with experience in environmental management, appointed by the Speaker of the House of Representatives.

(12) One member shall be ~~involved with the biofuels industry,~~ experienced in energy policy, to be appointed by the President Pro Tempore of the Senate."

PART XII. EFFECTIVE DATE

SECTION 15. This act is effective when it becomes law. Initial appointments to the Oil and Gas Board pursuant to G.S. 113-432, as enacted by Section 1.(a) of this act, shall be made no later than August 1, 2012. The Oil and Gas Board shall submit the first report due under G.S. 113-430(e), as enacted by Section 2.(a) of this act on or before January 1, 2013.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S **D**

BILL DRAFT 2011-SBz-35 [v.13] (04/02)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
4/18/2012 3:20:06 PM

Short Title:	Energy Jobs from Biofuel Crops.	(Public)
Sponsors:	Senator.	
Referred to:		

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE DIVISION OF WATER QUALITY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, IN CONSULTATION WITH THE DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES, TO ADMINISTER A PILOT PROJECT OF LIMITED SCOPE FOR DETERMINING THE AGRONOMIC RATES FOR THE APPLICATION OF SWINE WASTE TO CERTAIN ENERGY CROPS IN NORTH CAROLINA IN ORDER TO PROMOTE FEEDSTOCK DEVELOPMENT AND EXPEDITE DATA COLLECTION FOR FINAL AGRONOMIC RATE DETERMINATIONS AND TO EXTEND THE SUNSET ON THE TAX CREDIT FOR CONSTRUCTING RENEWABLE FUEL FACILITIES FROM JANUARY 1, 2013 TO JANUARY 1, 2015.

Whereas, in 2007, as directed by the General Assembly, the North Carolina's Strategic Plan for Biofuels Leadership established a goal that by 2017, ten percent (10%) of liquid fuels sold in North Carolina will come from biofuels grown and produced within the State; and

Whereas, the identification and development of reliable and cost-effective feedstocks to service biofuels facilities is imperative to the development of the biofuels industry in North Carolina; and

Whereas, North Carolina is one of the leading pork producing states in the nation, and the swine industry is a significant component of North Carolina's agricultural sector; and

Whereas, the lands utilized for swine waste application in North Carolina represent a potential opportunity for the planting and growing of energy crops; and

Whereas, appropriate levels of animal waste application and proper agronomic rates of crops must be established to ensure environmental compliance and to protect water quality; and

Whereas, in 1995, the General Assembly through the passage of S.L. 1995-626 established an Interagency Group to provide uniform interpretations to

technical specialists regarding the requirements of the animal waste management rules; and

Whereas, the intent of S.L. 1995-626 was to "establish a permitting program for animal waste management systems that will protect water quality and promote innovative systems and practices while minimizing the regulatory burden"; and

Whereas, the Interagency Group, as directed by S.L. 2011-198, on June 30, 2011, assigned interim agronomic rates to certain energy crops as follows: switchgrass (120 pounds of nitrogen per acre regardless of soil type, no application recommended during first year); fiber sorghum (45-55 pounds of nitrogen per ton per unit yield, variable with soil type); sweet sorghum single green harvest (80 pounds of nitrogen per acre regardless of soil type with total harvestable biomass being removed from field); sweet sorghum multiple green harvest (80 pounds of nitrogen per acre regardless of soil type for first harvest and 20 pounds of nitrogen per acre regardless of soil type for second harvest with total harvestable biomass being removed from field); Miscanthus giganteus (60 pounds of nitrogen per acre regardless of soil type with nitrogen application not recommended for the first three years after planting); and Arundo donax (giant reed) (30 pounds of nitrogen per acre regardless of soil type in year one and 60 pounds of nitrogen per acre regardless of soil type in subsequent years); and

Whereas, the Interagency Group's interim agronomic rates were based primarily upon scientific literature rather than North Carolina specific data; and

Whereas, the Legislative Research Commission Senate Energy Policy Issues Committee was presented nitrogen uptake rates from both scientific literature and crop data specific to North Carolina for energy crops that included the following information: switchgrass showed a calculated nitrogen uptake up to 191 pounds per acre with recommendations from North Carolina State University and the North Carolina Department of Agriculture and Consumer Services of ranges up to 160 pounds per acre; Miscanthus giganteus showed a calculated nitrogen uptake between 8-303 pounds of nitrogen per acre with reported fertilizer demand ranging from 36-167 pounds per acre and unpublished data from North Carolina showing nitrogen removal of between 79-158 pounds per acre from a two-cut system after first year; and Arundo donax (giant reed) showed a calculated nitrogen uptake between 5-497 pounds per acre with North Carolina data showing winter harvested crops removed between 66-241 pounds per acre after the first year; and

Whereas, North Carolina State University, the North Carolina Department of Agriculture and Consumer Services, and the Biofuels Center of North Carolina have expressed support for projects to gain new agricultural markets and advanced biofuels production in eastern North Carolina with appropriate environmental balance.; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. S.L. 2011-198 is repealed.

SECTION 2. The Division of Water Quality of the Department of Environment and Natural Resources, in consultation with the Department of Agriculture and Consumer Services, shall administer a pilot project of limited scope for determining the agronomic rates for the application of swine waste to Arundo donax (giant reed), Miscanthus giganteus (miscanthus), and switchgrass in North Carolina in order to

promote feedstock development and expedite data collection for final agronomic rate determinations.

SECTION 3.(a) The pilot project conducted pursuant to this act shall allow up to a combined 15,000 acres of giant reed, miscanthus, and switchgrass to be planted.

SECTION 3.(b) The crops identified in this Section that may be planted on the acreage defined in Section 3.(a) of this act and the application of swine waste to these plantings shall be determined as follows:

1) For giant reed, the agronomic rate shall be either the rate established by the Interagency Group pursuant to S.L. 1995-626 or 250 pounds of nitrogen per acre, whichever is greater.
2) For miscanthus, the agronomic rate shall be either the rate established by the Interagency Group pursuant to S.L. 1995-626 or 150 pounds of nitrogen per acre, whichever is greater.
3) For switchgrass, the agronomic rate shall be either the rate established by the Interagency Group pursuant to S.L. 1995-626 or no nitrogen for the first year of growth followed by 200 pounds of nitrogen per acre for the second and subsequent years of growth, whichever is greater.

SECTION 4. The Interagency Group shall use the information collected during the pilot project to assist in the establishment of both interim and final agronomic rates for the application of swine waste to giant reed, miscanthus, and switchgrass in North Carolina. The Interagency Group shall not establish final agronomic rates for the application of swine waste to giant reed, miscanthus, and switchgrass in North Carolina prior to December 31, 2017.

SECTION 5. No later than January 1 of the years 2013 through 2018, the Department of Agriculture and Consumer Services and the Interagency Group shall jointly submit a report on the status of the pilot project and the establishment of agronomic rates for the application of swine waste to giant reed, miscanthus, and switchgrass in North Carolina to the Environmental Review Commission and the chairs of the House Agriculture Committee, the House Environment Committee, and the Senate Agriculture/Environment/Natural Resources Committee.

SECTION 6. G.S. 105-129.16D reads as rewritten:

"**§ 105-129.16D. Credit for constructing renewable fuel facilities.**

(a) Dispensing Credit. – A taxpayer that constructs and installs and places in service in this State a qualified commercial facility for dispensing renewable fuel is allowed a credit equal to fifteen percent (15%) of the cost to the taxpayer of constructing and installing the part of the dispensing facility, including pumps, storage tanks, and related equipment, that is directly and exclusively used for dispensing or storing renewable fuel. A facility is qualified if the equipment used to store or dispense renewable fuel is labeled for this purpose and clearly identified as associated with renewable fuel.

The entire credit may not be taken for the taxable year in which the facility is placed in service but must be taken in three equal annual installments beginning with the taxable year in which the facility is placed in service. If, in one of the years in which the installment of a credit accrues, the portion of the facility directly and exclusively used for dispensing or storing renewable fuel is disposed of or taken out of service, the credit expires and the taxpayer may not take any remaining installment of the credit. The

taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.17.

(b) Production Credit. – A taxpayer that constructs and places in service in this State a commercial facility for processing renewable fuel is allowed a credit equal to twenty-five percent (25%) of the cost to the taxpayer of constructing and equipping the facility. The entire credit may not be taken for the taxable year in which the facility is placed in service but must be taken in seven equal annual installments beginning with the taxable year in which the facility is placed in service. If, in one of the years in which the installment of a credit accrues, the facility with respect to which the credit was claimed is disposed of or taken out of service, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.17.

(b1) Alternative Production Credit. – In lieu of the credit allowed under subsection (b) of this section, a taxpayer that constructs and places in service in this State three or more commercial facilities for processing renewable fuel and that invests a total amount of at least four hundred million dollars ($400,000,000) in the facilities is allowed a credit equal to thirty-five percent (35%) of the cost to the taxpayer of constructing and equipping the facilities. In order to claim the credit, the taxpayer must obtain a written determination from the Secretary of Commerce that the taxpayer is expected to invest within a five-year period a total amount of at least four hundred million dollars ($400,000,000) in three or more facilities. The credit must be taken in seven equal annual installments beginning with the taxable year in which the first facility is placed in service. If, in one of the years in which the installment of credit accrues, a facility with respect to which the credit was claimed is disposed of or taken out of service and the investment requirements of this subsection are no longer satisfied, the credit expires and the taxpayer may take any remaining installment of the credit only to the extent allowed under subsection (b) of this section. The taxpayer may, however, take the portion of an installment under this subsection that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.17. Notwithstanding the provisions of G.S. 105-129.17, a taxpayer may carry forward unused portions of the credit allowed under this subsection for the succeeding 10 years.

If a taxpayer that claimed a credit under this subsection fails to meet the requirements of this subsection but meets the requirements of subsection (b) of this section, the taxpayer forfeits the difference between the alternative credit claimed under this subsection and the credit allowed under subsection (b) of this section. A taxpayer that forfeits part of the alternative credit under this subsection is liable for the additional taxes avoided plus interest at the rate established under G.S. 105-241.21, computed from the date the additional taxes would have been due if the credit had not been allowed. The additional taxes and interest are due 30 days after the date the credit is forfeited. A taxpayer that fails to pay the additional taxes and interest by the due date is subject to penalties provided in G.S. 105-236.

(c) No Double Credit. – A taxpayer may not claim the credits allowed under subsections (b) and (b1) of this section with respect to the same facility. A taxpayer that claims any other credit allowed under this Chapter with respect to the costs of

constructing and installing a facility may not take the credit allowed in this section with respect to the same costs.

(d) Sunset. – This section is repealed effective for facilities placed in service on or after January 1, ~~2013.~~2015."

SECTION 7. This act becomes effective July 1, 2012. The pilot project authorized by this act shall sunset effective December 31, 2017.

Appendix C

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE RESEARCH COMMISSION

STATE LEGISLATIVE BUILDING
RALEIGH, NC 27601

April 10, 2012

TO THE MEMBERS OF THE LEGISLATIVE RESEARCH COMMISSION:

Attached for your consideration is the report to the 2012 Regular Session of the 2011 General Assembly. This report was prepared by the Legislative Research Commission's Committee on Automobile Insurance Modernization, pursuant to G.S. 120-30.17(1).

Senator Thomas Apodaca
Co-Chair

Representative Fred Steen
Co-Chair

Co-Chairs
Committee on Automobile Insurance Modernization
Legislative Research Commission

LEGISLATIVE RESEARCH COMMISSION

AUTOMOBILE INSURANCE MODERNIZATION COMMITTEE

NORTH CAROLINA GENERAL ASSEMBLY

REPORT TO THE 2012 SESSION of the 2011 GENERAL ASSEMBLY OF NORTH CAROLINA

MAY 8, 2012

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TRANSMITTAL LETTER

May 8, 2012

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TO THE MEMBERS OF THE 2012 REGULAR SESSION
OF THE 2011 GENERAL ASSEMBLY

The Legislative Research Commission herewith submits to you for your consideration its report and recommendations to the 2012 Regular Session of the 2011 General Assembly. The report was prepared by the Legislative Research Commission's Committee on Automobile Insurance Modernization, pursuant to G.S. 120-30.70(1).

Respectfully submitted,

Senator Philip E. Berger President Pro Tempore of the Senate	Representative Thomas R. Tillis Speaker of the House of Representatives

Co-Chairs
Legislative Research Commission

LEGISLATIVE RESEARCH COMMISSION MEMBERSHIP

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2011 – 2012

President Pro Tempore of the Senate
Senator Philip E. Berger
Co-Chair

Senator Thomas M. Apodaca
Acting Co-Chair

Senator Peter S. Brunstetter
Senator Linda D. Garrou
Senator Martin L. Nesbitt, Jr.
Senator Richard Y. Stevens

Speaker of the House of Representatives
Representative Thomas R. Tillis
Co-Chair

Representative Timothy K. Moore
Acting Co-Chair

Representative John M. Blust
Representative Justin P. Burr
Representative Mike D. Hager
Representative Edith D. Warren

PREFACE

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The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is the general purpose study group in the Legislative Branch of State Government. The Commission is co-chaired by the President Pro Tempore of the Senate and the Speaker of the House of Representatives and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigation into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

The Legislative Research Commission authorized the study of Automobile Insurance Modernization, under authority of G.S. 120-30.17(1). The Committee was chaired by Senator Thomas Apodaca and Representative Fred Steen, Co-Chairs of the Committee. The full membership of the Committee is listed under Committee Membership. A committee notebook containing the committee minutes and all information presented to the committee will be filed in the Legislative Library by the end of the **2011-2012** biennium.

COMMITTEE PROCEEDINGS

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The Legislative Research Commission's (LRC) Committee on Automobile Insurance Modernization met 4 times after the 2011 Regular Session. The Committee's Charge can be found here. The following is a brief overview of the Committee's proceedings. Detailed minutes and information, including handouts and written remarks from each Committee meeting, are available in the Legislative Library.

For a brief overview of the current law governing the automobile insurance rate-making process, please see the Findings and Recommendations Section of this report.

Tuesday, December 6, 2011

The first meeting of the LRC Automobile Insurance Modernization Committee took place on Tuesday, December 6, 2011 at 9:00 AM in Room 1228 of the Legislative Building. The Committee heard the following presentations:

- **Ms. Rose Vaughan Williams, Legislative Counsel, N.C. Department of Insurance**, maintained that under the current system, the State has rates among the lowest in the nation. Ms. Williams also noted the stability of the current market, appropriate market concentrations, and the relatively low number of uninsured drivers in the State. Moreover, competition among insurers is plentiful as exemplified by the large number of companies writing in the State.
- **Mr. Raymond Evans, General Manager, N. C. Rate Bureau and the N.C. Reinsurance Facility** gave an overview of the North Carolina Rate Bureau, the Safe Driver Insurance Program, the Reinsurance Facility and the clean risk subclassification within the Facility.
- **Ms. Sue Taylor, Director of Insurance Operations, N.C. Rate Bureau**, discussed the automobile ratemaking process. In her presentation, Ms. Taylor noted that the Bureau has the responsibility to analyze and propose fair and adequate rates for automobile policy holders in the State and must submit a filing to the Department of Insurance for auto insurance rates by February 1st of each year. The Department of Insurance reviews the filing and the Commissioner of Insurance approves or disapproves the filing. Insurers then take the approved rate and apply their underwriting criteria and possible downward deviations for discounts from the approved rate. Upward deviations from the approved rate are not allowed.
- **Mr. Evans** discussed the Safe Driver Incentive Plan. Mr. Evans noted the Plan, which is required by statute, attempts to apportion losses among all drivers by requiring those drivers with losses to pay higher premiums. Mr. Evans also provided background information on the N.C. Reinsurance Facility. He noted that, like the Rate Bureau, the Facility is not a state agency and does not lobby. The Facility was created because N.C. is a mandatory liability state, meaning that all drivers in NC must have liability insurance and insurers must provide liability

insurance and other required coverages to all eligible risks in the State who seek insurance from them. Insurers are able to cede those risks which they would prefer not to insure to the Facility.

- **Ms. Edith Davis, Director of Operations, N.C. Reinsurance Facility**, provided the Committee an overview of the Facility. With regard to the size of the Facility, Ms. Davis indicated that twenty-one percent of all N.C. exposures are reinsured by the Facility. There are three distinct populations in the Reinsurance Facility. The smallest one is Commercial, including trucks, vans and vehicles. The next is "other-than-clean risks". The State allows the Facility to file rates for that population. This rate is known as the Facility rate. The third population in the Facility is known as "clean risks." Clean risks in the Facility pay rates equal to voluntary rates filed by the Rate Bureau and approved by the Commissioner. The Facility is authorized to receive the proceeds of a "clean risk surcharge," which is the difference between the actual rate charged and the actuarially sound and self-supporting rate for clean risks in the Facility. The surcharge, which averages approximately $17 per car annually, is collected from all insured in the State by insurers.
- **Mr. Tim Hovis, Staff Attorney, Research Division** gave an overview of legislation considered during the 2011 Session on this issue. Mr. Hovis noted two proposals filed during the 2011 Session: (1) SB490, Automobile Insurance Regulatory Modernization, which would implement a "flex band' rating system in which rate filings submitted by individual insurers increasing or decreasing rates no more than set percentage are deemed to meet the required standard necessary for approval; and (2) HB834/SB 477, Reduce Overpopulation of the Reinsurance Facility, in which upward deviations filed by insurers up to the approved Facility rate are allowed and are presumed to meet the required standard necessary for approval. Mr. Hovis reviewed and compared the two bills. **See Appendix D, Attachment 1, Comparison of SB490 and HB834/S477.**
- **Ms. Williams** was recognized for closing comments. Ms. Williams reiterated the Departments' opposition to changes in the current automobile insurance system. She pointed out that, while some out-of-state auto insurance companies support reform, not all insurers are in favor of these proposals. The Department believes these reforms to the current system are being promoted to allow auto insurance companies to charge higher premiums to drivers. As noted by Ms. Williams, the law already allows downward deviations from the approved rate. Moreover, savings to drivers from the elimination of the recoupment surcharge would be small compared to the increased rates all drivers would be required to pay under the proposed reforms.

Wednesday, January 25, 2012

The second meeting of the LRC Automobile Insurance Modernization Committee was held on Wednesday, January 25, 2012 at 9:00 am in Room 1228 of the Legislative Building. At this meeting, the Committee heard several presentations given by insurance industry representatives and others. Speaking in favor of reform to the current system were the following:

- **Mr. Steve Pociask, President, American Consumer Institute**, referenced two primary factors related to the current system: (1) hidden fees brought on because of the residual market (the Reinsurance Facility); (2) the lack of competition in the industry due to the rate approval process centered around the Rate Bureau. Mr. Pociask argued that both factors lead to higher cost for consumers. He indicated that current regulations are anti-consumer because they protect the current market instead of encouraging price competition. Changing the current Rate Bureau system would encourage price competition by giving insurers increased rate flexibility.
- **Mr. John McMillan, Insurance Federation of North Carolina**, noted that every state has some sort of residual or shared market with respect to automobile private passenger liability insurance. This residual market was created to protect other drivers, not just the insured. North Carolina's residual market, the Reinsurance Facility is very large compared to other states and is listed in the Insurance Fact Book as having 80% of the entire residual market for the country. Mr. McMillan pointed out that North Carolina is the only state with a Rate Bureau that proposes a base rate for all the drivers in the state. Because companies do not have the opportunity to deviate upwards, the only alternative a company has is to cede insureds to the Reinsurance Facility if the Bureau approved rate is insufficient. Senate Bill 477/HB834 would allow companies to file deviations up to the Facility approved rate. With this change, many policies that would have been ceded to the Facility would be retained by the companies. In addition, because "clean risks" ceded to the Facility can only be charged the Bureau approved rate, the bill would eliminate the clean risk subclassification in the Facility. Doing so would allow those drivers to be charged an actuarially sound rate and eliminate the need for the clean risk surcharge. Mr. McMillan agreed that N.C. does have good liability rates, but these rates are due primarily to the cost of living, tort laws and other factors unique to North Carolina.
- **Ms. Liz Reynolds. State Affairs Manager, National Association of Mutual Insurance Companies (NAMIC)**, referenced the work done following the 2011 Session by NAMIC and the Property Casualty Insurance Association of America (PCI) to bring together a coalition of insurers (FAIR NC Coalition) to find an approach to improve an outdated, inefficient, and unfair auto insurance system.
- **Mr. Dave Stoller, State Farm and FAIR NC Coalition**, presented the FAIR NC proposal. Mr. Stoller stressed that the proposal would not change the State's regulation of market conduct, financial solvency, licensing, or other regulatory systems. It also would not eliminate the Rate Bureau or the Reinsurance Facility or the Commissioner's ability to approve rates. Noting the size of the State's residual market and the clean risk classification within the Facility, Mr. Stoller indicated that the Coalition's proposal would do three things: (1) eliminate the clean risk classification and the recoupment surcharge over five years by moving these drivers gradually to a fair rate; (2) allow companies the option of staying within the Rate Bureau system or, in the alternative, moving to a "flex band" rating system; and (3) implements a "flex band" system that presumes that rate filings within a certain limit set by statute are acceptable. This would allow rates to be adjusted quickly and in small increments as market forces change. Mr.

Stoller concluded by saying that, while N.C.'s rates are relatively low, they are not among the lowest. He stressed that there was no casual connection between the approved maximum rate or rate cap set by the Commissioner and the average rate paid by consumers. N.C.'s low average rates are a function of the State's tort system, safe roads, and other factors. Finally a flex band system would allow reduce costs, allow larger discounts, lead to more innovative products, and increase the number of insurers, leading to more competition among insurers.

The following speakers made remarks in opposition to changes proposed to the General Assembly and the Committee:

- **Mr. R. Lee Morton, Regional Vice President/N.C. Operations, Nationwide Insurance,** began his remarks by stating that if SB 490 or similar legislation implementing a flex band system were enacted in N.C. approximately 992,000 clean risks presently assigned to the Reinsurance Facility would see an increase in their automobile insurance premium by an average of $150/policy. Moreover, the Commissioner of Insurance will lose his authority to prevent automatic rate hikes for consumers who by state law are required to buy automobile liability insurance. Additional unintended consequences include the following: (1) rate stability would no longer exist; (2) common policies and forms submitted by the Rate Bureau and approved by the Department would be replaced by individual company policies and forms; (3) the number of uninsured motorist would rise because of higher insurance premiums, resulting in increased premiums and costs for all; and (4) markets for other lines of insurance, such as property insurance, may be affected by these changes. Mr. Morton concluded by noting that, under current law, insurers can already discount rates and the State already has among the lowest rates in the country.
- **Steve Carroll, Executive Vice President and General Manager, N.C. Farm Bureau Mutual Insurance Company** noted that automobile liability insurance is a statutorily mandated coverage as much, if not more, for the protection of the public as for the insured driver. With this in mind, the N. C. Reinsurance Facility was created to enable all drivers to purchase liability insurance. Mr. Carroll made the following points concerning the current Rate Bureau system: (1) the current system provides a large data pool which facilitates accurate and predictable rates; (2) appeals of rate making decisions are pursued by one entity rather than a multitude of individual companies; (3) forms under the current system are uniform leading to less consumer confusion in the purchase of auto insurance; (4) current rates are competitive nationally as exemplified by the number of companies in the State and the number of discounts offered to consumers; (5) the current system emphasizes good underwriting and risk selection which is particularly important for small companies and state insurers competing with large national carriers.
- **Glenn Jernigan, Registered Lobbyist, GMAC** Insurance noted that while N.C.'s system may be unique, it works. This is evidenced by the fact that it currently produces the 8th lowest rates in the nation. Mr. Jernigan asked if the potential savings of approximately $17.00 per year through elimination of the

recoupment surcharge be worth the risk of allowing insurance companies to increase their overall rates by as much as 15% every 365 days, with little or no ability to block these rate increases. Changes to the current system could translate into significant increases in premiums for drivers who need vehicles to get to work, to transport their children and for other uses. In conclusion, Mr. Jernigan maintained that neither consumers nor the Commissioner were asking for changes in the current automobile system. Rather, changes were motivated by a desire for higher rates.

- **Jeff Butler, President Able Auto/Cycle Insurance Inc., Vice President of Alliance of Agents of N.C.** began by recounting his conversations with consumers who, when told the rationale for the recoupment surcharge, did not object to the surcharge. He believed the current system to be a good one that allows companies to look at the risk posed by applicants and to decide whether to write the risk or cede it to the Facility. Clean risks are ceded to the facility because the company does not believe it will be able to make a profit providing insurance to that applicant. Mr. Butler noted that a clean risk is not someone who does not have any violations, but is someone who does not have any violations for which insurance points can be charged. If the clean risk classification is eliminated then almost 1 million people will see rate increases. Mr. Butler noted that, under a flex rating system, rate increases by insurers are limited to a set percentage annually in the aggregate. This mean that some individual insureds will see increases much larger than the set percentage. Mr. Butler concluded by noting that competition has never been stronger in the State than it is today and any changes in the current system will only raise the rates in N.C.

Following the presentations in favor of and opposing reforms, Mr. **Eli Lehrer, Vice President of the Heartland Institute,** addressed the Committee. A short summary of his remarks is provided below:

- Mr. Lehrer began by explaining that he did not speak for any company or individual, but was a proponent of a free market system. He made the following points: (1) in his opinion, rates are average in N.C. and no reform is going to greatly raise or lower rates; (2) the Facility is a way of assuring that companies cannot lose money writing auto insurance in N.C.; (3) because of the current Rate Bureau process, the more innovative and interesting products offered by the auto insurance industry are not sold in the State; and (4) the residual market (the Reinsurance Facility) in N.C. is enormous, with seventy-eight percent of all drivers in the country who are in a residual market, and serves as a subsidy for insurance companies. Mr. Lehrer concluded with the following: (1) the Rate Bureau is expensive and anachronistic and insurers should have to take responsibility for their own rates; (2) Second, the range of rating factors allowed should be expanded and sex, for example, should be allowed as a rating factor; (3) insurers will offer innovative and new products if allowed to file their own rates; and (4) abolishing the Facility may be disruptive in the short term, but it should be phased out and profit guarantees eliminated.

At the third meeting of the LRC Automobile Insurance Modernization Committee, the Committee began with a presentation by **Mr. Tim Hovis, Staff Attorney, Research Division.** Mr. Hovis discussed a chart comparing the FAIR NC Bill and SB 477/HB 834, and gave an overview of issues presented at the January 25th meeting of the Committee. **See Appendix D, Attachment 2.** In the chart comparing the two legislative proposals, Mr. Hovis noted that the FAIR NC proposal gives insurers the option of remaining under the jurisdiction of the Rate Bureau or opting out of the current system and filing rates directly with the Commissioner through a new "Flex Rating" band system. Under this system, rate filings by individual insurers increasing or decreasing rates no more than 12% aggregated for all insurers are deemed to meet the necessary standard and are approved upon filing.

Mr. Hovis next referred to that portion of the chart addressing SB477/HB834. As noted in previous meetings, this proposal leaves the Rate Bureau jurisdiction intact and allows individual insurers to file upward deviations with the Commissioner. Deviations filed by individual insurers up to the rate charged by the Reinsurance Facility are presumed to meet the necessary standard. Currently, the Facility rate is approximately 20 to 30% higher than the Rate Bureau base rate. **See Appendix D, Attachment 2, Comparison of FAIR NC Bill and SB 477/HB 834.**

The final page of Mr. Hovis' report is an "Overview of Issues" from the January 25th meeting. He reminded the Committee that the list is not an exhaustive list, but is a compilation of the major points made by presenters. **See, Appendix D, Attachment 2.**

After discussion and debate on the issue of reform, the Committee agreed not to recommend specific legislation but to note areas in which there was agreement and recommend further study of this complicated issue.

Technology to Detect Uninsured Motorists

The Committee then turned to the issue of uninsured motorists. Chairman Apodaca noted that he had received several complaints from constituents about the statutory requirement for uninsured motorist coverage and the premium charged for this coverage. Specifically, he wanted the Committee to hear about the use of technology to detect uninsured drivers.

Ms. Amy Jo Johnson, Staff Attorney, Research Division, presented draft legislation, Technology to Catch Uninsured Motorists. She described the current system in place for identifying drivers who have a lapse in financial responsibility. Ms. Johnson then explained that the draft proposal would direct the use of electronic verification systems as a means for identifying vehicles without financial responsibility and make other adjustments to Article 13 of Chapter 20: The Financial Responsibility Act. In doing so, the process of notifying individuals when the Division of Motor Vehicles is made aware of a potential lapse would be modified and the civil penalty for a lapse of financial

responsibility would be increased to $300.00. The bill draft would direct a revocation of the vehicle's driver license in addition to the current penalty of title revocation and remove the misdemeanor criminal penalty for lack of financial responsibility. The draft proposal would also modify the appeals process.

Brian Weibel, C.N.A. G.S.E.C., FDI Group, made a presentation on the technology associated with electronic verification systems. He explained Automatic License Plate Recognition (ALPR) technology as well as the National Law Enforcement Technology System (NLETS), both of which are currently in use and combine with the electronic verification system implemented in the draft proposal.

Following discussion of the developing technology in this area and the draft proposal, Chairman Apodaca stated that the Committee would continue to discuss the issue and monitor the development of technology to detect uninsured motorists.

Diminished Value

Chairman Apodaca introduced Ms. Rose Vaughn Williams, Legislative Counsel, Department of Insurance to review the law on diminished value. Ms. Williams explained that the term "diminished value" refers to those situations in which a car has been damaged in an accident and then repaired. Often, even after repair, the resale value of the vehicle may be less than if it had not been damaged. The damage results in a reduction or diminution in the resale value of the car. In North Carolina, there is no statute that sets out that there is right to a third party diminished value claim when a car is damaged by the negligence of a third party. The right to assert a claim is not in statute, but exists in the "common law." In Chapter 20, the North Carolina statutes do require liability policies to include a process for how certain claims for diminution in value can be resolved if who is at fault for the accident is not an issue. Ms. Williams then explained this process. Ms. Williams also noted that both the case law and the pattern jury instructions given by judges in N.C. assumes there is a right to assert a claim for diminished value in third party claims. The N.C. Administrative Code does have one brief reference to diminution in value for third party claims.

The right to make a claim against your own insurance company, a "first party claim" does not exist clearly in contracts of insurance, however. When looking at other state's laws on this issue, Ms. Vaughn Williams of the 23 states who responded to the Department's survey on this issue, only Louisiana had a written law governing diminished value claims and it applied only to third party claims. Many states are like North Carolina in that their law on diminished value claims is in the common law, not in statute, and there is no clearly recognized claim for diminished value in first party claims.

April 10, 2012

At its fourth and final meeting prior to the 2012 Short Session, the Committee voted to approve its report and forward the report to the Legislative Research Commission.

FINDINGS AND RECOMMENDATIONS

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BRIEF OVERVIEW OF CURRENT LAW

Article 36 of Chapter 58 requires the N.C. Rate Bureau to file rates and rating plans for nonfleet private passenger motor vehicle insurance jointly for all insurers with the Commissioner for approval. Current law allows individual insurers to deviate from the approved base rate if the deviation is also approved by the Commissioner. Companies can deviate downward from the base rate, but upward deviations are not allowed.

An insurer cannot deny auto insurance coverage to eligible risks. However, insurers may cede to the N.C. Reinsurance Facility any eligible risk it chooses for liability and other required coverages. The Facility is required to establish a separate classification for owners and operators who are "clean risks." Basically, a clean risk is someone who has at least two years of driving experience and does not have a violation for which insurance points may be charged in the preceding three years.

The rates for clean risks may not exceed the maximum rate approved by the Commissioner for clean risks outside of the Facility. The difference in an actuarially sound rate for clean risks in the Facility and the rate actually charged to these clean risks is recouped by a surcharge on all policies in the State, known as the "recoupment surcharge."

For drivers other than clean risks (i.e. drivers with insurance points) who are ceded to the Facility, the Facility files with the Commissioner a "Facility rate." The Facility rate serves as the base rate for these drivers ceded to the Facility and is approximately 20 to 30% higher than the base rate approved by the Commissioner for clean risks.

BACKGROUND

Over the course of four meetings, the Committee heard from a number of speakers concerning reform of the current system. Reform proposals submitted to the Committee included the following: (1) a proposal to give insurers the option of using a "flex band" rating system in which rate filings submitted by individual insurers increasing or decreasing rates no more than set percentage are deemed to meet the required standard necessary for approval; and (2) a proposal in which upward deviations filed by insurers up to the approved Facility rate are allowed and are presumed to meet the required standard necessary for approval. **See Appendix D, Attachment 2, Comparison of FAIR NC Bill and HB834/S477.**

Arguments raised by these presenters in favor of and in opposition to these proposals are discussed below.

Arguments Supporting Reform

Of concern to many in support of change was the size of the N.C. Reinsurance Facility which was cited as representing 80% of the residual market in the country with a population of almost 1.4 million. Because of the Facility's size and the fact that rates for clean risks in the Facility cannot exceed the approved Bureau rate, all drivers in the State must pay a "recoupment surcharge." As argued by many in favor of reform, this surcharge is a hidden subsidy of riskier drivers paid for by safe drivers. Elimination of the surcharge is cited as a major reason for reducing the population of the Facility.

In addition, as an argument for change, many presenters pointed to the current Rate Bureau system as antiquated and providing a mechanism for information sharing and collusive price setting by insurers. Because upward deviations from the base rate are not allowed, the base rate approved under the current system operates as a cap on rates. Moreover, the current system of group filing through the Rate Bureau does not encourage individual insurers to offer the most innovative products. In short, in their opinion, the current system protects the market share of insurers and does not allow for maximum competition.

Many supporting change acknowledged that the State's current rates are relatively low. However, those supporting reform attribute these lower rates to other factors such as State's cost-of living, tort laws, and safe roads.

In short, reform of the current system would eliminate the need for the surcharge, allow for greater competition and reduced rates, and lead to more innovative products.

Arguments Opposing Change

With regard to the Reinsurance Facility, many opposing reform of the current system pointed out that, under current law, automobile liability coverage is required for all drivers in the State. The purpose of the Facility is to encourage all drivers to comply with current law and acquire liability coverage. If the current system were changed and the Facility depopulated by elimination of the clean risk classification, approximately one million clean risks currently in the Facility will see an increase in premiums. According to those opposed to reform, because of this increase, fewer drivers will purchase insurance leading to an increase in the number of uninsured drivers and, ultimately, an increase in costs for all drivers.

On the issue of increased competition, those opposed to reform pointed to the large number of insurers in the State and the availability of discounts as evidence of a strong and competitive auto insurance market. Insurers are free under the current system to discount rates if they choose to do so. Moreover, those opposed to reform believe rates approved under the current system are among the lowest in the country and are particularly low when compared to other populated states.

Moreover, opponents maintain that if the current system were changed to allow for individual filings by companies, common policies and forms would no longer be used and consumers would no longer be able to compare rates and coverages between companies, leading to increased confusion on the part of consumers.

Other reasons cited by those opposed to change included the following: (1) rates in the automobile insurance market would no longer be stable and could have an unintended impact on other lines of insurance; and (2) any savings to consumers from the elimination of the clean risk classification and discontinuance of the surcharge would be small compared to potential rate increases if the current system were reformed.

FINDINGS AND RECOMMENDATIONS

Recommendation I: The Committee finds that proposals to reduce the population of the Reinsurance Facility and thereby reduce or eliminate the recoupment surcharge should be considered. Moreover, the Committee agrees that price competition between insurers benefits consumers and should be promoted. However, the Committee finds that reform of the current system should not create confusion among consumers or increase the number of uninsured drivers.

Understanding that this is a complex issue, the Committee recommends that the 2013 General Assembly build upon the information and proposals discussed in these meetings and enact legislation providing for a smooth and measured transition from the current system for automobile insurance rate regulation to a system more reliant on free market principles that reduces the population of the Facility, eliminates the need for the hidden recoupment surcharge, encourages competition, and also allows for more innovative products and benefits for the consumer.

Recommendation II: As noted in the Proceedings section of this report, at its meeting on March 6, 2012, the Committee heard presentations concerning the use of electronic verification systems as a means of identifying vehicles without the financial responsibility required pursuant to G.S. 20-309. It was explained in these presentations that technology currently in place in North Carolina, such as Automatic License Plate Recognition (ALPR) and the National Law Enforcement Technology System (NLETS), has the ability to combine with cutting-edge electronic verification technology and equipment for law enforcement agencies to enhance the detection of these uninsured motorists efficiently.

As reflected in the Committee's discussion of reforms to the automobile insurance system noted in Recommendation I of this report, uninsured motorists increase costs for all drivers in our State. The Committee finds that emerging technology to detect uninsured drivers may prove beneficial in addressing this problem and recommends that the General Assembly continue to monitor the development of technology to detect uninsured motorists.

Recommendation III: The Committee also discussed the issue of diminished value at its meeting on March 6, 2012. As explained at that meeting, the term "diminished value" refers to those situations in which a car has been damaged in an accident and then, after repair, the resale value of the vehicle is still less than if it had not been damaged. The damage results in a reduction or diminution in the resale value of the car.
The right to assert a third party claim of diminished value against another driver is recognized in North Carolina's common law, but does not exist in statute. For this reason, the Committee considered whether some insurers have been reluctant to compensate drivers for diminished value in third party claims. In such instances, often, drivers must aggressively pursue such claims to obtain relief.

The Committee finds that legislative action may be needed to improve the efficient and reasonable administration, payment, and processing of claims of diminished value and recommends that the General Assembly continue to study this issue, including the possible implementation of statutory provisions recognizing a claim of diminished value.

COMMITTEE MEMBERSHIP

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2011-2012

President Pro Tempore of the Senate Appointments:

Senator Thomas Apodaca, Co-Chair

Senator Richard Gunn
Senator Eleanor Kinnaird
Senator Robert Rucho

Speaker of the House of Representatives Appointments:

Representative Fred Steen, Co-Chair

Representative Justin Burr
Representative Susi Hamilton
Representative Harry Warren
Representative Jerry Dockham

COMMITTEE CHARGE

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Automobile Insurance Modernization – (a) Study issues relating to the method and manner of establishing automobile insurance rates in North Carolina, to ensure consumers are receiving the fullest possible benefit from marketplace competition among insurers on pricing, product, and coverage options. The study may include, but is not limited to, review of the insurance regulatory systems in other states; model laws and recommendations of the National Association of Insurance Commissioners and the National Conference of Insurance Legislators, the North Carolina Rate Bureau, the North Carolina Reinsurance Facility, and the Safe Driver Incentive Program; current and proposed restrictions and regulations on automobile insurance pricing, underwriting, and related issues; the method and effectiveness of assuring voluntary and involuntary automobile insurance markets; and the effect of modernizing the automobile insurance regulatory system upon the revenues, expenses, and operations of the Department of Insurance and the State of North Carolina; and the use of electronic verification systems by law enforcement agencies and officers to electronically identify motor vehicles operating on the public streets and public vehicular areas without financial responsibility as required pursuant to G.S. 20-309.

(b) Study issues related to enforcement and administration of safety and emissions inspection requirements set forth G.S. 20-183.2, et seq. The study may include, but is not limited to, review of current penalties assessed against motor vehicle owners, safety inspection station licensees and emission inspection licensees; review of new technologies available to increase the efficiency and effectiveness of the Department of Motor Vehicles' enforcement of inspection requirements; and review of the appeals processes governing the issuance, suspension and revocation of any of safety and/or emissions licenses issued by the Division and any fines assessed thereby.

STATUTORY AUTHORITY

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NORTH CAROLINA GENERAL STATUTES
ARTICLE 6B.

Legislative Research Commission.

§ 120-30.17. Powers and duties.

The Legislative Research Commission has the following powers and duties:

(1) Pursuant to the direction of the General Assembly or either house thereof, or of the chairmen, to make or cause to be made such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner.

(2) To report to the General Assembly the results of the studies made. The reports may be accompanied by the recommendations of the Commission and bills suggested to effectuate the recommendations.

(3), (4) Repealed by Session Laws 1969, c. 1184, s. 8.

(5), (6) Repealed by Session Laws 1981, c. 688, s. 2.

(7) To obtain information and data from all State officers, agents, agencies and departments, while in discharge of its duty, pursuant to the provisions of G.S. 120-19 as if it were a committee of the General Assembly.

(8) To call witnesses and compel testimony relevant to any matter properly before the Commission or any of its committees. The provisions of G.S. 120-19.1 through G.S. 120-19.4 shall apply to the proceedings of the Commission and its committees as if each were a joint committee of the General Assembly. In addition to the other signatures required for the issuance of a subpoena under this subsection, the subpoena shall also be signed by the members of the Commission or of its committee who vote for the issuance of the subpoena.

(9) For studies authorized to be made by the Legislative Research Commission, to request another State agency, board, commission or committee to conduct the study if the Legislative Research Commission determines that the other body is a more appropriate vehicle with which to conduct the study. If the other body agrees, and no legislation specifically provides otherwise, that body shall conduct the study as if the original authorization had assigned the study to that body and shall report to the General Assembly at the same time other studies to be conducted by the Legislative Research Commission are to be reported. The other agency shall conduct the transferred study within the funds already assigned to it.

SUPPORTING DOCUMENTATION

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ATTACHMENT 1

Comparison of S490 and H834/S477

	S490	H834/S477
Rate Bureau	Removes private passenger automobile insurance from Rate Bureau's jurisdiction; Allows individual insurers to file rates with the Commissioner through a new **"Flex Rating"** band system	Leaves Rate Bureau jurisdiction over base rates intact; Allows individual insurers to file upward **deviations** with the Commissioner from the approved base rate
Flex Rating versus Deviations	**Flex Rating** • Rate filings by individual insurers increasing or decreasing rates no more than 15%, aggregated for all insureds, are **deemed** to meet the standard and are approved upon filing (New Art. 37A) (Standard under current law is not excessive, inadequate, or unfairly discriminatory) • May be used upon filing or as specified by the insurer • Allows a filing, or combination of filings, up to 15% in a 12 month period • Commissioner may disapprove filing by written order specifying a reasonable future date the filing is not effective, if rate is inadequate or unfairly discriminatory • Order is prospective only • Filing(s) greater than 15% are subject to Commissioner's disapproval and refund to insureds (Article 40)	**Deviations** • Deviations filed by individual insurers above the Rate Bureau base rate up to the rate charged by the Reinsurance Facility for other than clean risks are **presumed** to meet the standard (Standard under current law is not excessive, inadequate, or unfairly discriminatory) • Currently, the Facility rate is approximately 20% higher than the Rate Bureau base rate and is filed by the Facility with the Commissioner. • Deviation takes effect upon filing • Commissioner may disapprove the deviation by written order specifying a reasonable future date the filing is not effective • Order is prospective only
NC Reinsurance Facility Changes	Eliminates "clean risk" subclassification to an actuarially sound rate over a 4 year period Moves the SDIP and corresponding insurance points system from the Rate Bureau to the Facility (anticipates that	Eliminates "clean risk" subclassification to an actuarially sound rate over a 5 year period Leaves the SDIP in the Rate Bureau applicable to all drivers to all drivers

	the need for the point system will be reduced with Flex Rating) Requires the Facility surcharge to be set out separately on premium statements	 Eliminates the Facility surcharge at the end of the 5 year period

ATTACHMENT 2

Comparison of FAIR NC Bill and H834/S477

	FAIR NC	H834/S477
Rate Bureau	Gives insurers the option of remaining under the jurisdiction of the Rate Bureau or opting out of the current system and filing rates directly with the Commissioner through a new **"Flex Rating"** band system	Leaves Rate Bureau jurisdiction over base rates intact; Allows individual insurers to file upward **deviations** with the Commissioner from the approved base rate
Flex Rating versus Deviations	**Flex Rating** • Rate filings by individual insurers increasing or decreasing rates no more than 12%, aggregated for all insureds, are **deemed** to meet the standard and are approved upon filing (New Art. 37A) (Standard under current law is not excessive, inadequate, or unfairly discriminatory) • May be used upon filing or as specified by the insurer • Allows a filing, or combination of filings, up to 12% in a 12 month period • Commissioner may disapprove filing by written order specifying a reasonable future date the filing is not effective, if rate is excessive, inadequate or unfairly discriminatory • Order is prospective only • Filing(s) greater than 12% are subject to Commissioner's disapproval and refund to insureds (Article 40)	**Deviations** • Deviations filed by individual insurers above the Rate Bureau base rate up to the rate charged by the Reinsurance Facility for other than clean risks are **presumed** to meet the standard (Standard under current law is not excessive, inadequate, or unfairly discriminatory) • Currently, the Facility rate is approximately 20% to 30% higher than the Rate Bureau base rate and is filed by the Facility with the Commissioner. • Deviation takes effect upon filing • Commissioner may disapprove the deviation by written order specifying a reasonable future date the filing is not effective • Order is prospective only
NC Reinsurance Facility Changes	Eliminates "clean risk" subclassification to an actuarially sound rate over a 5 year period	Eliminates "clean risk" subclassification to an actuarially sound rate over a 5 year period Eliminates the Facility surcharge at the end of the 5 year period

Overview of Issues From January 25th Meeting

Arguments Supporting Proposed Changes *(Steve Pociask, ACI; John McMillan, IFNC; Liz Reynolds, NAMIC; David Stoller, State Farm and FAIR NC Coalition)*

- Drivers ceded to the Facility in NC represent 80% of the residual market in the country-- 1, 392,804 drivers of 1,727,895 drivers nationally.
- The recoupment surcharge is currently 4.3% of liability coverage, but has been as high as 10%.
- The recoupment surcharge is a hidden subsidy paid for by safer drivers. By subsidizing riskier drivers and making it less expensive for these drivers to obtain insurance and drive, the recoupment surcharge contributes to speeding, accidents and insurance claims.
- The current Rate Bureau system is antiquated, allows for sharing of information between insurers and leads to collusive price-setting that protects the market share of insurers. It does not allow for maximum competition. Changes in the system would allow for increased competition resulting in lower prices for consumers.
- N.C.'s rates are low, but not the lowest in the South or the 8th lowest in the country. The base rate approved by the Commissioner serves as the maximum rate or a cap on rates. The average rate paid by consumers is not related to the maximum approved rate. The average rate is a reflection of the losses, costs and expenses of insurers and is directly related to other factors such as the State's tort system, safe roads, and cost-of-living.
- Points Related Specifically to FAIR Coalition Proposal (See chart summarizing legislation):
  - Eliminates the need for the surcharge by depopulating the Facility
  - Allows for greater competition between companies and more premium discounts to drivers
  - Allowing companies to opt out of the Rate Bureau and file individually leads to more innovative products
  - Reduces administrative costs and expenses of filings under the current system
  - Increases the number of companies competing in the State
- Points Related Specifically to S477/H834 (See chart summarizing legislation):
  - Eliminates need for Recoupment surcharge by depopulating the Facility
  - Allows for greater competition between companies and lower premiums for most drivers
  - Rate Bureau continues to file rates with the Commissioner and Commissioner retains ability to approve rates under current law

Arguments Opposing Proposed Changes *(R. Lee Morton, Nationwide; Steve Carroll, Farm Bureau; Glenn Jernigan, GMAC; Jeff Butler, Able Auto/Cycle Ins. Co. and Alliance of Agents)*

- Automobile liability insurance coverage is required under state law for all drivers for the protection of the public. The Facility was created to encourage all drivers to comply with state law and acquire liability coverage. There are approximately one million clean risks in the Facility who will see an increase in premiums if the current system is changed. As a result of this increase, the number of uninsured drivers will increase which will ultimately increase costs for everyone.
- Current market is strong and competitive as evidenced by the large number of auto insurers in the State and the number of available discounts. Insurers are free to discount rates under current law if they choose to do so.
- NC has the lowest rates in the Southeast, the 8th lowest in the country, and the lowest rates among the 10 most populated states.
- If the current system for automobile insurance is dismantled, rates in the automobile insurance market will no longer be stable but will change on both ends, high and low.
- If companies file individually, each filing will be different and consumers will no longer be able to compare rates and coverages between companies. In addition, policies and forms will no longer be filed by the Rate Bureau and approved by the Department, but will vary between insurers leading to increased confusion by the consumer.
- Dismantling the current system for auto insurance could have an unintended impact on other lines of insurance.
- Savings to consumer from the discontinuance of the recoupment surcharge is small compared to the potential rate increases under a flex rating system.

Appendix D

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE RESEARCH COMMISSION
STATE LEGISLATIVE BUILDING
RALEIGH, NC 27601

April 18, 2012

TO THE MEMBERS OF THE LEGISLATIVE RESEARCH COMMISSION:

Attached for your consideration is the report to the 2012 Regular Session of the 2011 General Assembly. This report was prepared by the Legislative Research Commission's Committee on Criminal Record Expunctions, pursuant to G.S. 120-30.17(1).

Representative N. Leo Daughtry
Chair

Committee on Criminal Record Expunctions
Legislative Research Commission

LEGISLATIVE RESEARCH COMMISSION

CRIMINAL RECORD EXPUNCTIONS COMMITTEE

NORTH CAROLINA GENERAL ASSEMBLY

REPORT TO THE 2012 SESSION of the 2011 GENERAL ASSEMBLY OF NORTH CAROLINA

APRIL, 2012

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LEGISLATIVE OFFICE BUILDING
RALEIGH, NORTH CAROLINA 27603-5925
TELEPHONE: (919) 733-9390

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TRANSMITTAL LETTER

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TO THE MEMBERS OF THE 2012 REGULAR SESSION
OF THE 2011 GENERAL ASSEMBLY

The Legislative Research Commission herewith submits to you for your consideration its report and recommendations to the 2012 Regular Session of the 2011 General Assembly. The report was prepared by the Legislative Research Commission's Committee on Criminal Record Expunctions, pursuant to G.S. 120-30.70(1).

Respectfully submitted,

Senator Philip E. Berger President Pro Tempore of the Senate	Representative Thomas R. Tillis Speaker of the House of Representatives

Co-Chairs
Legislative Research Commission

LEGISLATIVE RESEARCH COMMISSION MEMBERSHIP

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2011 – 2012

President Pro Tempore of the Senate
Senator Philip E. Berger
Co-Chair

Senator Thomas M. Apodaca
Acting Co-Chair

Senator Peter S. Brunstetter
Senator Linda D. Garrou
Senator Martin L. Nesbitt, Jr.
Senator Richard Y. Stevens

Speaker of the House of Representatives
Representative Thomas R. Tillis
Co-Chair

Representative Timothy K. Moore
Acting Co-Chair

Representative John M. Blust
Representative Justin P. Burr
Representative Mike D. Hager
Representative Edith D. Warren

PREFACE

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The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is the general purpose study group in the Legislative Branch of State Government. The Commission is co-chaired by the President Pro Tempore of the Senate and the Speaker of the House of Representatives and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigation into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

The Legislative Research Commission authorized the study of Criminal Record Expunctions, under authority of G.S. 120-30.17(1). The Committee was chaired by Representative N. Leo Daughtry. The full membership of the Committee is listed under Committee Membership. A committee notebook containing the committee minutes and all information presented to the committee will be filed in the Legislative Library by the end of the **2011-2012** biennium.

COMMITTEE PROCEEDINGS

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The Legislative Research Commission's Committee on Criminal Record Expunctions met two times after the 2011 Regular Session. The Committee's Charge can be found here. The following is a brief summary of the Committee's proceedings. Detailed minutes and information from each Committee meeting are available in the Legislative Library.

November 17, 2011 Meeting

The initial meeting of the LRC Committee on Criminal Record Expunctions began with a review of the Committee's charge and the adoption of an operating budget for the Committee. Committee staff provided an overview of North Carolina laws pertaining to the expunction of criminal records. (See Appendix E)

Committee members engaged in an open discussion of issues and concerns for consideration during the course of the Committee's deliberations. The Committee provided interested parties an opportunity to be heard on the issue.

April 18, 2012

The Committee met to finalize and adopt its final report containing its findings and recommendations to the Legislative Research Commission.

FINDINGS AND RECOMMENDATIONS

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Findings

The Committee makes the following findings regarding the expunction of criminal records:

1. In general, expunction is allowed in limited circumstances to remove information about a charge or conviction of a criminal offense from the records of certain classes of people. Once the record is expunged, any information related to the offense is permanently deleted from the record and the individual may deny the incident ever occurred.

2. In North Carolina, individuals who are eligible for expunction include:
   - Those who had charges brought against them, but those charges were ultimately dismissed or the person was found not guilty.
   - Those who received a pardon of innocence from the Governor of North Carolina.
   - Those who were the victim of identity theft (i.e. the person arrested for the crime provided another person's name and information to the police instead of their own).
   - Those 18 years of age or older wishing to expunge juvenile records of minor offenses.
   - First-time offenders 21 years old or younger charged with a minor alcohol offense or drug possession crime.
3. Information about a person's criminal record can be accessed by potential employers, landlords and others running criminal background checks. Consequently, many people are increasingly aware of the effect a criminal conviction can have on their lives and how it can impact everything from their ability to get a job or rent an apartment, to their ability to gain credit or to retain a professional license.
4. Expunction is a process that can and should be used to give people who have committed minor crimes a clean slate and a fresh start, especially when a significant amount of time has passed without further trouble.

Recommendation

The Committee recommends that the General Assembly enact Legislative Proposal I:

AN ACT TO PROVIDE FOR EXPUNCTION OF NONVIOLENT FELONIES OR NONVIOLENT MISDEMEANORS AFTER 15 YEARS FOR PERSONS WHO HAVE HAD NO OTHER CONVICTIONS FOR FELONIES OR MISDEMEANORS OTHER THAN TRAFFIC VIOLATIONS UNDER THE LAWS OF THE UNITED STATES, THIS STATE, OR ANY OTHER JURISDICTION.

COMMITTEE MEMBERSHIP

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2011-2012

Speaker of the House of Representatives Appointments:

Representative N. Leo Daughtry, Chair

Representative John Blust
Representative Richard Glazier
Representative Timothy Moore
Representative Shirley Randleman
Representative Timothy Spear
Representative Sarah Stevens

COMMITTEE CHARGE

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The Legislative Research Commission's Committee on Criminal Record Expunctions may study whether current law strikes an appropriate balance between an employer's need for access to accurate criminal history information about potential employees and the need for a person who committed a relatively minor offense in the distant past to obtain employment in spite of the person's criminal history. If the Committee finds that it may be possible to achieve a better balance between these interests, then the Committee may further consider what type of expunction procedure may be developed and implemented that addresses the interests and concerns of employers, but also affords some appropriate relief to persons with a relatively minor past criminal conviction. In its study, the Committee may consider all of the following:

(1) The effect of a person's criminal record with regard to a person's ability to obtain employment.

(2) The reasons that an employer may need to know about a potential employee's criminal record.

(3) What types of criminal records may or may not be relevant with regard to certain types of employment.

(4) What criminal offenses, if any, it may be reasonable to allow to be expunged from a person's record, the time period or other criteria that should be used to determine whether it is appropriate to allow the expunction, and whether the offense should be completely erased from the criminal record so that the person has no criminal record, or retained but limit the accessibility of the record only for certain purposes.

(5) Any other issues the Committee considers relevant to this topic.

Authority: LRC 2011 HJR 760

STATUTORY AUTHORITY

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NORTH CAROLINA GENERAL STATUTES
ARTICLE 6B.

Legislative Research Commission.

§ 120-30.17. Powers and duties.

The Legislative Research Commission has the following powers and duties:

(1) Pursuant to the direction of the General Assembly or either house thereof, or of the chairmen, to make or cause to be made such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner.

(2) To report to the General Assembly the results of the studies made. The reports may be accompanied by the recommendations of the Commission and bills suggested to effectuate the recommendations.

(3), (4) Repealed by Session Laws 1969, c. 1184, s. 8.

(5), (6) Repealed by Session Laws 1981, c. 688, s. 2.

(7) To obtain information and data from all State officers, agents, agencies and departments, while in discharge of its duty, pursuant to the provisions of G.S. 120-19 as if it were a committee of the General Assembly.

(8) To call witnesses and compel testimony relevant to any matter properly before the Commission or any of its committees. The provisions of G.S. 120-19.1 through G.S. 120-19.4 shall apply to the proceedings of the Commission and its committees as if each were a joint committee of the General Assembly. In addition to the other signatures required for the issuance of a subpoena under this subsection, the subpoena shall also be signed by the members of the Commission or of its committee who vote for the issuance of the subpoena.

(9) For studies authorized to be made by the Legislative Research Commission, to request another State agency, board, commission or committee to conduct the study if the Legislative Research Commission determines that the other body is a more appropriate vehicle with which to conduct the study. If the other body agrees, and no legislation specifically provides otherwise, that body shall conduct the study as if the original authorization had assigned the study to that body and shall report to the General Assembly at the same time other studies to be conducted by the Legislative Research Commission are to be reported. The other agency shall conduct the transferred study within the funds already assigned to it.

LEGISLATIVE PROPOSAL I

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A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR EXPUNCTION OF NONVIOLENT FELONIES OR NONVIOLENT MISDEMEANORS AFTER 15 YEARS FOR PERSONS WHO HAVE HAD NO OTHER CONVICTIONS FOR FELONIES OR MISDEMEANORS OTHER THAN TRAFFIC VIOLATIONS UNDER THE LAWS OF THE UNITED STATES, THIS STATE, OR ANY OTHER JURISDICTION.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 15A of the General Statutes is amended to add a new section to read:

"**§ 15A-145.5. Expunction of certain misdemeanors and felonies; no age limitation.**

(a) For purposes of this section, the term "nonviolent misdemeanor" or "nonviolent felony" means any misdemeanor or felony except the following:

(1) A Class A through G felony or a Class A1 misdemeanor.

(2) An offense that includes assault as an essential element of the offense.

(3) An offense requiring registration pursuant to Article 27A of Chapter 14 of the General Statutes, whether or not the person is currently required to register.

(4) Any of the following sex-related or stalking offenses: G.S. 14-27.7A(b), 14-190.7, 14-190.8, 14-190.9, 14-202, 14-208.11A, 14-208.18, 14-277.3, 14-277.3A, 14-321.1.

(5) Any felony offense in Chapter 90 of the General Statutes where the offense involves methamphetamines, heroin, or possession with intent to sell or deliver or sell and deliver cocaine.

(6) An offense under G.S. 14-12.12(b), 14-12.13, or 14-12.14, or any offense for which punishment was determined pursuant to G.S. 14-3(c).

(7) An offense under G.S. 14-401.16.

(8) Any felony offense in which a commercial motor vehicle was used in the commission of the offense.

(b) Notwithstanding any other provision of law, if the person is convicted of more than one nonviolent felony or nonviolent misdemeanor in the same session of court and none of the nonviolent felonies or nonviolent misdemeanors are alleged to have occurred after the person had already been served with criminal process for the commission of a nonviolent felony or nonviolent misdemeanor, then the multiple nonviolent felony or misdemeanor convictions shall be treated as one nonviolent felony or misdemeanor conviction under this section, and the expunction order issued under this section shall provide that the multiple nonviolent felony convictions or misdemeanor convictions shall be expunged from the person's record in accordance with this section.

(c) A person may file a petition in the court where the person was convicted for expunction of a nonviolent misdemeanor or nonviolent felony conviction from the person's criminal record if the person has no other misdemeanor or felony convictions, other than a traffic violation, and was convicted of a nonviolent misdemeanor or nonviolent felony that is eligible pursuant to subsection (b) of this section. The petition shall not be filed earlier than 15 years after the date of the conviction or when any active sentence, period of probation, and post-release supervision has been served, whichever occurs later. The petition shall contain, but not be limited to, the following:

(1) An affidavit by the petitioner that the petitioner has been of good behavior since the completion of any sentence received for the nonviolent misdemeanor or nonviolent felony, and has not been convicted of any other felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state.

(2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which the petitioner lives and that the petitioner's character and reputation are good.

(3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.

(4) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a name-based State and national criminal record check by the Department of Justice using any information required by the Administrative Office of the Courts to identify the individual and a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall be forwarded to the Department of Justice and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.

(5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner are outstanding.

Upon filing of the petition, the petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 30 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition. Upon good cause shown, the court may grant the district attorney an additional 30 days to file objection to the petition.

The presiding judge is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct since the completion of any sentence received for the nonviolent misdemeanor or nonviolent felony.

If the court, after hearing, finds that the petitioner has not been previously granted an expunction under this section, G.S. 15A-145, 15A-145.1, 15A-145.2, 15A-145.3, or 15A-145.4, the petitioner has no other felony or misdemeanor convictions, other than a traffic violation, the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner, and the petitioner was convicted of an offense eligible for expunction under this section and was

convicted of, and completed any sentence received for, the nonviolent misdemeanor or nonviolent felony at least 15 years prior to the filing of the petition, it shall order that such person be restored, in the contemplation of the law, to the status the person occupied before such arrest or indictment or information.

(d) No person as to whom an order has been entered pursuant to subsection (c) of this section shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of that person's failure to recite or acknowledge the arrest, indictment, information, trial, or conviction. Persons pursuing certification under the provisions of Chapter 17C or 17E of the General Statutes, however, shall disclose any and all convictions to the certifying Commission regardless of whether or not the convictions were expunged pursuant to the provisions of this section.

Persons required by State law to obtain a criminal history record check on a prospective employee shall not be deemed to have knowledge of any convictions expunged under this section.

(e) The court shall also order that the conviction be expunged from the records of the court and direct all law enforcement agencies bearing record of the same to expunge their records of the conviction. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.

(f) Any other applicable State or local government agency shall expunge from its records entries made as a result of the conviction ordered expunged under this section. The agency shall also reverse any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged. This subsection shall not apply to the Department of Justice for DNA records and samples stored in the State DNA Database and the State DNA Databank.

(g) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of one hundred seventy-five dollars ($175.00) at the time the petition is filed. Fees collected under this subsection shall be deposited in the General Fund. This subsection does not apply to petitions filed by an indigent."

SECTION 2. G.S. 15A-145.4 reads as rewritten:

"**§ 15A-145.4. Expunction of records for first offenders who are under 18 years of age at the time of the commission of a nonviolent felony.**

(a) For purposes of this section, the term "nonviolent felony" means any felony except the following:

(1) A Class A through G felony.

(2) A felony that includes assault as an essential element of the offense.

(3) A felony that is an offense ~~for which the convicted offender must register under~~ requiring registration pursuant to Article 27A of Chapter 14 of the General ~~Statutes.~~Statutes, whether or not the person is currently required to register.

~~(4) A felony that is an offense that did not require registration under Article 27A of Chapter 14 of the General Statutes at the time of the commission of the offense but does require registration on the date the petition to expunge the offense would be filed.~~

~~(5)~~(4) ~~A felony charged for any of~~Any felony offense under the following sex-related or stalking offenses: G.S. 14-27.7A(b), ~~14-190.6,~~ 14-190.7, 14-190.8, 14-202, 14-208.11A, 14-208.18, 14-277.3, 14-277.3A, 14-321.1.

~~(6)~~(5) Any felony offense ~~charged pursuant to~~in Chapter 90 of the General Statutes where the offense involves methamphetamines, heroin, or possession with intent to sell or deliver or sell and deliver cocaine.

~~(7)~~(6) A felony offense ~~charged pursuant to~~under G.S. 14-12.12(b), 14-12.13, or 14-12.14, or any felony offense ~~charged as a felony~~for which punishment was determined pursuant to G.S. 14-3(c).

~~(8)~~(7) A felony offense ~~charged pursuant to~~under G.S. 14-401.16.

~~(9)~~(8) ~~A~~ Any felony offense in which a commercial motor vehicle was used in the commission of the offense.

(b) Notwithstanding any other provision of law, if the person is convicted of more than one nonviolent felony in the same session of court and none of the nonviolent felonies are alleged to have occurred after the person had already been ~~charged and arrested~~served with criminal process for the commission of a nonviolent felony, then the multiple nonviolent felony convictions shall be treated as one nonviolent felony conviction under this section, and the expunction order issued under this section shall provide that the multiple nonviolent felony convictions shall be expunged from the person's record in accordance with this section.

(c) Whenever any person who had not yet attained the age of 18 years at the time of the commission of the offense and has not previously been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state pleads guilty to or is guilty of a nonviolent felony, the person may file a petition in the court where the person was convicted for expunction of the nonviolent felony from the person's criminal record. The petition shall not be filed earlier than four years after the date of the conviction or when any active sentence, period of probation, and post-release supervision has been served, whichever occurs later. The person shall also perform at least 100 hours of community service, preferably related to the conviction, before filing a petition for expunction under this section. The petition shall contain the following:

(1) An affidavit by the petitioner that the petitioner has been of good moral character since the date of conviction of the nonviolent felony in question and has not been convicted of any other felony

or any misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state.

(2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which the petitioner lives and that the petitioner's character and reputation are good.

(3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.

(4) An application on a form approved by the Administrative Office of the Courts requesting and authorizing (i) a State and national criminal history record check by the Department of Justice using any information required by the Administrative Office of the Courts to identify the individual; (ii) a search by the Department of Justice for any outstanding warrants or pending criminal cases; and (iii) a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall be forwarded to the Department of Justice and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.

(5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner are outstanding.

(6) An affidavit by the petitioner that the petitioner has performed at least 100 hours of community service since the conviction for the nonviolent felony. The affidavit shall include a list of the community services performed, a list of the recipients of the services, and a detailed description of those services.

(7) An affidavit by the petitioner that the petitioner possesses a high school diploma, a high school graduation equivalency certificate, or a General Education Development degree.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 30 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition. The district attorney shall make his or her best efforts to contact the victim, if any, to notify the victim of the request for expunction prior to the date of the hearing.

(d) The court in which the petition was filed shall take the following steps and shall consider the following issues in rendering a decision upon a petition for expunction of records of a nonviolent felony under this section:

(1) Call upon a probation officer for additional investigation or verification of the petitioner's conduct during the four-year

period since the date of conviction of the nonviolent felony in question.

(2) Review the petitioner's juvenile record, ensuring that the petitioner's juvenile records remain separate from adult records and files and are withheld from public inspection as provided under Article 30 of Chapter 7B of the General Statutes.

(3) Review the amount of restitution made by the petitioner to the victim of the nonviolent felony to be expunged and give consideration to whether or not restitution was paid in full.

(4) Review any other information the court deems relevant, including, but not limited to, affidavits or other testimony provided by law enforcement officers, district attorneys, and victims of nonviolent felonies committed by the petitioner.

(e) The court may order that the person be restored, in the contemplation of the law, to the status the person occupied before the arrest or indictment or information if the court finds all of the following after a hearing:

(1) The petitioner has remained of good moral character and has been free of conviction of any felony or misdemeanor, other than a traffic violation, for four years from the date of conviction of the nonviolent felony in question or any active sentence, period of probation, or post-release supervision has been served, whichever is later.

(2) The petitioner has not previously been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state.

(3) The petitioner has no outstanding warrants or pending criminal cases.

(4) The petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner.

(5) The petitioner was less than 18 years old at the time of the commission of the offense in question.

(6) The petitioner has performed at least 100 hours of community service since the time of the conviction and possesses a high school diploma, a high school graduation equivalency certificate, or a General Education Development degree.

(7) The search of the confidential records of expunctions conducted by the Administrative Office of the Courts shows that the petitioner has not been previously granted an expunction.

(f) No person as to whom an order has been entered pursuant to subsection (e) of this section shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of that person's failure to recite or acknowledge the arrest, indictment, information, trial, or

conviction. Persons pursuing certification under the provisions of Chapter 17C or 17E of the General Statutes, however, shall disclose any and all felony convictions to the certifying Commission regardless of whether or not the felony convictions were expunged pursuant to the provisions of this section.

Persons required by State law to obtain a criminal history record check on a prospective employee shall not be deemed to have knowledge of any convictions expunged under this section.

(g) The court shall also order that the nonviolent felony conviction be expunged from the records of the court and direct all law enforcement agencies bearing record of the same to expunge their records of the conviction. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.

(h) Any other applicable State or local government agency shall expunge from its records entries made as a result of the conviction ordered expunged under this section. The agency shall also reverse any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged. This subsection shall not apply to the Department of Justice for DNA records and samples stored in the State DNA Database and the State DNA Databank.

(i) Any person eligible for expunction of a criminal record under this section shall be notified about the provisions of this section by the probation officer assigned to that person. If no probation officer is assigned, notification of the provisions of this section shall be provided by the court at the time of the conviction of the felony which is to be expunged under this section."

SECTION 3. G.S. 15A-145(d1) is repealed.

SECTION 4. G.S. 15A-146 reads as rewritten:

"**§ 15A-146. Expunction of records when charges are dismissed or there are findings of not guilty.**

(a) If any person is charged with a crime, either a misdemeanor or a felony, or was charged with an infraction under G.S. 18B-302(i) prior to December 1, 1999, and the charge is dismissed, or a finding of not guilty or not responsible is entered, that person may apply to the court of the county where the charge was brought for an order to expunge from all official records any entries relating to his apprehension or trial. The court shall hold a hearing on the application and, upon finding that the person had not previously received an expungement under this section, G.S. 15A-145, G.S. 15A-145.1, 15A-145.2, ~~or 15A-145.3,~~15A-145.3, 15A-145.4, or 15A-145.5, and that the person had not previously been convicted of any felony under the laws of the United States, this State, or any other state, the court shall order the expunction. No person as to whom such an order has been entered shall be held thereafter under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of his failure to recite or acknowledge any expunged entries concerning apprehension or trial.

(a1) Notwithstanding subsection (a) of this section, if a person is charged with multiple offenses and all the charges are dismissed, or findings of not guilty or not responsible are made, then a person may apply to have each of those charges expunged if the offenses occurred within the same 12-month period of time or if the charges are dismissed or findings are made at the same term of court. Unless circumstances otherwise clearly provide, the phrase "term of court" shall mean one week for superior court and one day for district court. There is no requirement that the multiple offenses arise out of the same transaction or occurrence or that the multiple offenses were consolidated for judgment. The court shall hold a hearing on the application. If the court finds (i) that the person had not previously received an expungement under this subsection, or that any previous expungement received under this subsection occurred prior to October 1, 2005 and was for an offense that occurred within the same 12-month period of time, or was dismissed or findings made at the same term of court, as the offenses that are the subject of the current application, (ii) that the person had not previously received an expungement under G.S. 15A-145, 15A-145.1, 15A-145.2, ~~or 15A-145.3,~~15A-145.3, 15A-145.4, or 15A-145.5, and (iii) that the person had not previously been convicted of any felony under the laws of the United States, this State, or any other state, the court shall order the expunction. No person as to whom such an order has been entered shall be held thereafter under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of his failure to recite or acknowledge any expunged entries concerning apprehension or trial.

(b) The court may also order that the said entries, including civil revocations of drivers licenses as a result of the underlying charge, shall be expunged from the records of the court, and direct all law-enforcement agencies, the Division of Adult Correction of the Department of Public Safety, the Division of Motor Vehicles, and any other State or local government agencies identified by the petitioner as bearing record of the same to expunge their records of the entries, including civil revocations of drivers licenses as a result of the underlying charge being expunged. This subsection does not apply to civil or criminal charges based upon the civil revocation, or to civil revocations under G.S. 20-16.2. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150. The clerk shall forward a certified copy of the order to the Division of Motor Vehicles for the expunction of a civil revocation provided the underlying criminal charge is also expunged. The civil revocation of a drivers license shall not be expunged prior to a final disposition of any pending civil or criminal charge based upon the civil revocation. The costs of expunging the records, as required under G.S. 15A-150, shall not be taxed against the petitioner.

(b1) Any person entitled to expungement under this section may also apply to the court for an order expunging DNA records when the person's case has been dismissed by the trial court and the person's DNA record or profile has been included in the State DNA Database and the person's DNA sample is stored in the

State DNA Databank. A copy of the application for expungement of the DNA record or DNA sample shall be served on the district attorney for the judicial district in which the felony charges were brought not less than 20 days prior to the date of the hearing on the application. If the application for expungement is granted, a certified copy of the trial court's order dismissing the charges shall be attached to an order of expungement. The order of expungement shall include the name and address of the defendant and the defendant's attorney and shall direct the SBI to send a letter documenting expungement as required by subsection (b2) of this section.

(b2) Upon receiving an order of expungement entered pursuant to subsection (b1) of this section, the SBI shall purge the DNA record and all other identifying information from the State DNA Database and the DNA sample stored in the State DNA Databank covered by the order, except that the order shall not apply to other offenses committed by the individual that qualify for inclusion in the State DNA Database and the State DNA Databank. A letter documenting expungement of the DNA record and destruction of the DNA sample shall be sent by the SBI to the defendant and the defendant's attorney at the address specified by the court in the order of expungement.

(c) The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150."

SECTION 5. G.S. 15A-151(a) reads as rewritten:

"**§ 15A-151. Confidential agency files; exceptions to expunction.**

(a) The Administrative Office of the Courts shall maintain a confidential file containing the names of those people for whom it received a notice under G.S. 15A-150. The information contained in the file may be disclosed only as follows:

(1) To a judge of the General Court of Justice of North Carolina for the purpose of ascertaining whether a person charged with an offense has been previously granted a discharge or an expunction.

(2) To a person requesting confirmation of the person's own discharge or expunction, as provided in G.S. 15A-152.

(3) To the General Court of Justice of North Carolina in response to a subpoena or other court order issued pursuant to a civil action under G.S. 15A-152.

(4) If the criminal record was expunged pursuant to ~~G.S. 15A-145.4,~~ G.S. 15A-145.4 or G.S. 15A-145.5, to State and local law enforcement agencies for employment purposes only.

(5) If the criminal record was expunged pursuant to ~~G.S. 15A-145.4,~~ G.S. 15A-145.4 or G.S. 15A-145.5, to the North Carolina Criminal Justice Education and Training Standards Commission for certification purposes only.

(6) If the criminal record was expunged pursuant to ~~G.S. 15A-145.4,~~ G.S. 15A-145.4 or G.S. 15A-145.5, to the North Carolina Sheriffs' Education and Training Standards Commission for certification purposes only."

SECTION 6. G.S. 17C-13(b) reads as rewritten:

"(b) Notwithstanding ~~G.S. 15A-145.4,~~ G.S. 15A-145.4 or G.S. 15A-145.5, the Commission may gain access to a person's felony conviction records, including those maintained by the Administrative Office of the Courts in its confidential files containing the names of persons granted expunctions. The Commission may deny, suspend, or revoke a person's certification based solely on that person's felony conviction, whether or not that conviction was expunged."

SECTION 7. G.S. 17E-12 reads as rewritten:

"(b) Notwithstanding ~~G.S. 15A-145.4,~~ G.S. 15A-145.4 or G.S. 15A-145.5, the Commission may gain access to a person's felony conviction records, including those maintained by the Administrative Office of the Courts in its confidential files containing the names of persons granted expunctions. The Commission may deny, suspend, or revoke a person's certification based solely on that person's felony conviction, whether or not that conviction was expunged."

SECTION 8. Sections 2, 3, and 4 of this act become effective December 1, 2012, and apply to petitions filed on or after that date, but petitions filed prior to that date are not abated by this act. The remainder of this act becomes effective December 1, 2012.

NORTH CAROLINA GENERAL ASSEMBLY
Legislative Services Office

George R. Hall, Legislative Services Officer

Research Division
300 N. Salisbury Street, Suite 545
Raleigh, NC 27603-5925
Tel. 919-733-2578 Fax 919-715-5460

O. Walker Reagan
Director

TO: Members of the LRC Committee on Criminal Record Expunctions
FROM: Brenda Carter and Susan Sitze, Committee Co-Counsel
RE: Summary of North Carolina Law Concerning the Expunction of Criminal Records

In limited circumstances, North Carolina law permits the expunction of certain offenses from a person's criminal record. Expunction is the process by which a record of criminal conviction is removed by order of the court, and the individual is restored to the status he or she occupied before the arrest or indictment. The terms 'expunction' and 'expungement' are often used interchangeably, and both appear in the statutes. There are several requirements that must be met for expunction and a person may generally be granted only one expungement in his or her lifetime. Provisions for the expunction of criminal records are set out in Article 5, Chapter 15A of the General Statutes. This memorandum contains a brief overview of the circumstances under which expunction is authorized in this State.

Expunction When Charges Dismissed/Not Guilty

- ***Charges Dismissed Or Person Found Not Guilty*** - G.S. 15A-146 provides for the expunction of records when charges are dismissed or there is a finding of not guilty. A person charged with any crime, whether a misdemeanor or a felony, who is not convicted of that offense, can apply to have the charge expunged. *Persons who have previously received an expungement under this or other specified provisions, or persons who have previously been convicted of a felony would not qualify under this provision.*

- ***Charges Dismissed Or Person Found Not Guilty As A Result Of Identity Fraud*** - G.S. 15A-147 provides for the expunction of records when a charge is dismissed or there is a finding of not guilty in a case where a person is charged with a crime as a result of someone else using the person's identifying information to commit an infraction or crime. When the charge against the person is dismissed, a finding of not guilty is made, or the conviction is set aside, the person can apply to have the charge expunged. *There is no limit to the number of times a person who is the victim of identity fraud can qualify for an expungement under this provision.*

- ***Charges Dismissed Or Person Found Not Guilty Of Certain Drug-Related Offenses Committed While Not Over The Age Of 21*** - G.S. 15A-145.2(b) provides for the expunction of records when a person is charged with misdemeanor possession of a controlled substance or possession of less than 1 gram of cocaine*, and the charges are subsequently dismissed or there is a finding of not guilty. *An order of expunction must be entered if the court determines that the person was not over 21 at the time of the offense for which the person was charged.* A similar provision is contained in G.S. 15A-145.3(b) with regard to misdemeanor violations of the Toxic Vapors Act and possession of drug paraphernalia. **Note: Effective 12-1-11 this provision applies to both misdemeanor and felony drug possession.*

- ***Pardon of Innocence*** – G.S. 15A-149 provides for the expunction of records when a person has been granted a pardon of innocence by the Governor.

Expunction When the Offender Was Under a Specified Age at the Time of the Offense

- ***Juvenile Records*** - G.S. 7B-3200 provides for a person to petition for the expunction of records relating to the person's having been adjudicated delinquent or undisciplined while a minor. *This provision does not allow the expunction of records relating to an offense that would have been a Class A-E felony if committed by an adult.* The statute also provides for expunction of juvenile records when a juvenile petition was dismissed without adjudication.

- ***Convictions of Misdemeanor Committed While under the Age of 18*** - G.S. 15A-145 provides for the expunction of records for first offenders convicted of a misdemeanor committed while under the age of 18. *A person who is convicted of a misdemeanor committed prior to reaching the age of 18 may have that conviction expunged after 2 years, provided the person has completed any term of probation and assuming there have been no other convictions within that time period.*

- ***Misdemeanor Possession of Alcohol Committed While under the Age of 21*** - G.S. 15A-145 also provides for the expunction of records for first offenders convicted of misdemeanor possession of alcohol who were under the age of 21 at the time the offense was committed. *A person who is convicted of misdemeanor possession of alcohol committed while under the age of 21 may have that conviction expunged after 2 years, provided the person has completed any term of probation and assuming there have been no other convictions in that time period.*

- ***Misdemeanor Cyberbullying Committed While under the Age of 18*** – G.S. 14-458.1(c) provides for the conditional discharge and dismissal of a misdemeanor cyberbullying offense committed while under the age of 18 and provides that expunction may be obtained pursuant to G.S. 15A-146. *(See Charges Dismissed or Person Found Not Guilty above)*

- ***Certain Gang Offenses Committed While under the Age of 18*** – G.S. 15A-145.1 provides for the expunction of records for first offenders who are either: (i) convicted of, or (ii) discharged and dismissed, for certain gang offenses, when the offense was committed while the offender was under the age of 18. *A person who is convicted of, or discharged and dismissed for, one of these offenses committed while under the age of 18 may have that conviction expunged after 2 years, provided the person has completed any term of probation and assuming there have been no other convictions in that time period.*

- ***Nonviolent Felonies Committed While under the Age of 18 – (Effective December 1, 2011)*** G.S. 15A-145.4 *(as enacted in Senate Bill 397, Session Law 2011-278)* provides for the expunction of records for first offenders who are convicted of a Class H or Class I felony committed while the offender was under the age of 18. The provision does not apply to any felony that includes assault as an essential element of the offense, or to any offense that requires the person to register as a sex offender or that is otherwise specifically excluded. *A person who is convicted of an eligible felony offense committed while under the age of 18 may have that conviction expunged after 4 years, provided the person has completed any active sentence, period of probation, and post-release supervision, and there have been no other convictions in that time period. A petitioner seeking expunction under this provision must possess a high school diploma, a high school*

graduation equivalency certificate, or a GED, and must have completed at least 100 hours of community service since the conviction.

- ***Conditional Discharge and Expunction for First-time Drug Offenders Not Over Age 21*** – G.S. 15A-145.2(a) and G.S. 15A-145.3(a) authorize the expunction of records for offenses discharged and dismissed pursuant to G.S. 90-96(a) or (a1) or G.S. 90-113.14(a) or (a1). These conditional discharges and dismissals are for first offenders who were not over the age of 21 at the time the offense was committed, and who have not previously been convicted of any offense under North Carolina's Controlled Substances Act, Toxic Vapors Act, or Drug Paraphernalia Act, or under corresponding federal law or the laws of another state. When such person pleads guilty to or is found guilty of misdemeanor drug possession, possession of less than one gram of cocaine*, possessing drug paraphernalia, or inhaling or possessing any substance having the property of releasing toxic vapors or fumes, the court may, without entering a judgment of guilt and with the consent of such person, defer further proceedings and place the offender on probation under certain conditions. *Discharge and dismissal under this provision may occur only once with respect to any person. *Note: Effective 12-1-11 this provision applies to both misdemeanor and felony drug possession.*

- ***Cancellation and Expunction for First-time Drug Offenders Not Over Age 21*** – G.S. 15A-145.2(c) and G.S. 15A-145.3(c) apply to first offenders who were not over the age of 21 at the time the offense was committed, and who have not previously been convicted of any offense under North Carolina's Controlled Substances Act, Toxic Vapors Act, or Drug Paraphernalia Act, or under corresponding federal law or the laws of another state. No sooner than 12 months after conviction, the person may apply to the court to have a conviction of misdemeanor drug possession, possession of less than one gram of cocaine*, possessing drug paraphernalia, or inhaling or possessing any substance having the property of releasing toxic vapors or fumes, cancelled and records of that conviction expunged. *Cancellation and expunction under this provision may occur only once with respect to any person. *Note: Effective 12-1-11 this provision applies to both misdemeanor and felony drug possession.*

Expunction of Larceny Conviction after 15 Years Have Elapsed From Date of Conviction

- ***Misdemeanor Larceny*** – G.S. 15A-145(d1) provides for the expunction of a misdemeanor conviction of misdemeanor larceny pursuant to G.S. 14-72(a) if the person has no felony convictions, it has been at least 15 years since the conviction for misdemeanor larceny, and the person has had no felony or misdemeanor convictions during that 15 year period.

EXPUNCTION OF CRIMINAL RECORDS IN NORTH CAROLINA

CITATION	ELIGIBLE OFFENSES	WAITING PERIOD	STIPULATIONS
G.S. 15A-146 **Charges Dismissed or there is a finding of Not Guilty**	Misdemeanor or felony. Infraction under G.S. 18B-302(i) [purchase or possession of malt beverages or unfortified wine, or consumption of any alcoholic beverage, by a person 19 or 20 years old] prior to December 1, 1999.	None	Charges dismissed or finding of not guilty for offense. Not applicable if person has had previous expungement* of any kind or has a felony conviction. **Unless the previous expungement was prior to October 1, 2005 and was for an offense that occurred within the same 12-month period or was dismissed in the same term of court as the offense(s) for which the current expungement is sought.*
G.S. 15A-147 **Charges Dismissed or there is a finding of Not Guilty, as Result of Identity Theft**	Infraction, misdemeanor or felony	None	Charges brought as result of identity theft and charges dismissed, finding of not guilty, or conviction is set aside. No costs taxed against petitioner.
G.S. 15A-145.2(b) G.S. 15A-145.3(b) **Charges Dismissed Certain Drug Offenses/Toxic Vapors Act**	--Misdemeanor possession of a controlled substance, violation of the toxic vapors act, or possession of drug paraphernalia. --Felony possession of less than 1 gram of cocaine.* **Effective 12-1-11, includes felony possession of any controlled substance. (HB 642, Session Law 2011-192)*	None	Charges dismissed or finding of not guilty. Person must be 21 or under at time of offense.

CITATION	ELIGIBLE OFFENSES	WAITING PERIOD	STIPULATIONS
G.S. 15A-149 **Pardon of Innocence**	Any offense	None	Petitioner has received pardon of innocence from the Governor
G.S. 7B-3200(h) **Juvenile Records** Alleged Delinquent/Undisciplined	Any allegation of juvenile delinquency. Any allegation of undisciplined juvenile.	Petitioner is 16 years or older. Petitioner is 18 years or older.	Delinquency alleged, but juvenile petition dismissed. Undisciplined alleged, but juvenile petition dismissed.
G.S. 7B-3200(a),(b) **Juvenile Records** Adjudicated Delinquent/Undisciplined	Any adjudication of undisciplined. Any adjudication of delinquency for a misdemeanor or Class F-I felony.	Petitioner is 18 years or older. For delinquency, at least 18 months after release from juvenile court jurisdiction.	Petitioner has had no subsequent delinquent adjudications or convictions of a misdemeanor or felony as an adult.
G.S. 15A-145 **First Offender Under 18** **(Age 21 for certain alcohol offenses)**	Misdemeanor	Whichever of the following is later: • 2 years after the date of conviction; • Completion of any period of probation,	No other convictions, and Petitioner must have been: • Under 18 at the time of the offense; or • If offense is misdemeanor possession of alcohol in violation of G.S. 18B-302(b)(1), petitioner must have been under 21 at the time of the offense.
G.S. 15A-145.1 and G.S. 14-50.29 **Certain Gang Offenses**	Class H felony under Street Gang Suppression Act Enhanced offense under G.S. 14-50.22 (enhances any criminal offense by one class if done as part of gang activity)	After discharge and dismissal ; or For convictions, whichever of the following is later: • 2 years after the date of conviction; • Completion of any period of probation.	Petitioner must have been under 18 at the time of the offense. Petitioner has no prior misdemeanor or felony convictions.

CITATION	ELIGIBLE OFFENSES	WAITING PERIOD	STIPULATIONS
G.S. 14-458.1(c) **Cyberbullying**	Cyberbullying by person under the age of 18 years.	Upon discharge and dismissal.	Petitioner must have been under 18 at the time of the offense. Expunction is pursuant to G.S. 15A-146.
G.S. 15A-145.2(a) G.S. 15A-145.3(a) **First-time drug offenders** (Discharge & Dismissal)	Misdemeanor possession of a controlled substance, violation of the toxic vapors act, or possession of drug paraphernalia. Felony possession of less than 1 gram of cocaine.* **Effective 12-1-11, includes felony possession of any controlled substance (HB 642, Session Law 2011-192)*	Upon discharge and dismissal under G.S. 90-96(a) or (a1) or G.S. 90-113.14(a) or (a1).	Petitioner must have been under 21 at the time of the offense and must have no prior convictions and no prior discharge and dismissal under this statute.
G.S. 15A-145.2(c) G.S. 15A-145.3(c) **First-time drug offenders** (Convicted)	Misdemeanor possession of a controlled substance, violation of the toxic vapors act, or possession of drug paraphernalia. Felony possession of less than 1 gram of cocaine* **Effective 12-1-11, includes felony possession of any controlled substance (HB 642, Session Law 2011-192)*	No sooner than 12 months after conviction.	Petitioner must have been under 21 at the time of the offense and must have no prior convictions and no prior expunctions under this statute.
G.S. 15A-145(d1) **Misdemeanor Larceny**	Misdemeanor larceny pursuant to G.S. 14-72(a); value of goods $1,000 or less.	15 years from date of conviction.	Petitioner must have no felony convictions; and no misdemeanor convictions in the 15 years prior to petition for expunction.

CITATION	ELIGIBLE OFFENSES	WAITING PERIOD	STIPULATIONS
G.S. 15A-145.4 *(as enacted in Senate Bill 397, Session Law 2011-278 and effective December 1, 2011)* ***Nonviolent Felony***	Class H or Class I felony that does not include assault as an essential element of the offense, does not require the offender to register as a sex offender, or is otherwise specifically excluded.	Four years from date of conviction	Petitioner must have been under 18 at the time of the offense. Petitioner must *possess a high school diploma, graduation equivalency certificate, or a GED; and must have completed at least 100 hours of community service since the conviction.*

Chart Prepared by: *Brenda Carter & Susan Sitze, Staff Attorneys*
Research Division, NC General Assembly

Appendix E

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE RESEARCH COMMISSION

STATE LEGISLATIVE BUILDING

RALEIGH, NC 27601

April 12, 2012

TO THE MEMBERS OF THE LEGISLATIVE RESEARCH COMMISSION:

Attached for your consideration is the report to the 2012 Regular Session of the 2011 General Assembly. This report was prepared by the Legislative Research Commission's Committee on Efficiencies in State Government, pursuant to G.S. 120-30.17(1).

Senator Ralph Hise
Co-Chair

Representative Hugh Blackwell
Co-Chair

Co-Chairs
Committee on Efficiencies in State Government
Legislative Research Commission

LEGISLATIVE RESEARCH COMMISSION

EFFICIENCIES IN STATE GOVERNMENT COMMITTEE

NORTH CAROLINA GENERAL ASSEMBLY

REPORT TO THE 2012 SESSION of the 2011 GENERAL ASSEMBLY OF NORTH CAROLINA

APRIL, 2012

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TRANSMITTAL LETTER

April 12, 2012

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TO THE MEMBERS OF THE 2012 REGULAR SESSION
OF THE 2011 GENERAL ASSEMBLY

The Legislative Research Commission herewith submits to you for your consideration its report and recommendations to the 2012 Regular Session of the 2011 General Assembly. The report was prepared by the Legislative Research Commission's Committee on Efficiencies in State Government, pursuant to G.S. 120-30.17(1).

Respectfully submitted,

Senator Philip E. Berger President Pro Tempore of the Senate	Representative Thomas R. Tillis Speaker of the House of Representatives

Co-Chairs
Legislative Research Commission

LEGISLATIVE RESEARCH COMMISSION MEMBERSHIP

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2011 – 2012

President Pro Tempore of the Senate
Senator Philip E. Berger
Co-Chair

Senator Thomas M. Apodaca
Acting Co-Chair

Senator Peter S. Brunstetter
Senator Linda D. Garrou
Senator Martin L. Nesbitt, Jr.
Senator Richard Y. Stevens

Speaker of the House of Representatives
Representative Thomas R. Tillis
Co-Chair

Representative Timothy K. Moore
Acting Co-Chair

Representative John M. Blust
Representative Justin P. Burr
Representative Mike D. Hager
Representative Edith D. Warren

PREFACE

[Back to Top]

The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is the general purpose study group in the Legislative Branch of State Government. The Commission is co-chaired by the President Pro Tempore of the Senate and the Speaker of the House of Representatives and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigation into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

The Legislative Research Commission authorized the study of Efficiencies in State Government, under authority of G.S. 120-30.17(1). The Committee was chaired by Senator Ralph Hise and Representative Hugh Blackwell, Co-Chairs of the Committee. The full membership of the Committee is listed under Committee Membership. A committee notebook containing the committee minutes and all information presented to the committee will be filed in the Legislative Library by the end of the **2011-2012** biennium.

COMMITTEE PROCEEDINGS

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The Legislative Research Commission's Committee on Efficiencies in State Government met four times after the 2011 Regular Session. The Committee's Charge can be found here. The following is a brief summary of the Committee's proceedings. Detailed minutes and information from each Committee meeting are available in the Legislative Library. Materials distributed at the meetings, including Power Point presentations, can be found on the Committee's website.

This Committee focused primarily on two areas within the scope of its charge – zero-based budgeting and data analytics – and ultimately recommended three pieces of legislation. A summary of the Committee's discussion on each of these topics, along with the legislative proposals, are discussed below followed by a summary of the Committee's discussion of other issues for which no legislative proposal was recommended.

ZERO-BASED BUDGETING

Zero-based budgeting is a comprehensive budgeting system designed in the private sector in the 1970s as a means of analyzing components of budgets, ranking and evaluating activities, and encouraging decisions about maintaining, reducing, or increasing funding for those activities, thereby preserving, reducing, or eliminating those activities. The idea is to start from a zero base and evaluate programs or activities as though they are being created from the outset. The Committee discussed zero-based budgeting at each of its three meetings prior to adopting the report at its final meeting.

At the first meeting held on November 10, 2011, the Committee heard three presentations related to the budgeting process and the use of zero-based budgeting, including one by Fiscal Research staff on the General Assembly's use of justification and continuation reviews and one by a Senior Fellow at the National Conference of State Legislatures about other states' experiences with zero-based budgeting. At the second meeting, held on December 8, 2011, the Committee heard from the Office of State Budget and Management about the Executive Branch's use of program budgeting. At the third meeting, held on February 16, 2012, the Committee took a closer look at House Bill 627, *Study Efficiency/Cost Savings in State Government*, which was introduced by Representative Blackwell and Representative Crawford during the 2011 Session and proposed a zero-based budgeting review process to study efficiency and cost savings in State government.

Justification and Continuation Reviews

At its November 10, 2011, meeting Richard Bostic with the Fiscal Research Division provided the Committee with an overview of the General Assembly's experience with justification and continuation reviews. Mr. Bostic told the Committee that, for many years, members have been dissatisfied with the incremental approach that exists in State budgeting. He described several efforts to study the issue, but reported that none of the bills or studies resulted in any final recommendations being presented to the Legislature.

However, in 2005, the Legislative Services Commission authorized staff to begin a pilot program to justify the existence of selected programs, to analyze the impact of eliminating those programs, and to examine the expenditures and level of service for the programs. This effort resulted in staff developing a justification review process and selecting six programs for evaluation under that process. The goals of the process included (1) describing the programs, (2) identifying the major policy issues to be addressed by the Legislature, (3) considering how to implement the programs more efficiently and at less cost, and (4) identifying performance measures for those programs. Mr. Bostic said months of staff time were spent reviewing the programs and ultimately producing justification review reports. After allowing a period for agency comments, he said the reports were published in spring 2007 and presented to the Appropriations Committees during the 2007 Session. He shared the findings and ultimate outcomes of the justification review reports, including those for the Principals' Executive Program, the North Carolina Welcome Centers, residential schools for the deaf and blind, the Office of Administrative Hearings, Alcohol & Law Enforcement, and secondary roads funding, and he categorized the overall effort as a somewhat successful attempt.

In the following year, leadership moved toward a continuation review process, in which agencies were responsible for performing the studies. Mr. Bostic explained that staff then critiqued the studies and provided their analysis to the Appropriations chairs. In the meantime, programs selected for review were funded at a nonrecurring status, with continuation of funding dependent upon the Legislature's consideration and decision regarding the continuation review reports. Mr. Bostic said that, similar to the justification review process, objectives of the continuation review were to identify program performance measures, to determine whether to continue, reduce, or eliminate funding, to outline the consequences of discontinuing the program, and to identify other issues for legislative attention. He told members that continuation reviews have taken place in 2007, 2008, 2009 and 2011 and that a formal mission statement is now included in every budget bill describing the General Assembly's intent to establish a process for periodic review of programs.

Mr. Bostic explained that 20 continuation reviews have been completed since 2007 with results varying from elimination to increased funding. Specifically, the results have been as follows: six programs were returned to prior year level funding; five programs had general fund support eliminated; four programs had part of their funding restricted; three programs received increased funding; and two studies resulted in no action. This year, seven new continuation reviews and four new justification reviews were authorized and due prior to the start of the 2012 Regular Session.

Executive Branch Use of Program Budgeting

At the Committee's second meeting, held December 8, 2011, State Budget Director, Andy Willis, and Deputy Director for Management at OSBM, Mr. Jonathan Womer, provided the Committee with an overview of the Executive Branch's current use of program budgeting. They indicated that the Executive Branch has been working on program and performance-based budgeting for the past four or five years, and it has undergone many challenges. Among the challenges is the fact that the budget system is based on a 25-year old legacy concept, that the budget has increased 150% during that time, and that it is infinitely more complex. They stated that among OSBM's goals is to

identify the various programs across State agencies, to create a framework to connect those programs with results, and to reduce or eliminate inconsistency and redundancy across State agencies. They described how OSBM is setting up a standing program and measure review committee to receive data, to determine how agencies are using these measures, and to implement a review process before measures are changed, updated, or included to insure that the right measures are being collected over time.

Zero-Based Budgeting Process

At its November 10, 2011, meeting, Mr. John Turcotte, Director of the Program Evaluation Division, provided the Committee with an overview of the zero-based budgeting process. He explained that the first step is determining decision units, which would be the equivalent of programs or divisions within State agencies. Each decision unit would be given instructions to prepare decision packages outlining proposed service levels. Under this system, decision units would typically provide four decision packages: (1) a minimum level package, which can often be difficult to obtain from agencies without strong encouragement from legislators and staff, (2) a reduced level package, with the level of reduction to be defined by the General Assembly, (3) a current level package, and (4) an enhanced level package. Mr. Turcotte further clarified that agencies would be responsible for outlining the consequences of each funding level in terms of specific outputs and outcomes. As part of the process, agencies would be responsible for ranking the components of each decision package. Then, the General Assembly would have the opportunity to review the rankings and view the consequences of changing those rankings in terms of trade-offs in funding.

Mr. Turcotte affirmed that the process of building decision packages is time-consuming, but said high amounts of agency staff time is already being spent responding to spot information requests from both the legislative and executive branches. He said the zero-based budgeting process forces a certain level of discipline within agencies. Agencies charged with administering the project would have to provide evidence of a project's merit above other projects eligible for funding. He said that, while political choice would not be eliminated, the process for determining funding priorities would be more transparent. Mr. Turcotte noted that political influences often become a factor in implementing zero-based budgeting. For example, he said it is reasonable to expect that if the process is phased in, then agencies will lobby to participate in the last phase of review, with the belief that implementation could be abandoned before the last cycle is reached.

Other States' Experiences with Zero-Based Budgeting

Mr. Ronald Snell, Senior Fellow at the National Conference of State Legislatures, presented at the November 10, 2011, meeting on other states' experiences with zero-based budgeting. Mr. Snell said that, unlike performance budgeting, zero-based budgeting is fundamentally about reducing budgets. He further explained that states have had difficulty in adapting the highly-structured nature of the original system, but said the basic concept of zero-based budgeting has had a great deal of appeal to governors and legislators over the years. Mr. Snell described two variants of zero-based budgeting that have been used since the Reagan Administration. The simplified form used by the Reagan Administration was alternative or target budgeting, meaning that agencies are

told to calculate budgets at some level below the previous year's funding level, at the same funding level as the previous year, and at some growth level, and to present policymakers with the consequences of those alternatives. Mr. Snell said this strategy can be a very useful today and continues in use.

The other form of zero-based budgeting is a periodic review of agency budgets on a longer cycle of four to ten years. He said a number of state governments have adopted this practice as a legislative or executive branch goal, including Florida in the early 2000s and Oklahoma more recently. Mr. Snell described the effort by the State of Florida in 2000, which included an eight-year joint legislative and executive branch review process, with reviews conducted in the legislative interim. He said the effort involved fiscal budget staff, the Legislature's Office of Program Policy Analysis and Government Accountability (OPPAGA), and the executive budget office, and they evaluated agencies on a very thorough basis. Mr. Snell concluded that these studies, while very useful, were also very expensive and time-consuming and said the program was discontinued after a few years. The Oklahoma Legislature commenced a four-year review process in 2003. He described the experiment as a primarily legislative branch process and outlined the Legislature's efforts to review the Oklahoma Department of Education, the second largest agency in the state. After a number of weeks of hearings, he said the effort was abandoned due to demands on time of legislators and legislative staff. However, Mr. Snell said zero-based budgeting is currently being effectively implemented as an executive branch budgeting activity in the relatively small states of Idaho and New Hampshire. He said the process has been driven in both instances by executive order. Mr. Snell pointed out that a significant factor in the success of both programs has been the Governors' direct involvement in the process.

Mr. Snell stated that the concept, as a cyclical process, is very similar to the sunset review process employed by many legislatures in the 1970s and 1980s as well as the justification reviews currently conducted by the General Assembly. Moreover, he said experience shows that zero-based budgeting has been very difficult to adapt to the legislative budgeting process. He reminded the group that the previously shared success stories had largely been conducted within the executive branch and said the state of Oklahoma's experiment provided evidence that zero-based budgeting is a complex process that makes enormous demands on the time of the people involved. Still, he said, there are other similar processes of bottom-up review, such as the review programs conducted in North Carolina, which approach the same results as zero-based budgeting.

The Committee recognized that, based on the information presented, changing a fundamental budget process is not an activity that takes one or two years, but rather is a long-term process that requires careful planning and a clear delineation of goals and objectives. Moreover, it may be better implemented on an incremental basis given the scope and resource-intensive nature of the process.

House Bill 627: Study Efficiency/Cost Savings in State Government

At both the December 8, 2011, and February 16, 2012, meetings, the Committee discussed House Bill 627, *Study Efficiency/Cost Savings in State Government.* The bill does not implement zero-based budgeting across State government immediately, but it establishes a 10-member commission to identify an agency or agencies to undergo an

experimental zero-based budgeting review. As contemplated by the bill, the Joint Efficiency and Cost-Savings Study Commission would be an intensive working commission requiring a significant time commitment on the part of the members and staff. Membership would consist of five Senators appointed by the President Pro Tempore of the Senate and five Representatives appointed by the Speaker of the House of Representatives. The Directors of the Fiscal Research and Program Evaluation Divisions would serve as technical advisors to the Commission and members of the Fiscal Research Division would serve as commission staff. Under the bill, the Commission would select the agencies it wished to review and would require submission of information in a streamlined form determined by the Commission. Agencies would identify decision units for Commission approval and provide decision packages and quantitative impact estimates. The Commission would have the authority to reject any decision package that is not submitted according to the established guidelines. Finally, the Commission would issue instructions on how to rank the packages and would also require reporting measures.

Mr. Turcotte identified the membership of the Commission and the authority delegated to staff as key factors that would contribute to the success of the Commission. The members who are appointed need to have the time to commit to the work of the Commission because it will require a significant amount of deliberation as well as staff time. Also, the Commission staff has to be given authority to work with the Governor's office and the agency involved when selected for review. Mr. Turcotte pointed out that much of the work will be done at the staff level because the nature of the work is highly technical and very complex.

The bill contemplates an 18-month process to identify up to three agencies. After the initial pilot, the next step would likely be a two- or three- year effort requiring the passage of more comprehensive legislation that sets out a long-term schedule. Mr. Turcotte estimates that based on North Carolina's size, it may take ten to twelve years to fully implement this process across all State agencies. Critical to the success of this effort is cooperation and collaboration among the Legislature, the Executive Branch, and the various agencies.

At the final meeting on April 12, 2012, the Committee voted to recommend Legislative Proposal #1, which establishes the Joint Legislative Efficiency and Cost-Savings in State Government Study Commission (Appendix D). The legislation mirrors House Bill 627, which passed the House in 2011 but was not considered by the Senate. House Bill 627 is currently in the Senate State and Local Government Committee and would be eligible for consideration during the upcoming session.

TAXPAYER INVESTMENT ACCOUNTABILITY

At the February 16, 2012, meeting, the Committee discussed Senate Bill 463, *Accountability for Taxpayer Investment* Act, which was introduced by Senator Mansfield and cosponsored by Senator Hise and others during the 2011 Regular Session. Mr. Turcotte explained that the genesis for this bill was the fact that Senator Mansfield was surprised to learn that State agency websites do not provide clear definitions of services provided, outcomes achieved, and costs associated with their various programs. Generally speaking, there appears to be little information available to indicate

performance levels. Additionally, Mr. Turcotte said Senator Mansfield was concerned about the effect that turnover in executive and legislative leadership has on the degree of emphasis placed on accountability and performance measurement. Consequently, Senate Bill 463 envisions the development of a system similar to the federal Governmental Accounting Standards Board, which sets accounting standards for all units of government in the United States and allows for comparison of data between units. Mr. Turcotte described this type of system as relatively stable and permanent despite any turnover in leadership.

The bill would establish a standards board to define programs supported by State agencies and to provide, for each program, information related to the condition the program is designed to address; program resources, activities and processes; connection between programs, services, and activities and desired results; and other performance measures. He said this system would ease citizen access to information as well as comparisons between agencies and programs.

Under the bill, the system would be phased in over time, with agencies ultimately required to file an annual certificate of compliance with the State Auditor. In addition, he described an enforcement mechanism allowing a citizen to file a civil suit alleging that a State agency has not complied with the requirements of the standards board. The purpose of the bill is to implement a permanent, ongoing mechanism that eliminates any ebbs and flows in accounting and accountability measures.

With regard to cost, since agencies are already incurring costs for websites, annual reports, and other public relations materials, the intent is for those materials to be retooled rather than creating a new statewide information technology system. He added that the board would be an ex-officio board that would receive no salaries, and the program would be staffed by the State Controller's office. The system could provide an opportunity to streamline the reporting that is already being done. Senate Bill 463 also complements a zero-based budgeting effort. In the absence of this act, the zero-based budgeting bill would force agencies to work harder to pull together needed information on a consistent level.

At its final meeting on April 12, 2012, the Committee recommended Legislative Proposal #2, *Accountability for Taxpayer Investment Act*, which mirrors Senate Bill 463 (Appendix D). Senate Bill 463 is currently in House Finance and would be eligible for consideration in the upcoming session.

DATA ANALYTICS

Data analytics or "business intelligence" involves the integrated use of computer technology, statistics, and operational research which can be used to improve efficiency and to measure performance across State government. Among the goals of its use are to align outcomes with program or service goals and to provide broad-based access to consistent information, thereby increasing transparency and accountability in government.

At its first meeting on November 10, 2011, the Committee heard informational presentations about data analytics by four different software vendors: IBM, Oracle, Oversight Systems, and SAS. The presenters shared case studies and elaborated on how

software developed by their companies is used to detect fraud and waste. A consistent theme throughout the presentations was that states often have multiple systems of record, which can result in problems trying to bring the data together for use by policymakers.

Robert Dolan, Jr., IBM's Global Strategy Leader for Public Sector Business Analytics, delivered the first presentation. Mr. Dolan highlighted how state governments face increased expectations to deliver services more efficiently and effectively in light of current economic conditions. One of the major obstacles faced by governments is the fact that they tend to operate in silos, which prevents the flow of information. Mr. Dolan told the Committee that analytics can give government a holistic view of programs, budgets, and results, transforming existing data into a tool that can be used to make decisions about program investments and resource management and to reduce financial and operational risk. Mr. Dolan provided examples of government agencies in other states that are currently employing analytics applications, including Ohio's statewide consolidated business intelligence platform and the Texas Department of Education's student performance measurement system. Each of the examples, he said, reflected the decision by officials in those states to place value on a culture of analytics. The Committee expressed interest in knowing whether IBM could provide data related to return on investment in either dollars saved or outcomes achieved in its current government projects. The IBM representatives indicated that they could provide return on investment studies for several of the previously referenced projects.

The second presentation was by Mr. Randy Parrett and Mr. John Gearhart of Oracle. Mr. Parrett noted that Oracle's local clients include the NC Department of Public Instruction and the NC Department of Revenue. Mr. Gearhart cited as one benefit of analytics applications the integration of multiple systems of record rather than requiring agencies to transfer data back and forth. Mr. Gearhart identified one such product as Oracle's Relational Database Management System and detailed several examples of the product in use, including a project at the North Carolina Department of Public Instruction related to determining average teacher salary as well as a Virginia Department of Motor Vehicles project to evaluate delivery of citizen services and predict staffing requirements. Citing an example of a public safety program in New York City, Mr. Gearhart further expressed that use of analytics applications can result in increased accountability by making it easier to monitor agency performance as well as flexibility to rapidly respond to changing federal mandates. He suggested creating a small, focused analytical team, comprised of current staff that could prioritize solutions to implement and aggregate data from various sources at the Legislature. Finally, Mr. Gearhart recommended starting small and expanding the scope of applications to match the corresponding growth of expertise.

The third presenter was Mr. Christopher Rossie, Vice President of Public Sector and co-founder of Oversight Systems, which is based in Atlanta and is not currently doing business with the State of North Carolina, but leverages North Carolina technology in its product. Mr. Rossie noted that the majority of opportunities for implementing data analytics in State government involve either waste, fraud and abuse prevention, reconciliation of disbursements, or performance management. Mr. Rossie suggested the first area to focus is on improper payments, particularly vendor payments, grant receipts, or state entitlement payments. Further, Mr. Rossie discussed the capability of analytics

applications to predict anomalies and unexpected occurrences. He referenced an example with vendor payments at the US Department of Defense and said analytics had helped the agency prevent over $2 billion in improper payments. Mr. Rossie then outlined some recommendations for implementing data analytics in North Carolina, including adopting a bipartisan vision and objectives, designating a project management office or "center of excellence" as the lead force in the effort, and taking small steps forward. Mr. Rossie also noted that agency buy-in is a key to success and emphasized the importance of overcoming the concern that data analytics is being implemented as a result of poor agency performance. Consequently, he recommended a separation between those charged with implementing the program and those concerned with the potential results of the program.

The fourth presenter on this topic was Eric Hunley, Principal Solutions Architect at SAS. Mr. Hunley said decision analytics often focuses on three areas of technology: holistic data sharing, intelligent program management, and predictive analytics and forecasting. He described holistic or enterprise data sharing as sharing data across and within agencies and consolidating that information to make it more meaningful. Mr. Hunley cited North Carolina's CJLEADS program and Louisiana's statewide fraud management program, both developed by SAS, as examples of consolidating data across agencies. He also discussed the NC Department of Health and Human Services and Division of Medical Assistance's budget and forecast project and dashboard applications as examples of intelligent program management. Finally, he mentioned how the Department of Transportation in North Carolina and other states are using this technology to evaluate and prioritize road maintenance decisions and to analyze and prevent officer complaints.

At its second meeting on December 8, 2011, the Committee heard a presentation by Karlynn O'Shaughnessy of the Fiscal Research Division. Her presentation provided a legislative history on the use of business intelligence and a description of current applications as well as projects under development. She explained that there is not a comprehensive, overarching program currently in place because initial data integration efforts were concentrated in smaller, specific projects, like CJLEADS. She indicated that there are two primary programs: CJLEADS and the Fraud Detection System. She also reported that there is a varying degree of interest among agencies in participating in a more comprehensive program, largely because many agencies already have processes in place to detect fraud and have limited resources.

Generally speaking, the Committee observed that analytics is an important tool for measuring outcomes, developing budgets, and considering policy changes. The Committee expressed a strong sentiment that State government must become more efficient and effective in the future and believes that analytics is the next step in that process. With that in mind, the Committee at its final meeting recommended the Legislative Proposal #3, *Smarter Government/Business Intelligence Initiative* (Appendix D).

OTHER TOPICS

NC Thinks Program

The NC Thinks Program, which began in 1975 as the "Employee Suggestion Program," is a statewide program where State employees make suggestions about improving State government. At its December 8, 2011, meeting, Carl Goodwin with the Office of State Personnel provided the Committee with an overview of the program.

Mr. Goodwin outlined the recommended process for submitting ideas to the Program. First, it is worthwhile to note that the program is limited to suggestions by State employees. Mr. Goodwin said the Governor's office has an efficiency group that takes recommendations from the general public and State contractors. A State employee that has a suggestion can discuss his or her idea with a supervisor, and then the employee may submit the suggestion to the Program. In 2008, the Program implemented an online system for receiving suggestions. Mr. Goodwin said the electronic system has greatly enhanced the employee's ability to make suggestions. The electronic system makes the Program aware of the suggestion at the time of submission to the agency. The Program forwards the suggestion to the agency's coordinator, and the coordinator makes a determination in conjunction with an agency evaluator. There is a trial period within the agency to implement the idea. The period lasts either three months or 12 months depending on the length of time needed to determine the cost savings. If the idea is valid, the agency coordinator will then refer the suggestion to the State Review Committee. The State Review Committee determines the statewide impact and recommends the Program make an award for the suggestion. The State Review Committee meets quarterly or more often if necessary. Once the suggestion has gone through all parts of the process and has been approved, then the Program notifies the agency and employee of the award.

State employees are not required to follow this recommended process and may submit a suggestion online without discussing the suggestion with a supervisor. Mr. Goodwin noted that employees who were not encouraged by the agencies to submit the suggestion often call his office. Mr. Goodwin said one reason agencies do not encourage employees to submit suggestions is that the agency fails to consider whether the suggestion would benefit other agencies.

An employee can receive up to 20% of the annual savings of the suggestion, up to $20,000 per individual, and up to a maximum of $100,000 for a team suggestion. If a valuable suggestion does not produce monetary savings, the employee can be awarded up to three days of leave or receive a certificate. Mr. Goodwin described typical suggestions, which include ideas related to safety, costs, productivity, efficiency, conditions of employment, services, and energy resources. Some suggestions are ineligible for consideration, such as those that have already been considered or are in use, complaints or grievances, salary or benefits changes, enforcement of existing rules, routine maintenance, ideas that are not measurable, or ideas related to job responsibility. The Program lacks the authority to require agencies to implement suggestions.

The savings from the suggestion is distributed 50% to the general fund, 20% to the employee, 15% to the implementing agency, 10% to NC Thinks Program, and 5% to the Education and Training Fund. Any suggestion submitted becomes the property of the State. The operating cost of the Program is approximately $100,000 per year, and overall,

the Program has saved roughly $13,000,000. Since 2006, the Program has not made any awards.

This presentation was informational, and the Committee did not make any legislative recommendations related to this topic.

Performance-Based Measures in Education Setting

At its February 16, 2012, meeting, Charles Perusse, Vice President for Finance, The University of North Carolina, explained ongoing activities related to performance and efficiencies in the UNC system, and Dr. Suzanne Ortega, Senior Vice President for Academic Affairs, also spoke in response to questions. Mr. Perusse discussed the President's Advisory Committee on Efficiency and Effectiveness (PACE) initiative and the UNC Finance Improvement and Transformation (FIT) program as examples of an increased emphasis on efficiency. Mr. Peruse also cited the search for efficiencies in UNC's 2012-13 Tuition Resolution and increased emphasis on student success as a performance measure. Mr. Perusse discussed the UNC system's renewed focus on student success. For 2008-2009, targets for retention and graduation were set for each individual institution based on historical performance, campus mission, and peer performance. The Board of Governors increased minimum admission requirements for the UNC system to enhance student success and graduation rates by having better caliber students entering the system. Mr. Perusse said UNC President Ross recently charged a group of campus leaders with developing strategies to promote student success, review resource management, and review academic policies. The group's recommendations were presented March 1 to the UNC Board of Governors and forwarded to the General Assembly for review during the short session. Mr. Perusse indicated that the group's proposals will be a consistent accountability system based on well-defined standards.

Unique Student Identifiers

At the February 16, 2012, meeting, Dr. Lou Fabrizio, Director of Data, Research and Federal Policy Division, NC Department of Public Instruction, discussed the Statewide Longitudinal Data Systems (SLDS) initiative to study outcomes for students in pre-kindergarten through college. Dr. Fabrizio said a number of agencies are involved with the initiative, including the NC Department of Public Instruction (NCDPI), UNC General Administration (UNCGA), the NC Community College System (NCCCS), NC Independent Colleges and Universities (NCICU), and the NC Department of Commerce (NCDOC). These agencies have been sharing data for several years and have established a P-20W Council. Further, Dr. Fabrizio noted wider efforts are being made to coordinate data sharing on a statewide bases including NC Department of Health and Human Services, citing the free and reduced lunch program as an example.

Dr. Fabrizio discussed the NCDPI's Common Education Data Analysis and Reporting System (CEDARS) and its capacity to create a Unique ID (UID) for students and staff. The UID currently offers a way to monitor students in kindergarten through grade 12. The retrieval and creation of UID's will be completed three times a year at the State level to align with the fall, spring, and summer semesters. Data will not be shared in real-time. Within NCDPI, when a student transfers from one LEA to another, data

becomes available within about one day. Several years will be needed to achieve full data integration across sectors.

The UID is growing in usefulness as a tool to track students involved in additional systems such as UNCGA and NCCCS. The State, through the Governor's Early Childhood Advisory Council (ECAC), was awarded a $70 million Race to the Top Early Learning Challenge grant, including funds to connect the early childhood sector to the PK-12 data system using the UID system. NCCCS is working to add the UID to its data system. Students who enroll in a community college and attended a State public school prior to 2008 will not have a pre-assigned UID from PK-12. All students will have UID's assigned beginning with the 2008-2009 academic year. Dr. Fabrizio outlined the two types of programs conducted by the community college system: (1) degree-seeking and (2) continuing education/basic skills.

In the degree-seeking program, the UID system can retrieve the UID for students age 21 and younger, accounting for 33% of enrollment. For students age 22-23, retrieval of the UID might be possible. For students 24 and older, UID creation would be required. In the continuing education program, 13% of students are age 21 and younger and eligible for UID retrieval. Dr. Fabrizio discussed several challenges with the UID system at the NCCCS level including: students enrolled at two community colleges simultaneously; students who marry after leaving PK-12 and enter a community college with inconsistent last names; out-of-state students who never attended State public schools; and community colleges have a higher new student rate across semesters when compared to other sectors. NCICU has received funding to allow a centralized system for participation among the 36 private colleges and universities in the State. Dr. Fabrizio expected the participation by NCICU to enable more efficient data sharing with UNCGA. UNCGA is already implementing the UID system

In 2011, the State applied to the United States Department of Education for a $3.8 million SLDS grant to develop and link postsecondary and workforce data to the State's PK-12 data system. The potential SLDS grant would allow partner agencies to: (1) assign UID's to students and workforce participants; (2) share and analyze data across sectors; (3) train staff to assign UID's; and (4) improve policy-making and student support. Dr. Fabrizio said the partner agencies anticipated a successful grant award and the grant winners would be notified in May, 2012. If the SLDS grant is not received, the initiative would need appropriations to fund the next 2-3 years to ensure that these linkages and efficiencies are in place.

This presentation was informational, and the Committee did not make any legislative recommendations related to this topic.

FINDINGS AND RECOMMENDATIONS

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The Legislative Research Commission's Committee on Efficiencies in State Government makes the following findings and recommendations to the 2012 Regular Session of the 2011 General Assembly:

ZERO-BASED BUDGETING

FINDINGS: The Committee finds the following:

1. Members of the General Assembly have reported dissatisfaction with the accepted current-level-plus-or-minus approach to state budgeting.
2. There is interest in Zero-Based Budgeting (ZBB) as a promising alternative, although there are reservations about time and expense needed by agencies and the General Assembly.
3. Because of this interest, ZBB should be attempted on an experimental basis to determine if it can be more efficiently performed, with results reported to the General Assembly.

RECOMMENDATION: Therefore, the Committee recommends **Legislative Proposal #1, *Establish Efficiency & Cost-Savings Commission***, which would establish a 10-member commission for the purpose of identifying an agency or agencies to undergo zero-based budgeting review.

TAXPAYER INVESTMENT ACCOUNTABILITY

FINDINGS: The Committee finds the following:

1. Without a permanent statutory requirement for agencies to measure and report program cost, efficiency, and effectiveness, attempts at state government budgeting, management, and accountability will be frustrated.
2. Taxpayers who question a program's existence, cost, or worth cannot consistently obtain valid answers.
3. Governors have attempted performance budgeting and reporting, but those attempts have been sporadic, temporary, and relatively ineffective.
4. State agencies and institutions spend millions on public relations, web sites, and information systems. However, unlike the State's uniform financial system and accounts, which must conform with federal standards to assure uniformity and enable comparisons among state agencies and institutions, there are no equivalent reporting standards governing program performance, return on investment, nor program necessity, cost, and organization.

RECOMMENDATION: Therefore, the Committee recommends **Legislative Proposal #2, *Accountability for Taxpayer Investment Act***, which would require State agencies and certain non-state entities to develop, implement, and maintain information systems that provide uniform, program-level accountability information regarding the programs operated by those agencies.

DATA ANALYTICS

FINDINGS: The Committee finds the following:

1. Current economic conditions are challenging governments to deliver services more efficiently and effectively at the same time that less revenue is being generated from the tax base.
2. Governments often operate in silos which can prevent the flow of information between different parts of the organization.
3. Enterprise-level business intelligence across State agencies is required to support the effective and efficient development of State agency business intelligence capability in a coordinated manner that will reduce unnecessary information silos and technological barriers.
4. The State's business intelligence initiative is not intended to replace transactional systems, but is intended to leverage the data from those systems for enterprise-level business intelligence.
5. The Office of State Controller is the appropriate entity to lead the enterprise-level business intelligence effort across State agencies.
6. A phased, coordinated effort is the best way to increase the State's business intelligence capabilities.
7. Full cooperation is required on the part of State agencies to allow for successful and cost effective business intelligence efforts.
8. Savings to the General Fund and Highway Fund will be accomplished as a result of advancing the State's business intelligence capabilities due to the cancellation of duplicative or unnecessary projects, software, and licensing, as well as any other savings from the enterprise level business intelligence initiative.
9. Accountability, transparency, and reporting to the General Assembly should be required at all significant stages of the business intelligence effort.

RECOMMENDATION: Therefore, the Committee recommends **Legislative Proposal #3, *Smarter Government/Business Intelligence Initiative***, which would (i) establish the Government Business Intelligence Competency Center, under the direction of the State Controller, as an integral component of an enterprise-level State business intelligence initiative and (ii) provide for a phased approach towards expanding the State's business intelligence capabilities in a manner that creates efficiencies while preserving privacy and transparency.

COMMITTEE MEMBERSHIP

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2011-2012

President Pro Tempore of the Senate Appointments:

Senator Ralph Hise, Co-Chair

Senator Robert Atwater
Senator Andrew Brock
Senator Dan Soucek

Speaker of the House of Representatives Appointments:

Representative Hugh Blackwell, Co-Chair

Representative Marilyn Avila
Representative James Crawford
Representative Mike Hager

COMMITTEE CHARGE

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Office of the Speaker
North Carolina House of Representatives
Raleigh, North Carolina 27601-1096

THOM TILLIS
SPEAKER

September 12, 2011

Representative Tim Moore
Chairman
Legislative Research Commission
North Carolina House of Representatives
16 W. Jones Street, Room 1326
Raleigh, NC 27601-1096

Dear Representative Moore:

As you prepare your agenda for the Legislative Research Commission (the "Commission"), pursuant to G.S. 120-30.17, I hereby authorize the Commission to appoint subcommittees to study the following matters during the interim. House appointees to each study committee are also identified. Please restrict each study committee to a maximum of four meetings unless additional meetings are pre-approved by my office.

Studies Approved in Conjunction with the Senate:

- **Efficiencies in State Government** – Study additional uses of analytics to increase efficiencies across all areas of State government, including performance management; waste, fraud, and abuse; outcome management; and outsourcing.

  Chair: Blackwell (Hise)
  Members: Crawford, Hager, Avila (Brock, Atwater, Soucek)

STATUTORY AUTHORITY

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NORTH CAROLINA GENERAL STATUTES
ARTICLE 6B.

Legislative Research Commission.

§ 120-30.17. Powers and duties.

The Legislative Research Commission has the following powers and duties:

(1) Pursuant to the direction of the General Assembly or either house thereof, or of the chairmen, to make or cause to be made such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner.

(2) To report to the General Assembly the results of the studies made. The reports may be accompanied by the recommendations of the Commission and bills suggested to effectuate the recommendations.

(3), (4) Repealed by Session Laws 1969, c. 1184, s. 8.

(5), (6) Repealed by Session Laws 1981, c. 688, s. 2.

(7) To obtain information and data from all State officers, agents, agencies and departments, while in discharge of its duty, pursuant to the provisions of G.S. 120-19 as if it were a committee of the General Assembly.

(8) To call witnesses and compel testimony relevant to any matter properly before the Commission or any of its committees. The provisions of G.S. 120-19.1 through G.S. 120-19.4 shall apply to the proceedings of the Commission and its committees as if each were a joint committee of the General Assembly. In addition to the other signatures required for the issuance of a subpoena under this subsection, the subpoena shall also be signed by the members of the Commission or of its committee who vote for the issuance of the subpoena.

(9) For studies authorized to be made by the Legislative Research Commission, to request another State agency, board, commission or committee to conduct the study if the Legislative Research Commission determines that the other body is a more appropriate vehicle with which to conduct the study. If the other body agrees, and no legislation specifically provides otherwise, that body shall conduct the study as if the original authorization had assigned the study to that body and shall report to the General Assembly at the same time other studies to be conducted by the Legislative Research Commission are to be reported. The other agency shall conduct the transferred study within the funds already assigned to it.

LEGISLATIVE PROPOSALS

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Legislative Proposal #1:
Establish Efficiency & Cost-Savings Commission

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

U D

BILL DRAFT 2011-SVz-11 [v.3] (02/15)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
3/1/2012 3:58:57 PM

Short Title: Establish Efficiency & Cost-Savings Commn. (Public)

Sponsors:

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE JOINT LEGISLATIVE EFFICIENCY AND COST-SAVINGS IN STATE GOVERNMENT STUDY COMMISSION AS RECOMMENDED BY THE LRC COMMITTEE ON EFFICIENCIES IN STATE GOVERNMENT.

The General Assembly of North Carolina enacts:

SECTION 1. There is established the Joint Legislative Efficiency and Cost-Savings in State Government Study Commission.

SECTION 2. The Commission shall be composed of 10 members appointed as follows:

(1) Five Senators appointed by the President Pro Tempore of the Senate.

(2) Five Representatives appointed by the Speaker of the House of Representatives.

Vacancies on the Commission shall be filled by the appointing authority. The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair. A quorum of the Commission shall be a majority of its members.

The Commission may meet at any time upon call of the chairs. The Commission may meet in the Legislative Building or the Legislative Office Building. The Commission may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02.

The Commission, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4, including the power to request all officers, agents, agencies, and departments of the State to provide any information, data, or documents within their possession, ascertainable from their records, or otherwise available to them, and the power to subpoena witnesses and documents.

The Director of the Fiscal Research Division shall advise and provide staff support to assist the Commission in its work. The Director of the Program Evaluation Division shall advise the Commission. The Legislative Services Commission, through the Legislative Services Officer, shall assign other professional staff to assist the

Commission in its work. The House of Representatives' and Senate's Directors of Legislative Assistants shall assign clerical staff to the Commission, and the expenses relating to the clerical employees shall be borne by the Commission. Members of the Commission shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1, 138-5, or 138-6, as appropriate.

SECTION 3. The Commission shall use a zero-based budgeting review process to study whether there are obsolete programs, cost-reduction opportunities in State government, and any cases where existing funds can be redirected to meet new and changing demands for public services. At its first meeting, the Commission shall determine which agency or agencies to review. The Commission may require any agency under review to submit written information in a form specified by the Commission by a specified time. The Commission may accept or reject any or part of any information submitted and require revision or resubmission. The Commission may require information as follows:

(1) Identification of decision units. – The agency shall identify decision units representing any group of services with a common set of objectives or comprising an agency program or administrative support unit.

(2) Impact of discontinuing each decision unit. – The agency shall provide a quantitative estimate of any adverse impacts that could reasonably be expected should the State discontinue a decision unit, together with a full description of the methods by which the adverse impact is estimated.

(3) Division of decision units into decision packages. – The agency shall divide each decision unit into the following four discrete decision packages:

a. Minimum. – A quantitative estimate of any adverse impacts that could reasonably be expected and an itemized account of expenditures that would be required to maintain the activity at the minimum level of service required by any statutory authorization and below which would effectively eliminate all services, together with a concise statement of the resulting quantity and quality of services. This service level shall be below the level described by sub-subdivision b. of this subdivision.

b. Reduced. – A quantitative estimate of any adverse impacts that could reasonably be expected and an itemized account of expenditures that would be required if funding were reduced by the percentage or amount specified by the Commission below the current level as defined by sub-subdivision c. of this subdivision and a concise statement of the resulting quantity and quality of services.

c. Current. – A quantitative description of benefits from and an itemized account of expenditures that would be required to maintain the activity at the current level of service, together with a full description of the methods by which the current level

is determined and a concise statement of the resulting quantity and quality of services.

d. Enhanced. – A quantitative estimate of benefits that could reasonably be expected and an itemized account of expenditures that would be required to increase the current level of service, together with a full description of the methods by which the enhanced level is estimated and a concise statement of the resulting quantity and quality of services.

(4) Service delivery alternatives. – For each decision package, a description of alternative methods for delivering services which may include, but not be limited to, shedding one or more services and relying upon the free market for delivery, delegation to another level of government, using Requests for Information or competitive selection to outsource to private for-profit or nonprofit organizations, in whole or in part, including franchising, assisting or providing incubator arrangements for current State employees to form non-State organizations to compete for outsourcing opportunities, or through methods used by other states or nations.

(5) Ranking. – As instructed by the Commission, a ranking of all decision packages compared with each other without ties.

SECTION 4. The Commission shall make an interim report to the 2013 Regular Session of the 2013 General Assembly and shall make a final report to the 2014 Regular Session of the 2013 General Assembly. The reports may include any proposed legislation. The Commission shall terminate upon filing its final report or upon the convening of the 2014 Regular Session of the 2013 General Assembly, whichever is earlier.

SECTION 5. This act is effective when it becomes law.

Legislative Proposal #2:
Accountability for Taxpayer Investment Act

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

U D

BILL DRAFT 2011-SVz-12 [v.2] (02/15)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
2/29/2012 10:00:28 AM

Short Title: Accountability for Taxpayer Investment Act. (Public)

Sponsors:

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REQUIRE STATE AGENCIES AND CERTAIN NON-STATE ENTITIES TO DEVELOP, IMPLEMENT, AND MAINTAIN INFORMATION SYSTEMS THAT PROVIDE UNIFORM, PROGRAM-LEVEL ACCOUNTABILITY INFORMATION REGARDING THE PROGRAMS OPERATED BY THOSE AGENCIES AS RECOMMENDED BY THE LRC COMMITTEE ON EFFICIENCIES IN STATE GOVERNMENT.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 143 of the General Statutes is amended by adding a new Article to read:

"Article 2E.

"Accountability for Taxpayer Investment Act.

"**§ 143-47.30. Definitions.**

(1) Board. – The Taxpayer Investment Accountability Board established by this Article.

(2) Non-State entity. – Any of the following that is not a State agency and that must be discretely presented as a component unit in the State Comprehensive Annual Financial Report by the Governmental Accounting Standards Board: an individual, a firm, a partnership, an association, a corporation, or any other organization or group acting as a unit. The term does not include a local government unit or any other non-State entity that is subject to the audit and other requirements of the Local Government Commission.

(3) Principal executive officer. – Executive head of a State agency or non-State entity.

(4) State agency. – Any department, institution, board, commission, committee, division, bureau, board, council, or other entity for which the State has oversight responsibility, including The University of North Carolina, the Community College System, and any mental or specialty hospital.

(5) Taxpayer. – Any person subject to taxation by the State or by a unit of local government.

"**§ 143-47.31. Purpose; scope.**

(a) The purpose of this Article is to require uniform, program-level accountability information in State government.

(b) This Article applies to any State agency in the executive branch of State government. This Article also applies to any non-State entity that receives State funds.

"**§ 143-47.32. Taxpayer Investment Accountability Board.**

(a) There is established the Taxpayer Investment Accountability Board (Board). The members of the Board shall be:

(1) The State Controller, or the Controller's designee, who shall serve ex officio.

(2) The Director of the Office of State Budget and Management, or the Director's designee, who shall serve ex officio.

(3) The State Auditor, or the Auditor's designee, who shall serve ex officio as a nonvoting member.

(4) The State Chief Information Officer, or the Officer's designee, who shall serve ex officio.

(5) The Director of the Program Evaluation Division of the General Assembly.

(6) The Director of the Fiscal Research Division of the General Assembly.

(b) The State Controller shall be the Chair of the Board.

(c) The Office of the State Controller shall provide staff and adequate meeting space to the Board and shall provide any other type of support required by the Board.

(d) The Board shall meet at least four times a year and may meet as often as necessary. A majority of the members of the Board constitutes a quorum for the transaction of business. The affirmative vote of a majority of the members present at a meeting of the Board is required for action to be taken by the Board.

(e) The Board shall design and establish a framework to provide to the citizens of North Carolina uniform, program-level accountability information in State government. The Board shall establish comprehensive standards, policies, and procedures, including recurring oversight procedures, as part of the framework to provide uniform, program-level accountability information in State government. The framework shall be designed to ensure that the information is accessible through the main State government Web site.

(f) The Board members shall receive no salary or other monetary compensation for serving on the Board.

(g) The Board shall publish an annual report by January 1 of each year setting out the standards, policies, and procedures to be used by agencies in establishing, implementing, and maintaining the information systems required by this Article. The Board shall provide a copy of the report to each State agency and each non-State entity subject to this Article and to the Program Evaluation and Fiscal Research Divisions of the General Assembly.

"**§ 143-47.33. Required State agency and non-State entity information.**

(a) Each State agency shall establish, implement, and maintain within that State agency a system that provides uniform, program-level accountability information that

accurately conveys the mission, responsibilities, and activities of the State agency and any other information deemed necessary or appropriate by the Board. Each non-State entity, as a condition of receiving State funds, shall establish, implement, and maintain within that non-State entity a system that provides uniform, program-level accountability information that accurately conveys the mission, responsibilities, and activities of the non-State entity and any other information deemed necessary or appropriate by the Board. The system shall comply with the framework design and the standards, policies, and procedures established by the Taxpayer Accountability Board. The information shall be updated on a timely basis. Each information system shall further be readily and easily accessible to the citizens of North Carolina.

The principal executive officer of each State agency and the principal executive officer of each non-State entity is responsible for ensuring that the State agency or non-State entity, as appropriate, complies with the requirements of this Article.

(b) Each State agency and each non-State entity shall include the following information in its information system:

(1) For each program, a clear statement of what condition exists in North Carolina that the program is designed to address.

(2) For each program, a logic model that describes the sources of program resources, total resources invested, activities and processes, outputs, and outcomes.

(3) Evidence confirmed independently that changes in the conditions addressed are attributable to the programs, services, and activities.

(4) Performance measures for each program sufficient for a citizen to determine all of the following:

a. Outcome. – The verifiable quantitative effects or results attributable to the program compared to a performance standard.

b. Output. – The verifiable number of units of services or activities provided by the program.

c. Efficiency. – The verifiable total direct and indirect cost per output and per outcome.

d. Performance standards. – The metrics based upon best practices, generally recognized standards, or comparisons with relevant peer entities in other states or regions for gauging achievement of efficiency, output, and outcomes.

e. Benchmarks. – A broad societal indicator used for gauging ultimate outcomes of programs, such as U.S. Census data. Multiple programs among several agencies may be benchmarked to the same indicator.

(5) Organization charts and manager-to-employee ratios in a format specified by the Office of State Personnel. In addition to a comprehensive chart, each State agency and non-State entity shall have separate charts for each organizational division and in turn for each subordinate division or work unit in specific detail so that a citizen may determine the organizational location of every employee position.

(6) Revenues by source and expenditures by purchasing category aligned with each program individually.

(7) Effective July 1, 2014, a Web-based dashboard that reports all required performance information in a graphical gauging format. The format shall also be uniform and shall be sufficient to inform a citizen how the State is investing money consistent with understandable purposes.

(8) A listing of all employees. Each employee record shall contain the following fields: last name; first name; job title; State agency or non-State entity, as appropriate; organizational division; program; telephone number; e-mail address; office mailing address including 9-digit postal zip code; and building name and room number if not in the mailing address. The directory shall have a search feature to enable searching or listing by field. Each State agency and non-State entity subject to this Article shall also list its employees in the directory available through the main State government Web site.

"**§ 143-47.34. Verification of compliance by State Auditor.**

(a) Each agency or non-State entity which must comply with this Article shall file a certificate of compliance with the Article requirements, which shall be signed by the principal executive officer of each State agency and the principal executive officer of each non-State entity. The initial certificate shall be filed on or before June 30, 2014, and subsequent certificates filed annually by June 30.

(b) Internal auditors in State agencies required to have auditors pursuant to Article 79 of Chapter 143 of the General Statutes shall conduct annual audits for compliance with the requirements of this Article. The internal auditor shall submit an audit report annually to the State Auditor and the State Controller no later than April 1. The initial compliance audit shall be filed on or before April 1, 2014, and subsequent reports filed annually by April 1.

(c) The State Auditor may verify compliance with this Article by each State agency and each non-State entity on an annual basis. Upon the determination of the State Auditor that a State agency or non-State entity has failed to substantially comply with the provisions of this Article, the State Auditor shall report the noncompliance to the Board, the Governor, the Joint Legislative Commission on Governmental Operations, and the Fiscal Research Division of the General Assembly.

"**§ 143-47.35. Remedy for noncompliance.**

(a) Any taxpayer may institute a suit in the superior court requesting the entry of a judgment that a State agency or a non-State entity, as appropriate, has failed to comply with this Article. Specific performance compelling the State agency or non-State entity to comply with this Article shall be the available remedy. The taxpayer need not allege or prove special damage different from that suffered by the public at large.

(b) Upon the presentation by the taxpayer plaintiff of a prima facie case that a State agency or non-State entity has failed to comply with this Article, the burden shall be on the State agency or non-State entity, as appropriate, to show that it is in compliance with this Article.

(c) No State agency or non-State entity shall be held in noncompliance with this Article if it establishes that it has made a good faith effort to comply with the provisions of this Article.

(d) In any action brought pursuant to this section in which a party successfully compels compliance, the court shall allow the plaintiff to recover plaintiff's reasonable attorneys' fees. Any attorneys' fees assessed against a State agency or non-State entity under this section shall be charged against the operating expenses of the State agency or non-State entity, as appropriate.

(e) If the court determines that an action brought pursuant to this section was filed in bad faith or was frivolous, the court shall assess reasonable attorneys' fees against the person instituting the action and award it to the State agency or non-State entity, as appropriate, as part of the costs.

"**§ 143-47.36. Availability of technical assistance.**

(a) The Office of State Personnel shall adopt rules setting the standards and format for the organization charts and manager-to-employee ratios required by G.S. 143-47.33. The Office of State Personnel also shall provide templates and technical assistance to State agencies and non-State entities as needed to assure the uniformity required by this Article.

(b) The Office of State Budget and Management and the Office of Information Technology shall also provide technical assistance and software to State agencies and non-State entities as needed to assure the uniformity required by this Article."

SECTION 2. G.S. 150B-1(c) is amended by adding a new subdivision to read:

"(9) The Taxpayer Investment Accountability Board established in G.S. 143-47.32."

SECTION 3. If a State agency or a non-State entity subject to this act is not in compliance with Article 2E of Chapter 143 of the General Statutes as enacted by Section 1 of this act, then the State agency or non-State entity shall revise its information system to comply with the act. Each State agency, whether implementing a new information system or revising an existing system to bring it into compliance with the provisions of this act, shall use the State agency's existing resources allocated for computers and computer maintenance to comply with the act.

SECTION 4. This section and G.S. 143-47.32, as enacted by Section 1 of this act, become effective July 1, 2012. The remainder of this act becomes effective July 1, 2013, except as otherwise provided.

Legislative Proposal #3:
Smarter Government/Business Intelligence Initiative

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

U **D**

BILL DRAFT 2011-LRz-110C [v.3] (01/23)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
4/5/2012 1:12:07 PM

Short Title: Smarter Gov/Business Intelligence Initiative. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH ENTERPRISE-WIDE BUSINESS INTELLIGENCE AS A KEY COMPONENT OF ALL STATE GOVERNMENTAL OPERATIONS IN ORDER TO MAXIMIZE DATA INTEGRATION AND ANALYTICS, THEREBY YIELDING MORE EFFICIENT GOVERNMENT AND ADVANCING INNOVATION IN NORTH CAROLINA, AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION STUDY COMMITTEE ON EFFICIENCIES IN STATE GOVERNMENT.

The General Assembly of North Carolina enacts:

SECTION 1. Purpose. – The purpose of this act is to implement an enterprise-level data integration and analytics initiative across State government. The initiative will support the effective and efficient development of State government's business intelligence capability in a coordinated manner and reduce unnecessary information silos and technological barriers. The initiative is not intended to replace transactional systems, but it is intended to leverage the data from those systems for enterprise analytics.

SECTION 2.(a) Coordination. – Coordination of the State government business intelligence initiative shall be led by:

(1) The State Controller, for the executive branch.
(2) The officer or agency designated by the Chief Justice of the North Carolina Supreme Court, for the judicial branch.
(3) The officer or agency designated by the Legislative Services Commission, for the legislative branch.

SECTION 2.(b) From among those set forth in subsection (a) of this section, the State Controller shall serve as the principal coordinating officer responsible for the State government business intelligence initiative authorized by this act. Nothing in this act prevents the Chief Justice or the Legislative Services

Commission from designating the State Controller to lead the business intelligence initiative for the judicial and legislative branches, respectively.

SECTION 3.(a) There is established in the Office of State Controller (OSC) the Government Business Intelligence Competency Center (GBICC) as an integral component of the State government business intelligence initiative. The work, purpose, and resources of the current data integration effort in the OSC shall be assumed by GBICC. The State Controller shall make any other organizational changes necessary to maximize the effectiveness and efficiency of GBICC.

SECTION 3.(b) The State Controller and GBICC shall coordinate data requirements and usage for business intelligence applications across State government. This coordination shall be accomplished in a manner that (i) limits impacts on participating agencies as those agencies provide data and business knowledge expertise and (ii) assists in defining business rules so data can be properly used.

SECTION 3.(c) The GBICC shall:

(1) Continue and coordinate ongoing enterprise data integration efforts.
(2) Identify any technologies supporting data analytics.
(3) Identify technologies currently used in North Carolina, including standard technologies for foundation components.
(4) Identify other technologies that could support the State's business intelligence effort, especially those with unique capabilities.
(5) Compare capabilities and costs across State government.
(6) Ensure implementation is properly supported across State government.
(7) Ensure that data integration and sharing is performed in a manner that preserves privacy, as appropriate.

SECTION 3.(d) Efficiencies and savings generated by the work of the GBICC are intended to offset any additional resources agencies may require to support the sharing of data.

SECTION 4.(a) Data Sharing Mandatory. – The State Controller shall be granted access to all information required to develop and support State government business intelligence applications established by this act. The head of each State agency, department, and institution; the head of every political subdivision of the State; the Board of Governors of The University of North Carolina; the Community Colleges System Office; and, the local boards of education shall:

(1) Cooperate fully in the sharing of all data required to develop and effectuate the State government business intelligence initiative.
(2) Provide the full details of the agency's information technology, operational, and security requirements, and information on all of the agency's information technology activities relevant to State government business intelligence effort.

(3) Forecast the agency's projected future business intelligence information technology needs and capabilities.

(4) Identify potential resources for deploying business intelligence in their respective agencies and as part of the enterprise-wide effort.

SECTION 4.(b) The State Controller shall report immediately any failure to provide requested information to the Joint Legislative Committee on Information Technology and to the Chairs of the House of Representatives Appropriations and Senate Base Budget/Appropriations Committees.

SECTION 5.(a) Sensitive Data/Security. -- Any data that is not classified as a public record under G.S. 132-1 shall not be deemed a public record when incorporated into the data resources comprising the State's business intelligence initiative. To maintain the confidentiality requirements attached to the information provided to the State Controller and GBICC by the various State and local agencies, each source agency providing data shall be the sole custodian of the data for the purpose of any request for inspection or copies thereof under Chapter 132 of the General Statutes. When applicable, the State Controller and GBICC shall only allow access to data from the source agencies in accordance with rules adopted by the respective source agencies.

SECTION 5.(b) G.S. 75-66(d) reads as rewritten:

"(d) Nothing in this section shall:

(1) Limit the requirements or obligations under any other section of this Article, including, but not limited to, G.S. 75-62 and G.S. 75-65.

(2) Apply to the collection, use, or release of personal information for a purpose permitted, authorized, or required by any federal, state, or local law, regulation, or ordinance.

(3) Apply to data integration efforts to implement the State's business intelligence strategy as provided by law or under contract."

SECTION 6.(a) Public Records. -- Notwithstanding the provisions of Chapter 132 of the General Statutes, information compiled by the State Controller and the GBICC related to the business intelligence initiative authorized by this act may be released as a public record only if the State Controller, in that officer's sole discretion, finds that the release of information is in the best interest of the general public and not in violation of law or contract.

SECTION 6.(b) Information released to persons engaged in implementing the State's business intelligence strategy under this act that is used for purposes other than official State business is not a public record pursuant to Chapter 132 of the General Statutes.

SECTION 7.(a) Coordination Requirements/Phases. – The State government business intelligence initiative shall be phased for maximum benefit, as follows:

(1) Phase. I. -- In the first phase, the State Controller and GBICC shall:

a. Inventory existing data analytics projects, both completed and under development.

b. Develop a plan of action that does all of the following:

1. Defines the program requirements, objective, and end state of the business intelligence initiative.

2. Prioritizes stages of implementation in a detailed plan and benchmarked timeline.

3. Includes the effective coordination of all of the State's current data integration initiatives.

4. Utilizes a common approach that establishes standards for business intelligence initiative for all agencies and prevents the development of projects that do not meet the established standards.

5. Determines costs associated with the development effort and identifies potential sources of funding.

6. Includes a privacy framework for data integration consisting of adequate access controls and end user security requirements.

(2) The State Controller shall, working through GBICC, determine if:

a. Current, ongoing projects support the enterprise-level objectives.

b. Current applications are scalable, or are applicable for multiple agencies, or both.

(3) Phase II. -- In the next phase, the State Controller and GBICC shall:

a. Identify redundancies, and determine which projects should be discontinued.

b. Determine where gaps exist in current or potential capabilities.

(4) Phase III. -- By the final phase, the State Controller and GBICC shall:

a. Incorporate or consolidate existing projects, as appropriate.

b. Eliminate redundant projects, software, and licensing, and reprogram funding from redundant projects.

c. Have taken all steps necessary to achieve privacy preserving data integration.

SECTION 8.(a) Steering Committee. -- Section 6A.20.(b) of S.L. 2011-145, pertaining to the creation of the Data Integration Steering Committee, is repealed. The purposes, duties, and resources of the former entity shall be

assumed by the Government Business Intelligence Steering Committee created by this section.

SECTION 8.(b) The Data Integration Steering Committee (Committee) is created in the Office of the State Controller. The purpose of the Committee is to provide for the centralization of the State's business intelligence and data integration in order to increase value while decreasing cost and to enhance service provision and efficiency in the best interests of North Carolina.

The State Controller shall chair the Committee. The Committee shall consist of the following voting members:

(1) Two members appointed by the Governor, including one person with information technology background and expertise and one person having a background in law enforcement.

(3) Two members appointed by the President Pro Tempore of the Senate, including one person with a background in government accounting and one having experience in government operations.

(5) Two members appointed by the Speaker of the House of Representatives, including one person with a background in information technology and one person with a background in business management.

The State Treasurer, the State Auditor, the Director of the Office of State Budget and Management, and the State Chief Information Officer, are appointed as non-voting, ex-officio members of the Committee, serving in an advisory capacity.

The appointing authority shall fill vacancies. Members of the Committee shall receive per diem, subsistence, and travel allowances at the applicable rate established in G.S. 120-3.1, G.S. 138-6, or G.S. 138-5. Public members of the Committee may not have a current or former business relationship with any vendor with which the State is doing business for its information technology related requirements.

SECTION 8.(c) The Committee shall do all of the following:

(1) Review the agencies' portfolio of data and information assets as well as the tools, services, processes, and strategies by which the State's data assets can be aligned to increase the State's business intelligence.

(2) Develop policies pertaining to the State's data inventory that will further business intelligence.

(3) Evaluate the cost versus benefit relationship across agency information technology business processes.

(4) Consider ways to increase transparency through data sharing strategies such as data services toward the end that data integration will be effective.

(5) Consider ways to protect the privacy and information of persons in the State affected by data integration.

(6) Assist in the selection of project leaders who will accomplish enterprise-wide data integration and business intelligence objectives.

SECTION 8.(d) By September 1, 2012, and quarterly thereafter, the State Controller shall make a detailed progress report to the Joint Legislative Committee on Information Technology regarding implementation of the State government business intelligence initiative.

SECTION 9.(a) Appropriations. -- There is appropriated from the General Fund to the Office of State Controller the sum of _____dollars ($) for the 2012-2013 fiscal year to fund the business intelligence initiative established by this act.

SECTION 9.(b) There is appropriated from the Highway Fund to the Office of State Controller the sum of _____dollars ($) for the 2012-2013 fiscal year to fund the business intelligence initiative established by this act.

SECTION 10. Effective Date. -- This act becomes effective July 1, 2012.

Appendix F

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE RESEARCH COMMISSION

STATE LEGISLATIVE BUILDING
RALEIGH, NC 27601

April 10, 2012

TO THE MEMBERS OF THE LEGISLATIVE RESEARCH COMMISSION:

Attached for your consideration is the report to the 2012 Regular Session of the 2011 General Assembly. This report was prepared by the Legislative Research Commission's Committee on In-Home and Community Based Mental Health Services for Youth, pursuant to G.S. 120-30.17(1).

Senator Fletcher Hartsell
Co-Chair

Representative Mark Hollo
Co-Chair

Co-Chairs
Committee on In-Home and Community Based Mental Health Services for Youth
Legislative Research Commission

LEGISLATIVE RESEARCH COMMISSION

IN-HOME AND COMMUNITY BASED MENTAL HEALTH SERVICES FOR YOUTH COMMITTEE

NORTH CAROLINA GENERAL ASSEMBLY

REPORT TO THE 2012 SESSION of the 2011 GENERAL ASSEMBLY OF NORTH CAROLINA

APRIL10, 2012

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TRANSMITTAL LETTER

April 10, 2012

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TO THE MEMBERS OF THE 2012 REGULAR SESSION
OF THE 2011 GENERAL ASSEMBLY

The Legislative Research Commission herewith submits to you for your consideration its report and recommendations to the 2012 Regular Session of the 2011 General Assembly. The report was prepared by the Legislative Research Commission's Committee on In-Home and Community Based Mental Health Services for Youth, pursuant to G.S. 120-30.70(1).

Respectfully submitted,

Senator Philip E. Berger
President Pro Tempore of the Senate

Representative Thomas R. Tillis
Speaker of the House of Representatives

Co-Chairs
Legislative Research Commission

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LEGISLATIVE RESEARCH COMMISSION MEMBERSHIP

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2011 – 2012

President Pro Tempore of the Senate
Senator Philip E. Berger
Co-Chair

Senator Thomas M. Apodaca
Acting Co-Chair

Senator Peter S. Brunstetter
Senator Linda D. Garrou
Senator Martin L. Nesbitt, Jr.
Senator Richard Y. Stevens

Speaker of the House of Representatives
Representative Thomas R. Tillis
Co-Chair

Representative Timothy K. Moore
Acting Co-Chair

Representative John M. Blust
Representative Justin P. Burr
Representative Mike D. Hager
Representative Edith D. Warren

PREFACE

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The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is the general purpose study group in the Legislative Branch of State Government. The Commission is co-chaired by the President Pro Tempore of the Senate and the Speaker of the House of Representatives and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigation into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

The Legislative Research Commission authorized the study of In-Home and Community Based Mental Health Services for Youth, under authority of G.S. 120-30.17(1). The Committee was chaired by Senator Fletcher Hartsell and Representative Mark Hollo, Co-Chairs of the Committee. The full membership of the Committee is listed under Committee Membership. A committee notebook containing the committee minutes and all information presented to the committee will be filed in the Legislative Library by the end of the **2011-2012** biennium.

COMMITTEE PROCEEDINGS

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The Legislative Research Commission's Committee on In-Home and Community Based Mental Health Services for Youth met 4 times after the 2011 Regular Session. The Committee's Charge can be found here. The following is a brief summary of the Committee's proceedings. Detailed minutes and information from each Committee meeting are available in the Legislative Library.

January 12, 2012

The Committee held its first meeting on Thursday, January 12, 2012 at 10:00 a.m. in Room 544 of the Legislative Office Building. Representative Mark Hollo, Co-Chair, presided. Shawn Parker, Staff Attorney with the Research Division, presented the Committee's charge and an overview of the LRC committee process.

Kelly Crosbie, Licensed Clinical Social Worker and Chief of Behavioral Health Section in the Division of Medial Assistance (DMA), Department of Health and Human Services (DHHS) made a presentation to the Committee on the array of Medicaid-funded in-home and community based services available for children and adolescents under the age of 21. At the conclusion of her presentation, Ms. Crosbie introduced Ms. Shealy Thompson and Ms. Becky Ebron, both from the Division of Mental Health, Developmental Disabilities, and Substance Abuse Community Policy Management Section. Ms. Crosbie, Ms. Thompson, and Ms. Ebron responded to committee members' questions about available services and the NC Treatment Outcomes and Program Performance System (TOPPS).

Ms. Annie Smith, NC State Director for Youth Villages and Mr. Lee Rone, Chief Operating Officer for Youth Villages made a presentation to the Committee entitled *Tracking Outcomes for Youth Mental Health Services*. Youth Villages is a non-profit organization that provides home and community-based mental health services to children and their families.

Mr. Rone presented information about intensive in-home and transitional living services offered by Youth Villages in North Carolina. Youth Villages' services are based upon evidenced-based practices. The agency routinely collects outcome data to measure and evaluate the impact on the children served by these programs.

Committee members had multiple questions and comments following each of the presentations. After the final presentation, Chairman Hollo offered members of the public the opportunity to address the Committee. No one from the public requested to speak.

February 9, 2012

The Committee held its second meeting on Thursday, February 9, 2012 at 10:00 a.m. in Room 544 of the Legislative Office Building. Senator Fletcher Hartsell, Co-Chair, presided.

Kelly Crosbie, Chief of the Behavioral Health Section Clinical Policy and Programs, DMA, DHHS, made a follow up presentation to her January 12, 2012, presentation on the array of Medicaid-funded in-home and community based services offered to children and adolescents with emotional, behavioral, substance abuse and mental health issues. In this presentation, she addressed the following issues:

- Annual utilization and cost of State-funded Home and Community Based Services (FY 2010-2011)
- NC-TOPPS outcomes for adolescent mental health consumers who completed treatment (FY 2011)
- NC-TOPPS outcomes for adolescent mental health consumers who didn't complete treatment (FY 2011)
- Day treatment facilities: number of school-based service settings, number of off-campus service settings and length of stay in day treatment
- Medicaid staffing requirements for Level IV Residential Facilities
- Number of youth in out-of-state Psychiatric Residential Treatment Facilities (PRTF) and expenditures (FY 2012)

Dr. Ann-Marie Iselin, Research Scientist, Center for Child and Family Policy, Duke University explained that evidence-based treatments have been shown to be effective at reaching consistent outcomes in rigorous studies by different researchers or providers. Evidence-based treatments provide reasonable expectations that allow for comparisons of different programs. Dr. Iselin also reviewed the outcomes and costs and benefits for four programs: Functional Family Therapy (FFT), Multisystemic Treatment (MST), Brief Strategic Family Therapy (BSFT), and Multidimensional Treatment Foster Care (MTFC). There are also factors beyond evidence-based treatments that are important for success, including prevention and service delivery practices.

Kevin Kelley, Section Chief, Child Welfare Services, DHHS, gave some information about children in foster care. The average number of children in foster care at any time is 8,500 and the top three placement settings are family foster home (37%), relative care (21%) and therapeutic foster home (13%). The median length of stay for children in foster care is just over a year and children leave foster care either by means of reunification with family, guardianship with a relative, adoption, custody to non-removal parent, custody with other court approved caretaker or emancipation. The first goal is to reunify a child in foster care with their family.

Brian Manness, Vice President, Children's Home Society and Donna Henderson, Divisional Director/Family Finding explained the Family Finding program that works to

locate family members of children in foster care and to establish permanent family connections and support. From 2008-2011, 10 counties have participated in a Family Finding pilot project in Buncombe, Burke, Catawba, Cleveland, Forsyth, Guilford, Lincoln, Pitt, Scotland, and Wake Counties. An evaluation is currently being conducted of the safety, permanency, and well-being of children receiving Family Finding Services compared with similar children not receiving Family Finding services. Two short-term outcomes are a large number of relatives committing to ongoing relationships and a large number of relatives committing to adoption or guardianship. The Children's Home Society is looking to expand this program to 25-30 sites in over 20 counties serving over 250 children annually by 2014. In addition to the improved outcomes for children in foster care, the Family Finding program also provides savings for the State. For example, services for the 10,287 children in the foster care system in 2010 cost the State about $421 million or approximately $39,000 per child.

March 20, 2012

The Committee held its third meeting on Tuesday, March 20, 2012 at 10:00 a.m. in Room 1027 of the Legislative Building. Representative Mark Hollo, Co-Chair, presided.

Ms. Pam Burton, Regional Mental Health and Substance Abuse Care Coordination Manager with PBH, (formerly Piedmont Behavioral Healthcare) presented an outline of PBH's proposal of an Managed Care Organization (MCO) provider's partnership that is result oriented and outcome driven. She asked the committee to endorse the proposed demonstration project between PBH and Youth Villages.

Ms. Annie Smith, North Carolina State Director of Youth Villages made a presentation on Youth Villages Intercept Approach. The presentation provided examples of how Youth Villages provides successful interventions for youth to avoid out-of-home care and reunifies youth with their families through Youth Villages' work in 11 states.

Shawn Parker, Staff Attorney with the Research Division, presented the Committee's charge and presented the committee issues discussed in the previous meetings for direction in preparing the committee's report to the full LRC.

After extensive discussion and suggestions regarding the recommendations, Senator Hartsell moved to authorize staff to prepare a report to the full LRC, consistent with what took place in the meeting, and with the recommendation identified in the committee handout as a first report.

April 10, 2012

The Committee held its fourth meeting on Tuesday, April 10, 2012 at 10:00 a.m. in Room 544 of the Legislative Office Building. Senator Fletcher Hartsell, Co-Chair, presided. The Committee voted to adopt its report as amended.

FINDINGS AND RECOMMENDATIONS

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Finding: In-home and community based mental health services offer youths and their families an effective and less costly alternative to institutionalization.

- Home and community-based mental health services allow youth to receive treatment while remaining in their homes and communities and close to their families.

Finding: In-home and community based mental health services are an appropriate alternative for most youths, with more restrictive and costly residential treatment reserved for those with the more severe needs or who cannot be treated safely in a community setting.

- Residential services are an appropriate, effective, and important component in the spectrum of children's mental health services but their use should be reserved for and limited to those with the most severe needs.
- Home and community based services can effectively be used to divert or transition youth from higher cost residential treatment programs.

Finding: DHHS, through the Divisions of Medical Assistance and Mental Health Services/Developmental Disabilities/Substance Abuse Services, offers an array of mental health home and community based services, in addition to residential treatment programs to serve children and their families. The programs include

- Outpatient Child Mental Health Services
- Intensive In-home Mental Health Services (IIH)
- Multisystemic Therapy (MST)
- Substance Abuse Intensive Outpatient Program (SAIOP)
- Residential Childcare
- Therapeutic Foster Care
- Group Homes
- Psychiatric Residential Treatment Facilities (PRTF)

Recommendation 1:

North Carolina should use State, federal, and other resources to maximize the availability of home and community-based mental health services for youths and their families.

Finding: Evidenced-based treatment approaches have undergone rigorous research and evaluation with documented results of their effectiveness. Research indicates that evidence-based programs are effective in improving mental health outcomes for youth, reduce or prevent the need for residential care, and can reduce recidivism, out-of-home placement, substance abuse and school failure

- *Evidence Based Treatment is defined as the use of systematic decision-making processes or provision of services which have been shown, through available scientific evidence, to consistently improve measurable client outcomes. Instead of tradition, gut reaction or single observations as the basis for making decisions, evidenced-based approaches are based upon data collected through experimental research ...*[1].

Finding: Evidenced-based treatment includes, but is not limited to:

- Functional Family Therapy (FFT) - a short-term family-focused intervention program with an average of 12 sessions over a 3-4 month period. Services are provided in both clinic and home settings, and can also be provided in a variety of other settings including schools, child welfare facilities, and mental health facilities.
- Multisystemic Therapy (MST) - addresses the multiple causes of serious antisocial and other disorders in children and adolescents. The MST approach views individuals as part of a complex network of interconnected systems that include the youth, family, peers, school, and the community. Intervention may be necessary in any one or a combination of these systems
- Brief Strategic Family Therapy (BSFT) – focuses on factors in the child's and parent's relationships which contribute to problem behaviors
- Multidimensional Treatment Foster Care (MTFC) – provides consistent, immediate teaching and reinforcement to the child in a structured environment and teaches effective parenting skills

Finding: Some evidenced-based mental health treatment services are provided in North Carolina but are not available on state-wide basis. Local Management Entities (LMEs) determine which child mental health services will be offered in their catchment areas

Recommendation 2:

As the mental health service delivery system in North Carolina transitions to a behavioral health managed care environment, LMEs are encouraged to increase the availability and use of home and community-based child mental health services that evidenced-based and outcome driven.

---

[1] Evidence-Based Practice Institute, University of Washington School of Medicine (Evidence Based Practice Institute - University of Washington)

Finding: DHHS does not have a system in place to track the use of the evidence-based treatment programs or document their effectiveness.

- The Department utilizes the North Carolina Treatment Outcomes and Program Performance System (NC-TOPPS) to collect data on the effectiveness of the children's mental health services funded with Medicaid or State general funds.

- NC-TOPPS is not a comprehensive, state-wide database as mental health service providers are not required to report or submit outcome data to NC-TOPPS

Finding : Tracking the outcomes of mental health treatment services with standardized measures is important to help identify those services that have positive outcomes over time. Tracking should be limited to non-evidence-based treatment services since they have been proven to produce consistent outcomes.

Recommendation 3:

DHHS, in cooperation with the NC –TOPPS Taskforce, LMEs, and local providers, shall determine what data needs to be collected to track the outcomes of services, develop standardized measures for data collection, determine whether LMEs or providers will be responsible for collecting and maintaining the data, and how to make the data accessible to consumers so they can compare services.

Finding: Consistent with the System of Care philosophy of providing care in the least restrictive most normative environment, efforts should be increased to reduce the number of children and adolescents placed in Residential Treatment Services.

Finding: B3 services, if approved by the Centers of Medicare and Medicaid Services, can be utilized to as Customized Community Integration Services which are intended to:

- Assist in reducing cost and lengths of stay in child residential services.
- Assist children in reaching and maintaining progress on treatment goals.
- Support families by improving communication and conflict resolution skills and assisting youth and family build connection within the local community.
- Reduce recidivism of youth in residential treatment

Finding: PBH, a Local Management Entity, operates under a 1915 b/c waiver which provides flexibility within the State Medicaid program for providers to demonstrate beneficial outcomes for Medicaid recipients through alternative programs. Youth Villages has provided information which tends to show that they have provided successful interventions for youth to avoid out-of home care and reunification of youth with their families through their work in 11 states. The Committee has expressed support for the partnership between PBH and Youth Villages to implement a demonstration program (Customized Community Integration Services) that utilize B3 services targeted at youths age 6-20 to reduce lengths of stay or to divert residential placements when the placement is not appropriate or medically necessary.

Recommendation 4:

The Committee encourages all LMEs to explore, develop and utilize innovative programs based on evidence- and outcome-based practices that provide successful interventions and improve services for youth in an in-home or community based setting.

Finding: In the Committee's February 9, 2012, meeting, DMA provided a report to the General Assembly on NC-TOPPS Outcomes for Adolescent MH consumers. The General Assembly would benefit from having a method to measure what evidence- and outcome-based services are being provided by LMEs and to compare methods and outcomes, using a tool and report in a format similar to the quarterly report on LME performance included in Appendix D (Critical Measures at a Glance).

Recommendation 5:

The Committee recommends that the General Assembly direct the Department of Health and Human Services to develop criteria for the measurement of the effectiveness of LMEs' evidence- and outcome-based programs for youth, and to report to the General Assembly. The Committee further recommends that on an annual basis, the General Assembly review the effectiveness of various evidence- and outcome-based services and treatment programs to determine beneficial approaches towards achieving approved and desired outcomes for children served.

Appendix A

COMMITTEE MEMBERSHIP

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2011-2012

President Pro Tempore of the Senate Appointments:

Senator Fletcher Hartsell, Co-Chair

Senator Austin Allran
Senator Stan Bingham
Senator Martin Nesbitt
Senator Tommy Tucker

Speaker of the House of Representatives Appointments:

Representative Mark Hollo, Co-Chair

Representative William Brisson
Representative Justin Burr
Representative Pat Hurley
Representative Verla Insko

Appendix B

COMMITTEE CHARGE

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Study the development and implementation of a demonstration program for mental health providers providing in home and community based services to youth up to age 20 under the State Medicaid program, the purpose of which is to establish reimbursement and regulatory flexibility for providers that demonstrate beneficial outcomes for Medicaid recipients served.

STATUTORY AUTHORITY

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NORTH CAROLINA GENERAL STATUTES
ARTICLE 6B.

Legislative Research Commission.

§ 120-30.17. Powers and duties.

The Legislative Research Commission has the following powers and duties:

(1) Pursuant to the direction of the General Assembly or either house thereof, or of the chairmen, to make or cause to be made such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner.

(2) To report to the General Assembly the results of the studies made. The reports may be accompanied by the recommendations of the Commission and bills suggested to effectuate the recommendations.

(3), (4) Repealed by Session Laws 1969, c. 1184, s. 8.

(5), (6) Repealed by Session Laws 1981, c. 688, s. 2.

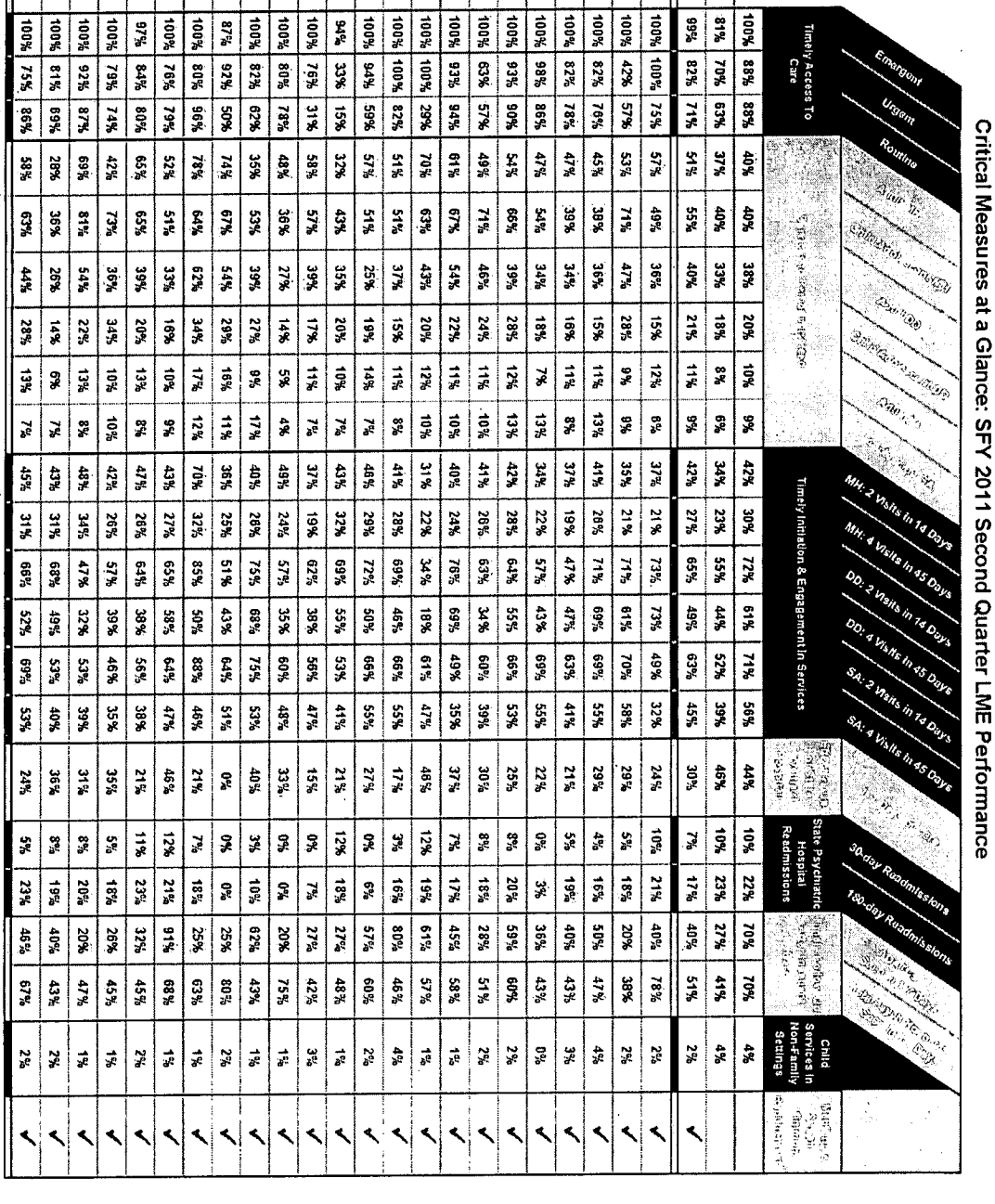
(7) To obtain information and data from all State officers, agents, agencies and departments, while in discharge of its duty, pursuant to the provisions of G.S. 120-19 as if it were a committee of the General Assembly.

(8) To call witnesses and compel testimony relevant to any matter properly before the Commission or any of its committees. The provisions of G.S. 120-19.1 through G.S. 120-19.4 shall apply to the proceedings of the Commission and its committees as if each were a joint committee of the General Assembly. In addition to the other signatures required for the issuance of a subpoena under this subsection, the subpoena shall also be signed by the members of the Commission or of its committee who vote for the issuance of the subpoena.

(9) For studies authorized to be made by the Legislative Research Commission, to request another State agency, board, commission or committee to conduct the study if the Legislative Research Commission determines that the other body is a more appropriate vehicle with which to conduct the study. If the other body agrees, and no legislation specifically provides otherwise, that body shall conduct the study as if the original authorization had assigned the study to that body and shall report to the General Assembly at the same time other studies to be conducted by the Legislative Research Commission are to be reported. The other agency shall conduct the transferred study within the funds already assigned to it.

Appendix D

Critical Measures at a Glance: SFY 2011 Second Quarter LME Performance



SFY2011 Statewide Goal	100%	88%	88%	40%	40%	38%	20%	10%	9%	42%	30%	72%	61%	71%	56%	44%	10%	22%	70%	70%	4%
SFY2011 Performance Standard	81%	70%	63%	37%	40%	33%	18%	8%	6%	34%	23%	55%	44%	52%	39%	46%	10%	23%	27%	41%	4%
Statewide Average	99%	82%	71%	51%	55%	40%	21%	11%	9%	42%	27%	65%	49%	63%	45%	30%	7%	17%	40%	51%	2%
Alamance-Caswell	100%	100%	75%	57%	49%	36%	15%	12%	8%	37%	21%	73%	73%	49%	32%	24%	10%	21%	40%	78%	2%
Beacon Center	100%	42%	57%	53%	71%	47%	28%	9%	9%	35%	21%	71%	61%	70%	58%	29%	5%	18%	20%	38%	2%
CenterPoint	100%	82%	76%	45%	38%	36%	15%	11%	13%	41%	28%	71%	69%	69%	55%	29%	4%	16%	50%	47%	4%
Crossroads	100%	82%	78%	47%	39%	34%	16%	11%	8%	37%	19%	47%	47%	63%	41%	21%	5%	19%	40%	43%	3%
Cumberland	100%	98%	86%	47%	54%	34%	18%	7%	13%	34%	22%	57%	43%	69%	55%	22%	0%	3%	36%	43%	0%
Durham Center	100%	93%	90%	54%	66%	39%	28%	12%	13%	42%	28%	64%	55%	66%	53%	25%	8%	20%	59%	60%	2%
ECBH	100%	63%	57%	49%	71%	46%	24%	11%	10%	41%	26%	63%	34%	60%	39%	30%	8%	18%	28%	51%	2%
Eastpointe	100%	93%	94%	61%	67%	54%	22%	11%	10%	40%	24%	76%	69%	49%	35%	37%	7%	17%	45%	58%	1%
Five County	100%	100%	29%	70%	63%	43%	20%	12%	10%	31%	22%	34%	18%	61%	47%	46%	12%	19%	61%	57%	1%
Guilford Center	100%	100%	82%	51%	51%	37%	15%	11%	8%	41%	28%	69%	46%	66%	55%	17%	3%	16%	80%	46%	4%
Johnston	100%	94%	59%	57%	51%	25%	19%	14%	7%	48%	29%	72%	50%	66%	55%	27%	0%	6%	57%	60%	2%
Mecklenburg	94%	33%	15%	32%	43%	35%	20%	10%	7%	43%	32%	69%	55%	53%	41%	21%	12%	18%	27%	48%	1%
Mental Health Partners	100%	76%	31%	58%	57%	39%	17%	11%	7%	37%	19%	62%	38%	56%	47%	15%	0%	7%	27%	42%	3%
Onslow-Carteret	100%	80%	78%	48%	36%	27%	14%	5%	4%	49%	24%	57%	35%	60%	48%	33%	0%	0%	20%	75%	1%
Orange-Person-Chatham	100%	82%	62%	35%	53%	39%	27%	9%	17%	40%	28%	75%	68%	75%	53%	40%	3%	10%	62%	43%	1%
Pathways	87%	92%	50%	74%	67%	54%	29%	16%	11%	36%	25%	51%	43%	64%	51%	0%	0%	0%	25%	80%	2%
PBH	100%	80%	96%	78%	64%	62%	34%	17%	12%	70%	32%	85%	50%	88%	46%	21%	7%	18%	25%	63%	1%
Sandhills Center	100%	76%	79%	52%	51%	33%	16%	10%	9%	43%	27%	65%	58%	64%	47%	46%	12%	21%	91%	68%	1%
Smoky Mountain Center	97%	84%	80%	65%	65%	39%	20%	13%	8%	47%	20%	64%	38%	56%	38%	21%	11%	23%	32%	45%	2%
Southeastern Center	100%	79%	74%	42%	73%	36%	34%	10%	10%	42%	26%	57%	39%	46%	35%	35%	5%	18%	26%	45%	1%
Southeastern Regional	100%	92%	87%	69%	81%	54%	22%	13%	8%	48%	34%	47%	32%	53%	39%	31%	8%	20%	20%	47%	1%
Wake	100%	81%	69%	28%	36%	26%	14%	6%	7%	43%	31%	68%	49%	53%	40%	36%	8%	19%	40%	43%	2%
Western Highlands Network	100%	75%	86%	58%	63%	44%	28%	13%	7%	45%	31%	68%	52%	69%	53%	24%	5%	23%	46%	67%	2%
	✓																				✓

[1] A checkmark in the column indicates the LME has met this performance standards for at least 50% of the critical measures, which is one of the requirements for consideration to receive single stream funding

NOTE: Percentages in green font have met or exceeded the SFY2011 performance standard for the measure

Critical Measures at a Glance

Introduction

This matrix was developed in response to S.L. 2008-107 (HB2436) to provide a quarterly summary of the Local Management Entities' status on critical measures that are included in the annual *DHHS-LME Performance Contract*. An LME is required to meet the Performance Standard on at least 65% of these measures to be eligible for single stream funding. The detailed information that generates this chart is presented each quarter in the *Community Systems Progress Report*, which is published on the DMH/DD/SAS website at http://www.ncdhhs.gov/mhddsas/statspublications/reports/index.htm .

How To Read the Chart

The **21 critical measures** are presented across the top of the chart and grouped by type of measure. They include:

> Timely Access to Care: This is a measure of **how long it takes an individual to enter care**. Persons with emergent needs are expected to be provided access to care within 2 hours of requesting it. Those with urgent needs should be seen within 48 hours. Persons with routine needs are expected to be seen within 14 days.

> Services to Persons In Need: This measures **how many people that are estimated to have MH/DD/SA problems each year receive publicly-funded MH/DD/SAS services**. This measure is often called "treated prevalence" or "penetration rate."

> Timely Initiation and Engagement In Services: Initiation measures **how quickly a person receives treatment or supports** after entering care. Engagement measures whether they begin to receive **enough services** to reduce the occurrence of crises and to improve chances for recovery and stability.

> Effective Use of State Psychiatric Hospitals: This is a measure of **how many people are entering the state hospitals for crisis stabilization**. An effective community crisis service system, good person-centered planning, and adequate community services are expected to reduce short-term stays in the state hospitals, keeping them available for persons with very complex needs.

> State Psychiatric Hospital Readmissions: This measures the effectiveness of **coordination between the state hospitals and community services**. Good hospital-LME communication, thorough person-centered planning, and adequate community services after individuals are discharged from the hospitals are expected to reduce the need for readmissions.

> Timely Follow-Up After Inpatient Care: This measures the **continuity of care** after a person is discharged from the hospital. Each person is expected to receive a follow-up service in the community within 7 days of being discharged from a state facility to ensure adequate medications and engagement in continuing care.

> Child Services in Non-Family Settings: This measures the percent of **children (ages 0-18) who are placed in non-family residential service settings** (residential treatment Level II-Program Type, Level III and Level IV). Effective supports for families and sufficient alternative family settings, such as therapeutic foster care, are expected to reduce the need for residential child services.

The **"SFY Statewide Goals"** are shown in the first row of the chart. The Division sets statewide goals for the service system at the beginning of the year to reflect current needs, priorities, available resources, and what it believes to be an achievable improvement for the year. Some goals may remain the same from one year to the next while others may increase to reflect where the Division wants community systems to focus their efforts.

The **"SFY Performance Standards"** of the *DHHS-LME Performance Contract* for the indicators are presented in the second row of the chart. The standards are based on recent statewide averages for each indicator and anticipated resource constraints at the time the annual Contract is put into place. Beginning in SFY2010, the performance standards are being reviewed quarterly and adjusted as necessary to reflect changes in available resources.

The **"Statewide Average"** is the performance of the entire state on the critical measures for the quarter being reported.

The 23 **Local Management Entities (LMEs)** are listed in the first column, with their performance on each measure in the rows across the chart. The green numbers indicate that the LME met or exceeded the current SFY Performance Standard. Note that a number equal to or lower than the Performance Standard is desirable for "Effective Use of State Psychiatric Hospitals," "Hospital Readmissions," and "Child Services in Non-Family Settings." A number equal to or higher than the Performance Standard is desired for all other measures. The greyed cells indicate measures for which no data was available.

The **"Met Single Stream Minimum Requirement"** column indicates whether each LME met the Performance Standard for at least 65% of the measures (14 out of 21). This is a requirement to be eligible for single stream funding..

Appendix G

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE RESEARCH COMMISSION

STATE LEGISLATIVE BUILDING
RALEIGH, NC 27601

April 17, 2012

TO THE MEMBERS OF THE LEGISLATIVE RESEARCH COMMISSION:

Attached for your consideration is the report to the 2012 Regular Session of the 2011 General Assembly. This report was prepared by the Legislative Research Commission's Committee on Incapacity to Proceed, pursuant to G.S. 120-30.17(1).

Rep. Shirley Randleman

Representative Shirley Randleman
Chair

Chair
Committee on Incapacity to Proceed
Legislative Research Commission

LEGISLATIVE RESEARCH COMMISSION

INCAPACITY TO PROCEED COMMITTEE

NORTH CAROLINA GENERAL ASSEMBLY

REPORT TO THE 2012 SESSION of the 2011 GENERAL ASSEMBLY OF NORTH CAROLINA

APRIL, 2012

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TRANSMITTAL LETTER

April 17, 2012

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TO THE MEMBERS OF THE 2012 REGULAR SESSION
OF THE 2011 GENERAL ASSEMBLY

The Legislative Research Commission herewith submits to you for your consideration its report and recommendations to the 2012 Regular Session of the 2011 General Assembly. The report was prepared by the Legislative Research Commission's Committee on Incapacity to Proceed, pursuant to G.S. 120-30.70(1).

Respectfully submitted,

Senator Philip E. Berger
President Pro Tempore of the Senate

Representative Thomas R. Tillis
Speaker of the House of Representatives

Co-Chairs
Legislative Research Commission

LEGISLATIVE RESEARCH COMMISSION MEMBERSHIP

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2011 – 2012

President Pro Tempore of the Senate
Senator Philip E. Berger
Co-Chair

Senator Thomas M. Apodaca
Acting Co-Chair

Senator Peter S. Brunstetter
Senator Linda D. Garrou
Senator Martin L. Nesbitt, Jr.
Senator Richard Y. Stevens

Speaker of the House of Representatives
Representative Thomas R. Tillis
Co-Chair

Representative Timothy K. Moore
Acting Co-Chair

Representative John M. Blust
Representative Justin P. Burr
Representative Mike D. Hager
Representative Edith D. Warren

PREFACE

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The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is the general purpose study group in the Legislative Branch of State Government. The Commission is co-chaired by the President Pro Tempore of the Senate and the Speaker of the House of Representatives and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of an investigation into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

The Legislative Research Commission authorized the study of Incapacity to Proceed, under authority of G.S. 120-30.17(1). The Committee was chaired by Representative Shirley Randleman.. The full membership of the Committee is listed under Committee Membership. A committee notebook containing the committee minutes and all information presented to the committee will be filed in the Legislative Library by the end of the **2011-2012** biennium.

COMMITTEE PROCEEDINGS

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The Legislative Research Commission's Committee on Incapacity to Proceed met four times after the 2011 Regular Session. The Committee's Charge can be found here. The following is a brief summary of the Committee's proceedings. Detailed minutes and information from each Committee meeting are available in the Legislative Library.

The Legislative Research Commission Committee on Incapacity to Proceed was established to consider the adequacy of the involuntary commitment process for a criminal defendant who lacks the capacity to proceed to trial. The Committee was authorized to consider the impact of current law on the limited resources of local law enforcement, hospitals, mental health facilities, and the State's court system while balancing the rights of the accused, victims, and the safety and the general welfare of the public. The Committee was also authorized to consider options for determining whether a defendant is likely to attain the capacity to proceed to trial in the foreseeable future and at what point in the process that determination should be made.

The Committee met four times from November 9, 2011, to April 17, 2012. At each meeting, the Committee provided interested parties an opportunity to be heard on the issues and received public comment. Detailed minutes and information from each Commission meeting are available in the Legislative Library.

November 9, 2011 Meeting

The first meeting of the Legislative Research Commission Subcommittee on Incapacity to Proceed was held on November 9, 2011. Following introductions of those present and opening remarks by Chair Shirley Randleman, the Committee adopted its operating budget. The following presentations were made:

- Committee co-counsel Hal Pell described the genesis of the current procedures relating to a defendant's incapacity to proceed and the need to comply with constitutional due process and equal protection concerns addressed in the 1972 United States Supreme Court case, *Jackson v. Indiana.*

- Committee co-counsel Janice Paul provided the background and overview of the North Carolina laws governing incapacity to proceed and the civil commitment process. A PowerPoint presentation is included in the Committee minutes.

- Chair Randleman described the situation that arose within her community which prompted her to request a study. She reiterated that the Committee's

mission is to promote efficiency and safeguards for everyone, including the general public.

- John Rubin, UNC School of Government noted that the SOG conducts training, consultation, and research for individuals, courts, and the criminal justice system. He discussed the legal standard which applies to incapacity to proceed, which differs from that applied to civil commitment proceedings.

- Brad Greenway, District Attorney for the 29A Prosecutorial District, discussed specific concerns that arise when a defendant has committed a crime, is found incapable to proceed, might never gain the capacity to proceed, but does not meet commitment criteria.

- Andrew Cagle, North Carolina Sheriffs Association, expressed concern over manpower and actual transportation costs associated with transporting defendants between jails and mental health facilities.

- Dr. Mark Hazelrigg, Director of Outpatient Evaluations at Central Regional Hospital, said that the differences in the legal standard for capacity to proceed and the standard for involuntary commitment cause a circular system, and expressed concern that there is no statutory mandate or even suggestion that hospitals provide services designed to restore an individual's capacity to proceed.

- Richard Slipsky, Special Deputy Attorney General, observed that most of the cases start in Superior Court, but after a defendant is released from a commitment, the case comes back in through a District/jail court. He expressed concern about transportation costs as well as the cost of maintaining someone in a state hospital who does not need to be there. He echoed Dr. Hazelrigg's concern that the statutes do not specify restorative measures for capacity, even though most patients who are confined in a hospital would like to have their criminal charges resolved.

The Chair then opened the floor for discussion and questions.

January 11, 2012 Meeting

In its second meeting on January 11, 2012, the Committee had a round-table discussion of various agencies' roles and interest in the incapacity to proceed process, any perceived problems, and potential solutions to those problems. Chair Randleman stressed the importance of coming up with draft legislation that can proceed through the General Assembly during the 2012 Short Session. Details of this discussion are contained in the Committee minutes.

John Rubin, UNC School of Government, presented case studies involving both misdemeanor and felony offenders whose capacity to proceed was questioned.

The floor was opened for questions and comment. Information was exchanged about the following:

- Who is qualified to conduct local forensic examinations;
- The time frame time reporting by the regional hospital;
- The procedure after individuals are released back to jail;
- Problems of decompensating in the jails;
- Issues relating to dismissal of charges;
- Notification to the court and interested parties of the defendant's mental health status;
- Subsequent hearings on restoration of capacity;
- Problems relating to individuals who are housed as safekeepers at Central Prison and who are not receiving mental health treatment;
- Approaches to expedite the process of screening and examination;
- Tracking and monitoring;
- Privacy issues.

Recommendations included:

- The need for judges to take evidence and make findings of fact on capacity to proceed;
- Specific changes to G.S. 15A-1008 relating to dismissal;
- The repeal of G.S. 15A-1009 concerning dismissal with leave when a defendant is found incapable of proceeding;
- Credentialing of forensic examiners.;
- Authorizing examiners to have access to many pieces of information (mental health treatment, criminal background, jail records, indictments, and police investigative reports);
- Mandated treatment to restore an individual's capacity to proceed;
- Implementation of a process to allow forensic units to re-evaluate an individual's capacity before being returned to jail;
- Mandatory training of judges, attorneys, and law enforcement personnel regarding incapacity to proceed and commitment procedures;
- Enhanced coordination, communication between various agencies, and accountability within the process;
- Establishing time limits on the proceedings;
- Greater training of examiners to identify and treat specific mental health disabilities, the establishment of specialized facilities for individuals with such disabilities, and the recognition that people with certain disabilities will most likely never be found capable to proceed in court.

February 8, 2012 Meeting

The Committee held its third meeting on February 8, 2012. The meeting's focus was on discussing proposed legislation and recommendations designed to make improvements in the capacity to proceed process. The following issues and proposals were discussed:

- Training for local forensic evaluators.
- Re-evaluation of defendants for a capacity determination prior to being returned to the jail from a state facility.
- Forensic evaluators' access to records.
- Time limits for forensic evaluations.
- Reporting a defendant's level of cooperation with the forensic examination.
- Minimum period of inpatient evaluation and observation.
- Requiring that defendants receive treatment to restore capacity to proceed.
- Reports to the court, parties, and communication and tracking issues.
- Notices of supplemental hearings.
- Dismissal of criminal charges.
- Requirement that court make findings of fact as to capacity to proceed.
- Methods of expediting cases for trial.
- Pretrial release for individuals with intellectual or developmental disabilities.
- Transportation issues.
- Bond, placement and other pretrial release issues for individuals with serious mental health issues.

Details of the discussion are contained in the Committee minutes.

After receiving input from Committee members and interested persons, the Committee voted that the General Assembly enact legislation to make changes to the process and procedures regarding incapacity to proceed, as follows:

- To provide that evaluation for misdemeanants be conducted locally only, and not at state facilities.
- To authorize a judge to order the release of confidential information to the forensic examiner.
- To require a court order to include findings of fact to support its determination regarding capacity to proceed.
- To provide time limits for reports to the court.
- To provide that the sheriff receive a copy of the covering statement of the forensic examiner's final report.
- To require that a defendant be examined for a determination of capacity to proceed prior to release from an involuntary civil commitment.
- To specify procedures relating to the return of the defendant for trial upon gaining capacity to proceed.

- To require expedited calendaring of cases for trial after a defendant gains capacity to proceed.
- To require dismissal of criminal charges in specified circumstances.
- To require that reports contain treatment recommendations, if any.
- To make conforming changes to G.S. Chapter 122C.

The Committee voted to include the following possible recommendations in its draft final report:

- That the Committee on Justice and Public Safety study the possibility of mandating that all law enforcement officers have crisis intervention training in order to recognize mental health issues and identify individuals with intellectual/developmental disabilities and to better deal with individuals with mental health issues or intellectual/developmental disabilities during the period of transportation and custody.

- That the Administrative Office of the Courts, in consultation with the School of Government, study whether defense attorneys, prosecutors and judges should be required to receive specific training on recognizing signs of mental illness and dealing with defendants that may be incapable of proceeding, and report the results of that study to the Committee on Justice and Public Safety.

- That the Joint Legislative Oversight Committee on Health and Human Services study the issue of transporting defendants who are being evaluated for determination of capacity to proceed, or who have been found incapable of proceeding. Possible issues to study include, whether the same-gender transportation requirement of G.S. 122C-251 should be repealed and whether it would be appropriate and feasible to develop a system where evaluators from the State facility could evaluate offenders charged with lower level felonies on-site in the county where the charges are pending as an alternative to transporting the offender to the State facility.

- That the Joint Legislative Oversight Committee on Health and Human Services study whether individuals with serious mental health issues or intellectual/developmental disabilities and lack of capacity to proceed should be released from jail to an appropriate mental health placement on a more expedited basis, and if so, the best method and process to facilitate that recommendation.

Rep. Burr informed the Committee that the Joint Legislative Oversight Committee on Health and Human Services was already considering the issue of whether it would be appropriate and feasible to open forensic units specifically focused on evaluating and providing habilitative services for individuals with intellectual or developmental disabilities and specialized in the care of incarcerated individuals diagnosed with intellectual or developmental disabilities.

FINDINGS AND RECOMMENDATIONS

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FINDINGS:

The Committee finds that comprehensive procedural changes need to be made in the process relating to determinations of a criminal defendant's incapacity to proceed to trial, in view of limited resources of law enforcement, hospitals, and mental health facilities, in consideration of a defendant's legal and mental status as they relate to providing a fair trial, and in order to promote efficiency in the overall judicial process in matters relating to incapacity to proceed. As a result of these findings, the Committee makes the following Recommendations:

RECOMMENDATION 1:

The Committee recommends that the General Assembly enact legislation (attached) to make changes to the process and procedures regarding incapacity to proceed.

RECOMMENDATION 2:

The Committee recommends that the Committee on Justice and Public Safety study the possibility of mandating that all law enforcement officers have crisis intervention training in order to recognize mental health issues and to identify individuals with intellectual or developmental disabilities during period of transportation and custody and to interact with them appropriately.

RECOMMENDATION 3:

The Committee recommends that the Administrative Office of the Courts, in consultation with the School of Government, study whether defense attorneys, prosecutors and judges should be required to receive specific training on recognizing signs of mental illness and intellectual or developmental disabilities and dealing with defendants who may be incapable of proceeding, and report the results of that study to the Committee on Justice and Public Safety.

RECOMMENDATION 4:

The Committee recommends that the Joint Legislative Oversight Committee on Health and Human Services continue to study whether it would be appropriate and feasible to open forensic units specifically focused on evaluating and providing habilitative services for individuals with intellectual or developmental disabilities and specialized in the care of incarcerated individuals diagnosed with intellectual or developmental disabilities.

RECOMMENDATION 5:

The Committee recommends that the Joint Legislative Oversight Committee on Health and Human Services study the issue of transporting defendants who are being evaluated for determination of capacity to proceed, or who have been found incapable of proceeding. Possible issues to study include: (1) whether the same-gender transportation requirement of G.S. 122C-251 should be repealed; (2) whether it would be appropriate and feasible to develop a system where evaluators from the State facility could evaluate offenders charged with lower level felonies on-site in the county where the charges are pending as an alternative to transporting the offender to the State facility; and (3) whether forensic evaluators can be assigned to each of the three State psychiatric hospitals to minimize the transportation demands on local law enforcement agencies.

RECOMMENDATION 6:

The Committee recommends that the Joint Legislative Oversight Committee on Health and Human Services study whether individuals with serious mental health issues, intellectual or developmental disabilities, and lack of capacity to proceed should be released from jail to an appropriate mental health placement on a more expedited basis, and if so, the best method and process to facilitate that recommendation.

COMMITTEE MEMBERSHIP

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2011-2012

Speaker of the House of Representatives Appointments:

Representative Shirley Randleman, Co-Chair

Representative Justin Burr
Representative John Faircloth
Representative Pat Hurley
Representative Frank McGuirt

COMMITTEE CHARGE

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Incapacity to Proceed (H.J.R. 612 - Randleman, Hurley) - The Commission may study the adequacy of the involuntary commitment process for a criminal defendant who lacks the capacity to proceed to trial. In its study, the Commission may consider the impact of current law on the limited resources of local law enforcement, hospitals, mental health facilities, and the State's court system while balancing the rights of the accused, victims, and the safety and the general welfare of the public. The Commission may also consider options for determining whether a defendant is likely to attain the capacity to proceed to trial in the foreseeable future and at what point in the process that determination should be made. The Commission may evaluate the statutory option of taking dismissals in these types of cases for defendants who are charged with nonviolent crimes and for defendants who are charged with violent crimes, how often that option is used, and at what point and under what circumstances that option should be used. In addition, the Commission may consider all of the following: issues related to transportation, including the frequency, distance, and cost associated with the required psychiatric evaluations; duration of involuntary commitment for defendants found incapable of proceeding to trial pursuant to Article 56 of Chapter 15A of the General Statutes and involuntarily committed pursuant to Part 7 of Article 5 of Chapter 122C of the General Statutes; and any other issues the Commission considers relevant to this topic.

STATUTORY AUTHORITY

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NORTH CAROLINA GENERAL STATUTES
ARTICLE 6B.

Legislative Research Commission.

§ 120-30.17. Powers and duties.

The Legislative Research Commission has the following powers and duties:

(1) Pursuant to the direction of the General Assembly or either house thereof, or of the chairmen, to make or cause to be made such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner.

(2) To report to the General Assembly the results of the studies made. The reports may be accompanied by the recommendations of the Commission and bills suggested to effectuate the recommendations.

(3), (4) Repealed by Session Laws 1969, c. 1184, s. 8.

(5), (6) Repealed by Session Laws 1981, c. 688, s. 2.

(7) To obtain information and data from all State officers, agents, agencies and departments, while in discharge of its duty, pursuant to the provisions of G.S. 120-19 as if it were a committee of the General Assembly.

(8) To call witnesses and compel testimony relevant to any matter properly before the Commission or any of its committees. The provisions of G.S. 120-19.1 through G.S. 120-19.4 shall apply to the proceedings of the Commission and its committees as if each were a joint committee of the General Assembly. In addition to the other signatures required for the issuance of a subpoena under this subsection, the subpoena shall also be signed by the members of the Commission or of its committee who vote for the issuance of the subpoena.

(9) For studies authorized to be made by the Legislative Research Commission, to request another State agency, board, commission or committee to conduct the study if the Legislative Research Commission determines that the other body is a more appropriate vehicle with which to conduct the study. If the other body agrees, and no legislation specifically provides otherwise, that body shall conduct the study as if the original authorization had assigned the study to that body and shall report to the General Assembly at the same time other studies to be conducted by the Legislative Research Commission are to be reported. The other agency shall conduct the transferred study within the funds already assigned to it.

LEGISLATIVE PROPOSALS

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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

U D

BILL DRAFT 2011-SA-18A [v.1] (03/01)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
4/24/2012 2:01:06 PM

Short Title: Incapacity to Proceed Amendments. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS GOVERNING INCAPACITY TO PROCEED AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1002 reads as rewritten:

"**§ 15A-1002. Determination of incapacity to proceed; evidence; temporary commitment; temporary orders.**

(a) The question of the capacity of the defendant to proceed may be raised at any time on motion by the prosecutor, the defendant, the defense counsel, or the court. The motion shall detail the specific conduct that leads the moving party to question the defendant's capacity to proceed.

(b) When the capacity of the defendant to proceed is questioned, the court shall hold a hearing to determine the defendant's capacity to proceed. If an examination is ordered pursuant to subdivision (1) or (2) of this subsection, the hearing shall be held after the examination. Reasonable notice shall be given to the defendant and prosecutor, and the State and the defendant may introduce evidence. ~~The court:~~

(1) ~~May~~ In the case of a defendant charged with a misdemeanor or felony, the court may appoint one or more impartial medical experts, including forensic evaluators approved under rules of the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services, to examine the defendant and return a written report describing the present state of the defendant's mental ~~health; reports~~health. Reports so prepared are admissible at the ~~hearing and the~~hearing. The court may call any expert so appointed to testify at the ~~hearing; any expert so appointed may be called to testify at the hearing by the court at~~hearing, with or without the request of either ~~party; or~~party.

(2) ~~In the case of a defendant charged with a misdemeanor only after the examination pursuant to subsection (b)(1) of this section or at~~At any time in the case of a defendant charged with a felony, the court may order the defendant to a State facility for the mentally ill for

observation and treatment for the period, not to exceed 60 days, necessary to determine the defendant's capacity to ~~proceed; in the case of a defendant charged with a felony, if~~proceed. If a defendant is ordered to a State facility without first having an examination pursuant to subsection (b)(1) of this section, the judge shall make a finding that an examination pursuant to this subsection would be more appropriate to determine the defendant's ~~capacity; the~~capacity. The sheriff shall return the defendant to the county when notified that the evaluation has been ~~completed; the~~completed. The director of the facility shall direct his report on defendant's condition to the defense attorney and to the clerk of superior court, who shall bring it to the attention of the ~~court; the~~court. The report is admissible at the hearing.

(3) Repealed by Session Laws 1989, c. 486, s. 1.

(4) A presiding district or superior court judge of this State who orders an examination pursuant to subdivision (1) or (2) of this subsection shall order the release of relevant confidential information to the examiner, including but not limited to, the warrant or indictment, arrest records, the law enforcement incident report, the defendant's criminal record, jail records, any prior medical and mental health records of the defendant, and any school records of the defendant, after providing the defendant with reasonable notice and an opportunity to be heard and then determining that the information is relevant and necessary to the hearing of the matter before the court and unavailable from any other source. This subdivision shall not be construed to relieve any court of its duty to conduct hearings and make findings required under relevant federal law before ording the release of any private medical or mental health information or records related to substance abuse or HIV status or treatment. The records may be surrendered to the court, for in camera review, if surrender is necessary to make the required determinations. The records shall be withheld from public inspection and, except as provided in this subdivision, may be examined only by order of the court.

(b1) ~~If the report pursuant to subdivision (1) or (2) of subsection (b) of this section indicates~~ The order of the court shall contain findings of fact to support its determination of the defendant's capacity to proceed. The parties may stipulate that the defendant is capable of proceeding, but shall not be allowed to stipulate that the defendant lacks capacity to proceed. If the court concludes that the defendant lacks capacity to proceed, proceedings for involuntary civil commitment under Chapter 122C of the General Statutes may be instituted on the basis of the report in either the county where the criminal proceedings are pending or, if the defendant is hospitalized, in the county in which the defendant is hospitalized.

(b2) Reports made to the court pursuant to this section shall be completed and provided to the court as follows:

(1) The report in a case of a defendant charged with a misdemeanor shall be completed and provided to the court no later than 10 day following the completion of the examination for a defendant who was in custody

at the time the examination order was entered, and no later than 30 days following the completion of the examination for a defendant who was not in custody at the time the examination order was entered.

(2) The report in the case of a defendant charged with a felony shall be completed and provided to the court no later than 30 days following the completion of the examination.

(3) In cases where the defendant challenges the determination made by the court ordered examiner or the State facility and the court orders an independent psychiatric examination, that examination and report to the court must be completed within 60 days of the entry of the order by the court.

The court may, for good cause shown, extend the time for the provision of the report to the court for up to 30 additional days. The court may renew an extension of time for an additional 30 days upon request of the State or the defendant prior to the expiration of the previous extension. In no case shall the court grant extensions totaling more than 120 days beyond the time periods otherwise provided in this subsection.

(c) The court may make appropriate temporary orders for the confinement or security of the defendant pending the hearing or ruling of the court on the question of the capacity of the defendant to proceed.

(d) Any report made to the court pursuant to this section shall be forwarded to the clerk of superior court in a sealed envelope addressed to the attention of a presiding judge, with a covering statement to the clerk of the fact of the examination of the defendant and any conclusion as to whether the defendant has or lacks capacity to proceed. If the defendant is being held in the custody of the sheriff, the clerk shall send a copy of the covering statement to the sheriff. The sheriff, and any persons employed by the sheriff, shall maintain the copy of the covering statement as a confidential record. A copy of the full report shall be forwarded to defense counsel, or to the defendant if he is not represented by ~~counsel provided, if~~counsel. If the question of the defendant's capacity to proceed is raised at any time, a copy of the full report must be forwarded to the district ~~attorney.~~attorney, as provided in G.S. 122C-54(b). Until such report becomes a public record, the full report to the court shall be kept under such conditions as are directed by the court, and its contents shall not be revealed except as directed by the court. Any report made to the court pursuant to this section shall not be a public record unless introduced into evidence."

SECTION 2. G.S. 15A-1004(c) reads as rewritten:

"(c) If the defendant is placed in the custody of a hospital or other institution in a proceeding for involuntary civil commitment, the orders must provide for reporting to the clerk if the defendant is to be released from the custody of the hospital or institution. The original or supplemental orders may make provisions as in subsection (b) in the event that the defendant is released. The court shall also order that the defendant shall be examined to determine whether the defendant has the capacity to proceed prior to release from custody. A report of the examination shall be provided pursuant to G.S. 15A-1002. If the defendant was charged with a violent crime, including a crime involving assault with a deadly weapon, and that charge has not been dismissed, the order must require that if the defendant is to be released from the custody of the hospital or other institution, he is to be released only to the custody of a specified law

enforcement agency. If the original or supplemental orders do not specify to whom the respondent shall be released, the hospital or other institution may release the defendant to whomever it thinks appropriate."

SECTION 3. G.S. 15A-1006 reads as rewritten:

"**§ 15A-1006. Return of defendant for trial upon gaining capacity.**

If a defendant who has been determined to be incapable of proceeding, and who is in the custody of an institution or an individual, ~~gains~~ has been determined by the institution or individual having custody to have gained capacity to proceed, the individual or institution ~~must notify~~shall provide written notification to the clerk in the county in which the criminal proceeding is pending. The clerk ~~must notify the sheriff to~~ shall provide written notification to the district attorney, the defendant's attorney and the sheriff. The sheriff shall return the defendant to the county for supplemental hearing pursuant to G.S. 15A-1007, if conducted, and trial, and ~~to~~ hold ~~him~~ the defendant for supplemental hearing and trial, subject to the orders of the court entered pursuant to G.S. 15A-1004."

SECTION 4. G.S. 15A-1007 reads as rewritten:

"**§ 15A-1007. Supplemental hearings.**

(a) When it has been reported to the court that a defendant has gained capacity to proceed, or when the defendant has been determined by the individual or institution having custody of him to have gained capacity and has been returned for ~~trial, the~~ trial in accordance with G.S. 15A-1004(e) and G.S. 15A-1006, the clerk shall notify the district attorney. Upon receiving the notification, the district attorney shall calendar the matter for hearing at the next available term of court, but no later than 30 days after receiving the notification. The court may hold a supplemental hearing to determine whether the defendant has capacity to proceed. The court may take any action at the supplemental hearing that it could have taken at an original hearing to determine the capacity of the defendant to proceed.

(b) The court may hold a supplemental hearing any time upon its own determination that a hearing is appropriate or necessary to inquire into the condition of the defendant.

(c) The court must hold a supplemental hearing if it appears that any of the conditions for dismissal of the charges have been met.

(d) If the court determines in a supplemental hearing that a defendant has gained the capacity to proceed, the case shall be calendared for trial at the earliest practicable time. Continuances that extend beyond 60 days after initial calendaring of the trial shall be granted only in extraordinary circumstances when necessary for the proper administration of justice, and the court shall issue a written order stating the grounds for granting the continuance."

SECTION 5. G.S. 15A-1008 reads as rewritten:

"**§ 15A-1008. Dismissal of charges.**

(a) When a defendant lacks capacity to proceed, the court ~~may~~ shall dismiss the ~~charges:~~charges upon the earliest of the following occurrences:

(1) When it appears to the satisfaction of the court that the defendant will not gain capacity to ~~proceed; or~~proceed.

(2) When the defendant has been substantially deprived of his liberty for a period of time equal to or in excess of the ~~maximum permissible~~

~~period of confinement for the crime or crimes charged; or~~maximum term of imprisonment permissible for prior record level VI for felonies or prior conviction level III for misdemeanors for the most serious offense charged.

(3) Upon the expiration of a period of five years from the date of determination of incapacity to proceed in the case of misdemeanor charges and a period of 10 years in the case of felony charges.

(b) A dismissal entered pursuant to subdivision (a)(2) of this section shall be without leave.

(c) A dismissal entered pursuant to subdivision (a)(1) or (a)(3) of this section shall be issued without prejudice to the refiling of the charges. Upon the defendant becoming capable of proceeding, the prosecutor may reinstitute proceeding dismissed pursuant to subdivision (a)(1) or (a)(3) by filing written notice with the clerk, with the defendant and with the defendant's attorney of record.

(d) Dismissal of criminal charges pursuant to this section shall be upon motion of the prosecutor or the defendant, or upon the court's own motion."

SECTION 6. G.S. 15A-1009 is repealed.

SECTION 7. G.S. 122C-54(b) reads as rewritten:

"(b) If an individual is a defendant in a criminal case and a mental examination of the defendant has been ordered by the court as provided in G.S. 15A-1002, the facility shall send the results or the report of the mental examination to the clerk of court, to the district attorney or prosecuting officer, and to the attorney of record for the defendant as provided in G.S. 15A-1002(d). The report shall contain a treatment recommendation, if any, and any opinion as to whether there is a likelihood that the defendant will gain the capacity to proceed."

SECTION 8. G.S. 122C-263(d) reads as rewritten:

"(d) After the conclusion of the examination the physician or eligible psychologist shall make the following determinations:

(1) If the physician or eligible psychologist finds that:

a. The respondent is mentally ill;

b. The respondent is capable of surviving safely in the community with available supervision from family, friends, or others;

c. Based on the respondent's psychiatric history, the respondent is in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness as defined by G.S. 122C-3(11); and

d. The respondent's current mental status or the nature of the respondent's illness limits or negates the respondent's ability to make an informed decision to seek voluntarily or comply with recommended treatment.

The physician or eligible psychologist shall so show on the examination report and shall recommend outpatient commitment. In addition the examining physician or eligible psychologist shall show the name, address, and telephone number of the proposed outpatient treatment physician or center. The person designated in the order to provide transportation shall return the respondent to the respondent's

regular residence or, with the respondent's consent, to the home of a consenting individual located in the originating county, and the respondent shall be released from custody. Notwithstanding the provisions of this subdivision, if the order placing respondent in custody was issued pursuant to G.S. 15A-1003, after making the determination required by this subdivision, the respondent shall be examined for capacity to proceed and released pursuant to the requirements of G.S. 15A-1004(c).

(2) If the physician or eligible psychologist finds that the respondent is mentally ill and is dangerous to self, as defined in G.S. 122C-3(11)a., or others, as defined in G.S. 122C-3(11)b., the physician or eligible psychologist shall recommend inpatient commitment, and shall so show on the examination report. If, in addition to mental illness and dangerousness, the physician or eligible psychologist also finds that the respondent is known or reasonably believed to be mentally retarded, this finding shall be shown on the report. The law enforcement officer or other designated person shall take the respondent to a 24-hour facility described in G.S. 122C-252 pending a district court hearing. If there is no area 24-hour facility and if the respondent is indigent and unable to pay for care at a private 24-hour facility, the law enforcement officer or other designated person shall take the respondent to a State facility for the mentally ill designated by the Commission in accordance with G.S. 143B-147(a)(1)a. for custody, observation, and treatment and immediately notify the clerk of superior court of this action. If a 24-hour facility is not immediately available or appropriate to the respondent's medical condition, the respondent may be temporarily detained under appropriate supervision at the site of the first examination, provided that at anytime that a physician or eligible psychologist determines that the respondent is no longer in need of inpatient commitment, the proceedings shall be terminated and the respondent transported and released in accordance with subdivision (3) of this subsection. However, if the physician or eligible psychologist determines that the respondent meets the criteria for outpatient commitment, as defined in subdivision (1) of this subsection, the physician or eligible psychologist may recommend outpatient commitment, and the respondent shall be transported and released in accordance with subdivision (1) of this subsection. Any decision to terminate the proceedings or to recommend outpatient commitment after an initial recommendation of inpatient commitment shall be documented and reported to the clerk of superior court in accordance with subsection (e) of this section. If the respondent is temporarily detained and a 24-hour facility is not available or medically appropriate seven days after the issuance of the custody order, a physician or psychologist shall report this fact to the clerk of superior court and the proceedings shall be terminated. Termination of proceedings pursuant to this subdivision shall not prohibit or prevent

the initiation of new involuntary commitment proceedings when appropriate. Affidavits filed in support of proceedings terminated pursuant to this subdivision may not be submitted in support of any subsequent petitions for involuntary commitment. If the affiant initiating new commitment proceedings is a physician or eligible psychologist, the affiant shall conduct a new examination and may not rely upon examinations conducted as part of proceedings terminated pursuant to this subdivision.

In the event an individual known or reasonably believed to be mentally retarded is transported to a State facility for the mentally ill, in no event shall that individual be admitted to that facility except as follows:

a. Persons described in G.S. 122C-266(b);
b. Persons admitted pursuant to G.S. 15A-1321;
c. Respondents who are so extremely dangerous as to pose a serious threat to the community and to other patients committed to non-State hospital psychiatric inpatient units, as determined by the Director of the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services or his designee; and
d. Respondents who are so gravely disabled by both multiple disorders and medical fragility or multiple disorders and deafness that alternative care is inappropriate, as determined by the Director of the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services or his designee.

Individuals transported to a State facility for the mentally ill who are not admitted by the facility may be transported by law enforcement officers or designated staff of the State facility in State-owned vehicles to an appropriate 24-hour facility that provides psychiatric inpatient care.

No later than 24 hours after the transfer, the responsible professional at the original facility shall notify the petitioner, the clerk of court, and, if consent is granted by the respondent, the next of kin, that the transfer has been completed.

Notwithstanding the provisions of this subdivision, if the order placing respondent in custody was issued pursuant to G.S. 15A-1003, prior to any release from custody pursuant to this subdivision, the respondent shall be examined for capacity to proceed and released pursuant to the requirements of G.S. 15A-1004(c).

(3) If the physician or eligible psychologist finds that neither condition described in subdivisions (1) or (2) of this subsection exists, the proceedings shall be terminated. The person designated in the order to provide transportation shall return the respondent to the respondent's regular residence or, with the respondent's consent, to the home of a consenting individual located in the originating county and the respondent shall be released from custody. Notwithstanding the

provisions of this subdivision, if the order placing respondent in custody was issued pursuant to G.S. 15A-1003, after making the determination required by this subdivision, the respondent shall be examined for capacity to proceed and released pursuant to the requirements of G.S. 15A-1004(c)."

SECTION 9. The Commission for Mental Health, Developmental Disabilities and Substance Abuse Services shall develop and adopt rules by December 1, 2012, to require forensic evaluators appointed pursuant to 15A-1002(b) to meet the following requirements:

(1) Complete all training requirements necessary to be credentialed as a certified forensic evaluator.

(2) Attend annual continuing education seminars that provide continuing education and training in conducting forensic evaluations and screening examinations of defendants to determine capacity to proceed and preparation of written reports required by law.

SECTION 10. The Commission for Mental Health, Developmental Disabilities and Substance Abuse Services shall, by December 1, 2012, adopt guidelines for treatment of individuals who are involuntarily committed following a determination of incapacity to proceed and a referral pursuant to G.S. 15A-1003. The guidelines shall require a treatment plan that uses best practices in an effort to restore the individual's capacity to proceed in the criminal matter.

SECTION 11. Sections 1 through 8 of this act become effective December 1, 2012, and apply to offenses committed on or after that date. The remainder of this act is effective when it becomes law.

Appendix H

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE RESEARCH COMMISSION

STATE LEGISLATIVE BUILDING
RALEIGH, NC 27601

April, 2012

TO THE MEMBERS OF THE LEGISLATIVE RESEARCH COMMISSION:

Attached for your consideration is the report to the 2012 Regular Session of the 2011 General Assembly. This report was prepared by the Legislative Research Commission's Committee on Life Cycle Cost Analysis, pursuant to G.S. 120-30.17(1).

Representative John Torbett
Chair

Chair
Committee on Life Cycle Cost Analysis
Legislative Research Commission

LEGISLATIVE RESEARCH COMMISSION

LIFE CYCLE COST ANALYSIS COMMITTEE

NORTH CAROLINA GENERAL ASSEMBLY

REPORT TO THE 2012 SESSION of the 2011 GENERAL ASSEMBLY OF NORTH CAROLINA

APRIL 19, 2012

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TRANSMITTAL LETTER

April, 2012

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TO THE MEMBERS OF THE 2012 REGULAR SESSION
OF THE 2011 GENERAL ASSEMBLY

The Legislative Research Commission herewith submits to you for your consideration its report and recommendations to the 2012 Regular Session of the 2011 General Assembly. The report was prepared by the Legislative Research Commission's Committee on Life Cycle Cost Analysis, pursuant to G.S. 120-30.70(1).

Respectfully submitted,

Senator Philip E. Berger
President Pro Tempore of the Senate

Representative Thomas R. Tillis
Speaker of the House of Representatives

Co-Chairs
Legislative Research Commission

LEGISLATIVE RESEARCH COMMISSION MEMBERSHIP

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2011 – 2012

President Pro Tempore of the Senate
Senator Philip E. Berger
Co-Chair

Senator Thomas M. Apodaca
Acting Co-Chair

Senator Peter S. Brunstetter
Senator Linda D. Garrou
Senator Martin L. Nesbitt, Jr.
Senator Richard Y. Stevens

Speaker of the House of Representatives
Representative Thomas R. Tillis
Co-Chair

Representative Timothy K. Moore
Acting Co-Chair

Representative John M. Blust
Representative Justin P. Burr
Representative Mike D. Hager
Representative Edith D. Warren

PREFACE

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The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is the general purpose study group in the Legislative Branch of State Government. The Commission is co-chaired by the President Pro Tempore of the Senate and the Speaker of the House of Representatives and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigation into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

The Legislative Research Commission authorized the study of Life Cycle Cost Analysis, under authority of G.S. 120-30.17(1). The Committee was chaired by Representative John Torbett. The full membership of the Committee is listed under Committee Membership. A committee notebook containing the committee minutes and all information presented to the committee will be filed in the Legislative Library by the end of the **2011-2012** biennium.

COMMITTEE PROCEEDINGS

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The Legislative Research Commission's Committee on Life Cycle Cost Analysis met 4 times after the 2011 Regular Session. The Committee's Charge can be found here. The following is a brief summary of the Committee's proceedings. Detailed minutes and information from each Committee meeting are available in the Legislative Library.

January 26, 2012

The first meeting of the Committee was held January 26, 2012 at 9:00 am in Room Room 421 of the Legislative Office Building. After hearing its charge and adopting a budget, the Committee heard a presentation on the North Carolina Department of Transportation construction process from Terry R. Gibson, PE, State Highway Administrator.

February 23, 2012

The second meeting of the Committee was held February 23, 2012 at 10:00 am in Room 421 of the Legislative Office Building. The Committee heard presentations on highway contracting methods from Jon Nance, P.E., NC DOT Chief Engineer; Berry Jenkins, P.E., Carolinas Associated General Contractors, NC Highway Division Director, Carolinas Associated General Contractors; Ricky Vick, P.E., Executive Vice President, S.T.Wooten Corporation; and Kathryn S. Westcott, Executive Director, American Council of Engineering Companies of North Carolina.

March 28, 2012

The third meeting of the Committee was held March 28, 2012 at 10:00 am in Room 421of the Legislative Office Building. The Committee heard presentations on life cycle costs and pavement from Jerry Reece, Executive Director, North Carolina Concrete Pavement Association and Christie Barbee, Executive Director, Carolina Asphalt Pavement Association Presentation. Next the committee heard a presentation from Jon Nance, P.E., Chief Engineer, NC DOT, on recommendations from the Department for possible recommendations by the Committee in its report. Finally, the chairman reviewed of list of additional proposed recommendations, included in this report.

April 19, 2012

The Fourth meeting of the Committee was held April 19, 2012, in Room 421 of the Legislative Office Building. At the meeting, the Committee adopted this report

FINDINGS AND RECOMMENDATIONS

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With the limited time available to conduct its study this interim, the Committee finds that there are some issues that should be addressed immediately with proposed legislation. Other issues may not require legislation but may be addressed through the Department of Transportation. The Committee also finds that issues related to more efficient and effective methods for construction of transportation projects are broad, complex, and varied and recommends ongoing study.

Proposed Legislation

Interest Rate on Condemnation Judgments – Under G.S. 136-113, the State is currently required to pay 8% interest in condemnation cases. Interest is paid from the date of the taking to the date the judgment is signed. The 8% interest rate does not fluctuate. The Committee recommends that G.S. 136-113 be amended to provide for a variable interest rate in condemnation cases. (See APPENDIX D: LEGISLATIVE PROPOSALS)

Study Expediting State Water Quality Regulation for Transportation Projects – Under current law, the Sedimentation Control Commission of the Department of Environment and Natural Resources delegates jurisdiction to the Department of Transportation to administer an erosion and sedimentation control program, which has been successful at producing time and cost savings while not sacrificing the quality of the program. The Committee heard recommendations from interested parties that the Department of Environment and Natural Resources be given similar authority to delegate jurisdiction to the Department of Transportation to administer water quality programs. However, because of possible conflicts with federal law, the Committee recommends that the Department of Transportation and the Department of Environment and Natural Resources jointly study the feasibility of expediting water quality-related regulation in order to expedite transportation projects. (See APPENDIX D: LEGISLATIVE PROPOSALS)

Proposals for action by the Department of Transportation

Department of Transportation Efficiency Initiatives – The Committee recommends that the Department of Transportation continue to take measures to develop and utilize the most efficient and effective methods of planning and constructing transportation projects, including:

- Effective use and timing of contracting methods.
- Better coordination of utility work.
- Exploring methods to reduce right-of-way.

- Higher grade sheeting for signs and other innovations that reduce future costs to the State.
- Technology initiatives.
- Utilization of more road closures to speed construction time.
- Driver education to improve mobility.
- Full and complete examination of Life Cycle Cost determinations.
- Develop and utilize a process for private sector peer review of design and construction methods to ensure the State is using best practices.

Continued Study

The Committee recommends that the 2013 General Assembly create a new committee, or task an appropriate existing committee, to continue the Life Cycle Cost study of issues related to more effective and efficient construction of transportation projects in this State.

COMMITTEE MEMBERSHIP

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2011-2012

Speaker of the House of Representatives Appointments:

Representative John Torbett, Chair

Representative Mitch Gillespie
Representative Mark Hilton
Representative Frank Iler
Representative Richard Killian
Representative P. Mills
Representative Tom Murry

COMMITTEE CHARGE

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From the Legislative Research Commission authorization letter of the Speaker of House, Thom Tillis, dated September 1, 2011:

The Committee "may study the implementation of revised policies on life cycle cost analysis including material cost indexing, open bidding for alternate pavement designs for all TIP projects that exceed $500,000 in pavement costs, and the 30 year design periods and 45 year analysis periods based upon actual historic schedules and costs."

STATUTORY AUTHORITY

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NORTH CAROLINA GENERAL STATUTES
ARTICLE 6B.

Legislative Research Commission.

§ 120-30.17. Powers and duties.

The Legislative Research Commission has the following powers and duties:

(1) Pursuant to the direction of the General Assembly or either house thereof, or of the chairmen, to make or cause to be made such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner.

(2) To report to the General Assembly the results of the studies made. The reports may be accompanied by the recommendations of the Commission and bills suggested to effectuate the recommendations.

(3), (4) Repealed by Session Laws 1969, c. 1184, s. 8.

(5), (6) Repealed by Session Laws 1981, c. 688, s. 2.

(7) To obtain information and data from all State officers, agents, agencies and departments, while in discharge of its duty, pursuant to the provisions of G.S. 120-19 as if it were a committee of the General Assembly.

(8) To call witnesses and compel testimony relevant to any matter properly before the Commission or any of its committees. The provisions of G.S. 120-19.1 through G.S. 120-19.4 shall apply to the proceedings of the Commission and its committees as if each were a joint committee of the General Assembly. In addition to the other signatures required for the issuance of a subpoena under this subsection, the subpoena shall also be signed by the members of the Commission or of its committee who vote for the issuance of the subpoena.

(9) For studies authorized to be made by the Legislative Research Commission, to request another State agency, board, commission or committee to conduct the study if the Legislative Research Commission determines that the other body is a more appropriate vehicle with which to conduct the study. If the other body agrees, and no legislation specifically provides otherwise, that body shall conduct the study as if the original authorization had assigned the study to that body and shall report to the General Assembly at the same time other studies to be conducted by the Legislative Research Commission are to be reported. The other agency shall conduct the transferred study within the funds already assigned to it.

Appendix D

LEGISLATIVE PROPOSALS

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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

U D

BILL DRAFT 2011-RW-17 [v.1] (04/09)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
4/9/2012 3:42:04 PM

Short Title: Interest Rate on DOT Condemnation Deposits. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE A MARKET INTEREST RATE OF INTEREST ON DEPARTMENT OF TRANSPORTATION CONDEMNATION JUDGMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 136-113 reads as rewritten:

"**§ 136-113. Interest as a part of just compensation.**

To said amount awarded as damages by the commissioners or a jury or judge, the judge shall, as a part of just compensation, add interest at the ~~legal rate as provided in G.S. 24-1~~prime rate plus one percent (1%) on said amount from the date of taking to the date of judgment; but interest shall not be allowed from the date of deposit on so much thereof as shall have been paid into court as provided in this Article. The rate shall be set as of the date of the declaration of taking, and shall be reset on the anniversary date of the taking for each subsequent year of interest, until the date the award of damages is paid."

SECTION 2. This act becomes effective October 1, 2012.

Appendix D

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H **D**

BILL DRAFT 2011-SUz-10 [v.1] (04/19)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
4/19/2012 1:48:28 PM

Short Title:	DOT/DENR Study Expedite Water Quality Reg.	(Public)
Sponsors:	Representative.	
Referred to:		

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE DEPARTMENT OF TRANSPORTATION AND THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO JOINTLY STUDY EXPEDITING WATER QUALITY REGULATION MONITORING AND IMPLEMENTATION FOR TRANSPORTATION PROJECTS.

The General Assembly of North Carolina enacts:

SECTION 1. The Department of Transportation and the Department of Environment and Natural Resources shall jointly study the feasibility of expediting State water quality-related regulation monitoring and implementation, in order to expedite construction of transportation projects in the State. The Department of Transportation and the Department of Environment and Natural Resources shall report the results of the study to the Joint Legislative Transportation Oversight Committee on or before December 1, 2012.

SECTION 2. This act is effective when it becomes law.

Appendix I

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE RESEARCH COMMISSION

STATE LEGISLATIVE BUILDING

RALEIGH, NC 27601

April 5, 2012

TO THE MEMBERS OF THE LEGISLATIVE RESEARCH COMMISSION:

Attached for your consideration is the report to the 2012 Regular Session of the 2011 General Assembly. This report was prepared by the Legislative Research Commission's Committee on Marine Fisheries, pursuant to G.S. 120-30.17(1).

Senator Harry Brown
Co-Chair

Representative Darrell McCormick
Co-Chair

Co-Chairs
Committee on Marine Fisheries
Legislative Research Commission

LEGISLATIVE RESEARCH COMMISSION

COMMITTEE ON MARINE FISHERIES

NORTH CAROLINA GENERAL ASSEMBLY

REPORT TO THE 2012 SESSION of the 2011 GENERAL ASSEMBLY OF NORTH CAROLINA

APRIL 5, 2012

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TRANSMITTAL LETTER

April 5, 2012

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TO THE MEMBERS OF THE 2012 REGULAR SESSION
OF THE 2011 GENERAL ASSEMBLY

The Legislative Research Commission herewith submits to you for your consideration its report and recommendations to the 2012 Regular Session of the 2011 General Assembly. The report was prepared by the Legislative Research Commission's Committee on Marine Fisheries, pursuant to G.S. 120-30.70(1).

Respectfully submitted,

Senator Philip E. Berger President Pro Tempore of the Senate	Representative Thomas R. Tillis Speaker of the House of Representatives

Co-Chairs
Legislative Research Commission

LEGISLATIVE RESEARCH COMMISSION MEMBERSHIP

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2011 – 2012

President Pro Tempore of the Senate
Senator Philip E. Berger
Co-Chair

Senator Thomas M. Apodaca
Acting Co-Chair

Senator Peter S. Brunstetter
Senator Linda D. Garrou
Senator Martin L. Nesbitt, Jr.
Senator Richard Y. Stevens

Speaker of the House of Representatives
Representative Thomas R. Tillis
Co-Chair

Representative Timothy K. Moore
Acting Co-Chair

Representative John M. Blust
Representative Justin P. Burr
Representative Mike D. Hager
Representative Edith D. Warren

PREFACE

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The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is the general purpose study group in the Legislative Branch of State Government. The Commission is co-chaired by the President Pro Tempore of the Senate and the Speaker of the House of Representatives and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigation into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

The Legislative Research Commission authorized the study of Marine Fisheries, under authority of G.S. 120-30.17(1). The Committee was chaired by Senator Harry Brown and Representative Darrell McCormick, Co-Chairs of the Committee. The full membership of the Committee is listed under Committee Membership. A Committee notebook containing the Committee minutes and all information presented to the committee will be filed in the Legislative Library by the end of the **2011-2012** biennium.

Copies of the presentations made and handouts distributed to the Committee are available at the Committee website:

http://www.ncleg.net/gascripts/DocumentSites/browseDocSite.asp?nID=175

COMMITTEE PROCEEDINGS

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The Legislative Research Commission's Committee on Marine Fisheries met four times after the 2011 Regular Session. The Committee's Charge can be found here. The following is a brief summary of the Committee's proceedings. Detailed minutes and information from each Committee meeting are available in the Legislative Library or online.

January 5, 2012

AGENDA

1:00 p.m. Thursday
Room 643 Legislative Office Building
Raleigh, North Carolina

1. Call to order
   Senator Brown, Presiding

2. Introductory remarks by Cochairs
   Senator Harry Brown
   Representative Darrell G. McCormick

3. Introduction of members and staff

4. Review of Committee Charge
   Jeff Hudson, Committee Counsel

5. Adoption of Committee Budget

6. Overview of fisheries management agencies in North Carolina
   Jeff Hudson, Committee Counsel

7. Overview of budgets and funding of fisheries management agencies in North Carolina
   Lanier McRee, Fiscal Analyst

8. Overview of the Division of Marine Fisheries of the Department of Environment and Natural Resources and the management of marine fisheries in North Carolina
   Louis Daniel, Director
   Division of Marine Fisheries, Department of Environment and Natural Resources

9. Overview of the Wildlife Resources Commission and the management of inland fisheries and game in North Carolina
   Gordon Meyers, Executive Director

Wildlife Resources Commission

10. Commission discussion and announcements

11. Adjourn

The first meeting of the Legislative Research Commission's Committee on Marine Fisheries was held on January 5, 2012 at 1:00 p.m. in Room 643 of the Legislative Office Building. Senator Brown presided.

Mr. Jeff Hudson, Committee Counsel, explained the Committee Charge and the Committee Budget and provided an overview of fisheries management in North Carolina. Mr. Hudson discussed jurisdictional differences between State and federal fisheries management. He then outlined and explained the duties of the three main agencies responsible for fisheries and wildlife management in North Carolina: 1) the Marine Fisheries Commission, 2) the Division of Marine Fisheries, 3) and the Wildlife Resources Commission.

Ms. Lanier McRee, Committee Fiscal Analyst, explained the mission statements of the fisheries and wildlife management agencies and provided budget and spending information for the agencies.

Dr. Louis Daniel, Director of the Division of Marine Fisheries (DMF) of the Department of Environment and Natural Resources (DENR), gave an overview of DMF and the management of marine fisheries in North Carolina. Dr. Daniel's presentation included information about DMF's staff, their procedures, and an overview of North Carolina's fish and wildlife regulatory structure. Dr. Daniel explained the fisheries management process under the Fisheries Reform Act of 1997 (FRA). Dr. Daniel also discussed various species of fish in North Carolina, fish mortality rates, and potential economic impacts of both recreational and commercial fishing.

The Committee discussed public input in the fisheries management process, the health of specific fisheries, overfishing, fish mortality, and fisheries education programs.

Mr. Gordon Myers, Executive Director of the Wildlife Resources Commission (WRC) gave an overview of the WRC and the management of inland fisheries and game in North Carolina. Mr. Myers explained that the WRC's primary charge is to conserve fish and wildlife resources and protect their habitats. Mr. Myers further explained the WRC's various programs, which include law enforcement, wildlife management, inland fisheries, conservation education, administrative sections, and engineering services.

The Committee discussed the amount of time the WRC's staff spends in the field and the publication of Wildlife Magazine.

February 2, 2012

AGENDA

1:00 p.m. Thursday

Room 643 Legislative Office Building
Raleigh, North Carolina

1. Call to order
   Representative Darrell McCormick, Presiding

2. Introductory remarks by Cochairs
   Representative Darrell McCormick
   Senator Harry Brown

3. Overview of organization of fisheries management agencies in other states
   Jeff Hudson, Committee Counsel

4. Overview of gamefish designations in other states
   Jeff Hudson, Committee Counsel

5. Comments from stakeholders on the contributions of fishing activity to the State and how gamefish designations in North Carolina might affect those contributions
   Commercial Fishing Stakeholders
   Sean McKeon, President
   North Carolina Fisheries Association

   Willie Etheridge III, Owner
   Etheridge Seafood, Wanchese, North Carolina

   Bill Hitchcock, Host
   Saltwater Catch Radio Show

   Recreational Fishing Stakeholders
   Recreational Fishing Guides
   Seth Vernon, Owner
   Double Haul Guide Service, Wilmington, North Carolina

   Captain Richard Andrews, Inshore Guide
   Tar-Pam Guide Service, Washington, North Carolina

   Retail Tackle Shops
   Donald Willis, Jr., Owner
   Custom Marine and Fabrication, New Bern, North Carolina

   Chris Medlin, Owner
   East Coast Sports, Surf City, North Carolina

Boat Builders
Jim Hardin, Compliance Manager
Grady White Boats, Greenville, North Carolina

Robin Parker Wynn, Owner
Parker Boats, Beaufort, North Carolina

Recreational Fisherman
Ray Brown
Goldsboro, North Carolina

6. Overview of the menhaden fishery and prohibitions on taking menhaden
Louis Daniel, Director
Division of Marine Fisheries, Department of Environment and Natural Resources

7. Presentation of fishery management recommendations from the Division of Marine Fisheries
Louis Daniel, Director
Division of Marine Fisheries, Department of Environment and Natural Resources

8. Committee discussion of potential recommendations regarding reforms to fisheries management in North Carolina

9. Adjourn

The second meeting of the Legislative Research Commission's Committee on Marine Fisheries was held on February 2, 2012 at 1:00 p.m. in Room 643 of the Legislative Office Building. Representative McCormick presided.

Mr. Jeff Hudson, Committee Counsel, gave an overview of the organization of fisheries management agencies and gamefish designations in other states.

The Committee received comment from nine stakeholders and representatives of the fishing community, including commercial fisherman, recreational fisherman, retail tackle shops, and boat builders. The stakeholders discussed the contributions of fishing activities to the State and how gamefish designations in North Carolina might affect those contributions.

Dr. Louis Daniel, Director, Division of Marine Fisheries (DMF), Department of Environment and Natural Resources (DENR), provided background information and gave an overview on the menhaden fishery and prohibitions on taking menhaden. Dr. Daniel discussed the importance of menhaden to the North Carolina commercial fishing industry.

The Committee discussed the impact of the reduction fishery on menhaden populations, overfishing of menhaden, restrictions on fisheries in other states, and the current status of menhaden. There was additional discussion of DMF's position on the gamefish bill, the status of sturgeon as an endangered species, and the federal requirements of the Endangered Species Act.

Dr. Daniel provided DMF's fishery management recommendations. Dr. Daniel specifically discussed monitoring programs for endangered species interactions. According to Dr. Daniel, the fishing industry is difficult and expensive to monitor without a corresponding licensing program, as observer programs are costly. Dr. Daniel said that it currently costs the State $1 million to monitor endangered sea turtles. Dr. Daniel then provided the Committee with DMF's proposed modifications to the Fisheries Reform Act. DMF believes that the proposed modifications will increase the efficiency and effectiveness of the fisheries management process. The proposed modifications fall into the following categories:

- Marine Fisheries Commission
- Marine Fisheries Commission Advisory Committee Consolidation
- Fishery Management Plans
- Joint Legislative Commission on Governmental Operations Review of Fishery Management Plans
- Limited Entry
- Licenses
- License and Permit Fees
- Civil Penalties
- Coastal Habitat Protection Plan
- Protected Species

March 1, 2012

AGENDA

1:00 p.m. Thursday
Room 643 Legislative Office Building
Raleigh, North Carolina

1. Call to order
   Senator Harry Brown, Presiding

2. Introductory remarks by Cochairs
   Senator Harry Brown
   Representative Darrell McCormick

3. Adoption of the minutes from the January 5, 2012 Committee meeting

4. Committee discussion of potential recommendations to the Legislative Research Commission and the 2012 Regular Session of the General Assembly

- Transfer Marine Fisheries Management to the Wildlife Resources Commission

- Transfer enforcement of fish dealer activities to the Department of Agriculture and Consumer Services

- Provide funding/support to the Department of Agriculture and Consumer Services for expanded seafood marketing

- Prohibit certain commercial harvesting of menhaden

- Establish a legislative oversight commission with jurisdiction over fish and wildlife management

5. Adjourn

The third meeting of the Legislative Research Commission's Committee on Marine Fisheries was held on March 1, 2012 at 1:00 p.m. in Room 643 of the Legislative Office Building. Senator Brown presided.

The Committee discussed the following potential recommendations to the Legislative Research Commission and the 2012 Regular Session of the General Assembly.

Transfer Marine Fisheries Management to the Wildlife Resources Commission

The Committee discussed different organizational structures of fisheries and wildlife management agencies in other states and how they compare to North Carolina. There was additional discussion on the proposed organizational structure of the Division of Marine Fisheries (DMF) if transferred to the Wildlife Resources Commission (WRC).

Several Committee members were concerned about duplication of enforcement and suggested that a transfer could potentially address duplication and make enforcement more efficient. The Committee also discussed cost savings that could be realized by a potential reorganization.

Several Committee members expressed concerns with a possible transfer without further study. They said that such a transfer would be premature and if problems with marine fisheries management exist, they should be dealt with before a possible transfer takes place. There was discussion of possibly forming a subcommittee to study these issues, as these issues are comprehensive and complex.

The Committee discussed whether or not fisheries should be treated as a commodity, similar to agricultural products. If the fisheries were commodity-based, jurisdiction over them could be transferred to the Department of Agriculture and Consumer Services (DACS), as DACS advocates for many North Carolina agricultural commodities. Several members questioned whether fish are a commodity or a public trust resource.

There was Committee discussion on whether moving DMF to WRC would be a "transfer" or a "merger." Several Committee members asked about the current organizational structure of DMF and WRC.

Dr. Louis Daniel, Director of DMF of the Department of Environment and Natural Resources (DENR), explained the various jurisdictional issues between DMF and WRC.

With regard to dual enforcement, Representative Spear added that it's not duplicative; it's the way the waters are classified.

With regard to fish being treated as a commodity or a public trust, Dr. Daniel explained that fish are a public trust resource, not a commodity. In that respect, fish are similar to duck, quail, bear, and other wildlife.

Mr. Gordon Myers, Executive Director of WRC, addressed the members. Mr. Myers reiterated the various organizational structures in other states. He noted that the WRC wants to maintain its operating structure.

Transfer enforcement of fish dealer activities to the Department of Agriculture and Consumer Services

The Committee discussed the possibility of transferring jurisdiction over fish dealer activities to the Commissioner of Agriculture.

Dr. Daniel explained that transferring fish dealer activities to DACS would have a tremendous impact on DMF, specifically with regard to DMF's interactions with fish dealers. The DMF monitors fish quotas on a daily basis, which is a critical component of their job. Transferring these activities would remove DMF's ability to monitor the quotas. Dr. Daniel explained that he would be forced to shut down fisheries, as he wouldn't be able to demonstrate State compliance with federal quotas and other requirements.

Provide funding/support to the Department of Agriculture and Consumer Services for expanded seafood marketing

The Committee discussed the lack of funding for such a recommendation.

Prohibit certain commercial harvesting of menhaden

Several Committee members expressed concern about the depletion and current stock status of menhaden. Menhaden is an important bait fish in North Carolina.

Dr. Daniel explained the location of menhaden production, the reduction fishery, and the bycatch problems associated with menhaden. Dr. Daniel indicated that the Atlantic

States Marine Fisheries Commission (ASMFC) will likely place restrictions on menhaden. Dr. Daniel said the ASMFC's report will be issued in May 2012.

Establish a legislative oversight commission with jurisdiction over fish and wildlife management

The committee did not discuss this agenda item.

Dredging

The Chair added discussion of dredging to the agenda.

Mr. Warren Judd, Chairman of the Dare County Commissioners, discussed Dare County's study on the economic impact of the Oregon Inlet. According to Mr. Judd, 70 million pounds of fish are transported through Oregon Inlet each year and $45 million in federal taxes and $43 million in State taxes are generated. The inlet is an important roadway for fisherman and is valuable to the economy.

There was some Committee discussion of possibly funding a jetty project in order to keep the inlet open, as a jetty could eliminate the need for dredging. Several Committee members referenced the marine fuel tax and the possibility of a natural resources tax to fund dredging, building a jetty, and maintaining public beaches.

April 5, 2012

The fourth meeting of the Legislative Research Commission's Committee on Marine Fisheries was held on April 5, 2012 at 1:00 p.m. in Room 643 of the Legislative Office Building. Senator Brown presided. The Committee adopted this report.

COMMITTEE MEMBERSHIP

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2011-2012

President Pro Tempore of the Senate Appointments:

Senator Harry Brown, Co-Chair

Senator Don W. East
Senator Thom Goolsby
Senator Brent Jackson
Senator Jean R. Preston
Senator William P. Rabon
Senator Tommy Tucker
Senator Stanford M. White

Speaker of the House of Representatives Appointments:

Representative Darrell G. McCormick, Co-Chair

Representative Bryan R. Holloway
Representative Dan W. Ingle
Representative Daniel F. McComas
Representative Pat McElraft
Representative Tom Murry
Representative Ruth Samuelson
Representative Tim L. Spear

COMMITTEE CHARGE

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Marine Fisheries - Study issues relating to marine fisheries. Specifically, the subcommittee may study the following:

1. Potential impact to both the State's fisheries resources and the State's economy related to the designation of Red Drum (Sciaenops ocellatus), Spotted Sea Trout (Cynoscion nebulosus), and Striped Bass (Morone saxatilis) as coastal game fish.
2. Changes to the appointment process and qualification for membership on the North Carolina Marine Fisheries Commission.
3. Creation of a hook and line commercial fishery.
4. Elimination of the trawl boat fishery in North Carolina.
5. Entering into reciprocal agreements with other jurisdictions with regard to the conservation of marine and estuarine resources; and regulating placement of nets and other sports or commercial fishing apparatus in coastal fishing waters with regard to navigational and recreational safety as well as from a conservation standpoint.
6. Entering into agreements regarding the delegation of law enforcement powers from the National Marine Fisheries Service over matters within the jurisdiction of the Service.
7. Potential modification of the Fisheries Reform Act of 1997.
8. Whether Marine Fisheries should be a division of the Coastal Resources Commission or Wildlife Resources Commission.
9. Other findings that promote the allocation of the State's resources to the optimum use.

STATUTORY AUTHORITY

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NORTH CAROLINA GENERAL STATUTES
ARTICLE 6B.

Legislative Research Commission.

§ 120-30.17. Powers and duties.

The Legislative Research Commission has the following powers and duties:

(1) Pursuant to the direction of the General Assembly or either house thereof, or of the chairmen, to make or cause to be made such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner.

(2) To report to the General Assembly the results of the studies made. The reports may be accompanied by the recommendations of the Commission and bills suggested to effectuate the recommendations.

(3), (4) Repealed by Session Laws 1969, c. 1184, s. 8.

(5), (6) Repealed by Session Laws 1981, c. 688, s. 2.

(7) To obtain information and data from all State officers, agents, agencies and departments, while in discharge of its duty, pursuant to the provisions of G.S. 120-19 as if it were a committee of the General Assembly.

(8) To call witnesses and compel testimony relevant to any matter properly before the Commission or any of its committees. The provisions of G.S. 120-19.1 through G.S. 120-19.4 shall apply to the proceedings of the Commission and its committees as if each were a joint committee of the General Assembly. In addition to the other signatures required for the issuance of a subpoena under this subsection, the subpoena shall also be signed by the members of the Commission or of its committee who vote for the issuance of the subpoena.

(9) For studies authorized to be made by the Legislative Research Commission, to request another State agency, board, commission or committee to conduct the study if the Legislative Research Commission determines that the other body is a more appropriate vehicle with which to conduct the study. If the other body agrees, and no legislation specifically provides otherwise, that body shall conduct the study as if the original authorization had assigned the study to that body and shall report to the General Assembly at the same time other studies to be conducted by the Legislative Research Commission are to be reported. The other agency shall conduct the transferred study within the funds already assigned to it.

LEGISLATIVE PROPOSALS

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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

U **D**

BILL DRAFT 2011-SBz-30 [v.5] (03/07)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
4/5/2012 3:06:17 PM

Short Title: Study Reorganization of Fish & Wildlife Mgmt. (Public)

Sponsors:

Referred to:

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE EXECUTIVE DIRECTOR OF THE WILDLIFE RESOURCES COMMISSION, THE DIRECTOR OF THE DIVISION OF MARINE FISHERIES OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, AND THE COMMISSIONER OF AGRICULTURE TO JOINTLY STUDY THE REORGANIZATION OF FISH AND WILDLIFE MANAGEMENT IN THE STATE.

The General Assembly of North Carolina enacts:

SECTION 1. It is the intent of the General Assembly to gather information on abolishing the current Marine Fisheries Commission, transferring its powers and duties to the Wildlife Resources Commission, and merging all powers, duties, functions, and personnel of the Division of Marine Fisheries of the Department of Environment and Natural Resources and the Wildlife Resources Commission into a new Fish and Wildlife Resources Commission effective July 1, 2013. Prior to October 1, 2012, the Commissioner of Agriculture is authorized to review and identify positions or duties regarding fisheries resource management currently carried out by the Marine Fisheries Commission or the Division of Marine Fisheries of the Department of Environment and Natural Resources that are within the scope of the overall mission of the Department of Agriculture and Consumer Services.

SECTION 2. The Executive Director of the Wildlife Resources Commission, the Director of the Division of Marine Fisheries of the Department

of Environment and Natural Resources, and, where appropriate, the Commissioner of Agriculture shall, in consultation with various user groups, examine ways to:

(1) Provide for the efficient and effective transfer of all statutory authority, powers, duties, and functions, including but not limited to rule making, licensing, and the rendering of findings, orders, and adjudications.

(2) Provide for the efficient and effective transfer and consolidation of all records, personnel, property, and unexpended balances of appropriations, allocations, or other funds. This component of the study shall specifically:

(a) Provide a detailed description of the proposed organization of the reorganized agencies.

(b) Identify any areas of overlap between programs or personnel.

(c) Provide for the consolidation of law enforcement functions.

(d) Identify a target reduction of five percent (5%) in personnel and budgetary spending to be achieved by the reorganization.

(3) Provide for the uninterrupted and unimpaired continuation of all:

(a) Services provided by the agencies.

(b) Rules adopted or implemented by the agencies.

(c) Contracts or other obligations entered into by either agency.

(d) Proceedings to which either agency is a party.

(4) Identify all statutory, rule, and policy changes that would be necessary to reorganize fish and wildlife management in the State.

(5) Identify and address any other issues necessary to implement Section 1 of this act.

SECTION 3. The Executive Director of the Wildlife Resources Commission, the Director of the Division of Marine Fisheries of the Department of Environment and Natural Resources, and, if appropriate, the Commissioner of Agriculture shall jointly report on the study conducted pursuant to Section 2 of this act to the Legislative Research Commission Committee on Marine Fisheries no later than October 1, 2012.

SECTION 4. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

U **D**

BILL DRAFT 2011-SBz-31 [v.3] (03/10)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
4/5/2012 3:11:08 PM

Short Title: Study Coastal Fishing & Boating License Fees. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE DIRECTOR OF THE DIVISION OF MARINE FISHERIES OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES AND THE EXECUTIVE DIRECTOR OF THE WILDLIFE RESOURCES COMMISSION TO JOINTLY STUDY FEES ASSOCIATED WITH THE ISSUANCE OF COASTAL FISHING LICENSES AND THE NUMBERING AND TITLING OF VESSELS.

The General Assembly of North Carolina enacts:

SECTION 1. It is the intent of the General Assembly to provide funding for the dredging and maintenance of the State's coastal inlets from fees charged to those who make use of the inlets.

SECTION 2. In order to identify possible sources of funds for the purposes set out in Section 1 of this act, the Director of the Division of Marine Fisheries of the Department of Environment and Natural Resources and the Executive Director of the Wildlife Resources Commission shall jointly study the fees associated with the issuance of coastal fishing licenses pursuant to Chapter 113 of the General Statutes and the numbering and titling of vessels pursuant to Chapter 75A of the General Statutes.

(1) For coastal fishing licenses, the Director and Executive Director shall specifically:
   (a) Identify all types of fishing licenses issued for the purpose of taking fish in coastal fishing waters, both recreational and commercial.
   (b) Identify the fees associated with these licenses.

(c) Identify the analogous licenses issued and fees charged by states with fisheries profiles similar to those of North Carolina, including at least South Carolina and Virginia.

(d) Recommend several levels of increases in the license fees and calculate the amount of revenue that would be generated by the different levels of increase.

(e) Identify any limitations under State or federal law on the use of license fees for purposes not related to the management of marine fisheries.

(2) For the numbering and titling of vessels, the Executive Director shall specifically:

(a) Identify all requirements for the numbering and titling of vessels.

(b) Determine if there is a method for differentiating between vessels that are used predominantly in coastal fishing waters versus those that are used predominantly in inland fishing waters.

(c) Identify the fees associated with the numbering and titling of vessels.

(d) Identify the analogous vessel numbering and titling requirements and fees charged by states with coastal boating profiles similar to those of North Carolina, including at least South Carolina and Virginia.

(e) Recommend several levels of increases in the fees associated with the numbering and titling of vessels and calculate the amount of revenue that would be generated by the different levels of increase.

(f) Identify any limitations under State or federal law on the use of fees associated with the numbering and titling of vessels.

(3) The Director and the Executive Director shall examine all other sources of funding, including the gas tax.

SECTION 3. The Director of the Division of Marine Fisheries of the Department of Environment and Natural Resources and the Executive Director of the Wildlife Resources Commission shall jointly submit a report on the study required by Section 2 of this act to the Legislative Research Commission Committee on Marine Fisheries no later than September 1, 2012.

SECTION 4. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

U **D**

BILL DRAFT 2011-SBz-26 [v.3] (02/07)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
3/7/2012 9:05:31 AM

Short Title: Prohibit Certain Harvest of Menhaden. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO MAKE IT UNLAWFUL TO TAKE MENHADEN OR ATLANTIC THREAD HERRING WITH A PURSE SEINE NET DEPLOYED BY A MOTHER SHIP AND ONE OR MORE RUNNER BOATS IN COASTAL FISHING WATERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-187 reads as rewritten:

"**§ 113-187. Penalties for violations of Subchapter and rules.**

(a) Any person who participates in a commercial fishing operation conducted in violation of any provision of this Subchapter and its implementing rules or in an operation in connection with which any vessel is used in violation of any provision of this Subchapter and its implementing rules is guilty of a Class A1 misdemeanor.

(b) Any owner of a vessel who knowingly permits it to be used in violation of any provision of this Subchapter and its implementing rules is guilty of a Class A1 misdemeanor.

(c) Any person in charge of a commercial fishing operation conducted in violation of any provision of this Subchapter and its implementing rules or in charge of any vessel used in violation of any provision of this Subchapter and its implementing rules is guilty of a Class A1 misdemeanor.

(d) Any person in charge of a commercial fishing operation conducted in violation of the following provisions of this Subchapter or the following rules of the Marine Fisheries Commission; and any person in charge of any vessel used in violation of the following provisions of the Subchapter or the following rules, shall be guilty of a Class A1 misdemeanor. The violations of the statute or the rules for which the penalty is mandatory are:

(1) Taking or attempting to take, possess, sell, or offer for sale any oysters, mussels, or clams taken from areas closed by statute, rule, or proclamation because of suspected pollution.

(2) Taking or attempting to take or have in possession aboard a vessel, shrimp taken by the use of a trawl net, in areas not opened to shrimping, pulled by a vessel not showing lights required by G.S. 75A-6 after sunset and before sunrise.

(3) Using a trawl net in any coastal fishing waters closed by proclamation or rule to trawl nets.

(4) Violating the provisions of a special permit or gear license issued by the Department.

(5) Using or attempting to use any trawl net, long haul seine, swipe net, mechanical methods for oyster or clam harvest or dredge in designated primary nursery areas.

(e) Any person who takes menhaden or Atlantic thread herring by the use of a purse seine net deployed by a mother ship and one or more runner boats in coastal fishing waters is guilty of a Class A1 misdemeanor."

SECTION 2. S.L. 2007-320 is repealed.

SECTION 3. This act becomes effective December 1, 2012, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

U **D**

BILL DRAFT 2011-SBz-27 [v.9] (02/08)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
4/5/2012 3:14:16 PM

Short Title: Legislative Oversight of Fish & Wildlife Mgmt. (Public)

Sponsors:

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE JOINT LEGISLATIVE COMMISSION ON FISH AND WILDLIFE.

The General Assembly of North Carolina enacts:

SECTION 1. The caption to Article 12F of Chapter 120 of the General Statutes reads as rewritten:

"Article 12F.

Joint Legislative Commission on ~~Seafood and Aquaculture.~~Fish and Wildlife."

SECTION 2. Article 12F of Chapter 120 of the General Statutes is amended by adding three new sections to read:

"**§ 120-70.67. Creation and membership of Joint Legislative Commission on Fish and Wildlife.**

(a) The Joint Legislative Commission on Fish and Wildlife is established.

(b) The Commission shall consist of 16 members as follows:

(1) Eight members of the Senate appointed by the President Pro Tempore of the Senate, at least two of whom are members of the minority party.

(2) Eight members of the House of Representatives appointed by the Speaker of the House of Representatives, at least two of whom are members of the minority party.

(b1) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall ensure geographic diversity of membership in making the appointments under subsection (b) of this section.

(c) Terms on the Commission are for two years and begin on the convening of the General Assembly in each odd-numbered year. Members may complete a term of service on the Commission even if they do not seek reelection or are not

reelected to the General Assembly, but resignation or removal from service in the General Assembly constitutes resignation or removal from service on the Commission. A member continues to serve until his successor is appointed.

"**§ 120-70.68. Purpose and powers and duties of Commission.**

(a) The Joint Legislative Commission on Fish and Wildlife shall exercise legislative oversight over the management of fish and wildlife in the State. In the exercise of this oversight, the Commission may do any of the following:

(1) Monitor and evaluate the programs, policies, and actions of the Marine Fisheries Commission, the Division of Marine Fisheries of the Department of Environment and Natural Resources, the Wildlife Resources Commission, and of any other board, commission, department, or agency of the State or local government that manages fish and wildlife.

(2) Review and evaluate existing and proposed State statutes and rules affecting the management of fish and wildlife in the State and determine whether any modification of these statutes or rules is in the public interest.

(3) Monitor changes in federal law and court decisions affecting the management of fish and wildlife in the State.

(4) Monitor and evaluate fishing and hunting related industries in the State and study measures to promote these industries.

(5) Study any other matters related to the management of fish and wildlife in the State that the Commission considers necessary to fulfill its mandate.

(b) The Commission may make reports and recommendations, including proposed legislation, to the General Assembly from time to time as to any matter relating to its oversight and the powers and duties set out in this section.

"**§ 120-70.69. Organization of Commission.**

(a) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Joint Legislative Commission on Fish and Wildlife. The Commission may meet at any time upon the call of either cochair, whether or not the General Assembly is in session.

(b) A quorum of the Commission is eight members.

(c) While in the discharge of its official duties, the Commission has the powers of a joint committee under G.S. 120-19 and G.S. 120-19.1 through 120-19.4. The Commission may contract for consultants or hire employees in accordance with G.S. 120-32.02.

(d) From funds available to the General Assembly, the Legislative Services Commission shall allocate monies to fund the Joint Legislative Commission on Fish and Wildlife. Members of the Commission receive subsistence and travel expenses as provided in G.S. 120-3.1. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Commission in its work. Upon the direction of the Legislative Services

Commission, the Supervisors of Clerks of the Senate and of the House of Representatives shall assign clerical staff to the Commission. The expenses for clerical employees shall be borne by the Commission."

SECTION 3. Section 1.2(a) of S.L. 2011-291 reads as rewritten:

"**SECTION 1.2.(a)** The duties of the following committees and commissions are transferred to the Joint Legislative Commission on Governmental Operations:

(1) Joint Legislative Oversight Committee on Capital Improvements.
(2) Joint Legislative Commission on Future Strategies for North Carolina.
(3) Joint Select Committee on Low-Level Radioactive Waste.
(4) Legislative Committee on New Licensing Boards.
~~(5) Joint Legislative Commission on Seafood and Aquaculture.~~
(6) Joint Legislative Utility Review Commission."

SECTION 4. G.S. 120-76 reads as rewritten:

"**§ 120-76. Powers and duties of the Commission.**

The Commission shall have the following powers:

(1) To conduct program evaluation studies of the various components of State agency activity as they relate to:
   a. Service benefits of each program relative to expenditures;
   b. Achievement of program goals;
   c. Use of indicators by which the success or failure of a program may be gauged; and
   d. Conformity with legislative intent.
(2) To study legislation which would result in new programs with statewide implications for feasibility and need. These studies may be jointly conducted with the Fiscal Research Division of the Legislative Services Commission.
(3) To study on a continuing basis the implementation of State government reorganization with respect to:
   a. Improvements in administrative structure, practices and procedures;
   b. The relative effectiveness of centralization and decentralization of management decisions for agency operation;
   c. Opportunities for effective citizen participation; and
   d. Broadening of career opportunities for professional staff.
(4) To make such studies and reports of the operations and functions of State government as it deems appropriate or upon petition by resolution of either the Senate or the House of Representatives.
(5) To produce routine written reports of findings for general legislative and public distribution. Special attention shall be given to the presentation of findings to the appropriate committees of the Senate and the House of Representatives. If findings arrived at during a study have a potential impact on

either the finance or appropriations deliberations, such findings shall immediately be presented to the committees. Such reports shall contain recommendations for appropriate executive action and when legislation is considered necessary to effect change, draft legislation for that purpose may be included. Such reports as are submitted shall include but not be limited to the following matters:

a. Ways in which the agencies may operate more economically and efficiently;
b. Ways in which agencies can provide better services to the State and to the people; and
c. Areas in which functions of State agencies are duplicative, overlapping, or failing to accomplish legislative objectives, or for any other reason should be redefined or redistributed.

(6) To devise a system, in cooperation with the Fiscal Research Division of the Legislative Services Commission, whereby all new programs authorized by the General Assembly incorporate an evaluation component. The results of such evaluations may be made to the Appropriations Committees at the beginning of each regular session.

(7) To evaluate and approve or deny requests from the Department of Transportation regarding the funding of federally eligible construction projects as provided in the fourth paragraph of G.S. 136-44.2.

(8) The Joint Legislative Commission on Governmental Operations shall be consulted by the Governor before the Governor does any of the following:

a. Repealed by Session Laws 2007-117, s. 2, effective July 1, 2007.
b. Authorizes expenditures in excess of the total requirements of a purpose or program as enacted by the General Assembly and as provided by G.S. 143C-6-4.
c. Proceeds to reduce programs subsequent to a reduction of ten percent (10%) or more in the federal fund level certified to a department and any subsequent changes in distribution formulas.
d. Takes extraordinary measures under Article III, Section 5(3) of the Constitution to effect necessary economies in State expenditures required for balancing the budget due to a revenue shortfall, including, but not limited to, the following: loans among funds, personnel freezes or layoffs, capital project reversions, program eliminations,

and use of reserves. However, if the Committee fails to meet within 10 calendar days of a request by the Governor for its consultation, the Governor may proceed to take the actions he feels are appropriate and necessary and shall then report those actions at the next meeting of the Commission.

e. Approves a new capital improvement project funded from gifts, grants, receipts, special funds, self-liquidating indebtedness, and other funds or any combination of funds for the project not specifically authorized by the General Assembly. The budget for each capital project must include projected revenues in an amount not less than projected expenditures.

(9) To examine, on a continuing basis, capital improvements approved and undertaken for State facilities and institutions and to have oversight over implementation of the six-year capital improvements plan developed pursuant to G.S. 143C-8-5.

(10) To establish a subcommittee to evaluate the need for any new licensing board by establishing criteria and procedures for reviewing proposed licensing boards. To assure that no new licensing board shall be established unless the following criteria are met:

a. The unregulated practice of the profession or occupation can substantially harm or endanger the public health, safety, or welfare, and the potential for such harm is recognizable and not remote or dependent upon tenuous argument.

b. The profession or occupation possesses qualities that distinguish it from ordinary labor.

c. Practice of the profession or occupation requires specialized skill or training.

d. A substantial majority of the public does not have the knowledge or experience to evaluate whether the practitioner is competent.

e. The public is not effectively protected by other means.

f. Licensure will not have a substantial adverse economic impact upon consumers of the practitioner's goods or services.

(11) To evaluate the North Carolina Utilities Commission, by doing the following:

a. Reviewing the actions of the North Carolina Utilities Commission, including the review of its interim and final orders, to the end that the members of the General

Assembly may better judge whether these actions serve the best interest of the citizens of North Carolina, individual and corporate.

b. Inquiring into the role of the North Carolina Utilities Commission, the Public Staff, and the several utility companies in the development of alternate sources of energy.

c. Submitting evaluations to the General Assembly, from time to time, of the performance of the North Carolina Utilities Commission, the Public Staff, and the various utilities operating in the State. A proposed draft of such evaluations shall be submitted to the North Carolina Utilities Commission, the Public Staff, and the affected public utilities prior to submission to the General Assembly, and the affected entity shall be given an opportunity to be heard before the Commission prior to the completion of the evaluation and its submission to the General Assembly.

(12) To make reports and recommendations to the General Assembly, from time to time, on matters relating to the powers and duties set out in this section.

(13) To review and evaluate changes in federal law and regulations, relevant court decisions, and changes in technology affecting any of the duties of the Commission.

(14) To review and evaluate changes in federal law and regulation, or changes brought about by court actions, as well as changes in technology affecting any of the duties of the Commission, to determine whether the State's laws require modification as a result of those changes.

~~(15) With regard to seafood and aquaculture:~~

~~a. To monitor and study the seafood industry in North Carolina, including studies of the feasibility of increasing the State's production, processing, and marketing of seafood.~~

~~b. To study the potential for increasing the role of aquaculture in all regions of the State.~~

~~c. To evaluate the feasibility of creating a central permitting office for fishing and aquaculture matters.~~

~~d. To evaluate actions of the Division of Marine Fisheries of the Department of Environment and Natural Resources, the Wildlife Resources Commission of the Department of Environment and Natural Resources and of any other~~

~~State or local government agency as such actions relate to the seafood and aquaculture industries.~~

~~e. To make recommendations regarding regulatory matters relating to the seafood and aquaculture industries including, but not limited to evaluating the necessity to substantially increase penalties for trespass and theft of shellfish and other aquaculture products.~~

~~f. To review and evaluate changes in federal law and regulations, relevant court decisions, and changes in technology affecting the seafood and aquaculture industries.~~

~~g. To review existing and proposed State law and rules affecting the seafood and aquaculture industries and to determine whether any modification of law or rules is in the public interest.~~"

SECTION 5. G.S. 113-175.6 reads as rewritten:

"**§ 113-175.6. Report.**

The Chair of the Marine Fisheries Commission and the Chair of the Wildlife Resources Commission shall jointly submit to the Joint Legislative Commission on ~~Governmental Operations~~Fish and Wildlife by October 1 of each year a report on the Marine Resources Fund and the Endowment Fund that shall include the source and amounts of all moneys credited to each fund and the purpose and amount of all disbursements from each fund during the prior fiscal year."

SECTION 6. G.S. 113-182.1 reads as rewritten:

"**§ 113-182.1. Fishery Management Plans.**

(a) The Department shall prepare proposed Fishery Management Plans for adoption by the Marine Fisheries Commission for all commercially or recreationally significant species or fisheries that comprise State marine or estuarine resources. Proposed Fishery Management Plans shall be developed in accordance with the Priority List, Schedule, and guidance criteria established by the Marine Fisheries Commission under G.S. 143B-289.52.

(b) The goal of the plans shall be to ensure the long-term viability of the State's commercially and recreationally significant species or fisheries. Each plan shall be designed to reflect fishing practices so that one plan may apply to a specific fishery, while other plans may be based on gear or geographic areas. Each plan shall:

(1) Contain necessary information pertaining to the fishery or fisheries, including management goals and objectives, status of relevant fish stocks, stock assessments for multiyear species, fishery habitat and water quality considerations consistent with Coastal Habitat Protection Plans adopted pursuant to G.S. 143B-279.8, social and economic impact of the fishery to the State, and user conflicts.

(2) Recommend management actions pertaining to the fishery or fisheries.

(3) Include conservation and management measures that will provide the greatest overall benefit to the State, particularly with respect to food production, recreational opportunities, and the protection of marine ecosystems, and that will produce a sustainable harvest.

(4) Repealed by Session Laws 2010-13, s. 1, effective June 23, 2010.

(5) Specify a time period, not to exceed two years from the date of the adoption of the plan, for ending overfishing. This subdivision shall only apply to a plan for a fishery that is not producing a sustainable harvest.

(6) Specify a time period, not to exceed 10 years from the date of the adoption of the plan, for achieving a sustainable harvest. This subdivision shall not apply if the Fisheries Director determines that the biology of the fish, environmental conditions, or lack of sufficient data make implementing the requirements of this subdivision incompatible with professional standards for fisheries management.

(7) Include a standard of at least fifty percent (50%) probability of achieving sustainable harvest for the fishery or fisheries. This subdivision shall not apply if the Fisheries Director determines that the biology of the fish, environmental conditions, or lack of sufficient data make implementing the requirements of this subdivision incompatible with professional standards for fisheries management.

(c) To assist in the development of each Fishery Management Plan, the Chair of the Marine Fisheries Commission shall appoint a fishery management plan advisory committee. Each fishery management plan advisory committee shall be composed of commercial fishermen, recreational fishermen, and scientists, all with expertise in the fishery for which the Fishery Management Plan is being developed.

(c1) The Department shall consult with the regional advisory committees established pursuant to G.S. 143B-289.57(e) regarding the preparation of each Fishery Management Plan. Before submission of a plan for review by the Joint Legislative Commission on ~~Governmental Operations,~~Fish and Wildlife, the Department shall review any comment or recommendation regarding the plan that a regional advisory committee submits to the Department within the time limits established in the Schedule for the development and adoption of Fishery Management Plans established by G.S. 143B-289.52. Before the Commission adopts a management measure to implement a plan, the Commission shall review any comment or recommendation regarding the management measure that a regional advisory committee submits to the Commission.

(d) Each Fishery Management Plan shall be reviewed at least once every five years. The Marine Fisheries Commission may revise the Priority List and guidance criteria whenever it determines that a revision of the Priority List or guidance criteria will facilitate or improve the development of Fishery Management Plans or is necessary to restore, conserve, or protect the marine and estuarine resources of the State. The Marine Fisheries Commission may not revise the Schedule for the development of a Fishery Management Plan, once adopted, without the approval of the Secretary of Environment and Natural Resources.

(e) The Secretary of Environment and Natural Resources shall monitor progress in the development and adoption of Fishery Management Plans in relation to the Schedule for development and adoption of the plans established by the Marine Fisheries Commission. The Secretary of Environment and Natural Resources shall report to the Joint Legislative Commission on ~~Governmental Operations~~Fish and Wildlife on progress in developing and implementing the Fishery Management Plans on or before 1 September of each year. The Secretary of Environment and Natural Resources shall report to the Joint Legislative Commission on ~~Seafood and Aquaculture~~Fish and Wildlife within 30 days of the completion or substantial revision of each proposed Fishery Management Plan. The Joint Legislative Commission on ~~Governmental Operations~~Fish and Wildlife shall review each proposed Fishery Management Plan within 30 days of the date the proposed Plan is submitted by the Secretary. The Joint Legislative Commission on ~~Governmental Operations~~Fish and Wildlife may submit comments and recommendations on the proposed Plan to the Secretary within 30 days of the date the proposed Plan is submitted by the Secretary.

(e1) If the Secretary determines that it is in the interest of the long-term viability of a fishery, the Secretary may authorize the Commission to develop temporary management measures to supplement an existing Fishery Management Plan pursuant to this subsection. Development of temporary management measures pursuant to this subsection is exempt from subsections (c), (c1), and (e) of this section and the Priority List, Schedule, and guidance criteria established by the Marine Fisheries Commission under G.S. 143B-289.52. During the next review period for a Fishery Management Plan supplemented pursuant to this subsection, the Commission shall either incorporate the temporary management measures into the revised Fishery Management Plan or the temporary management measures shall expire on the date the revised Fishery Management Plan is adopted.

(f) The Marine Fisheries Commission shall adopt rules to implement Fishery Management Plans in accordance with Chapter 150B of the General Statutes.

(g) To achieve sustainable harvest under a Fishery Management Plan, the Marine Fisheries Commission may include in the Plan a recommendation that the General Assembly limit the number of fishermen authorized to participate in the fishery. The Commission may recommend that the General Assembly limit participation in a fishery only if the Commission determines that sustainable

harvest cannot otherwise be achieved. In determining whether to recommend that the General Assembly limit participation in a fishery, the Commission shall consider all of the following factors:

(1) Current participation in and dependence on the fishery.
(2) Past fishing practices in the fishery.
(3) Economics of the fishery.
(4) Capability of fishing vessels used in the fishery to engage in other fisheries.
(5) Cultural and social factors relevant to the fishery and any affected fishing communities.
(6) Capacity of the fishery to support biological parameters.
(7) Equitable resolution of competing social and economic interests.
(8) Any other relevant considerations."

SECTION 7. G.S. 113-200(i) reads as rewritten:

"(i) Report on Grant Program. – The Sea Grant College Program shall report on the Fishery Resource Grant Program to the Marine Fisheries Commission and the Joint Legislative Commission on ~~Governmental Operations~~Fish and Wildlife no later than January 1 of each year."

SECTION 8. G.S. 143B-279.8 reads as rewritten:

"**§ 143B-279.8. Coastal Habitat Protection Plans.**

(a) The Department shall coordinate the preparation of draft Coastal Habitat Protection Plans for critical fisheries habitats. The goal of the Plans shall be the long-term enhancement of coastal fisheries associated with each coastal habitat identified in subdivision (1) of this subsection. The Department shall use the staff of those divisions within the Department that have jurisdiction over marine fisheries, water quality, and coastal area management in the preparation of the Coastal Habitat Protection Plans and shall request assistance from other federal and State agencies as necessary. The plans shall:

(1) Describe and classify biological systems in the habitats, including wetlands, fish spawning grounds, estuarine or aquatic endangered or threatened species, primary or secondary nursery areas, shellfish beds, submerged aquatic vegetation (SAV) beds, and habitats in outstanding resource waters.
(2) Evaluate the function, value to coastal fisheries, status, and trends of the habitats.
(3) Identify existing and potential threats to the habitats and the impact on coastal fishing.
(4) Recommend actions to protect and restore the habitats.

(b) Once a draft Coastal Habitat Protection Plan has been prepared, the chairs of the Coastal Resources Commission, the Environmental Management Commission, and the Marine Fisheries Commission shall each appoint two members of the commission he or she chairs to a six-member review committee. The six-member review committee, in consultation with the Department, shall

review the draft Plan and may revise the draft Plan on a consensus basis. The draft Plan, as revised by the six-member review committee, shall then be submitted to the Coastal Resources Commission, the Environmental Management Commission, and the Marine Fisheries Commission, each of which shall independently consider the Plan for adoption. If any of the three commissions is unable to agree to any aspect of a Plan, the chair of each commission shall refer that aspect of the Plan to a six-member conference committee to facilitate the resolution of any differences. The six-member conference committee shall be appointed in the same manner as a six-member review committee and may include members of the six-member review committee that reviewed the Plan. Each final Coastal Habitat Protection Plan shall consist of those provisions adopted by all three commissions. The three commissions shall review and revise each Coastal Habitat Protection Plan at least once every five years.

(c) In carrying out their powers and duties, the Coastal Resources Commission, the Environmental Management Commission, and the Marine Fisheries Commission shall ensure, to the maximum extent practicable, that their actions are consistent with the Coastal Habitat Protection Plans as adopted by the three commissions. The obligation to act in a manner consistent with a Coastal Habitat Protection Plan is prospective only and does not oblige any commission to modify any rule adopted, permit decision made, or other action taken prior to the adoption or revision of the Coastal Habitat Protection Plan by the three commissions. The Coastal Resources Commission, the Environmental Management Commission, and the Marine Fisheries Commission shall adopt rules to implement Coastal Habitat Protection Plans in accordance with Chapter 150B of the General Statutes.

(d) If any of the three commissions concludes that another commission has taken an action that is inconsistent with a Coastal Habitat Protection Plan, that commission may request a written explanation of the action from the other commission. A commission shall provide a written explanation: (i) upon the written request of one of the other two commissions, or (ii) upon its own motion if the commission determines that it must take an action that is inconsistent with a Coastal Habitat Protection Plan.

(e) The Coastal Resources Commission, the Environmental Management Commission, and the Marine Fisheries Commission shall report to the Joint Legislative Commission on ~~Governmental Operations~~Fish and Wildlife and the Environmental Review Commission on progress in developing and implementing the Coastal Habitat Protection Plans, including the extent to which the actions of the three commissions are consistent with the Plans, on or before 1 September of each year.

(f) The Secretary of Environment and Natural Resources shall report to the Environmental Review Commission and the Joint Legislative Commission on ~~Seafood and Aquaculture [Joint Legislative Commission on Governmental Operations]~~Fish and Wildlife within 30 days of the completion or substantial

revision of each draft Coastal Habitat Protection Plan. The Environmental Review Commission and the Joint Legislative Commission on ~~Governmental Operations~~Fish and Wildlife shall concurrently review each draft Coastal Habitat Protection Plan within 30 days of the date the draft Plan is submitted by the Secretary. The Environmental Review Commission and the Joint Legislative Commission on ~~Governmental Operations~~Fish and Wildlife may submit comments and recommendations on the draft Plan to the Secretary within 30 days of the date the draft Plan is submitted by the Secretary."

SECTION 9. This act becomes effective January 1, 2013.

Appendix J

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE RESEARCH COMMISSION

STATE LEGISLATIVE BUILDING

RALEIGH, NC 27601

March 27, 2012

TO THE MEMBERS OF THE LEGISLATIVE RESEARCH COMMISSION:

Attached for your consideration is the report to the 2012 Regular Session of the 2011 General Assembly. This report was prepared by the Legislative Research Commission's Committee on Mechanics Lien on Real Property, pursuant to G.S. 120-30.17(1).

Senator Peter Brunstetter
Co-Chair

Representative Sarah Stevens
Co-Chair

Co-Chairs
Committee on Mechanics Lien on Real Property
Legislative Research Commission

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LEGISLATIVE RESEARCH COMMISSION

MECHANICS LIEN ON REAL PROPERTY COMMITTEE

NORTH CAROLINA GENERAL ASSEMBLY

REPORT TO THE 2012 SESSION of the 2011 GENERAL ASSEMBLY OF NORTH CAROLINA

MARCH, 2012

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TRANSMITTAL LETTER

Month Day, Year

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TO THE MEMBERS OF THE 2012 REGULAR SESSION
OF THE 2011 GENERAL ASSEMBLY

The Legislative Research Commission herewith submits to you for your consideration its report and recommendations to the 2012 Regular Session of the 2011 General Assembly. The report was prepared by the Legislative Research Commission's Committee on Mechanics Lien on Real Property, pursuant to G.S. 120-30.70(1).

Respectfully submitted,

Senator Philip E. Berger President Pro Tempore of the Senate	Representative Thomas R. Tillis Speaker of the House of Representatives

Co-Chairs
Legislative Research Commission

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LEGISLATIVE RESEARCH COMMISSION MEMBERSHIP

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2011 – 2012

President Pro Tempore of the Senate
Senator Philip E. Berger
Co-Chair

Senator Thomas M. Apodaca
Acting Co-Chair

Senator Peter S. Brunstetter
Senator Linda D. Garrou
Senator Martin L. Nesbitt, Jr.
Senator Richard Y. Stevens

Speaker of the House of Representatives
Representative Thomas R. Tillis
Co-Chair

Representative Timothy K. Moore
Acting Co-Chair

Representative John M. Blust
Representative Justin P. Burr
Representative Mike D. Hager
Representative Edith D. Warren

PREFACE

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The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is the general purpose study group in the Legislative Branch of State Government. The Commission is co-chaired by the President Pro Tempore of the Senate and the Speaker of the House of Representatives and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigation into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

The Legislative Research Commission authorized the study of Mechanics Lien on Real Property, under authority of G.S. 120-30.17(1). The Committee was chaired by Senator Peter Brunstetter and Representative Sarah Stevens, Co-Chairs of the Committee. The full membership of the Committee is listed under Committee Membership. A committee notebook containing the committee minutes and all information presented to the committee will be filed in the Legislative Library by the end of the **2011-2012** biennium.

COMMITTEE PROCEEDINGS

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The Legislative Research Commission's Committee on Mechanics Lien on Real Property met three times after the 2011 Regular Session. The Committee's Charge can be found here. The following is a brief summary of the Committee's proceedings. Detailed minutes and information from each Committee meeting are available in the Legislative Library.

At its first meeting on February 23, 2012, Committee staff summarized Bill Draft 2011-TGz-13. The committee then received presentations by two attorneys representing the North Carolina Bar Association, Keith Coltrain and Andy Carmen, who first explained existing law governing mechanics liens and payment bond claims under Articles 2 and 3 of Chapter 44A. Messrs. Coltrain and Carmen then provided a detailed summary of the changes proposed in the bill draft and additional changes recommended by the Bar Association to address problems that subcontractors were experiencing resulting from bankruptcy court interpretation of current laws governing liens upon funds, and which proposed changes were posted on the Committee website in Mr. Coltrain's letter and its enclosure.

Lastly, the committee received presentations from Susan Lewis, CEO of Beam Construction Company, Inc., and Mr. J. Scott Bengel, CFO of Shelco, Inc. These speakers explained why general contractors support the bill draft's provisions relating to payment bond claims on public construction projects. As explained by the speakers, these provisions are intended to avoid double payment liability by requiring persons who do not contract directly with the prime contractor to notify the prime contractor of their involvement in the public construction project as a condition of making a payment bond claim.

Rep. Stam asked the committee to consider adding provisions clarifying when a former owner of property subject to a lien is a necessary party in an action to enforce the lien, and Sen. Stein asked the committee to consider adding provisions dealing with procedures for releasing a tax lien on a subdivided parcel of property.

Presiding Co-Chair Stevens announced that the committee may discuss other issues at its next meeting, including the problem of "hidden liens" in private construction projects and liens for work done on leased premises.

At the Committee's second meeting on March 7, 2012, Presiding Co-Chair Brunstetter acknowledged and expressed appreciation to stakeholders who met the previous week to discuss and resolve differences over provisions in Bill Draft 2011-TGz-13 relating to payment bond claims.

Sen. Brunstetter stated that the Co-Chairs recognized that there were legitimate unresolved concerns relating to proposed legislation to address the problem of hidden liens, contained in Bill Draft 2011-TGz-15. Sen. Brunstetter expressed the Co-Chairs' desire that stakeholders interested in this issue also engage in discussions in an effort to resolve their differences.

Next, Committee staff explained changes to the earlier bill draft contained in revised Bill Draft 2011-TGz-13A. These changes included the addition of provisions addressing the problem affecting subcontractors' liens upon funds in cases involving bankruptcy, clarifying when former owners are necessary parties in lien enforcement actions, and modifying the law governing the release of tax liens on subdivided parcels, all of which were discussed at the Committee's first meeting.

As staff further explained to the Committee, a number of changes to the payment bond provisions in the bill draft resulted from discussions held at a meeting attended by interested parties and Committee staff on February 27, 2012. At this meeting, persons representing the interests of general contractors, subcontractors, suppliers and credit managers involved in public projects discussed various concerns with the original version of the bill draft, and identified a number of revisions to address those concerns. Participants were asked to notify Committee staff of any objections to the suggested changes discussed at this meeting by no later than Friday, March 2, 2012. As of March 6, 2012, no objections had been received by staff, at which time the revised bill draft was posted on the Committee website, incorporating the changes suggested at the stakeholders meeting as well as several noncontroversial revisions suggested by stakeholders after the meeting.

After staff's presentation, the Committee discussed the bill draft and staff was instructed to revise the draft to address several technical issues raised and discussed during the meeting.

On March 20, 2012, a draft Report to the 2012 Session of the 2011 General Assembly was circulated to committee members, including the proposed legislation contained in revised Bill Draft 2011-TGz-13A.

The Committee's third and last meeting was held on March 27, 2012, at which time the Committee, after discussion, voted to adopt the draft as its Report to the 2012 Session of the 2011 General Assembly.

FINDINGS AND RECOMMENDATIONS

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The Committee recommends the changes contained in the proposed legislation presented in this report to Article 2 and Article 3 of Chapter 44A of the General Statutes, to address problems under the current law, including subcontractor claims of lien upon funds being impaired by decisions of federal bankruptcy courts interpreting current law, and prime contractors on public projects incurring double payment liability as a result of claims under payment bonds by subcontractors and suppliers whose participation in the project was unknown by the contractor when it made payments to first-tier subcontractors.

In addition, the Committee recommends changes to clarify when a former owner of real property subject to a mechanics lien is a necessary party to an action to enforce the lien, and to improve the procedure by which a subdivided parcel of real property is released from a tax lien.

The Committee also examined the issue of liability for title insurance claims resulting from mechanics liens under Article 2 of Chapter 44A that are not filed as of the date of closing on the sale of the improved property, referred to as "hidden liens." In the time allocated to it for its work, however, the Committee was not able to evaluate unresolved issues relating to the provisions addressing this issue in Bill Draft 2011-TGz-15, and therefore does not recommend legislation on this issue during the 2012 short session.

The Committee recommends further study of the hidden liens issue to determine what, if any, changes to current law should be made during the 2013 Session, including consideration of the following issues:

- identifying and assessing problems resulting from hidden liens, including their impact on bona fide purchasers of improved real property and the potential effect of claims paid by title insurers for hidden liens on the availability of title insurance coverage for mechanics liens in North Carolina;
- identifying what, if any, legislative action is needed to address these problems; and
- identifying, assessing, and fairly allocating any burden or expense resulting from such legislative action on all affected parties, including sellers and purchasers of improved property, title insurers, lenders, and persons providing labor and services in connection with improvements to real property.

The Committee also recommends further study of the need for changes to current law to strengthen the lien rights of persons who contract with the owner of a leasehold interest to provide labor or materials in connection with improvements to the leased property.

Appendix A

COMMITTEE MEMBERSHIP

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2011-2012

President Pro Tempore of the Senate Appointments:

Senator Peter Brunstetter, Co-Chair

Senator Thom Goolsby
Senator Kathy Harrington
Senator Josh Stein

Speaker of the House of Representatives Appointments:

Representative Sarah Stevens, Co-Chair

Representative Hugh Blackwell
Representative Bill Faison
Representative Paul Stam

Appendix B

COMMITTEE CHARGE

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Study issues related to mechanic's liens on real property in North Carolina, including ways to address "hidden" liens in real estate transactions, and any other issues the committee deems relevant to the study.

STATUTORY AUTHORITY

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NORTH CAROLINA GENERAL STATUTES
ARTICLE 6B.

Legislative Research Commission.

§ 120-30.17. Powers and duties.

The Legislative Research Commission has the following powers and duties:

(1) Pursuant to the direction of the General Assembly or either house thereof, or of the chairmen, to make or cause to be made such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner.

(2) To report to the General Assembly the results of the studies made. The reports may be accompanied by the recommendations of the Commission and bills suggested to effectuate the recommendations.

(3), (4) Repealed by Session Laws 1969, c. 1184, s. 8.

(5), (6) Repealed by Session Laws 1981, c. 688, s. 2.

(7) To obtain information and data from all State officers, agents, agencies and departments, while in discharge of its duty, pursuant to the provisions of G.S. 120-19 as if it were a committee of the General Assembly.

(8) To call witnesses and compel testimony relevant to any matter properly before the Commission or any of its committees. The provisions of G.S. 120-19.1 through G.S. 120-19.4 shall apply to the proceedings of the Commission and its committees as if each were a joint committee of the General Assembly. In addition to the other signatures required for the issuance of a subpoena under this subsection, the subpoena shall also be signed by the members of the Commission or of its committee who vote for the issuance of the subpoena.

(9) For studies authorized to be made by the Legislative Research Commission, to request another State agency, board, commission or committee to conduct the study if the Legislative Research Commission determines that the other body is a more appropriate vehicle with which to conduct the study. If the other body agrees, and no legislation specifically provides otherwise, that body shall conduct the study as if the original authorization had assigned the study to that body and shall report to the General Assembly at the same time other studies to be conducted by the Legislative Research Commission are to be reported. The other agency shall conduct the transferred study within the funds already assigned to it.

LEGISLATIVE PROPOSALS

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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

U **D**

BILL DRAFT 2011-TGz-13A [v.10] (02/07)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
3/21/2012 10:19:42 AM

Short Title:	Mechanics Liens/Payment Bond Reforms.	(Public)
Sponsors:	Unknown.	
Referred to:		

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS AMENDMENTS TO NORTH CAROLINA'S MECHANICS LIEN, TAX LIEN, AND PAYMENT BOND LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 44A-7 reads as rewritten:

"**§ 44A-7. Definitions.**

Unless the context otherwise ~~requires in this Article:~~requires, the following definitions apply in this Article:

(1) Contractor. – A person who contracts with an owner to improve real property.

(2) First tier subcontractor. – A person who contracts with a contractor to improve real property.

~~(1)~~(3) ~~"Improve" means to~~ Improve. – To build, effect, alter, repair, or demolish any improvement upon, connected with, or on or beneath the surface of any real property, or to excavate, clear, grade, fill or landscape any real property, or to construct driveways and private roadways, or to furnish materials, including trees and shrubbery, for any of such purposes, or to perform any labor upon such improvements, and shall also mean and include any design or other professional or skilled services furnished by architects, engineers, land surveyors and landscape architects registered under Chapter 83A, 89A or 89C of the General Statutes, off-site design, fabrication, and related labor and materials in connection with noncommodity prefabricated

materials, products systems, or equipment customized for the use and benefit of improving particular real property whether delivered to the real property or not, and rental of equipment directly utilized on the real property in making the improvement.

~~(2)~~(4) ~~"Improvement" means all~~ Improvement. – All or any part of any building, structure, erection, alteration, demolition, excavation, clearing, grading, filling, or landscaping, including trees and shrubbery, driveways, and private roadways, on real property.

(5) Obligor. – An owner, contractor, or subcontractor in any tier who owes money to another as a result of the other's partial or total performance of a contract to improve real property.

~~(3)~~(6) ~~An "owner" is a~~ Owner. – A person who has an interest in the real property improved and for whom an improvement is made and who ordered the improvement to be made. "Owner" includes successors in interest of the owner and agents of the owner acting within their authority.

~~(4)~~(7) ~~"Real property" means the~~ Real property. – The real estate that is improved, including lands, leaseholds, tenements and hereditaments, and improvements placed thereon.

(8) Second tier subcontractor. – A person who contracts with a first tier subcontractor to improve real property.

(9) Third tier subcontractor. – A person who contracts with a second tier subcontractor to improve real property."

SECTION 2. G.S. 44A-11 reads as rewritten:

"**§ 44A-11. Perfecting claim of lien on real property.**

(a) Perfection. – A claim of lien on real property granted by this Article shall be perfected as of the time provided in G.S. 44A-10 upon the ~~filing of the claim of lien on real property under G.S. 44A-12 and may be enforced pursuant to G.S. 44A-13~~occurrence of all of the following:

(1) Service of a copy of the claim of lien on real property upon the record owner of the real property claimed to be subject to the claim of lien, and if the claim of lien on real property is being asserted pursuant to G.S. 44A-23, also upon the contractor through which subrogation is being asserted.

(2) Filing of the claim of lien on real property under G.S. 44A-12.

(b) Method of Service. – Service of the claim of lien on real property pursuant to subsection (a) of this section shall not require proof of actual receipt by the listed recipient and shall be complete upon the occurrence of any of the following:

(1) Personal delivery of a copy of the claim of lien on real property upon the recipient.

(2) Deposit of a copy of the claim of lien on real property in a postpaid, properly addressed wrapper in either of the following:

(i) A post office or official depository under the exclusive care and custody of the United States Postal Service.

(ii) An authorized depository under the exclusive care and custody of a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2).

(c) Service Address. – For purposes of this section, a wrapper addressed to a party required to be served under subdivision (a)(1) of this section shall be conclusively deemed properly addressed if it uses any of the following addresses:

(1) The address for the party to be served listed on the permit issued for the improvement.

(2) The address for the party to be served listed with the tax rolls for any county in North Carolina.

(3) The address of the registered agent for the party to be served listed with the North Carolina Secretary of State's office."

SECTION 3. G.S. 44A-12 reads as rewritten:

"**§ 44A-12. Filing claim of lien on real property.**

(a) Place of Filing. – All claims of lien on real property must be filed in the office of the clerk of superior court in each county where the real property subject to the claim of lien on real property is located. The clerk of superior court shall note the claim of lien on real property on the judgment docket and index the same under the name of the record owner of the real property at the time the claim of lien on real property is filed. An additional copy of the claim of lien on real property may also be filed with any receiver, referee in bankruptcy or assignee for benefit of creditors who obtains legal authority over the real property.

(b) Time of Filing. – Claims of lien on real property may be filed at any time after the maturity of the obligation secured thereby but not later than 120 days after the last furnishing of labor or materials at the site of the improvement by the person claiming the lien.

(c) Contents of Claim of Lien on Real Property to Be Filed. – All claims of lien on real property must be filed using a form substantially as follows:

CLAIM OF LIEN ON REAL PROPERTY

(1) Name and address of the person claiming the claim of lien on real property:

(2) Name and address of the record owner of the real property claimed to be subject to the claim of lien on real property at the time the claim of lien on real property is ~~filed:~~filed, and, if the claim of lien on real property is being asserted pursuant to G.S. 44A-23, the name of the contractor through which subrogation is being asserted:

(3) Description of the real property upon which the claim of lien on real property is claimed: (Street address, tax lot and block number, reference to recorded instrument, or any other description of real property is sufficient, whether or not it is specific, if it reasonably identifies what is described.)

(4) Name and address of the person with whom the claimant contracted for the furnishing of labor or materials:

(5) Date upon which labor or materials were first furnished upon said property by the claimant:

(5a) Date upon which labor or materials were last furnished upon said property by the claimant:

(6) General description of the labor performed or materials furnished and the amount claimed therefor:

(7) I hereby certify that I have served the parties listed in paragraph two above in accordance with the requirements of G.S. 44A-11.

_____

Lien Claimant

Filed this ____ day of ____, ____

_____

Clerk of Superior Court

A general description of the labor performed or materials furnished is sufficient. It is not necessary for lien claimant to file an itemized list of materials or a detailed statement of labor performed.

(d) No Amendment of Claim of Lien on Real Property. – A claim of lien on real property may not be amended. A claim of lien on real property may be cancelled by a claimant or the claimant's authorized agent or attorney and a new claim of lien on real property substituted therefor within the time herein provided for original filing.

(e) Notice of Assignment of Claim of Lien on Real Property. – When a claim of lien on real property has been filed, it may be assigned of record by the lien claimant in a writing filed with the clerk of superior court who shall note the assignment in the margin of the judgment docket containing the claim of lien on real property. Thereafter the assignee becomes the lien claimant of record.

(f) Waiver of Right to File, Serve, or Claim ~~Liens as Consideration for Contract Against Public Policy.~~ Liens. –

(1) An agreement to waive the right to file a claim of lien on real property granted under this Part, or an agreement to waive the right to serve a notice of claim of lien upon funds granted under Part 2 of this Article, which agreement is in anticipation of and in consideration for the awarding of any contract, either expressed or implied, for the making of an improvement upon real property under this Article is against public policy and is unenforceable. This section does not prohibit subordination or release of a lien granted under this Part or Part 2 of this Article.

(2) Lien waivers denoted as "partial" lien waivers shall not alter or waive the lien claimant's effective date for any lien claim created by this Article. The sole manner of altering or waiving the effective date is by the lien claimant's executing a document expressly denoted as a "final" lien waiver.

(3) Unless expressly stated on the lien waiver form, the lien waiver shall be construed to be conditional upon the lien claimant's actual receipt of the specified funds.

(4) Lien waivers shall be substantially in the forms set forth below. Other forms may be used, but any substantive provisions that represent

variations to the statutory forms affecting the lien rights created by this Article shall be unenforceable.

(g) Partial lien waivers shall be in substantially the following form:

PARTIAL LIEN WAIVER

The undersigned lien claimant, in consideration of the sum of $___(insert amount of payment)___, hereby waives and releases its lien and right to claim a lien for labor, services, or materials furnished through ___(insert date)_____ to (insert the name of your customer) on the job of (insert the name of the owner) to the following property:

(insert description of property)

This waiver and release does not cover any labor, services, or materials furnished after the date specified above nor does it release claims for retention to become due at a later date nor does it release any other claims expressly identified below:

Claims not released by this waiver:

_____

_____

_____

THIS WAIVER IS / IS NOT CONDITIONAL UPON LIEN CLAIMANT'S FUTURE RECEIPT OF THE FUNDS STATED ABOVE. (If no choice is indicated, this lien waiver shall be deemed to be conditional upon lien claimant's future receipt of the specified funds.) Unless expressly excepted above, this waiver shall likewise apply to any payment bond issued for the benefit of lien claimant for its labor, materials, or services provided to improve the property.

DATED:_____

(Lien Claimant)
By:-_____

(h) Final lien waivers shall be in substantially the following form:

FINAL LIEN WAIVER

The undersigned lien claimant, in consideration of the final payment in the amount of $_____ hereby waives and releases its lien and right to claim a lien for labor, services, or materials furnished to (insert the name of your customer) on the job of (insert the name of the owner) to the following described property:

(description of property)

This waiver and release does not cover any labor, services, or materials furnished after the date of this lien waiver. Lien claimant, however, does hereby release any and all claims of lien for labor, materials, or services provided on or before the date of this waiver, including, but not exclusively, any amounts that may be deemed retainage. This lien waiver further waives the effective date of any lien claim created by this Article. The only claims of lien for previously provided labor, services, or materials which are not hereby released are those claims expressly identified below:

Claims not released by this waiver:

_____

_____

_____

THIS WAIVER IS / IS NOT CONDITIONAL UPON LIEN CLAIMANT'S FUTURE RECEIPT OF THE FUNDS STATED ABOVE. (If no choice is indicated, this lien waiver shall be deemed to be conditional upon lien claimant's future receipt of the specified funds.) Unless expressly excepted above, this waiver shall likewise apply to any payment bond issued for the benefit of lien claimant for its labor, materials, or services provided to improve the property.

DATED: _____

(Lien Claimant)

By: _____".

SECTION 4. G.S. 44A-13 is amended by adding a new subsection to read:

"**§ 44A-13. Action to enforce claim of lien on real property.**

...

(d) Former Owner Not a Necessary Party to Action. – In an action brought under this section, a former owner of the improved property at the time the lien arose, who holds no ownership interest in the property at the time the action is commenced, and against whom the plaintiff seeks no relief, is not a necessary party to the action."

SECTION 5. G.S. 44A-17 is repealed.

SECTION 6. G.S. 44A-18 reads as rewritten:

"**§ 44A-18. Grant of lien upon funds; subrogation; perfection.**

~~Upon compliance with this Article:~~

(~~1~~a) A first tier subcontractor who furnished labor, materials, or rental equipment at the site of the improvement shall ~~be entitled to~~ have a lien upon funds that are owed to the contractor with whom the first tier subcontractor dealt and that arise out of the improvement on which the first tier subcontractor worked or furnished materials.

(~~2~~b) A second tier subcontractor who furnished labor, materials, or rental equipment at the site of the improvement shall ~~be entitled to~~have a lien upon funds that

are owed to the first tier subcontractor with whom the second tier subcontractor dealt and that arise out of the improvement on which the second tier subcontractor worked or furnished materials. A second tier subcontractor, to the extent of the second tier subcontractor's lien provided in this subdivision, shall also be ~~entitled to be~~ subrogated to the lien upon funds of the first tier subcontractor with whom the second tier contractor dealt provided for in subdivision (1) of this section and shall ~~be entitled to~~ perfect it by service of the notice of claim of lien upon funds to the extent of the claim.

(~~3~~c) A third tier subcontractor who furnished labor, materials, or rental equipment at the site of the improvement shall ~~be entitled to~~ have a lien upon funds that are owed to the second tier subcontractor with whom the third tier subcontractor dealt and that arise out of the improvement on which the third tier subcontractor worked or furnished materials. A third tier subcontractor, to the extent of the third tier subcontractor's lien upon funds provided in this subdivision, shall also ~~be entitled to~~ be subrogated to the lien upon funds of the second tier subcontractor with whom the third tier contractor dealt and to the lien upon funds of the first tier subcontractor with whom the second tier subcontractor dealt to the extent that the second tier subcontractor is ~~entitled to be~~ subrogated thereto, and in either case shall ~~be entitled to~~ perfect ~~the same~~ it by service of the notice of claim of lien upon funds to the extent of the claim.

(4d) Subcontractors more remote than the third tier who furnished labor, materials, or rental equipment at the site of the improvement shall ~~be entitled to~~ have a lien upon funds that are owed to the person with whom they dealt and that arise out of the improvement on which they furnished labor, materials, or rental equipment, but such remote tier subcontractor shall not be entitled to subrogation to the rights of other persons.

(~~5~~e) The liens upon funds granted under this section shall secure amounts earned by the lien claimant as a result of having furnished labor, materials, or rental equipment at the site of the improvement under the contract to improve real property, including interest at the legal rate provided in G.S. 24-5, whether or not such amounts are due and whether or not performance or delivery is complete. In the event insufficient funds are retained to satisfy all lien claimants, subcontractor lien claimants may recover the interest due under this subdivision on a pro rata basis, but in no event shall interest due under this subdivision increase the liability of the obligor under G.S. 44A-20.

(~~6~~f) A lien upon funds granted under this section arises, attaches, and is ~~perfected~~ effective immediately upon the first furnishing of labor, materials, or rental equipment at the site of the improvement by a subcontractor. Any lien upon funds granted under this section is perfected upon the giving of notice of claim of lien upon funds in writing to the obligor as provided in ~~G.S. 44A-19 and shall be effective upon the obligor's receipt of the notice. The subrogation rights of a first, second, or third tier subcontractor to the claim of lien on real property of the contractor created by Part 1 of Article 2 of this Chapter are perfected as provided in G.S. 44A-23.~~ G.S. 44A-19.

(g) Until a lien claimant gives notice of a claim of lien upon funds in writing to the obligor as provided in G.S. 44A-19, any owner, contractor or subcontractor against whose interest the lien upon funds is claimed may make, receive, use, or collect payments thereon and may use such proceeds in the ordinary course of its business."

SECTION 7. G.S. 44A-19 reads as rewritten:

"**§ 44A-19. Notice of claim of lien upon funds.**

(a) Notice of a claim of lien upon funds shall set forth all of the following information:

(1) The name and address of the person claiming the lien upon funds.

(2) A general description of the real property improved.

(3) The name and address of the person with whom the lien claimant contracted to improve real property.

(4) The name and address of each person against or through whom subrogation rights are claimed.

(5) A general description of the contract and the person against whose interest the lien upon funds is claimed.

(6) The amount of the lien upon funds claimed by the lien claimant under the contract.

(b) All notices of claims of liens upon funds by first, second, or third tier subcontractors must be given using a form substantially as follows:

NOTICE OF CLAIM OF LIEN UPON FUNDS BY FIRST, SECOND, OR THIRD TIER SUBCONTRACTOR

To:

1. _____, owner of property involved.
(Name and address)

2. _____, ~~general~~ contractor.
(Name and address)

3. _____, first tier subcontractor against or through
(Name and address) whom subrogation is claimed, if any.

4. _____, second tier subcontractor against or through
(Name and address) whom subrogation is claimed, if any.

General description of real property ~~where~~ on which labor performed or material furnished:

_____

_____

_____

General description of undersigned lien claimant's contract including the names of the parties thereto:

_____

_____

The amount of lien upon funds claimed pursuant to the above described contract:

$ _____

The undersigned lien claimant gives this notice of claim of lien upon funds pursuant to North Carolina law and claims all rights of subrogation to which he is entitled under Part 2 of Article 2 of Chapter 44A of the General Statutes of North Carolina.

Dated _____

_____, Lien Claimant

_____
(Address)

(c) All notices of claims of liens upon funds by subcontractors more remote than the third tier must be given using a form substantially as follows:

NOTICE OF CLAIM OF LIEN UPON FUNDS BY SUBCONTRACTOR MORE REMOTE THAN THE THIRD TIER

To:

_____, person holding funds against which lien
(Name and Address)
upon funds is claimed.

General description of real property ~~where~~ on which labor performed or material furnished: _____

_____

_____

General description of undersigned lien claimant's contract including the names of the parties thereto:

_____

_____

The amount of lien upon funds claimed pursuant to the above described contract:

$ _____

The undersigned lien claimant gives this notice of claim of lien upon funds pursuant to North Carolina law and claims all rights to which he or she is entitled under Part 2 of Article 2 of Chapter 44A of the General Statutes of North Carolina.

Dated: _____

_____, Lien Claimant
(Address)

(d) Notices of claims of lien upon funds under this section shall be served upon the obligor by personal delivery or in any manner authorized by Rule 4 of the North Carolina Rules of Civil Procedure. A copy of the notice of claim of lien upon funds shall be attached to any claim of lien on real property filed pursuant to ~~G.S. 44A-20(d) or G.S. 44A-23.~~G.S. 44A-20(d).

(e) Notices of claims of lien upon funds shall not be filed with the clerk of superior court and shall not be indexed, docketed, or recorded in any way as to affect title to any real property, except a notice of a claim of lien upon funds may be filed with the clerk of superior court under either of the following circumstances:

(1) When the notice of claim of lien upon funds is attached to a claim of lien on real property filed pursuant to ~~G.S. 44A-20(d) or G.S. 44A-23.~~G.S. 44A-20(d).

(2) When the notice of claim of lien upon funds is filed by the obligor for the purpose of discharging the claim of lien upon funds in accordance with G.S. 44A-20(e).

(f) Filing a notice of claim of lien upon funds pursuant to subsection (e) of this section is not a violation of G.S. 44A-12.1."

SECTION 8. G.S. 44A-20 reads as rewritten:

"**§ 44A-20. Duties and liability of obligor.**

(a) Upon receipt of the notice of claim of lien upon funds provided for in this Article, the obligor shall be under a duty to retain any funds subject to the lien or liens

upon funds under this Article up to the total amount of such liens upon funds as to which notices of claims of lien upon funds have been received.

(b) If, after the receipt of the notice of claim of lien upon funds to the obligor, the obligor makes further payments to a contractor or subcontractor against whose interest the lien or liens upon funds are claimed, the lien upon funds shall continue upon the funds in the hands of the contractor or subcontractor who received the payment, and in addition the obligor shall be personally liable to the person or persons entitled to liens upon funds up to the amount of such wrongful payments, not exceeding the total claims with respect to which the notice of claim of lien upon funds was received prior to payment.

(c) If an obligor makes a payment after receipt of notice of claim of lien on funds and incurs personal liability under subsection (b) of this section, the obligor shall be entitled to reimbursement and indemnification from the party receiving such payment.

(d) If the obligor is an owner of the property being improved, the lien claimant shall be entitled to a claim of lien upon real property upon the interest of the obligor in the real property to the extent of the owner's personal liability under subsection (b) of this section, which claim of lien on real property shall be enforced only in the manner set forth in G.S. 44A-7 through G.S. 44A-16 and which claim of lien on real property shall be entitled to the same priorities and subject to the same filing requirements and periods of limitation applicable to the contractor. The claim of lien on real property is perfected as of the time set forth in G.S. 44A-10 upon the filing of the claim of lien on real property pursuant to G.S. 44A-12. A lien waiver signed by the contractor prior to filing of the claim of lien on real property waives the subcontractor's right to a claim of lien on real property but does not affect the subcontractor's rights to a claim of lien on funds under this Article. The claim of lien on real property as provided under this subsection shall be in the form set out in G.S. 44A-12(c) and shall contain, in addition, a copy of the notice of claim of lien upon funds given pursuant to G.S. 44A-19 as an exhibit together with proof of service thereof by affidavit, and shall state the grounds the lien claimant has to believe that the obligor is personally liable for the debt under subsection (b) of this section.

(e) A notice of claim of lien upon funds under G.S. 44A-19 may be filed by the obligor with the clerk of superior court in each county where the real property upon which the filed notice of claim of lien upon funds is located for the purpose of discharging the notice of claim of lien upon funds by any of the methods described in G.S. 44A-16.

(f) A bond deposited under this section to discharge a filed notice of claim of lien upon funds shall be effective to discharge any claim of lien on real property filed by the same lien claimant pursuant to subsection (d) of this section or G.S. 44A-23 and shall further be effective to discharge any notices of claims of lien upon funds served by lower tier subcontractors or any claims of lien on real property filed by lower tier subcontractors pursuant to subsection (d) of this section or G.S. 44A-23 claiming through or against the contractor or higher tier subcontractors up to the amount of the bond."

SECTION 9. G.S. 44A-23 reads as rewritten:

"**§ 44A-23. Contractor's claim of lien on real property; perfection of subrogation rights of subcontractor.**

(a) First tier subcontractor. – A first tier ~~subcontractor, who gives notice of claim of lien upon funds as provided in this Article,~~ subcontractor may, to the extent of ~~this~~ its claim, enforce the claim of lien on real property of the contractor created by Part 1 of this Article. The manner of such enforcement shall be as provided by G.S. 44A-7 through 44A-16. The claim of lien on real property is perfected as of the time set forth in G.S. 44A-10 upon filing of the claim of lien on real property pursuant to G.S. 44A-12. When completing the claim of lien on real property form, the subcontractor may use as the date upon which labor or materials were first or last furnished on the real property either the date of the first or last furnishing of labor or materials on the real property by the subcontractor making the claim or the date of the first or last furnishing of labor or materials on the real property by the contractor through which the claim of lien on real property is being asserted. Upon the filing of the claim of lien on real ~~property, with the notice of claim of lien upon funds attached,~~ property and the commencement of the action, no action of the contractor shall be effective to prejudice the rights of the subcontractor without his written consent. A lien waiver signed by the contractor prior to commencement of the action waives the subcontractor's right to a claim of lien on real property but does not affect the subcontractor's rights to a claim of lien on funds under this Article.

(b) Second or third subcontractor. –

(1) A second or third tier ~~subcontractor, who gives notice of claim of lien upon funds as provided in this Article,~~subcontractor may, to the extent of his claim, enforce the claim of lien on real property of the contractor created by Part 1 of Article 2 of the Chapter except when:

a. The owner or contractor, within 30 days following the date the ~~building~~ permit is issued for the improvement of the real property ~~involved,~~ involved or within 30 days following the date the contractor is awarded the contract for the improvement of the real property involved, whichever is later, posts on the property in a visible location adjacent to the posted ~~building permit~~ permit, if a permit is required, and files in the office of the clerk of superior court in each county wherein the real property to be improved is located, a completed and signed notice of contract form and the second or third tier subcontractor fails to serve upon the contractor a completed and signed notice of subcontract form by the same means of service as described in G.S. 44A-19(d); or; or

b. After the posting and filing of a signed notice of contract and the service upon the contractor of a signed notice of subcontract, the contractor serves upon the second or third tier subcontractor, within five days following each subsequent payment, by the same means of service as described in G.S. 44A-19(d), the written notice of payment setting forth the date of payment and the period for which payment is made as requested in the notice of subcontract form set forth herein.

(2) The form of the notice of contract to be so utilized under this section shall be substantially as follows and the fee for filing the same with the

clerk of superior court shall be the same as charged for filing a claim of lien on real property:

"NOTICE OF CONTRACT

"(1) Name and address of the Contractor:

"(2) Name and address of the owner of the real property at the time this Notice of Contract is recorded:

"(3) General description of the real property to be improved (street address, tax map lot and block number, reference to recorded instrument, or any other description that reasonably identifies the real property):

"(4) Name and address of the person, firm or corporation filing this Notice of Contract:

"Dated: _____

_____

"Contractor

"Filed this the ____ day of _____, ____.

_____

Clerk of Superior Court"

(3) The form of the notice of subcontract to be so utilized under this section shall be substantially as follows:

"NOTICE OF SUBCONTRACT

"(1) Name and address of the subcontractor:

"(2) General description of the real property ~~where~~ on which the labor was performed or the material was furnished (street address, tax map lot and block number, reference to recorded instrument, or any description that reasonably identifies the real property):

"(3)

"(i) General description of the subcontractor's contract, including the names of the parties thereto:

"(ii) General description of the labor and material performed and furnished thereunder:

"(4) Request is hereby made by the undersigned subcontractor that he be notified in writing by the contractor of, and within five days following, each subsequent payment by the contractor to the first tier subcontractor for labor performed or material furnished at the improved real property within the above descriptions of such in paragraph (2) and subparagraph (3)(ii), respectively, the date payment was made and the period for which payment is made.

"Dated: _____

_____

Subcontractor"

(4) The manner of such enforcement shall be as provided by G.S. 44A-7 through G.S. 44A-16. The lien is perfected as of the time set forth in G.S. 44A-10 upon the filing of a claim of lien on real property pursuant to G.S. 44A-12. Upon the filing of the claim of lien on real ~~property, with the notice of claim of lien upon funds attached,~~ property and the commencement of the action, no action of the contractor shall

be effective to prejudice the rights of the second or third tier subcontractor without his written consent."

SECTION 10. G.S. 44A-24 reads as rewritten:

"**§ 44A-24. False statement a ~~misdemeanor.~~misdemeanor, an unfair and deceptive trade practice, and grounds for disciplinary action against a licensed contractor or qualifying party.**

If any contractor or other person receiving payment from an obligor for an improvement to real property or from a purchaser for a conveyance of real property with improvements subject to this Article or to Article 3 of this Chapter shall knowingly furnish to such obligor, purchaser, or to a lender who obtains a security interest in said real property, or to a title insurance company insuring title to such real property, a false written statement of the sums due or claimed to be due for labor or material furnished at the site of improvements to such real property, then such contractor, subcontractor or other person shall be guilty of a Class 1 ~~misdemeanor.~~ misdemeanor and shall be subject to a claim for violation of G.S. 75-1.1 by any obligor, purchaser, lender who obtains a security interest in such property, title insurance company insuring title to such property, or any person who otherwise would be entitled to a claim of lien on real property under this Article and who suffers actual harm as a result of the misrepresentation. In addition, any person who knowingly signs or directs another person to sign such a written statement shall be guilty of a Class 1 misdemeanor and subject to a claim for violation of G.S. 75-1.1. Upon conviction and in the event the court shall grant any defendant a suspended sentence, the court may in its discretion include as a condition of such suspension a provision that the defendant shall reimburse the party who suffered loss on such conditions as the court shall determine are proper.

The elements of the offense herein stated are the furnishing of the false written statement with knowledge that it is false and the subsequent or simultaneous receipt of payment from an obligor or ~~purchaser, and in any~~ purchaser by the person signing the document, a person directing another to sign the document, or any person or entity for whom the document was signed. In any criminal prosecution hereunder it shall not be necessary for the State to prove that the obligor, purchaser, lender or title insurance company relied upon the false statement or that any person was injured thereby.

In addition to the criminal sanctions and civil liabilities created by this section, conduct constituting the offense herein stated and causing actual harm to any person by any licensed contractor or qualifying party, as that term is used in Chapter 87 of the General Statutes, shall constitute deceit and misconduct subject to disciplinary action under Chapter 87 of the General Statutes, including revocation, suspension, or restriction of a license or the ability to act as a qualifying party for a license."

SECTION 11. G.S. 44A-27 reads as rewritten:

"**§ 44A-27. Actions on payment bonds; service of notice.**

(a) Subject to the provision of subsection (b) hereof, any claimant who has performed labor or furnished materials in the prosecution of the work required by any contract for which a payment bond has been given pursuant to the provisions of this Article, and who has not been paid in full therefor before the expiration of 90 days after the day on which the claimant performed the last such labor or furnished the last such materials for which he claims payment, may bring an action on such payment bond in

his own name, to recover any amount due him for such labor or materials and may prosecute such action to final judgment and have execution on the judgment.

(b) Any claimant who has a direct contractual relationship with any subcontractor but has no contractual relationship, express or implied, with the contractor may bring an action on the payment bond only if he has given written notice of claim on payment bond to the contractor within 120 days from the date on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed and the name of the person for whom the work was performed or to whom the material was furnished. The contractor shall furnish a copy of the payment bond required by this Article within seven calendar days in response to a written request served by any claimant in accordance with the provisions of G.S. 44A-27(c). Subject to the exception set forth in subsection (e) of this section, unless the contractor has failed to satisfy its obligation to timely furnish a copy of the payment bond to a claimant upon proper request by the claimant, the claim of such a claimant shall be limited to the labor or materials provided within 60 days prior to the claimant's service, in accordance with subsections (c) and (d) of this section, of its written notice of public subcontract to the contractor.

(c) The ~~notice~~ notices required by and any requests for copy of payment bond referenced by subsection (b) of this section, ~~above,~~ shall be served by ~~registered or~~ certified mail, or by signature confirmation as provided by the United States Postal Service, postage prepaid, in an envelope addressed to such contractor at any place where his office is regularly maintained for the transaction of business or to such agent identified in the contractor's project statement referenced in subsection (f)(1) below, or served in any manner provided by law for the service of summons.

(d) The form of the notice of public subcontract to be served pursuant to subsection (b) of this section shall be substantially as follows:

'NOTICE OF PUBLIC SUBCONTRACT

(1) Name and address of the subcontractor giving notice of public subcontract:

(2) General description of the real property on which the labor was performed or the material was furnished (street address, tax map lot and block number, reference to recorded instrument, or any description that reasonably identifies the real property):

(3) General description of the subcontractor's contract, including the names and addresses of the parties thereto:

(4) General description of the labor and material performed and furnished thereunder:

Dated: _____

_____

Subcontractor'

(e) Notwithstanding subsections (b), (c), and (d) above, the obligation to provide a notice of public subcontract shall not apply to claims of $10,000.00 or less, and for any claim exceeding $10,000.00, shall apply only to that portion of the claim in excess of $10,000.00.

(f) In connection with any construction contract for which a bond is required by G.S. 44A-26(a):

(1) The contractor shall provide to each subcontractor that it engages to perform labor or furnish materials in the performance of the construction contract a contractor's project statement containing all of the following information:

a. The name of the project.

b. The physical address of the project.

c. The name of the contracting body.

d. The name of the contractor.

e. The name, phone number, and mailing address of an agent authorized by the contractor to accept service of the requests for payment bond, the notice of public subcontract and the notice of claim on payment bond referenced in subsection (b) of this section.

f. The name and address of the principal place of business of the surety issuing the payment bond required by G.S. 44A-26(a) for the construction contract.

(2) Each subcontractor shall provide each subcontractor that it engages to perform labor or furnish materials in the performance of the construction contract a copy of the contractor's project statement.

(3) No agreement entered into between a contractor and a subcontractor or between a subcontractor and its subcontractor shall be enforceable against the lower tier party until the contractor's project statement has been provided to the lower tier party."

SECTION 12. G.S. 105-362(b) reads as rewritten:

"**§ 105-362. Discharge of lien on real property.**

...

(b) Release of Separate Parcels from Tax Lien. –

...

(2) When real property listed as one parcel is divided, a part thereof ~~may~~ shall be released as provided in subdivision (b)(1), above, after the assessed valuation of the part to be released has been determined and certified to the tax collector by the ~~tax supervisor~~ county assessor and payment of all past-due taxes on the parent parcel, the taxes on the part to be released, plus any penalties, interest, and costs allowed by law, have been fully paid. The county assessor shall have ten business days from receipt of a written request for valuation under this subdivision to provide the valuation; provided, however, this subdivision shall not apply upon a showing of good cause by the tax collector based on the tax payment history of the owner of the parent parcel."

SECTION 13.1. G.S. 44A-4(b) reads as rewritten:

"**§ 44A-4. Enforcement of lien by sale.**

...

"(b) Notice and Hearings. –

(1) If the property upon which the lien is claimed is a motor vehicle that is required to be registered, the lienor following the expiration of the relevant time period provided by subsection (a) shall give notice to the

Division of Motor Vehicles that a lien is asserted and sale is proposed and shall remit to the Division a fee of ten dollars ($10.00). The Division of Motor Vehicles shall issue notice by ~~registered or~~ certified mail, return receipt requested, to the person having legal title to the property, if reasonably ascertainable, to the person with whom the lienor dealt if different, and to each secured party and other person claiming an interest in the property who is actually known to the Division or who can be reasonably ascertained. The notice shall state that a lien has been asserted against specific property and shall identify the lienor, the date that the lien arose, the general nature of the services performed and materials used or sold for which the lien is asserted, the amount of the lien, and that the lienor intends to sell the property in satisfaction of the lien. The notice shall inform the recipient that the recipient has the right to a judicial hearing at which time a determination will be made as to the validity of the lien prior to a sale taking place. The notice shall further state that the recipient has a period of 10 days from the date of receipt in which to notify the Division by ~~registered or~~ certified mail, return receipt requested, that a hearing is desired and that if the recipient wishes to contest the sale of his property pursuant to such lien, the recipient should notify the Division that a hearing is desired. The notice shall state the required information in simplified terms and shall contain a form whereby the recipient may notify the Division that a hearing is desired by the return of such form to the Division. The Division shall notify the lienor whether such notice is timely received by the Division. In lieu of the notice by the lienor to the Division and the notices issued by the Division described above, the lienor may issue notice on a form approved by the Division pursuant to the notice requirements above. If notice is issued by the lienor, the recipient shall return the form requesting a hearing to the lienor, and not the Division, within 10 days from the date the recipient receives the notice if a judicial hearing is requested. If the ~~registered or~~ certified mail notice has been returned as undeliverable and the notice of a right to a judicial hearing has been given to the owner of the motor vehicle in accordance with G.S. 20-28.4, no further notice is required. Failure of the recipient to notify the Division or lienor, as specified in the notice, within 10 days of the receipt of such notice that a hearing is desired shall be deemed a waiver of the right to a hearing prior to the sale of the property against which the lien is asserted, and the lienor may proceed to enforce the lien by public or private sale as provided in this section and the Division shall transfer title to the property pursuant to such sale. If the Division or lienor, as specified in the notice, is notified within the 10-day period provided above that a hearing is desired prior to sale, the lien may be enforced by sale as provided in this section and the Division will transfer title only pursuant to the order of a court of competent jurisdiction.

If the ~~registered or~~ certified mail notice has been returned as undeliverable, or if the name of the person having legal title to the vehicle cannot reasonably be ascertained and the fair market value of the vehicle is less than eight hundred dollars ($800.00), the lienor may institute a special proceeding in the county where the vehicle is being held, for authorization to sell that vehicle. Market value shall be determined by the schedule of values adopted by the Commissioner under G.S. 105-187.3.

In such a proceeding a lienor may include more than one vehicle, but the proceeds of the sale of each shall be subject only to valid claims against that vehicle, and any excess proceeds of the sale shall be paid immediately to the Treasurer for disposition pursuant to Chapter 116B of the General Statutes.

The application to the clerk in such a special proceeding shall contain the notice of sale information set out in subsection (f) hereof. If the application is in proper form the clerk shall enter an order authorizing the sale on a date not less than 14 days therefrom, and the lienor shall cause the application and order to be sent immediately by first-class mail pursuant to G.S. 1A-1, Rule 5, to each person to whom notice was mailed pursuant to this subsection. Following the authorized sale the lienor shall file with the clerk a report in the form of an affidavit, stating that the lienor has complied with the public or private sale provisions of G.S. 44A-4, the name, address, and bid of the high bidder or person buying at a private sale, and a statement of the disposition of the sale proceeds. The clerk then shall enter an order directing the Division to transfer title accordingly.

If prior to the sale the owner or legal possessor contests the sale or lien in a writing filed with the clerk, the proceeding shall be handled in accordance with G.S. 1-301.2.

(2) If the property upon which the lien is claimed is other than a motor vehicle required to be registered, the lienor following the expiration of the 30-day period provided by subsection (a) shall issue notice to the person having legal title to the property, if reasonably ascertainable, and to the person with whom the lienor dealt if different by ~~registered or~~ certified mail, return receipt requested. Such notice shall state that a lien has been asserted against specific property and shall identify the lienor, the date that the lien arose, the general nature of the services performed and materials used or sold for which the lien is asserted, the amount of the lien, and that the lienor intends to sell the property in satisfaction of the lien. The notice shall inform the recipient that the recipient has the right to a judicial hearing at which time a determination will be made as to the validity of the lien prior to a sale taking place. The notice shall further state that the recipient has a period of 10 days from the date of receipt in which to notify the lienor by ~~registered or~~ certified mail, return receipt requested, that a hearing is desired and that if the recipient wishes to contest the sale of his

property pursuant to such lien, the recipient should notify the lienor that a hearing is desired. The notice shall state the required information in simplified terms and shall contain a form whereby the recipient may notify the lienor that a hearing is desired by the return of such form to the lienor. Failure of the recipient to notify the lienor within 10 days of the receipt of such notice that a hearing is desired shall be deemed a waiver of the right to a hearing prior to sale of the property against which the lien is asserted and the lienor may proceed to enforce the lien by public or private sale as provided in this section. If the lienor is notified within the 10-day period provided above that a hearing is desired prior to sale, the lien may be enforced by sale as provided in this section only pursuant to the order of a court of competent jurisdiction."

SECTION 13.2. G.S. 44A-24.10 reads as rewritten:

"**§ 44A-24.10. Lien extinguished for lien claimant failing to file suit or answer in pending suit within 30 days after service on owner.**

If a lien claimant fails to file a suit to enforce the lien or fails to file an answer in a pending suit to enforce a lien within 30 days after a properly served written demand of the owner, lienee, or other authorized agent, the lien shall be extinguished. Service of the demand shall be by ~~registered or~~ certified mail, return receipt requested, or by personal service. The claimant shall file proof of properly served written demand with the clerk of the superior court. The provisions of this section shall not extend to any other deadline provided by law for the filing of any pleadings or for the foreclosure of any lien governed by this Part."

SECTION 13.3. G.S. 44A-43(b)(1) and (c)(1)a. read as rewritten:

"**§ 44A-43. Enforcement of self-service storage facility lien.**

...

(b) Notice and Hearing:

(1) If the property upon which the lien is claimed is a motor vehicle, the lienor, following the expiration of the 15-day period provided by subsection (a), shall give notice to the Division of Motor Vehicles that a lien is asserted and that a sale is proposed. The lienor shall remit to the Division a fee of two dollars ($2.00); and shall also furnish the Division with the last known address of the occupant. The Division of Motor Vehicles shall issue notice by ~~registered or~~ certified mail, return receipt requested to the person having legal title to the vehicle, if reasonably ascertainable, and to the occupant, if different, at his last known address. The notice shall:

...

c. State that the legal title holder and the occupant have a period of 10 days from the date of receipt of the notice in which to notify the Division of Motor Vehicles by ~~registered or~~ certified mail, return receipt requested, that a hearing is desired to contest the sale of the vehicle pursuant to the lien.

The person with legal title or the occupant must, within 10 days of receipt of the notice from the Division of Motor Vehicles, notify the Division of his desire to contest the sale of the vehicle pursuant to the lien, and that the Division should so notify lienor.

Failure of the person with legal title or the occupant to notify the Division that a hearing is desired shall be deemed a waiver of the right to a hearing prior to sale of the vehicle against which the lien is asserted. Upon such failure, the Division shall so notify the lienor; the lienor may proceed to enforce the lien by a public sale as provided by this section; and the Division shall transfer title to the property pursuant to such sale.

If the Division is notified within the 10-day period provided in this section that a hearing is desired prior to the sale, the lien may be enforced by a public sale as provided in this section and the Division will transfer title only pursuant to the order of a court of competent jurisdiction.

...

(c) Public Sale. –

(1) Not less than 20 days prior to sale by public sale the lienor:

a. Shall cause notice to be delivered by ~~registered or~~ certified mail to the person having a security interest in the property if reasonably ascertainable, and to the occupant at the occupant's last known address. Notice given pursuant to this subdivision shall be presumed delivered when it is properly addressed, first-class postage prepaid, and deposited with the United States Postal Service."

SECTION 14. Sections 1 through 3 and sections 5 through 11 of this act become effective January 1, 2013, and apply to improvements to real property for which the first permit required to be obtained is obtained on or after that date or, with respect to projects for which no permit is required, apply to improvement to real property commenced on or after that date. Section 12 of this act is effective when it becomes law and applies to taxes imposed for taxable years beginning on or after July 1, 2012. Sections 4, 13 and 14 of this act are effective when it becomes law.

Appendix K

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE RESEARCH COMMISSION

STATE LEGISLATIVE BUILDING

RALEIGH, NC 27601

April 19, 2012

TO THE MEMBERS OF THE LEGISLATIVE RESEARCH COMMISSION:

Attached for your consideration is the report to the 2012 Regular Session of the 2011 General Assembly. This report was prepared by the Legislative Research Commission's Committee on Metropolitan Sewerage/Water System, pursuant to G.S. 120-30.17(1).

Representative Tim D. Moffitt
Chair

Chair
Committee on Metropolitan Sewerage/Water System
Legislative Research Commission

LEGISLATIVE RESEARCH COMMISSION

METROPOLITAN SEWERAGE/WATER SYSTEM COMMITTEE

NORTH CAROLINA GENERAL ASSEMBLY

REPORT TO THE 2012 SESSION of the 2011 GENERAL ASSEMBLY OF NORTH CAROLINA

MAY 14, 2012

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TRANSMITTAL LETTER

May xx, 2012

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TO THE MEMBERS OF THE 2012 REGULAR SESSION
OF THE 2011 GENERAL ASSEMBLY

The Legislative Research Commission herewith submits to you for your consideration it's report and recommendations to the 2012 Regular Session of the 2011 General Assembly. The report was prepared by the Legislative Research Commission's Committee on Metropolitan Sewerage/Water System, pursuant to G.S. 120-30.17 (1).

Respectfully submitted,

Senator Philip E. Berger President Pro Tempore of the Senate	Representative Thomas R. Tillis Speaker of the House of Representatives

Co-Chairs
Legislative Research Commission

LEGISLATIVE RESEARCH COMMISSION MEMBERSHIP

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2011 – 2012

President Pro Tempore of the Senate
Senator Philip E. Berger
Co-Chair

Senator Thomas M. Apodaca
Acting Co-Chair

Senator Peter S. Brunstetter
Senator Linda D. Garrou
Senator Martin L. Nesbitt, Jr.
Senator Richard Y. Stevens

Speaker of the House of Representatives
Representative Thomas R. Tillis
Co-Chair

Representative Timothy K. Moore
Acting Co-Chair

Representative John M. Blust
Representative Justin P. Burr
Representative Mike D. Hager
Representative Edith D. Warren

PREFACE

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The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is the general purpose study group in the Legislative Branch of State Government. The Commission is co-chaired by the President Pro Tempore of the Senate and the Speaker of the House of Representatives and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigation into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

The Legislative Research Commission authorized the study of Metropolitan Sewerage/Water System , under authority of G.S. 120-30.17(1). The Committee was Representative Tim D. Moffitt, Chairs of the Committee. The full membership of the Committee is listed under Committee Membership. A committee notebook containing the committee minutes and all information presented to the committee will be filed in the Legislative Library by the end of the **2011-2012** biennium.

COMMITTEE PROCEEDINGS

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The Legislative Research Commission's Committee on Metropolitan Sewerage/Water System met 4 times after the 2011 Regular Session. The Committee's Charge can be found here. The following is a brief summary of the Committee's proceedings. Detailed minutes and information from each Committee meeting are available in the Legislative Library.

January 23, 2012

The first meeting of the Legislative Research Commission's Committee on Municipal Sewerage/Water System took place on January 23, 2012 at 2:00 p.m. in room 544 of the Legislative Office Building.

The Committee first heard a brief overview of the Sullivan Acts and history of the Asheville water system from Committee Staff. Vance Holloman, Deputy Treasurer, State and Local Finance Division, Department of State Treasurer then discussed the financial status of the Asheville Water and Sewer System.

The remainder of the meeting consisted of presentations of individuals from the Asheville area. Asheville's Vice Mayor Esther Manheimer gave an overview of the City's perspective on the Asheville Water and Sewer History. The Director of Water Resources for the City of Asheville, Steve Shoaf, gave an overview and history of the water system. He also discussed the financial stability of the system and the capital plans of the system. General Manager of the Metropolitan Sewerage District (MSD), Tom Hartye, gave a presentation on the organization and operation of the MSD. Steve Aceto, Chairman of the MSD Board of Directors presented on the historical overview of the MSD. The final presenter was Robert B. Long, attorney with Long, Parker, Warren, Anderson & Payne. Mr. Long discussed the history of the water dispute, and gave an overview of case law related to the dispute.

February 23, 2012

The second meeting of the Legislative Research Commission's Committee on Municipal Sewerage/Water System took place on February 23, 2012 at 9:00 a.m. in the Virginia C. Boone Mountain Heritage Building of the Western North Carolina Agriculture Center in Fletcher, North Carolina.

The meeting was held in the Fletcher, NC to hear from local officials and members of the public regarding regional water and sewer issues including the following:

- Increasing efficiencies in the delivery of services.

- Realization of economies of scale through better planning, engineering, and administration.
- The important role water and sewer has in economic development for the area.

The Committee accepted comments regarding the public water system managed by the City of Asheville along the three publicly stated potential study outcomes:

1. The water system remains managed by the City of Asheville.
2. The creation of an independent regional water authority similar to MSD.
3. Merging the water system with MSD, creating a regional authority.

The hearing time for interested parties was designated as:

9:00 a.m. - 10:00 a.m.	Elected Officials
10:00 a.m. - 12:00 p.m.	City of Asheville Residents
1:00 p.m. - 3:00 p.m.	Buncombe County Residents
3:00 p.m. - 4:00 p.m.	Henderson County Residents
4:00 p.m. - 5:00 p.m.	Business Community

Fourteen local officials and 67 members of the public addressed the Committee. A complete report of the comments is included in the minutes of the Committee in the Legislative Library.

March 14, 2012

The third meeting of the Legislative Research Commission's Committee on Municipal Sewerage/Water System took place on March 14, 2012 at 1:30 p.m. in room 643 of the Legislative Office Building.

The Committee heard from representatives of Buncombe County and Henderson County water systems on the local perspective of public water and sewer service. Bo Ferguson, City Manager of Hendersonville presented a description of the Hendersonville water and sewer structure, and plans for future improvements. Henderson County Attorney, Russell Burrell, discussed the local water system from Henderson County's perspective. Marcus Jones, Henderson County Engineer, presented the Committee with information on the operation of the sewerage system in Henderson County. Tom Hartye, General Manager of MSD, presented on the operation, future growth potential, and capital improvement plan of the MSD.

The Committee next heard from Reid Wilson, Executive Director of the Conservation Trust for North Carolina on the Asheville Watershed Conservation Easement. The easement is attached in Appendix D.

April 19, 2012

The forth meeting of the Legislative Research Commission's Committee on Municipal Sewerage/Water System took place on April 19, 2012 at 10:30 a.m. in room 643 of the Legislative Office Building.

Committee staff reviewed the draft report of the Committee. The Committee amended the draft report and then voted to approve the final report. The Committee staff was directed to prepare the final report of the Committee for submission to the Legislative Research Commission.

FINDINGS AND RECOMMENDATIONS

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Finding 1 - The Metropolitan Sewer District (MSD) serves Asheville, Biltmore Forest, Black Mountain, Montreat, Woodfin, Weaverville, and the unincorporated parts of Buncombe County. The MSD also has an agreement for the wastewater treatment services for part of Henderson County. The MSD service area is over 180 square miles and services 51,000 customer accounts. The MSD was formed in 1962 to collect and treat wastewater.

In 1990, area local governments gave their collection lines to MSD for ownership and maintenance in "Sewer Consolidation" agreements. The following fifteen separate sewer systems were consolidated: City of Asheville, Town of Biltmore Forest, Town of Black Mountain, Town of Montreat, Town of Weaverville, Beaverdam Water and Sewer District, Busbee Sanitary Sewer District, Caney Valley Sanitary Sewer District, Crescent Hill Sanitary Sewer District, Enka-Candler Water and Sewer District, Fairview Sanitary Sewer District, Venable Sanitary Sewer District, Skyland Sanitary Sewer District, Swannanoa Water and Sewer District, and the Woodfin Sanitary Water and Sewer District.

The MSD is governed by a 12 member Board of Directors appointed by the following entities:

1. City of Asheville (3 members).
2. Buncombe County (3 members).
3. Biltmore Forest.
4. Black Mountain.
5. Montreat.
6. Weaverville.
7. Woodfin Sanitary Water and Sewer District.
8. Town of Woodfin.

Recommendation 1 - The Committee recommends the Metropolitan Sewerage District Act be amended to:

1. Reflect population shifts in single-county districts.
2. Modify representation in multicounty districts.
3. Allow metropolitan sewerage districts to exercise the same authority as metropolitan water districts.

Finding 2 - The Public Utility Water System, currently managed by the City of Asheville Water Resources Department, continues to be a topic of substantial concern within the unincorporated (non-City of Asheville) community. It is important to note that this discussion involves the rate-payers (customers of the water system) of the Public Utility Water System managed by the City of Asheville Water Resources Department, not ad-valorem (property) taxpayers per se. The concern regards ongoing public commentary regarding differential water rate limitations and tax inequities emanating from City of Asheville leaders and officials. This discourse contributes to continued distrust, unease and water insecurity with current and future rate-payers (water customers) in unincorporated (non-City of Asheville) Buncombe and Henderson Counties.

Moreover, the City of Asheville's primary method of growth, involuntary annexation, has been compromised by recent legislation and, therefore, creates increased concern for non-City of Asheville residents of Buncombe County when water system management issues are involved. As noted by City Attorney, Bob Oast, on March 23, 2011, "[b]ecause of legal and financial limitations related to water service, Asheville does not engage in voluntary annexations to the same extent that other cities are able to."[1] Broad statewide annexation reform, allowing persons facing involuntary annexation an opportunity to deny or approve annexation, will ultimately cause cities, such as the City of Asheville, to pursue other avenues of growth. These new limitations on all North Carolina municipalities exacerbates the fact that the City of Asheville does not possess the ability to utilize differential water pricing to compel voluntary annexation. This prohibition, as a result of Sullivan Acts I, II and III, is unique to Asheville and is rooted in a long, complex, history dating back to the Great Depression. Because of these circumstances, consideration must be given to the enactment of a proactive solution to avoid what will invariably lead, again and again, to conflict between the City of Asheville, on the one hand, and Buncombe County, Henderson County, the region's other communities and the State of North Carolina, on the other hand.

To fully understand the dynamics involved, a thorough understanding of the history must first be attained. This Committee has spent the past several months heavily investigating and researching the historical perspectives, community opinions, settled law, laws, and legal cases pertaining to the matter. The following are excerpts and summaries of that history. To facilitate a full understanding, source documents are available online and in the Legislative Library for review and consideration.

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[1] Email from City of Asheville Attorney, Bob Oast to House Committee on Finance, March 23, 2011.

Admittedly, at the beginning of the 19th Century, and progressing over many years thereafter, the City of Asheville established a waterworks system to provide the citizens of the City of Asheville with an adequate water supply. Even today, the sources for that water supply remain located outside the contiguous boundaries of the City of Asheville. "Between 1923 and 1927, pursuant to various Acts of the Legislature, there were formed in Buncombe County six water and sewer districts. These districts were duly incorporated by the Legislature as municipal corporations for the purpose of furnishing to the residents of the respective districts water and sewer service. By the provisions of the various Acts of the Legislature, the districts were given geographical boundaries and were authorized to acquire rights of way for water and sewer lines, to construct such lines, and to hold elections authorizing the issuance of bonds in payment therefore."[2]

During the Great Depression, all of the aforementioned water districts went bankrupt. Therefore, beginning in 1928, the City of Asheville began selling water directly to individual customers (rate-payers), instead of the respective water districts. With the sale of water to individuals, the City adopted an ordinance that lowered the rates for all consumers. However, the rate for customers outside of the corporate limits was still double the rates paid by customers inside of the corporate limits. Due to default by the respective water districts on their bonds, Buncombe County assumed their liabilities and obligations, and acquired their corresponding rights and assets. Thus, Buncombe County became responsible for water line maintenance. In exchange for Buncombe County's assumption of those liabilities and obligations, differential water rates were no longer considered appropriate.

Therefore, in 1933, the General Assembly, through the efforts of Buncombe County Legislator William (Billy) Sullivan, enacted Chapter 399 of the 1933 Public-Local Laws. Commonly known as Sullivan I, this Act prohibited the City of Asheville from charging higher rates for water to residents of Buncombe County that were in a water district that incurred the aforementioned debt for the water system infrastructure. However, Sullivan I did allow the City of Asheville to terminate service for nonpayment of water by rate-payers. Sullivan I also provided that individuals outside of the City of Asheville were only entitled to the use of surplus water and, since Buncombe County owned the water lines, the Buncombe County Commissioners or trustees of the water districts were required to maintain the water lines.[3]

In 1955, in direct violation of Sullivan I, the Asheville City Council began charging water rates that were substantially higher for rate-payers outside of the corporate limits of the

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[2] *Candler v. City of Asheville,* 247 N.C. 398, 101 S.E. 2d 470 (1958).

[3] *The Sullivan Acts are attached in Appendix E.*

City of Asheville than the rates for individuals within the corporate limits. Therefore, a law suit ensued regarding the constitutionality of Sullivan I. In *Candler v. City of Asheville*, 247 N.C. 398, 101 S.E. 2d 470 (1958), the Supreme Court of North Carolina specifically found that Sullivan I was constitutional and binding upon the City of Asheville. Thus, the City of Asheville was again prohibited from charging differential water rates to non-City of Asheville rate-payers.

By 1976, the indebtedness of all of the respective water districts was retired. In 1980, the Asheville City Council passed a resolution to challenge the validity of Sullivan I. However, before the lawsuit was filed, an interlocal agreement was entered into between the City of Asheville and Buncombe County regarding the water system. The agreement established the Asheville/Buncombe County Water Authority. The Water Agreement included provisions for the water system, as well as provisions relating to parks, recreation and law enforcement. In the Water Agreement, the City of Asheville specifically agreed not to challenge the validity of Sullivan I. The City of Asheville was also required, by the Agreement, to charge the same water rates for rate-payers inside and outside the corporate limits of the City of Asheville.

On November 11, 1995, leaders of the City of Asheville, Buncombe County and Henderson County came together and, by agreement, formed the Regional Water Authority which replaced the Asheville/Buncombe Water Authority. Its formation was in furtherance of an agreement between the City of Asheville and Henderson County, as a pre-condition, to allow Mills River, in Henderson County, to become an additional source of water for the Region. This regional agreement was driven by electoral consensus as well as the realization that our respective communities and economies are linked together. The agreement contained the following forward-looking language which demonstrated the intent of all of the parties involved:

SECTION XXI: REGIONAL WATER AND/OR SEWER AUTHORITY

> *21.0 It is the intention of the parties to this Agreement to establish herein the basis for the formation of a Regional Water and/or Sewer Authority, which would, at a minimum, include as members Henderson and Buncombe Counties, the Authority and Asheville. Pursuant to that intent, the parties herein shall in good faith work towards the creation of a regional authority and the promotion of said authority to other units of local government in the western part of North Carolina. At the time that the Regional Authority is created, all assets and improvements accumulated pursuant to this Agreement shall be transferred to such*

Regional Authority upon such terms and conditions as are then mutually acceptable.[4]

The agreement was a significant accomplishment. For the first time since the construct of the public water system, water security was enjoyed by the rate-payers in both the incorporated and the unincorporated areas. The de-politicizing of the public water system provided hope that a new era of regional cooperation and economic development synergy would spur smart industrial growth and opportunity for the region. The agreement also recognized that the public water system itself was truly a Public Utility Water System and acknowledged the contribution of non-City of Asheville rate-payers to its history.

Despite that history, in May, 2004, the Asheville City Council voted unanimously to unilaterally terminate the Regional Water Agreement to once again attempt to charge differential water rates, to compel voluntary annexation and to control growth outside of its corporate boundaries.[5] The City of Asheville gave Buncombe County a one year notice that they were unilaterally terminating the agreement.[6]

Additionally, the leadership of the City of Asheville has long claimed that the Public Utility Water System had fallen into disrepair (which was true). Therefore, since the members of the Regional Authority could not agree upon a Capital Improvement Plan (CIP) to fund maintenance and repairs, the City of Asheville felt it appropriate to unilaterally take over the Public Utility Water System. Those most knowledgeable of the matter, point out that "[f]rom 1957 through fiscal year 2005, the City of Asheville did not put any funds into the water system. In fact, in addition to the net operating revenue for that period of time of almost $114,000,000.00 (income less expenses), there were a number of payments made from the "water fund" as part of the "operating expenses."[7]

Essentially, the City of Asheville had taken (diverted) so much revenue from the water system to subsidize the City of Asheville's general fund, the City of Asheville itself was primarily (not solely) at fault for the system disrepair by not having dedicated the water funds for said maintenance and repair. Thus, the City of Asheville created the basis for its own complaint. Also, with the termination of the Regional Water Agreement, the City of Asheville made a determination that it would be able to successfully challenge the Sullivan Acts in Court and have them overturned. "When the dust settles, and when the

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[4] Regional Water Supply and Water Service Agreement.

[5] The City Council at this time consisted of: Mayor, Charles Worley; Vice-Mayor, Dr. Carl Mumpower; Councilman, Jan Davis; Councilman Dr. Joe Dunn; Councilwoman, Holly Jones; Councilwoman, Terry Bellamy and Councilman, Brownie Newman.

[6] Asheville City Council Minutes May 25, 2004, page 27.

[7] *Asheville v. State*, No. 05 CVS 10743 (Super. Ct. Wake Co Feb. 2, 2007)(memorandum of decision and order re: summary judgment), page 9.

City of Asheville has established its legal right to operate its water system like every other city in North Carolina – and despite what has been said, Asheville and Buncombe County are not that different from the rest of the State – you will have to explain publicly why you have passed up the opportunity to reach an agreement that was fair to everyone." (Quoting Mayor Worley).[8] With the Sullivan Acts out of the way, the City of Asheville could then pursue their long held desire to charge differential water rates to rate-payers in unincorporated areas, increase the price for its wholesale customers, control growth on its perimeter and coerce new non-City of Asheville rate-payers to agree to voluntary annexation in exchange for water connection, and consumption.

Differential water rates serve primarily two purposes for the City of Asheville. First, the City of Asheville has determined that with a differential water rate structure, an additional six million dollars (approximately) would flow unrestricted into the City of Asheville's general fund. "Regarding rate differentials, Mayor Bellamy said that when you look at differentials across the State of North Carolina, the average differential is 85% (they use that to offset costs). City Council is willing to give up our rate differential ability (which is about 85%) and for that 85%, it would cost us over $6 million. Today we would like to see a tax equity payment of $6 million for us to give up rate differential ability."[9] (Note: *This is a reference to an annual payment to the City of Asheville coming from Buncombe County taxpayers. Agreement to those terms would more than likely raise ad-valorem taxes on all County residents regardless of whether they were or were not rate-payers to the water system).* Furthermore, comparison to other Cities in North Carolina unnecessarily confuses the issue. The other cities completely own their distribution systems. However, the City of Asheville does not.

Second, the City of Asheville has long used the lack of a differential rate structure as justification for its involuntary annexations. Utilizing an escalating water rate structure for non-City of Asheville rate-payers, the City of Asheville would have the ability to coerce non-City of Asheville rate-payers to agree to voluntary annexation to obtain economic relief. In essence, in exchange for lower water rates by agreeing to annexation by the City of Asheville, a non-City of Asheville rate-payers property tax would almost double. Also, as noted in the aforementioned Minutes, the City of Asheville would <u>force</u> annexation in exchange for connection to the water system. Such actions by the City of Asheville obviously contradict and betray the history of the Public Utility Water System.

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[8] Letter from Mayor Worley, dated June 24, 2005 to Chairman Ramsey, Buncombe County Commissioners, page 2.

[9] Asheville City Council Minutes, Monday, June 12, 2006.

(Please review the Factual Background *part of the Wake County Superior Court decision attached herein as it provides an excellent summary of the history).*[10]

In response to the City of Asheville's more recent actions to challenge Sullivan Act I, the North Carolina Legislature enacted, on June 29, 2005, Sullivan II (S.L. 2005-140) and Sullivan III (S.L. 2005-139).

Sullivan II expressly prohibits the City of Asheville from charging differential water rates to Buncombe County residents outside the corporate limits of the City of Asheville that are connected to the waterlines maintained by the Asheville/Buncombe Water Authority. This Act continued to allow the City of Asheville to terminate service for nonpayment and required the Buncombe County Commissioners or trustees of the water districts to maintain the water lines owned by Buncombe County.

Sullivan III amends the City of Asheville's public enterprise authority for the provision of water and sewer service to provide that rules adopted for the service must not provide for differential treatment for individuals outside of the corporate limits. This Act also, required petitions for voluntary annexations to include a statement that the petition is not based on representations regarding the availability of public enterprise services.

In October 2005, the City of Asheville filed a declaratory judgment action challenging the constitutionality of the respective Sullivan Acts. The constitutionality of the Acts was upheld by the North Carolina Court of Appeals. The North Carolina Supreme Court approved that decision by denying the City of Asheville's request for review.[11]

On May 16, 2006, City of Asheville Mayor, Terry Bellamy, sent a letter to the Buncombe County Legislative Delegation about the ongoing "water dispute". The Mayor stated, "At this point, we are prepared to continue our legal challenges against the Sullivan Acts; however we prefer a locally determined solution." Attached with this letter was a summary of the terms presented in offers and counter offers between the City of Asheville and Buncombe County.[12]

On June 22, 2006, the Chair of the Buncombe County Commissioners, Nathan Ramsey, sent a letter to the Mayor and members of the Asheville City Council, outlining a set of terms acceptable to the Buncombe County Commission relative to the "water dispute". The proposal represented significant concessions by Buncombe County to the City of Asheville on a number of issues. However, the ability to implement differential water

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[10] *Asheville v. State*, No. 05 CVS 10743 (Super. Ct. Wake Co Feb. 2, 2007) (memorandum of decision and order re: summary judgment), page 2.

[11] *City of Asheville v. State,* 192 N.C. App 1, 665 S.E.2d 103 (2008), *appeal dismissed, disc. rev. denied, 672 S.E.2d 685 (2009).*

[12] Letter, City of Asheville with attachment, May 16, 2006.

rates was not one of those concessions. Therefore, the City of Asheville rejected the proposal and continued their legal challenges against the Sullivan Acts.[13]

As a result of the foregoing, the City of Asheville has considered, from time to time, a Legislative Agenda seeking legislation to be introduced by the local delegation to repeal the Sullivan Acts.[14]

The "water dispute" has also been reviewed by other local non-governmental organizations. On April 28, 2005, the Board of Directors for the Asheville Chamber of Commerce accepted the findings of and adopted the recommendations set forth by the "Water Agreement Task Force".

> "After considerable discussion, many meetings, and review of the background material, the committee recommends that the city pursue a sale of the Water Authority to the Metropolitan Sanitary District (MSD) for the following reasons:
>
> - The Metropolitan Sanitary District has a strong track record and culture of good service and efficiency.
> - It would create a one-stop shop (plan review, permitting, inspection and acceptance) for the two major utilities.
> - It would be a regional approach to utility extension and service.
> - There would be reduced administrative costs. (Attachment 1)
> - There would be reduced costs from highway relocation. (Attachment 2)"[15]

In early Spring of 2005, a League of Women Voters board member, Mr. Andrew Reed submitted a guest editorial regarding the results of their study. Although the League does not take an official position, the League board concurs with the opinions expressed.

> "A truly independent Regional Water Authority is best route out of this mess"
>
> "Clean, affordable water is integral to our region's physical and economic health, and the Water Authority exists for the sole purpose of providing it. The League of Women Voters of Asheville and Buncombe County proposes a simple, straightforward and nonpartisan approach to fulfill that purpose".

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[13] Letter, Buncombe County Board of Commissioners, June 22, 2006.

[14] City of Asheville, Staff Report, Legislative Agenda for 2007. See also, City Council minutes April 25, 2006, page 24.

[15] *Report From Water Agreement Task Force, Asheville Chamber of Commerce, April 28, 2005.*

"The Water Authority is, simply, a public infrastructure that exists to serve its users. It collects rainfall and runoff from far outside the city limits. It operates treatment plants in Buncombe and Henderson Counties, and it serves both Asheville residents and tens of thousands who live outside the city. Our water system is already a regional operation, and to carry out its mission it must be truly independent".[16]

Given all of the foregoing, this Committee makes the following conclusions:

1. The City of Asheville does not own the entire Public Utility Water System;

2. Buncombe County owns part of the Public Utility Water System;

3. The Public Utility Water System is a "Public Enterprise" and, therefore, the City of Asheville cannot profit from its management;

4. The City of Asheville is constrained and prohibited from charging non-City of Asheville rate-payers higher water rates by Sullivan I;

5. The City of Asheville is constrained and prohibited from charging non-City of Asheville rate-payers higher water rates by Sullivan II;

6. The City of Asheville is constrained and prohibited from adopting rules for the provision of water that provide for differential treatment for non-City of Asheville rate-payers by Sullivan III;

7. The City of Asheville has attempted to charge non-City of Asheville rate-payers higher rates for water than City of Asheville rate-payers in direct violation of the Sullivan Acts;

8. The City of Asheville has intentionally failed to fulfill contractual obligations to other governmental entities regarding the Public Utility Water System;

9. The City of Asheville has refused to reach a reasonable agreement with Buncombe County regarding the Public Utility Water System;

10. It is the intent of the City of Asheville to charge non-City of Asheville rate-payers substantially more for water than City of Asheville rate-payers;

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[16] *Asheville-Citizen Times,* March 25, 2005, Editorial, Page 9.

11. The City of Asheville desires to maintain control of the Public Utility Water System until persons sympathetic to the City of Asheville are elected into office and can repeal the respective Sullivan Acts;

12. Buncombe County has substantially contributed to and invested in the Public Utility Water System;

13. The City of Asheville refuses to acknowledge Buncombe County's contribution and investment in the Public Utility Water System;

14. The non-City of Asheville rate-payers should not continually face the threat of double, triple and possibly quadruple increases in their water rates; and

15. The non-City of Asheville rate-payers are at risk of inequitable treatment by the City of Asheville (i.e. paying a disproportionately high portion of the water rates and "forced" voluntary annexation).

16. The Committee encourages the regional water and sewer stakeholders specifically to:
    a. Study of the impact of a water system transfer on water ratepayers.
    b. Study of the impact of a water system transfer on sewer ratepayers.
    c. Study of the impact of a water system transfer on economic development prospects.
    d. Consider whether and how water system operators in the District other than COA and Henderson County ought to be encouraged to transfer their systems to the District.
    e. Consider what measures might be appropriate to prevent privatization or diversion of public water resources outside the District boundary over the long term. There is a trend towards private operators acquiring entire public systems in some form or other. Our District's water resources are definitely unique and desirable and can be expected to attract more attention as the years go by. In considering the measures to prevent privatization or diversion of public water resources outside the District boundary, include a study of all of the following:
        i. What is considered privatization of the water system.
        ii. What are the water and sewer functions that are currently subcontracted by the City of Asheville or MSD. What are the bulk contracts for water that are currently in place, or under consideration, for sale of water to large users including beer breweries and soft drink bottlers. How do these current practices stop the diversion of water resources outside of the District and prevent inappropriate private benefits?

iii. What current measures preclude the City of Asheville from privatizing or diverting water resources outside of the District?
iv. What steps should be taken to prevent the privatization of this public resource?

It is the Committee's opinion that direct repeal or defiance of the Sullivan Acts would produce such substantially negative outcomes in the region that a proactive remedy must be pursued and implemented in a timely fashion.

Recommendation 2 - After careful consideration of the information presented, the Committee recommends merging the Public Utility Water System with the Metropolitan Sewerage District of Buncombe County.

The benefits of combining the two utilities are undeniable. The benefits include, among numerous others, the following:

1. Each utility essentially serves the same residential, commercial and industrial customers;
2. Wastewater volumetric charges are directly linked to domestic water metered consumption;
3. Treatment of raw potable water and wastewater requires similar expertise, and similar interaction with Federal and State Authorities;
4. Economies of scale can be achieved in the areas of administration, planning and engineering; and
5. Single location for water and wastewater availability and planning.

The Committee recommends that the 2013 Session of the North Carolina General Assembly consolidate the Public Utility Water System with the Metropolitan Sewerage District of Buncombe County. Should the interested governments craft their own solution for consolidation, which achieves all the objectives of the Committee, before the 2013 North Carolina General Assembly convenes, due consideration would be given to the local plan. Action will not be taken if the parties are engaged in good-faith negotiations on this matter.

Finding 3 - The 1996 Asheville Watershed Conservation Easement is designed to protect the drinking water in and around Asheville. There are some places where the language in the conservation easement could be clearer. However, the issue can be addressed directly with the City of Asheville and the General Assembly does not need to act at this time.

Recommendation 3- The Committee recognizes the efforts of the Conservation Trust for North Carolina in protecting the drinking water in and around Asheville. It recommends that the Conservation Trust for North Carolina continue to work with the City of

Asheville as the parties consider clarifying the 1996 Asheville Watershed Conservation Easement.

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COMMITTEE MEMBERSHIP

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2011-2012

Speaker of the House of Representatives Appointments:

Representative Tim D. Moffitt, Co-Chair
Representative William Brawley
Representative William Brisson
Representative Chuck McGrady
Representative Tom Murry

COMMITTEE CHARGE

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The Legislative Research Commission shall study whether requiring large cities that have a municipal water system and that are located entirely within a Metropolitan Sewerage District to convey that water system to the district will improve the efficiency of providing public services. The Commission shall specifically examine House Bill 925, First Edition, 2011 Regular Session, and the following issues:

1) Financial stability of the current independent systems on a historic basis and the anticipated financial stability of a combined system.
2) Cost-benefit analysis of a combined system, including a review of assets and liabilities; personnel needs; equipment and infrastructure replacement schedules; facilities leased and owned; and fee schedules.
3) Debt obligation.
4) Taxpayer investments in the systems.
5) Audit of current financials.
6) Comparative analysis of the current system to existing public and private systems.
7) Conservation and water efficiency practices.
8) Best management practices.
9) The disposition of property in Article 12 of Chapter 160A of the General Statutes as it relates to a conveyance of a water system.
10) The transfer of permits when a water system is conveyed.
11) Any local acts applicable to the city or metropolitan sewerage district.
12) Other items the Commission deems relevant to the study.

STATUTORY AUTHORITY

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NORTH CAROLINA GENERAL STATUTES
ARTICLE 6B.

Legislative Research Commission.

§ 120-30.17. Powers and duties.

The Legislative Research Commission has the following powers and duties:

(1) Pursuant to the direction of the General Assembly or either house thereof, or of the chairmen, to make or cause to be made such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner.

(2) To report to the General Assembly the results of the studies made. The reports may be accompanied by the recommendations of the Commission and bills suggested to effectuate the recommendations.

(3), (4) Repealed by Session Laws 1969, c. 1184, s. 8.

(5), (6) Repealed by Session Laws 1981, c. 688, s. 2.

(7) To obtain information and data from all State officers, agents, agencies and departments, while in discharge of its duty, pursuant to the provisions of G.S. 120-19 as if it were a committee of the General Assembly.

(8) To call witnesses and compel testimony relevant to any matter properly before the Commission or any of its committees. The provisions of G.S. 120-19.1 through G.S. 120-19.4 shall apply to the proceedings of the Commission and its committees as if each were a joint committee of the General Assembly. In addition to the other signatures required for the issuance of a subpoena under this subsection, the subpoena shall also be signed by the members of the Commission or of its committee who vote for the issuance of the subpoena.

(9) For studies authorized to be made by the Legislative Research Commission, to request another State agency, board, commission or committee to conduct the study if the Legislative Research Commission determines that the other body is a more appropriate vehicle with which to conduct the study. If the other body agrees, and no legislation specifically provides otherwise, that body shall conduct the study as if the original authorization had assigned the study to that body and shall report to the General Assembly at the same time other studies to be conducted by the Legislative Research Commission are to be reported. The other agency shall conduct the transferred study within the funds already assigned to it.

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Prepared by: Charles E. Roe, Conservation Trust for N.C.
Return to: William F. Slawter, Nesbitt & Slawter

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

REGISTERED

96 DEC -3 P1:18

BK1938PG018

ASHEVILLE WATERSHED CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT (herein "Conservation Easement") made this 15 day of November 1996, by and between the City of Asheville, a North Carolina municipal corporation (hereinafter the "Grantor") and the CONSERVATION TRUST FOR NORTH CAROLINA, a non-profit corporation organized under the laws of the State of North Carolina (hereinafter the "Grantee") with an address of 883 Washington Street, Raleigh, North Carolina 27605.

RECITALS:

A. The Grantor is the owner of certain real property known as the Asheville watershed (inclusive of the North Fork and Bee Tree watersheds) and consisting of 7,356± acres, more or less, located in Buncombe County, North Carolina, and more particularly described in Exhibit A attached hereto and by this reference made a part hereof (hereinafter "Protected Property").

B. The Grantee is a nonprofit corporation established for the preservation and protection of land in its natural, scenic, and open space condition for scientific, educational, charitable, and aesthetic purposes.

C. The Grantor is desirous of conveying a perpetual Conservation Easement over the Protected Property, pursuant to the terms of the North Carolina Conservation and Historic Preservation Agreements Act of 1979 (N.C.G.S. 121-34 et seq.) and N.C.G.S. 160A-266 to 279, thereby restricting and limiting the use of the Protected Property, on the terms and conditions and for the purposes hereinafter set forth.

D. The Grantor conveys this Conservation Easement to the Grantee after approval by a majority of the members of the city council of the city of Asheville, NC, at a meeting duly held on June 28, 1996.

E. The Grantee is a tax-exempt public charity under section 501(c)(3) and 509(a)(2) of the Internal Revenue code, is authorized by the laws of the state of North Carolina to accept, hold and administer conservation easements, possesses the authority to accept and is willing to accept this conservation Easement under the terms and conditions hereinafter described, and is a "qualified organization" and an eligible donee within the meaning of N.C.G.S. 121-34 and within the meaning of Section 170(H)(3) of the Internal Revenue code and regulations promulgated thereunder.

F. Grantor and Grantee recognize the conservation value of the Protected Property in its present state as forest land and surface water supply reservoirs, the preservation of which is pursuant to federal, state and local government policy, as evidenced by designation of the Asheville Watershed as a "nationally significant" natural area in the North Carolina Natural Heritage Protection Plan (1995), prepared by the North Carolina Natural Heritage Program, N.C. Department of Environment, Health and Natural Resources, pursuant to N.C.G.S. chapter 113A-164 of Article 9A.

Additionally, preservation of the Protected Property provides for the scenic enjoyment of the general public, as evidenced by its location and visual access to the public traveling on the Blue Ridge Parkway, a unit of the National Park system, which traverses the ridgetop above the Asheville Watershed.

The Protected Property yields significant public benefit by permanently protecting the principal public drinking water supply for the citizens of Asheville and Buncombe County.

NOW, THEREFORE, in consideration of the mutual covenants, terms, conditions and restrictions hereinafter set forth, Grantor unconditionally and irrevocably hereby grants and conveys unto Grantee, its successors and assigns, forever and in perpetuity a conservation Easement of the nature and character and to the extent hereinafter set forth, over the Protected Property, f or the benefit of the people of North Carolina, together with the right to preserve and protect the conservation values of the Protected Property.

ARTICLE I. PURPOSE OF EASEMENT

The Protected Property is used primarily to provide a clean, safe, plentiful source of drinking water for the people of the City of Asheville and surrounding areas. Subject to this primary use of providing water, the Grantor conveys this easement for the following purposes: to ensure that the Protected Property will be retained forever in its predominantly natural, scenic and forested condition: to protect native plants, animals and plant communities on the Protected Property; and to prevent any use of the Protected Property that will significantly impair or interfere with the conservation values of the Protected Property described above.

ARTICLE II. PROHIBITED ACTS

Grantor promises that it will not perform, and not knowingly allow others to perform, any act on or affecting the Protected Property that is inconsistent with the purposes for which this conservation easement is given.

ARTICLE III. CONSISTENT USES

The following uses and practices on the Protected Property, although not an exhaustive recital of consistent uses and practices, are consistent with this Easement, and these uses and practices shall not be precluded, prevented or limited by this Easement:

a) To produce and deliver drinking water, including the right to:

(i) build and maintain all structures, buildings and improvements necessary to collect, process and deliver water, including but not limited to the reservoirs, dams, treatment facilities, pipelines, roads, parking areas, office, maintenance and storage facilities that currently exist (hereinafter referred to as the "Water Production Facilities").

(ii) to replace all or part of the Water Production Facilities with facilities used for a like purpose.

(iii) the right to expand the Water Production Facilities to meet growing demand for water

usage or to comply with governmental regulations.

(iv) the right to remove and destroy any plant or animal within or immediately adjacent to the Water Production Facilities which interferes with the production and delivery of drinking water.

b) Uneven-aged, selective timber harvesting may be conducted below the 3600 foot topographic elevation, but in accordance with the following restrictions and conditions:

(i) Best Management Practice guidelines for the timber industry as the same may be promulgated by law or regulation in the state of North Carolina and amended from time-to-time.

(ii) maintenance and restoration, insofar as possible, of old-growth forests and preservation of the same where it already exists, as documented by the conservation Easement Documentation Report, established by Article VIII(A) below.

(iii) maintenance and protection of habitats of state-listed or candidate endangered or threatened species of plants or animals.

c) Development of recreational facilities in a manner not inconsistent with the use of the property as a primary water source, whether under existing regulations or under such regulations as may be promulgated in the future, whether such regulations are more or less restrictive.

d) Such other uses as the Asheville City Council may determine as is necessary and in the best interests of the City of Asheville provided:

(I) that such uses are consistent with the use of the property for drinking water production whether under existing regulations or under such regulations as may be promulgated in the future, including regulations that may be less restrictive as to the uses that are incompatible with water production, if the property is used for water production at the time of such uses.

(ii) that such uses are consistent with the maintaining of scenic views from the Blue Ridge Parkway and is compatible with the natural surroundings present on the property.

(iii) that such uses are carried out in such a manner as to minimize the destruction of trees and forest area.

ARTICLE IV. PROHIBITED USES

The following uses and practices are inconsistent with the purposes of this Conservation Easement and shall be prohibited upon or within the Protected Property, unless otherwise allowed pursuant to Article III above.

a) The division, subdivision or partition of the Protected Property except in conjunction with any consistent use.

b) The construction or placement of any permanent or mobile buildings or structures on the Protected Property except in connection with any consistent use.

c) The filing, dumping, excavation, and removal of soil, minerals, gravel or sand except in conjunction with any consistent use. However, this provision shall not prevent an archaeological excavation conducted with the approval of the Grantee.

d) The manipulation, degradation, pollution, alteration, or draining through human activities of the natural watercourses of the Protected Property except in conjunction with any consistent use.

e) The cutting or the destruction of trees or other plants, except as may be necessary for protection against outbreaks of disease or imminent hazard, or for maintenance of the Grantors public water supply or except in connection with any consistent use.

f) The introduction of non-native plants or animals or grazing of domestic animals.

g) The use of poisons except within structures.

h) The storage or dumping of trash, garbage, hazardous substances or toxic waste.

I) The construction of new roads except in connection with any consistent use.

j) Horseback riding or operation of vehicles except on existing roads for monitoring and management of the Protected Property or except in connection with any consistent use.

k) The construction of utility lines on the Protected Property other than to service allowed improvements or except in connection with any consistent use.

l) The erection of signs except as necessary for the management of the Protected Property and except in conjunction with any consistent use.

ARTICLE V. RIGHTS RETAINED BY GRANTOR

The Grantor retains the right to perform any act not specifically prohibited by this Conservation Easement and which is not inconsistent with the purposes for which this conservation Easement was given.

ARTICLE VI. ENFORCEMENT AND REMEDIES

A. If a breach of the terms of this conservation Easement by the Grantor or a third party comes to the attention of the Grantee, the Grantee shall notify the Grantor in writing of the breach. The Grantor shall have thirty (30) days after receipt of such notice to take actions that are reasonably calculated to correct the conditions constituting such a breach. If the Grantor fails to take such corrective action within thirty (30) days after written notice is provided by Grantee to Grantor, the Grantee may enforce the conservation restrictions and prohibitions by appropriate legal or equitable proceedings, as are reasonably necessary to require and compel the Grantor to correct such conditions, including but not limited to the exercise of the right to require that the Protected Property be restored promptly to the condition required by the conservation Easement.

B. No failure on the part of the Grantee to enforce any covenant or provision hereof shall discharge or invalidate such covenant or any other covenant, condition, or provision hereof or affect the right

to Grantee to enforce the same in the event of a subsequent breach or default.

C. Nothing contained in this conservation Easement shall be construed to entitle the Grantee to bring any action against the Grantor for any injury or change in the Protected Property resulting from causes beyond the Grantors control, including, without limitation, fire, flood, storm, and earth movement, third parties, or from any prudent action taken in good faith by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to life, damage to property, or harm to the Protected Property resulting from such causes.

ARTICLE VII. PUBLIC ACCESS

The Grantor agrees to allow and does hereby grant visual access of the Protected Property to the general public from the Blue Ridge Parkway, other public roads, and adjacent public lands. The granting of this conservation Easement neither (1) conveys to the public any right to enter the Protected Property or to land or buildings owned by Grantor or on land that is adjacent to the Protected Property for any purpose whatsoever, nor (2) prohibits any public access thereto which may be permitted by Grantor.

ARTICLE VIII. DOCUMENTATION AND TITLE

A. Documentation Report. The parties acknowledge that the conservation Easement

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Documentation Report dated October 1, 1996, a copy of which is on file at the offices of the Grantee, accurately established the uses, structures, conservation values and condition of the Protected Property as of the date hereof.

B. Title. The Grantor represents that the Grantor is the sole owner of the Protected property in fee simple and has the right to grant and convey the aforesaid Conservation Easement.

ARTICLE IX. MISCELLANEOUS

A. Subsequent Transfers. Grantor agrees for itself, its successors and assigns, to notify Grantee in writing of the names and addresses of any party to whom the Protected Property, or any part thereof, is to be transferred at or prior to the time said transfer is consummated. Grantor, and its successors and assigns, further agree to make specific reference to this conservation Easement in a separate paragraph of any subsequent lease, deed or other legal instrument by which any interest in the Protected Property is conveyed.

B. Conservation Purpose. Grantee, for itself, its successors and assigns agrees that this Conservation Easement shall be held exclusively for conservation purposes, as defined in Section 17 0 (h) (4) (a) of the Internal Revenue code.

C. Merger. Grantor and Grantee agree that the terms of this Conservation Easement shall survive any merger of the fee and easement interests in the Protected Property.

D. Assignment. The parties hereto recognize and agree that the benefits of this conservation

Easement are in gross and assignable by the Grantee to The Nature Conservancy, a nonprofit corporation organized and existing under the laws of the District of Columbia, whose address is 1815 N. Lynn street, Arlington, Fairfax county, Virginia 22209, or to an assignee designated by The Nature Conservancy, provided, however that the Grantee hereby covenants and agrees, that in the event it transfers or assigns this conservation Easement, the organization receiving the interest will be a qualified organization and an eligible donee as those terms are defined in section 17 0 (h) (3) of the Internal Revenue code of 19 8 6 (or any successor section) and the regulations promulgated thereunder, which is organized and operated primarily for the conservation purposes specified in Section 17 0 (h) (4) (A) of the Internal Revenue code, and Grantee further covenants and agrees that the terms of the transfer or assignment will be such that the transferee or assignee will be required to continue to carry out in perpetuity the conservation purposes which the contribution was originally intended to advance, set forth in Article I herein.

E. Access for Inspection and Research. The Grantee, its employees and agents and its successors and assigns, have the right, with five (5) days prior written notice to Grantor, to enter the Protected Property at reasonable times provided that the time and manner of such visitations shall be approved in advance by Grantor, such approval not to be unreasonably withheld or delayed, for the following purposes: (1) to inspect the Protected Property to determine whether the Grantor, its representatives, successors or assigns are complying with the terms, conditions restrictions and purposes of this Conservation Easement; (2) to conduct scientific research on the Protected Property.

F. Construction of Terms. This conservation Easement shall be construed to promote the purposes of N.C.G.S. section 121-34 et seq., the conservation and Historic Preservation Agreements Act, which authorizes the creation of Conservation Easements for purposes including those set forth in the recitals herein, and the conservation purposes of this conservation Easement, including such purposes as are defined in section 170(h)(4)(A) of the Internal Revenue code.

G Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the conservation Easement and supersedes all prior discussions, negotiations, understandings or agreements related to the conservation Easement. If any provision is found to be invalid, the remainder of the provisions of this conservation Easement, and the application of such provisions to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

H. Recording. The Grantee shall record this instrument in timely fashion in the official records of Buncombe county, North Carolina, and may rerecord it at any time as may be required to preserve their rights under this Conservation Easement.

I. Notices. Any notices shall be sent by registered or certified mail, return receipt requested, to the parties at their addresses shown herein above or to other addresses as either party establishes in writing upon ratification to the other. In any case where the terms of this conservation Easement require the consent of the Grantee, such consent shall be requested by notice to the Grantee. Such consent shall be deemed to have been given unless, within fortyfive (45) days after receipt of notice, the Grantee mails notice to the Grantor of disapproval and the reason therefore.

J. Amendment, modification, Rescission. This conservation Easement may not be amended, modified, nor rescinded except upon written consent of both parties to this easement. The Grantor shall evidence authority to execute any such consent by adoption of a resolution or ordinance after due notice and upon the respective vote of the city council of the City of Asheville.

BK 1938 PG 053

As attested by the Seal of the Conservation Trust for North Carolina and the signature of its President affixed hereto, the Grantee hereby accepts without reservation the rights and responsibilities conveyed by this conservation Easement. This conservation Easement shall be effective as of the date recorded in the Registry of Deed, Buncombe county, North Carolina.

TO HAVE AND TO HOLD, this Grant of Conservation Easement unto the Conservation Trust for North Carolina, its successors and assigns, forever. The covenants agreed to and the terms, conditions, restrictions and purposes imposed as aforesaid shall be binding upon the Grantor, its successors and assigns, and shall continue as a servitude running in perpetuity with the Protected Property.

IN WITNESS WHEREOF, the parties hereto have set their hands and caused these presents to be executed in their respective names by authority duly given this 15 day of November ____, 1996.

ATTEST:

City Clerk

THE CITY OF ASHEVILLE
a municipal corporation

By: _____
Mayor

ACCEPTED:

CONSERVATION TRUST FOR NORTH CAROLINA,
a not-for-profit corporation

By: _____
President

Secretary

Exhibit A. (Legal description for Protected Property to be attached)

BK 1938 PG 054

STATE OF NORTH CAROLINA

COUNTY OF BUNCOMBE

I, Janet M. Rhodes a Notary Public of the County and State aforesaid, certify that Magdalen Burleson personally came before me this day and acknowledged that he (she) is clerk of the City of Asheville, a North Carolina municipal corporation, and that by authority duly given and as the act of the city, the foregoing instrument was signed in its name by its mayor, sealed with its official seal, and attested by him (herself) as its clerk.

Witness my hand and official stamp or seal, this 29th day of October, 1996.

Janet M. Rhodes
Notary Public

[Seal]

My commission expires 10-3-98.

STATE OF NORTH CAROLINA

COUNTY OF ~~BUNCOMBE~~ WAKE

I, Miriam R. Brown a Notary Public of the County and State aforesaid, certify that Charles E. Roe personally came before me this day and acknowledged that he is secretary of the Conservation Trust for North Carolina Inc. a North Carolina corporation, and that by authority duly given and as the act of the city, the foregoing instrument was signed in its name by its president, sealed with its official seal, and attested by him as its secretary.

Witness my hand and official stamp or seal, this 16 day of November, 1996.

Miriam R Brown
Notary Public

[seal]

My commission expires My Commission Expires 2-26-2000

State of North Carolina, County of Buncombe

Each of the foregoing certificates, namely of Janet M. Rhodes and Miriam R Brown a notary or Notaries public of the State and County designated is hereby certified to be correct.

Filed for registration on this the 3 day of December, 19 96 at 1:18 P M.

Otto W. DeBruhl
OTTO W. DeBRUHL
Register of Deeds, Buncombe County

Joan M. Morgan
By: Asst./Deputy/Register of Deeds

Buncombe 02
Property Description

Asheville Watershed Easement

Beginning at point (1), said point is on the boundary between Buncombe and Yancey County and is further known as Balsam Gap on the Blue Ridge Parkway; thence southeasterly along the Buncombe-Yancey County boundary which is also the National Forest Boundary of Pisgah National Forest to point (2), the summit of Pinnacle Mountain, said point is also the common corner for Buncombe, Yancey, and McDowell counties; thence continuing along Buncombe-McDowell county boundary to point (3), the summit of Gray Beard Mountain, said point is further described as being the most northerly boundary of the Town of Montreat; thence southwesterly along the Town of Montreat Corporate limit to point (4), the northeast corner of property now or formerly owned by George and Nancy Duke as recorded in Buncombe County Register of Deed office in deed book 1062 page 59; thence westerly along the boundary of privately owned properties to point (5); said point is described as being approximately 115 feet southwesterly of the center of North Fork Road (SR 2469) and on the easterly boundary of property now or formerly owned by Robert E. Burnett as recorded in Deed Book 1195 Page 581; thence northerly along the boundary of private property and North Fork Road to point (6) the northeast corner of property now or formerly owned by the City of Asheville as recorded in Deed Book 1856 Page 182; said point is further described as being on the northerly boundary of property as shown on Plat Book 59 page 30 as recorded in the Buncombe County Register of Deeds office; thence northwesterly along privately owned property to point (7), said point is described as the most northerly point of property now or formerly owned by CBU Christian Fellowship Inc., as recorded in Deed Book 1778 Page 529, thence southwesterly along privately owned properties to point (8), in the center of Bee Tree Road, on the northerly boundary of property now or formerly owned by Ronnie J. and Mary J. Branch as recorded in Deed Book 1630 Page 583; thence northwesterly along privately owned properties to point (9), the most northerly point of property now or formerly owned by Joseph F. Mongovis, Trustee, as recorded in Deed Book 1051 Page 271, said point is also known as Paynes Knob; thence northerly along the Pisgah National Forest boundary to point (10), known as Lane Pinnacle, elevation 5230 feet; thence northeasterly along the ridge of Bull Mountain, which line is also known as the boundary between Swannanoa and Reems Creek townships to point (11), said point is the common corner of Swannanoa, Reems Creek and Ivy Townships; thence northeasterly along the Pisgah National Forest boundary passing Bearpen Knob, Pinnacle Gap, Craggy Pinnacle, and Bullhead Gap along the Great Craggy Mountains ridge line to the point of beginning.

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Sullivan I

H. B. 931 **CHAPTER 399**

AN ACT TO REGULATE CHARGES MADE BY THE CITY OF ASHEVILLE FOR WATER CONSUMED IN BUNCOMBE COUNTY WATER DISTRICTS.

The General Assembly of North Carolina do enact:

Charges for water by Asheville to users in Buncombe County regulated.

SECTION 1. That from and after the passage of this act it shall be unlawful for the City of Asheville, or any of the governing authorities, agents, or employees thereof, to charge, exact, or collect from any resident of Buncombe County, whose property is now connected or may hereafter be connected with the main of any water district which has paid or issued bonds for the payment of the expense of laying such main, a rate for water consumed higher than that charged by the City of Asheville to persons residing within the corporate limits of said city.

Discontinuance of supply for failure to pay rent.

SEC. 2. That the City of Asheville is hereby specifically authorized and empowered, through its officers, agents and employees, to cause any user of water who shall fail to pay promptly his water rent for any month to be cut off, and his right to further use of water from the city system to be discontinued until payment of any water rent arrearages.

Cutting out users outside City in emergencies.

SEC. 3. That it is the purpose and intent of this act to declare that persons residing outside of the corporate limits of the City of Asheville shall be entitled to the use of Asheville surplus water only, and the governing body of the City of Asheville is authorized and empowered to discontinue the supply of water to any districts, or persons, out of the corporate limits of the City of Asheville at any time that there may be a drought or other emergency, or at any time the governing body of the City of Asheville may deem that the city has use for all of its water supply.

Water wastage prohibited.

SEC. 4. That it shall be the duty of the County Commissioners of Buncombe County and/or the trustees of the different water districts operating outside of the corporate limits of the City of Asheville, in Buncombe County, to maintain the water lines in proper repair in order that there may not be a waste of water by leakage.

Conflicting laws repealed.

SEC. 5. That all laws and clauses of laws in conflict with this act are hereby repealed.

SEC. 6. That this act shall be in force from and after its ratification.

Ratified this the 28th day of April, A.D. 1933.

Sullivan II

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

SESSION LAW 2005-140
HOUSE BILL 1065

AN ACT REGARDING WATER RATES IN BUNCOMBE COUNTY.

Whereas, the North Carolina General Assembly previously adopted Chapter 399 of the 1933 Public-Local Laws (known as the "Sullivan Act") to address the particular circumstances of the supplying of water to certain residents of Buncombe County by the City of Asheville and the charges therefor; and

Whereas, from the adoption of the Sullivan Act until the present, the City of Asheville, directly or through the Asheville/Buncombe Water Authority, has continued to supply water to certain consumers of water in Buncombe County outside the corporate limits of the City of Asheville in those areas of the County where water has been supplied by the City of Asheville, all at a rate no higher than that charged by the City of Asheville to similarly situated water consumers residing within the corporate limits of said city; and

Whereas, from and after 1981, the City of Asheville and the County of Buncombe have discharged various of their obligations relating to the provision of water to certain citizens of Buncombe County residing inside and outside the corporate limits of the City of Asheville and the maintenance and upkeep of their respective water facilities pursuant to an Agreement between the City of Asheville and the County of Buncombe establishing the Asheville/Buncombe Water Authority dated 29 October 1981 and certain supplements and amendments thereto (hereinafter "Water Agreement"); and

Whereas, practically all, if not all, of the cost of the waterlines serving Buncombe County (outside of the corporate limits of the City of Asheville) has been paid by the County of Buncombe, the various water and sewer districts of the County of Buncombe, by the Asheville/Buncombe Water Authority pursuant to its duties to Buncombe County, and by private developers and landowners, desiring water service in such areas and not paid by the City of Asheville; and

Whereas, during the term of the Water Agreement, the County of Buncombe has paid directly to the City of Asheville in excess of $37,000,000 pursuant to that Agreement; and

Whereas, at the time of the adoption of the Water Agreement, certain public recreational facilities were transferred to the County of Buncombe by the City of Asheville, and during the term of the Water Agreement, the costs related to those facilities have been borne by the County of Buncombe; and

Whereas, during the term of the Water Agreement, the County of Buncombe has expended $9,025,715 on capital expenditures for the public recreational facilities referenced above; and

Whereas, the City of Asheville has given notice to terminate the Water Agreement as of 30 June 2005; and

Whereas, the City of Asheville is entitled to a fair return on its capital investment; and

Whereas, upon the termination of the Water Agreement as noticed by the City of Asheville for 30 June 2005, the ownership of the public recreational facilities shall revert to the City of Asheville; and

Whereas, upon the termination of the Water Agreement as noticed by the City of Asheville for 30 June 2005, the ownership of all water system facilities conveyed to the City of Asheville pursuant to the Water Agreement shall revert to the County of Buncombe and its water districts; and

Whereas, the citizens of Buncombe County outside the corporate limits of the City of Asheville now, or in the future to be, supplied water from lines connected to the waterlines currently maintained by the Asheville/Buncombe Water Authority, and replacements, extensions, and additions thereto, are entitled to obtain water at a fair rate from the water system for which they have paid, through taxes, through payments for water, and through direct payments by the County of Buncombe and its water and sewer districts; and

Whereas, the population of Buncombe County is projected to grow by more than thirty-eight percent over the next twenty-five years, and more than two-thirds of that growth is projected to occur outside the current city limits of the City of Asheville; and

Whereas, the Asheville/Buncombe Water Authority has developed substantial excess capacity in anticipation of the growth of population in Buncombe County and of supplying water to the additional population from facilities the cost of which has been, and in the future will be, paid out of water system revenues; and

Whereas, the excess capacity in the water system maintained by the Asheville/Buncombe Water Authority is such that the system has a current capacity in excess of 41 million gallons per day and a current average usage of 22 million gallons per day; and

Whereas, the Mills River water treatment plant of the Asheville/Buncombe Water Authority was constructed at a location and in a manner that substantial additional capacity can be added to the water system now served by the Asheville/Buncombe Water Authority in the future without the construction of an additional water treatment plant; and

Whereas, the complicated pattern of dealings between the City of Asheville and the County of Buncombe regarding the provision of water to water consumers in Buncombe County connected to the waterlines currently maintained by the Asheville/Buncombe Water Authority, and replacements, extensions, and additions thereto has now given rise to the issue of the rate that the City of Asheville may charge the water consumers in Buncombe County connected to the waterlines currently maintained by the Asheville/Buncombe Water Authority, and replacements, extensions, and additions thereto to whom it provides water even though the Sullivan Act remains in full force and effect; and

Whereas, it is the exclusive right of the State to regulate the provision of and rates charged for public utilities to the citizens of the State; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. From and after the effective date of this act, it shall be unlawful for the City of Asheville, or any of the governing authorities, agents, or employees thereof, to charge, exact, or collect from any water consumer in Buncombe County currently or hereafter connected to the waterlines currently maintained by the Asheville/Buncombe Water Authority, and replacements, extensions, and additions thereto a rate for water consumed higher than the rate

charged for the same classification of water consumer residing or located within the corporate limits of the City of Asheville. Classification of water consumer as referred to herein means the type of facility to which the water is provided (e.g., single-family residence, multiple-family residence, retail, commercial, industrial) without regard to geographic location within Buncombe County.

SECTION 2. The City of Asheville may, through its officers, agents, and employees, cause any user of water who shall fail to pay promptly his water rent for any month to be cut off and his right to further use of water from the city system to be discontinued until payment of any water rent arrearages, all consistent with G.S. 160A-314(b).

SECTION 3. It shall be the duty of the Board of Commissioners of Buncombe County and/or the trustees of the different water districts operating outside of the corporate limits of the City of Asheville in Buncombe County to maintain the waterlines owned by the County of Buncombe and such water districts in proper repair in order that there may not be a waste of water by leakage.

SECTION 4. To the extent that the Sullivan Act (Chapter 399 of the Public-Local Laws of 1933) does not conflict with this act, it continues to apply.

SECTION 5. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 29th day of June, 2005.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ James B. Black

Speaker of the House of Representatives

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

Sullivan III

SESSION LAW 2005-139
HOUSE BILL 1064

AN ACT REGARDING THE OPERATION OF PUBLIC ENTERPRISES BY THE CITY OF ASHEVILLE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-312 reads as rewritten:

"**§ 160A-312. Authority to operate public enterprises.**

(a) A city shall have authority to acquire, construct, establish, enlarge, improve, maintain, own, operate, and contract for the operation of any or all of the public enterprises as defined in this Article to furnish services to the city and its ~~citizens.~~ citizens and other areas and their citizens located outside the corporate limits of the city. Subject to Part 2 of this Article, a city may acquire, construct, establish, enlarge, improve, maintain, own, and operate any public enterprise outside its corporate limits, within reasonable ~~limitations, but in no case shall a city be held liable for damages to those outside the corporate limits for failure to furnish any public enterprise service.~~limitations.

(b) A city shall have full authority to protect and regulate any public enterprise system belonging to or operated by it by adequate and reasonable rules. The rules shall be adopted by ordinance, and shall comply with all of the following:

(1) The rules shall apply equally to the public enterprise system both within and outside the corporate limits of the ~~city;~~city.

(2) The rules may not apply differing treatment within and outside the corporate limits of the city.

(3) The rules shall make access to public enterprise services available to the city and its citizens and other areas and their citizens located outside the corporate limits of the city equally.

(4) The rules may prioritize the continuation of the provision of services based on availability of excess capacity to provide the service.

(5) The rules ~~and~~ may be enforced with the remedies available under any provision of law.

(c) A city may operate that part of a gas system involving the purchase and/or lease of natural gas fields, natural gas reserves and natural gas supplies and the surveying, drilling or any other activities related to the exploration for natural gas, in a partnership or joint venture arrangement with natural gas utilities and private enterprise.

(d) A city shall account for a public enterprise in a separate fund and may not transfer any money from that fund to another except for a capital project fund established for the construction or replacement of assets for that public enterprise. Obligations of the public enterprise may be paid out of the separate fund. Obligations shall not include any other fund or line item in the city's budget."

SECTION 2. G.S. 160A-31(a) reads as rewritten:

"(a) The governing board of any municipality may annex by ordinance any area contiguous to its boundaries upon presentation to the governing board of a

petition signed by the owners of all the real property located within such area. The petition shall be signed by each owner of real property in the area and shall contain the address of each such ~~owner.~~ owner and a statement that the owner's petition for annexation is not based upon any representation by the municipality that a public enterprise service available outside the corporate limits of that municipality would be withheld from the owner's property without the petition for annexation."

SECTION 3. G.S. 160A-58.1(c) reads as rewritten:

"(c) The petition shall contain the names, addresses, and signatures of all owners of real property within the proposed satellite corporate limits (except owners not required to sign by subsection (a)), shall describe the area proposed for annexation by metes and bounds, and shall have attached thereto a map showing the area proposed for annexation with relation to the primary corporate limits of the annexing city. The petition shall also contain a statement from the owner that the owner's petition for annexation is not based upon any representation by the municipality that a public enterprise service available outside the corporate limits of that municipality would be withheld from the owner's property without the petition for annexation. When there is any substantial question as to whether the area may be closer to another city than to the annexing city, the map shall also show the area proposed for annexation with relation to the primary corporate limits of the other city. The city council may prescribe the form of the petition."

SECTION 4. This act applies only to the City of Asheville. Section 1 of this act shall not apply to the operation of public transportation systems or off-street parking facilities and systems as public enterprises.

SECTION 5. This act becomes effective June 30, 2005. Section 1 of this act applies to the fiscal year 2005-2006 and thereafter. Any assets, liabilities, or equity of a public enterprise operated or held by the city during the fiscal year 2004-2005 shall be transferred to a separate fund in accordance with G.S. 160A-312, as amended by Section 1 of this act, when this act becomes law. Sections 2 and 3 apply to petitions for annexation received by the municipality on or after June 30, 2005.

In the General Assembly read three times and ratified this the 29th day of June, 2005.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ James B. Black
Speaker of the House of Representatives

LEGISLATIVE PROPOSALS

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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H **D**

BILL DRAFT 2011-LBz-421B [v.1] (03/29)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
4/19/2012 10:34:45 AM

Short Title:	MSD Amendments.	(Public)
Sponsors:	Representative.	
Referred to:		

A BILL TO BE ENTITLED

AN ACT TO AMEND THE NORTH CAROLINA METROPOLITAN SEWERAGE DISTRICTS ACT TO REFLECT POPULATION SHIFTS IN SINGLE-COUNTY DISTRICTS, TO MODIFY REPRESENTATION IN MULTICOUNTY DISTRICTS, AND TO ALLOW METROPOLITAN SEWERAGE DISTRICTS TO ALSO EXERCISE THE SAME POWERS AS METROPOLITAN WATER DISTRICTS, ALL AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION'S METROPOLITAN SEWERAGE/WATER SYSTEM COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 162A-67(a) is amended by adding a new subdivision to read:

"(2a) Upon the expansion of the district into another county so that the district lies in two counties, the three board members appointed by the county in which the largest portion of the district lies (determined with reference to the land area of the district lying within the county as a percentage of the land area of the entire district at the time such appointment or reappointment is made) shall continue to serve on the district board, and the board of commissioners of the county in which the largest portion of the

district lies shall, upon completion of their respective terms, reappoint such members or appoint other qualified voters residing in the county and district as their successors such that the county in which the largest portion of the district lies shall always have three members on the district board. The board of commissioners of the county in which the lesser portion of the district lies (determined with reference to the land area of the district lying within the county as a percentage of land area of the entire district at the time such appointment or reappointment is made), shall appoint to the district board two qualified voters residing in the county and district to serve for a term of three years, and shall, upon completion of the board members' respective terms, reappoint such members or appoint other qualified voters residing in the county and district as their successors such that the county in which the lesser portion of the district lies, shall always have two members on the district board."

SECTION 2. The prefatory language of G.S. 162A-67(a) reads as rewritten:

"(a) Appointment of Board for District Lying Wholly or Partly outside City or Town Limits. – The district board of a metropolitan sewerage district lying in whole or in part outside the corporate limits of a city or town shall be appointed ~~immediately after the creation of the district~~ in the following manner:"

SECTION 3. G.S. 162A-67(a)(4) reads as rewritten:

"(4) The governing body of each political subdivision, other than counties, lying in whole or in part within the district, shall appoint one member of the district ~~board.~~ board, except that no appointment shall be made by or in behalf of a political subdivision which has not appointed a member to the district board as of July 1, 2012, and which does not own or operate a public system for the collection of wastewater at the time of such appointment. ~~No appointment of a member of the district board shall be made by or in behalf of any political subdivision of which the board or boards of commissioners shall be the governing body.~~ If any city or town within the district shall have a population, as determined from the latest decennial census, ~~greater than that of all other political subdivisions (other than counties) and unincorporated areas within the district,~~ more than one-half the combined population of all other political subdivisions (other than counties) and unincorporated areas within the district, the governing body of any such city or town shall appoint three members. For purposes of determining district board representation of political subdivisions other than counties,

population shall be determined by reference to the most recent decennial census population of such political subdivisions and unincorporated areas of counties within the district which have district board representation at the time of such appointment and not merely that portion of the population residing within the district boundary itself. ~~All members and their successors appointed by the governing bodies of political subdivisions other than counties shall serve for a term of three years and shall be qualified voters residing in the district and the political subdivision from which they are appointed.~~"

SECTION 4. G.S. 162A-69 is amended by adding a new subdivision to read:

"Each district shall be deemed to be a public body and body politic and corporate exercising public and essential governmental functions to provide for the preservation and promotion of the public health and welfare, and each district is hereby authorized and empowered:

.....

(13c) To exercise all the powers of a Metropolitan Water District under Article 4 of this Chapter.

....."

SECTION 5. This act becomes effective July 1, 2012.

SUPPORTING DOCUMENTATION

The following supporting documents are located in the Legislative Library with the Committee minutes:

Email from City of Asheville Attorney, Bob Oast to House Committee on Finance, March 23, 2011.

Candler v. City of Asheville, 247 N.C. 398, 101 S.E. 2d 470 (1958).

Regional Water Supply and Water Service Agreement.

Asheville City Council Minutes May 25, 2004.

Asheville v. State, No. 05 CVS 10743 (Super. Ct. Wake Co Feb. 2, 2007)(memorandum of decision and order re: summary judgment).

Letter from Mayor Worley, dated June 24, 2005 to Chairman Ramsey, Buncombe County Commissioners.

Asheville City Council Minutes, Monday, June 12, 2006.

City of Asheville v. State, 192 N.C. App 1, 665 S.E.2d 103 (2008), *appeal dismissed, disc. rev. denied, 672 S.E.2d 685 (2009).*

Letter, City of Asheville with attachment, May 16, 2006.

Letter, Buncombe County Board of Commissioners, June 22, 2006.

City of Asheville, Staff Report, Legislative Agenda for 2007.

City Council minutes April 25, 2006.

Report From Water Agreement Task Force, Asheville Chamber of Commerce, April 28, 2005.

Asheville-Citizen Times, March 25, 2005, Editorial, Page 9.

Appendix L

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE RESEARCH COMMISSION

STATE LEGISLATIVE BUILDING
RALEIGH, NC 27601

April 5, 2012

TO THE MEMBERS OF THE LEGISLATIVE RESEARCH COMMISSION:

Attached for your consideration is the report to the 2012 Regular Session of the 2011 General Assembly. This report was prepared by the Legislative Research Commission's Committee on Municipal Power Agency Relief, pursuant to G.S. 120-30.17(1).

Senator E.S. (Buck) Newton
Co-Chair

Representative Jeffrey L. Collins
Co-Chair

Co-Chairs
Committee on Municipal Power Agency Relief
Legislative Research Commission

LEGISLATIVE RESEARCH COMMISSION

MUNICIPAL POWER AGENCY RELIEF COMMITTEE

NORTH CAROLINA GENERAL ASSEMBLY

REPORT TO THE 2012 SESSION of the 2011 GENERAL ASSEMBLY OF NORTH CAROLINA

MAY 8, 2012

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TRANSMITTAL LETTER

May 8, 2012

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TO THE MEMBERS OF THE 2012 REGULAR SESSION
OF THE 2011 GENERAL ASSEMBLY

The Legislative Research Commission herewith submits to you for your consideration its report and recommendations to the 2012 Regular Session of the 2011 General Assembly. The report was prepared by the Legislative Research Commission's Committee on Municipal Power Agency Relief, pursuant to G.S. 120-30.17(1).

Respectfully submitted,

Senator Philip E. Berger President Pro Tempore of the Senate	Representative Thomas R. Tillis Speaker of the House of Representatives

Co-Chairs
Legislative Research Commission

LEGISLATIVE RESEARCH COMMISSION MEMBERSHIP

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2011 – 2012

President Pro Tempore of the Senate
Senator Philip E. Berger
Co-Chair

Senator Thomas M. Apodaca
Acting Co-Chair

Senator Peter S. Brunstetter
Senator Linda D. Garrou
Senator Martin L. Nesbitt, Jr.
Senator Richard Y. Stevens

Speaker of the House of Representatives
Representative Thomas R. Tillis
Co-Chair

Representative Timothy K. Moore
Acting Co-Chair

Representative John M. Blust
Representative Justin P. Burr
Representative Mike D. Hager
Representative Edith D. Warren

PREFACE

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The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is the general purpose study group in the Legislative Branch of State Government. The Commission is co-chaired by the President Pro Tempore of the Senate and the Speaker of the House of Representatives and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigation into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

The Legislative Research Commission authorized the study of Municipal Power Agency Relief, under authority of G.S. 120-30.17(1). The Committee was chaired by Senator E.S. (Buck) Newton and Representative Jeffrey L. Collins, Co-Chairs of the Committee. The full membership of the Committee is listed under Committee Membership. A committee notebook containing the committee minutes and all information presented to the committee will be filed in the Legislative Library by the end of the **2011-2012** biennium.

COMMITTEE PROCEEDINGS

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The Legislative Research Commission's Committee on Municipal Power Agency Relief met four times after the 2011 Regular Session. The Committee's Charge can be found here. The following is a brief summary of the Committee's proceedings. Detailed minutes and information from each Committee meeting are available in the Legislative Library.

History of the Joint Municipal Power Agencies

In 1975, the General Assembly enacted the "Joint Municipal Power and Energy Act" which allows municipal electric systems to band together to own electric generation facilities. The Act enabled local government units with municipal power distribution systems to form a joint agency to own and operate electric generation facilities. Joint agencies created under the Act were authorized to issue revenue bonds to finance the costs of a project. In 1977, the people of North Carolina approved an amendment to the North Carolina Constitution to allow the Power Agencies to own generation facilities, and to issue revenue bonds to finance the facilities. Shortly after the Act, North Carolina Municipal Power Agency Number 1 (NCMPA1) and the North Carolina Eastern Municipal Power Agency (NCEMPA) were formed. There are currently 70 cities offering electric service in North Carolina; NCMPA1 has 19 members; NCEMPA has 32 members; and 19 other cities offer electric service but do not belong to either of the Municipal Power Agencies.

It is important to note the municipalities had compelling economic motives for seeking ownership interest in power plants. In the 1970s, fuel and electricity prices were climbing while demand for energy was growing. By purchasing interest in generation facilities, the municipalities sought to guarantee a source of electricity that was less expensive than purchases on the wholesale market. Unfortunately for the Municipal Power Agencies, many of the economic motives that led to the original purchase of the generation facilities changed by the 1980s. As energy conservation efforts were successful, demand for electricity fell. Fuel prices declined. Most importantly, the regulatory environment for nuclear facilities changed after the incident at the Three Mile Island facility in Pennsylvania. These regulatory changes increased the construction costs for nuclear facilities while financing costs were also increased due to the historically high interest rates of the early 1980s.

The joint municipal power agencies' ownership interest in the generation facilities was financed with revenue bonds. The NCMPA1 has a 75 percent ownership interest in Catawba Nuclear Station Unit 2. This plant is operated by Duke Power and located in York County, S.C. NCMPA1 also has an agreement with Duke that provides for electric power via McGuire Nuclear Station and Catawba Unit 1 should Catawba 2 be unavailable for service. The debt for the NCMPA1 as of January 2, 2012 is $1,453,730,000. The debt is scheduled to be retired in 2031.

The NCEMPA owns interest in five generating units built and operated by Progress Energy. These facilities include three nuclear units, 2 units at the Brunswick Plant in Brunswick County, and 1 unit at Shearon Harris Plant in Wake County. The NCEMPA also owns an interest in two coal-fired plants in Person County. The debt for the NCEMPA as of January 2, 2012 is $2,105,495,000. The debt is scheduled to be retired in 2025.

A list of the debt responsibility of each city member of the municipal power agencies is attached in Appendix D.

ElectriCities is the membership organization of municipal and university operated electric systems in North Carolina, South Carolina, and Virginia. ElectriCities also provides management services to the municipal power agencies in North Carolina

October 25, 2011

The first meeting of the Legislative Research Commission's Committee on Municipal Power Agency Relief took place on October 25, 2011 at 9:30 a.m. in room 643 of the Legislative Office Building.

The Committee first heard a presentation on the history of the joint municipal power agencies from Committee Staff. The Committee also heard a presentation from two representatives of the State and Local Government Division of State Treasurer's Office. Vance Holland, Deputy Treasurer, and Tim Romocki, Local Debt Management, gave a presentation on the debt incurred by the joint municipal power agencies.

The Committee also heard from local business leaders on the impact of the debt of the municipal power agencies on economic development in the Eastern part of the State. The local business leaders who spoke were Billy Lamm, Chairman, Lamm & Company Partners, Thomas Joyner, President, Nash Produce, and Lee Stephenson, President, Stephenson Millwork.

At the end of the Committee's official agenda, the Chairs allowed for public comment. Andre Knight and Ruben Blackwell of the Rocky Mount City Council provided comments to the Committee.

January 10, 2012

The second meeting of the Legislative Research Commission's Committee on Municipal Power Agency Relief took place on January 10, 2012 at 1:30 p.m. in room 544 of the Legislative Office Building.

The Committee first heard from Thomas Stith of the Kenan Institute for Private Enterprise. Mr. Stith presented on the high rates of the joint municipal power agency member cities.

The Committee then heard from Graham Edwards, the Chief Executive Officer of EletriCities. ElectriCities is the membership organization of municipal and university operated electric systems in North Carolina, South Carolina, and Virginia. Mr. Edwards presented on the history of the organization, and debt of the joint municipal power agencies, and the future of ElectriCities and the joint municipal power agencies. The final presentation to the Committee at the second meeting was on the rate setting procedures of city members of the joint municipal power agencies. Mark Williams, town manager of Wake Forest and Ron Elks, General Manager of Greenville Utilities Commission presented on the operation of the electric systems in each of their cities.

March 7, 2012

The third meeting of the Legislative Research Commission's Committee on Municipal Power Agency Relief took place on March 7, 2012 at 1:30 p.m. in room 544 of the Legislative Office Building.

Committee staff reviewed the proposed findings and recommendations of the Committee. The Committee amended the proposed findings and recommendations and then voted to approve the amended findings and recommendations. The Committee staff was directed to draft legislation in accordance with the Committee recommendations, and to prepare the draft report of the Committee.

April 5, 2012

The forth meeting of the Legislative Research Commission's Committee on Municipal Power Agency Relief took place on April 5, 2012 at 1:30 p.m. in room 544 of the Legislative Office Building.

Committee staff reviewed the draft report of the Committee. The Committee voted to approve the final report. The Committee staff was directed to prepare the final report of the Committee for submission to the Legislative Review Commission.

FINDINGS AND RECOMMENDATIONS

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Detailed minutes and copies of materials from each Committee meeting are available in the Legislative Library.

The Debt

Finding #1: At this time, the rates of the municipal electric systems operated by members of the North Carolina Eastern Municipal Electric Power Agency (NCEMPA) are significantly higher than the rates for service offered by the investor owned utilities. The higher rates are due to the large debt incurred by NCEMPA to finance the purchase of electric generation facilities in the 1970's. [1] Thirty-eight percent (38%) of the wholesale rate for electricity paid by members of NCEMPA is used to pay this debt.[2] However, the rates of the municipal electric systems vary between the members.[3]

Finding #2: The total debt of NCEMPA as of January 1, 2011 is $2,254,510,000. Each member of NCEMPA is responsible for a portion of the total debt of the power agency. The debt responsibility of each member of NCEMPA is attached as attachment #1. [4]

Finding #3: ElectriCities has proactively worked to restructure the debt to take advantage of the changing bond market.[5]

Finding #4: In the current bond market there would be limited short term advantages and long term disadvantages to refunding the debt. Due to the bond market and the nature of the indebtedness, it would not be advantageous at this time to restructure the debt.[6]

Finding #5: Due to federal tax regulations and the structure of the bonds, a large portion of the debt cannot be refunded at this time. Approximately one half of the debt cannot be called before its maturity date.[7]

Impact and Economic Development

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[1] Presentation of Vance Holloman, State and Local Government Division of State Treasurer's Office, October 25, 2011.

[2] Presentation of CEO Graham Edwards, ElectriCities, January 10, 2012.

[3] Presentations of Wake Forest Town Manager Mark Williams, and General Manager of Greenville Utilities Commission Ron Elks, January 10, 2012.

[4] Presentation of CEO Graham Edwards, ElectriCities, January 10, 2012.

[5] Presentation of CEO Graham Edwards, ElectriCities, January 10, 2012.

[6] Presentation of Vance Holloman, State and Local Government Division of State Treasurer's Office, October 25, 2011.

[7] Presentation of Vance Holloman, State and Local Government Division of State Treasurer's Office, October 25, 2011.

Finding #6: The high electric rates of the NCEMPA member cities have affected economic development in these cities. Individuals with businesses in these cities provided testimony to the Committee on the economic impact of the electric rates.[8]

Finding #7: The effect of the electric rates on economic development differs between the NCEMPA member cities. Cities with greater growth have not been as severely impacted as cities with less growth.[9]

Finding #8: The high electric rates in the NCEMPA member cities exacerbate the effects of the loss of industrial businesses.[10]

Finding #9: Dr. Thomas Stith of the Kenan Institute of Private Enterprise found the rate payers in NCEMPA have paid $240 million more in electric rates each year as compared to other rate payers in the State.[11]

Potential Solutions

Finding #10: ElectriCities is actively engaged in exploring the idea of selling generation assets.[12]

Finding #11: The sale of generation assets cannot be further explored at this time due to the potential regulatory changes faced by the investor owned utilities in the State. The sale of generation assets is a potential solution that should be explored further. [13]

Finding #12: ElectriCities has been proactively looking for possible solutions to the problems created by the higher rates.[14]

Further Study

Finding #13: Development of solutions to the problem of high electric rates in the NCEMPA member cities would be aided by an in depth study of the economic impact of the higher rates on Eastern North Carolina and potential impact of the higher rates on the State as a whole.

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[8] Presentation of local business leaders, Billy Lamm, Chairman, Lamm & Company Partners, Thomas Joyner, President, Nash Produce, and Lee Stephenson, President, Stephenson Millwork, October, 25, 2011.

[9] Presentation of local business leaders, Billy Lamm, Chairman, Lamm & Company Partners, Thomas Joyner, President, Nash Produce, and Lee Stephenson, President, Stephenson Millwork, October, 25, 2011.

[10] Presentation of local business leaders, Billy Lamm, Chairman, Lamm & Company Partners, Thomas Joyner, President, Nash Produce, and Lee Stephenson, President, Stephenson Millwork, October, 25, 2011.

[11] Presentation of Thomas Stith, Kenan Institute of Private Enterprise, January 10, 2012.

[12] Presentation of CEO Graham Edwards, ElectriCities, January 10, 2012.

[13] Presentation of CEO Graham Edwards, ElectriCities, January 10, 2012.

[14] Presentation of CEO Graham Edwards, ElectriCities, January 10, 2012.

Finding #14: Further study of the electric rates in the NCEMPA member cities should include the exploration of the following areas:

- Value of the generation facilities owned by NCEMPA.
- Need for electric generation capacity in the State now and in the future.
- Expected electricity demand in the future.
- Potential of new energy sources to meet future electricity demands.
- Effect of rate preferences on all rate payers including small to medium size businesses, and residential users.

Recommendations

Recommendation #1: When feasible, the effects of the high electric rates on the NCEMPA member cities should be studied further. When conducted, the study should include exploration of the following areas:

- Value of the generation facilities owned by NCEMPA.
- The effect of the electric rates on the economic development of Eastern North Carolina and the State as a whole. The Kenan Institute of Private Enterprise may provide an in depth study of the economic impact of the higher rates.
- Need for electric generation capacity in the State now and in the future.
- Expected electricity demand in the future.
- Potential of new energy sources to meet future electricity demands.
- Effect of rate preferences on all rate payers including small to medium size businesses, and residential users.
- Other matters the Commission deems relevant.

Recommendation #2: S.L. 2011-129 is a local bill that requires the cities of Clayton, Selma, and Smithfield to limit the use of revenue from electric rates. This revenue may only be used to (1) pay the direct and indirect costs of the electric system, (2) provide a set rate of return to the city for its capital investment, and (3) reduce rates for electric service or make payments on the debt incurred for the electric system. This restriction should be applied to all NCEMPA member cities.

COMMITTEE MEMBERSHIP

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2011-2012

President Pro Tempore of the Senate Appointments:

Senator E.S. (Buck) Newton, Co-Chair
Senator Andrew Brock
Senator Eric Mansfield
Senator Wesley Meredith
Senator Robert Rucho

Speaker of the House of Representatives Appointments:

Representative Jeffrey Collins, Co-Chair
Representative William Brawley
Representative Jimmy Dixon
Representative William Owens
Representative Paul Stam

COMMITTEE CHARGE

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Study potential options to provide relief to customers of the joint municipal power agencies from high electric rates, including:

1. The feasibility of refinancing or restructuring the debt of the power agencies.

2. The feasibility of selling assets of the municipalities or the power agencies to lower electric rates or the total amount of debt.

STATUTORY AUTHORITY

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NORTH CAROLINA GENERAL STATUTES
ARTICLE 6B.

Legislative Research Commission.

§ 120-30.17. Powers and duties.

The Legislative Research Commission has the following powers and duties:

(1) Pursuant to the direction of the General Assembly or either house thereof, or of the chairmen, to make or cause to be made such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner.

(2) To report to the General Assembly the results of the studies made. The reports may be accompanied by the recommendations of the Commission and bills suggested to effectuate the recommendations.

(3), (4) Repealed by Session Laws 1969, c. 1184, s. 8.

(5), (6) Repealed by Session Laws 1981, c. 688, s. 2.

(7) To obtain information and data from all State officers, agents, agencies and departments, while in discharge of its duty, pursuant to the provisions of G.S. 120-19 as if it were a committee of the General Assembly.

(8) To call witnesses and compel testimony relevant to any matter properly before the Commission or any of its committees. The provisions of G.S. 120-19.1 through G.S. 120-19.4 shall apply to the proceedings of the Commission and its committees as if each were a joint committee of the General Assembly. In addition to the other signatures required for the issuance of a subpoena under this subsection, the subpoena shall also be signed by the members of the Commission or of its committee who vote for the issuance of the subpoena.

(9) For studies authorized to be made by the Legislative Research Commission, to request another State agency, board, commission or committee to conduct the study if the Legislative Research Commission determines that the other body is a more appropriate vehicle with which to conduct the study. If the other body agrees, and no legislation specifically provides otherwise, that body shall conduct the study as if the original authorization had assigned the study to that body and shall report to the General Assembly at the same time other studies to be conducted by the Legislative Research Commission are to be reported. The other agency shall conduct the transferred study within the funds already assigned to it.

SUPPORTING DOCUMENTATION

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NCEMPA Debt Responsibility by Power Agency Participants

(as of 1/2/2012)
Debt Outstanding: $2,105,495,000.00

City	Percentage	Responsibility
Apex	0.7056 %	$14,856,373
Ayden	1.1340 %	$23,876,313
Belhaven	0.4090 %	$8,611,475
Benson	0.5773 %	$12,155,023
Clayton	0.7448 %	$15,681,727
Edenton	1.5961 %	$33,605,806
Elizabeth City	4.2510 %	$89,504,592
Farmville	1.2901 %	$27,162,991
Fremont	0.3062 %	$6,447,026
Greenville	16.1343 %	$339,706,880
Hamilton	0.0783 %	$1,648,603
Hertford	0.4124 %	$8,683,061
Hobgood	0.0913 %	$1,922,317
Hookerton	0.1550 %	$3,263,517
Kinston	8.6678 %	$182,500,096
LaGrange	0.5014 %	$10,556,952
Laurinburg	2.2675 %	$47,742,099
Louisburg	0.8577 %	$18,058,831
Lumberton	5.1568 %	$108,576,166
New Bern	6.3676 %	$134,069,500
Pikeville	0.2046 %	$4,307,843
Red Springs	0.5798 %	$12,207,660
Robersonville	0.5066 %	$10,666,438

City	Percentage	Responsibility
Rocky Mount	16.0260 %	$337,426,629
Scotland Neck	0.5762 %	$12,131,862
Selma	0.8102 %	$17,058,720
Smithfield	2.0056 %	$42,227,808
Southport	0.7139 %	$15,031,129
Tarboro	4.7427 %	$99,857,311
Wake Forest	0.7262 %	$15,290,105
Washington	5.8920 %	$124,055,765
Wilson	15.5120 %	$326,604,384

Interest payments are due and payable on January 1 and July 1 each year. Principal payments are due and payable January 1 each year.

LEGISLATIVE PROPOSALS

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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S **D**

BILL DRAFT 2011-TDz-14 [v.2] (03/07)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
3/13/2012 11:56:19 AM

Short Title:	NCEMPA/Use of Rate Revenue.	(Public)
Sponsors:	Senator.	
Referred to:		

A BILL TO BE ENTITLED

AN ACT PROVIDING THAT THE CITIES AND TOWNS THAT ARE MEMBERS OF THE NORTH CAROLINA EASTERN MUNICIPAL POWER AGENCY SHALL USE REVENUE DERIVED FROM RATES FOR ELECTRIC SERVICE FOR PAYING THE DIRECT AND INDIRECT COSTS OF OPERATING THE ELECTRIC SYSTEM, TRANSFERRING AMOUNTS THAT REPRESENT A RATE OF RETURN ON THE INVESTMENT IN THE ELECTRIC SYSTEM, AND MAKING DEBT SERVICE PAYMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. Section 2 of S.L. 2011-129 reads as rewritten:

"**SECTION 3.** This act only applies to the cities and towns that are members of the North Carolina Eastern Municipal Power Agency."

SECTION 2. This act is effective July 1, 2013.

Appendix M

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE RESEARCH COMMISSION

STATE LEGISLATIVE BUILDING
RALEIGH, NC 27601

February 27, 2012

TO THE MEMBERS OF THE LEGISLATIVE RESEARCH COMMISSION:

Attached for your consideration is the report to the 2012 Regular Session of the 2011 General Assembly on Orderly and Expeditious Removal by Landlord of Personal Property of Deceased. This report was prepared by the Legislative Research Commission's Committee on Orderly and Expeditious Removal by Landlord of Personal Property of Deceased, pursuant to G.S. 120-30.17(1).

Julia C. Howard

Representative Julia C. Howard

Chair
Committee on Orderly and Expeditious Removal by
Landlord of Personal Property of Deceased
Legislative Research Commission

LEGISLATIVE RESEARCH COMMISSION

ORDERLY AND EXPEDITIOUS REMOVAL BY LANDLORD OF PERSONAL PROPERTY OF DECEASED COMMITTEE

NORTH CAROLINA GENERAL ASSEMBLY

REPORT TO THE 2012 SESSION of the 2011 GENERAL ASSEMBLY OF NORTH CAROLINA

Orderly and Expeditious Removal by Landlord Of Personal Property of Deceased

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RALEIGH, NORTH CAROLINA 27611
TELEPHONE: (919) 733-7778

OR

ROOM 500
LEGISLATIVE OFFICE BUILDING
RALEIGH, NORTH CAROLINA 27603-5925
TELEPHONE: (919) 733-9390

Orderly and Expeditious Removal by Landlord
Of Personal Property of Deceased

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OF DECEASED COMMITTEE.

TRANSMITTAL LETTER

May 16, 2012

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TO THE MEMBERS OF THE 2012 REGULAR SESSION
OF THE 2011 GENERAL ASSEMBLY

The Legislative Research Commission herewith submits to you for your consideration it's report and recommendations on Orderly and Expeditious Removal by Landlord of Personal Property of Deceased to the 2012 Regular Session of the 2011 General Assembly. The report was prepared by the Legislative Research Commission's Committee on Orderly and Expeditious Removal by Landlord of Personal Property of Deceased, pursuant to G.S. 120-30.70(1).

Respectfully submitted,

Senator Philip E. Berger
President Pro Tempore of the Senate

Representative Thomas R. Tillis
Speaker of the House of Representatives

Co-Chairs
Legislative Research Commission

LEGISLATIVE RESEARCH COMMISSION MEMBERSHIP

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2011 – 2012

President Pro Tempore of the Senate
Senator Philip E. Berger
Co-Chair

Senator Thomas M. Apodaca
Acting Co-Chair

Senator Peter S. Brunstetter
Senator Linda D. Garrou
Senator Martin L. Nesbitt, Jr.
Senator Richard Y. Stevens

Speaker of the House of Representatives
Representative Thomas R. Tillis
Co-Chair

Representative Timothy K. Moore
Acting Co-Chair

Representative John M. Blust
Representative Justin P. Burr
Representative Mike D. Hager
Representative Edith D. Warren

Preface

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The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is the general purpose study group in the Legislative Branch of State Government. The Commission is cochaired by the President Pro Tempore of the Senate and the Speaker of the House of Representatives and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigation into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

The Legislative Research Commission authorized the study of **Orderly and Expeditious Removal by Landlord of Personal Property of Deceased**, under authority of G.S. 120-30.17(1). The authorization provides that the Committee may recommend changes to the General Statutes to provide for the orderly and expeditious removal by a landlord of the personal property of a deceased tenant where the heirs are not readily identifiable or available to take possession of that personal property. The letter of authorization from the Speaker of the House of Representatives, Thom Tillis, is included in Appendix A of this Report. The Committee was chaired **by Representative Julia C. Howard**. The full membership of the Committee is listed in Appendix B. A committee notebook containing the committee minutes and all information presented to the committee will be filed in the Legislative Library by the end of the **2011-2012** biennium.

COMMITTEE PROCEEDINGS

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The Legislative Research Commission's Committee on Orderly and Expeditious Removal by Landlord of Personal Property of Deceased met 3 times after the 2011 Regular Session. The following is a brief summary of the Committee's proceedings. Detailed minutes and information from each Committee meeting are available in the Legislative Library.

The Committee held its initial meeting on November 17, 2011. Representative Julia Howard welcomed members of the Committee and visitors. Committee Staff reviewed the charge to the Committee and outlined the budget for the Committee's work.

The first presenter was Mr. William Brownlee of the North Carolina Apartment Association. Mr. Brownlee outlined the problems faced by landlords regarding the disposition of a tenant's property where a tenant had died without readily identifiable next of kin or persons available or qualified to open an estate. Existing statutes do not address this situation. As a result, it may take months before a landlord is able to remove the deceased tenant's personal property from the dwelling unit and put the unit back on the market. Mr. Greg Roney, Committee Counsel, offered some potential solutions to the issues presented. The Committee had an extensive discussion of the issue. Comments were also received from Ms. Elinor Foy with Wyrick, Robbins, Yates, and Ponton, and member of the Estate Planning and Fiduciary Law Section of the North Carolina Bar Association and Ms. Kim Crouch, Director of Governmental Affairs, North Carolina Bar Association. Representative Howard asked that Ms. Foy and Ms. Crouch work with the North Carolina Apartment Association and Committee Staff to draft legislation to provide landlords with a statutory procedure for expediting the removal and storage of a deceased tenant's personal property.

At the second meeting, January 19, 2012, Gayle Moses, Committee Counsel, presented the proposed legislation that resulted from the discussions of the stakeholders. The draft set forth a procedure allowing a landlord to take possession of and remove the personal property from a dwelling unit upon the filing of an affidavit with the Clerk of Superior Court that establishes that ten days have passed since the last paid rental period ended, no person has applied to act as the personal representative for the estate, and no affidavit has been filed regarding the estate under Article 25 of Chapter 28 of the General Statutes (Small Estates). The landlord must store the property for a period of 90 days after which time the property may be sold or delivered to a nonprofit organization. Extensive discussion ensued and a number of amendments were made to the proposed legislation. Mr. Peter E. Powell, Legal Counsel to the North Carolina Administrative Office of the Courts spoke to the Committee about a number of concerns with the proposed legislation and there was extensive Committee discussion. At the conclusion of

the meeting Committee staff was instructed to incorporate several amendments into the proposed legislation and to present the revised draft for approval at its next meeting.

The Committee held its third meeting on February 27, 2012. At the meeting, the Committee considered further amendments to the proposed legislation. The Committee then voted to recommend the amended proposal to the Legislative Research Commission (Legislative Proposal I) and to adopt this report.

FINDINGS AND RECOMMENDATIONS

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The Legislative Study Committee on Orderly and Expeditious Removal by Landlord of Personal Property of Deceased finds that a small number of tenants die in North Carolina without immediate family or others willing to administer a decedent's estate. Landlords, especially commercial landlords renting residential apartment units, do not have a clear and time-efficient statutory procedure to regain possession of a rental unit after the death of the tenant without someone available to administer his or her estate and dispose of the deceased tenant's property.

To implement the above finding, the Legislative Study Committee on Orderly and Expeditious Removal by Landlord of Personal Property of Deceased Committee recommends the adoption of a new estate administration procedure that gives landlords statutory authority to regain possession of a dwelling unit and dispose of the personal property of the deceased tenant as set forth in Appendix C as **Legislative Proposal I**: A BILL TO BE ENTITLED AN ACT ESTABLISHING A PROCESS WHEREBY A LANDLORD MAY REMOVE FROM A RESIDENTIAL DWELLING UNIT TANGIBLE PERSONAL PROPERTY BELONGING TO A DECEASED TENANT AFTER FILING AN AFFIDAVIT WITH THE CLERK OF SUPERIOR COURT IN THE COUNTY IN WHICH THE RESIDENTIAL DWELLING UNIT IS LOCATED, AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION ORDERLY AND EXPEDITIOUS REMOVAL BY LANDLORD OF PERSONAL PROPERTY OF DECEASED COMMITTEE.

APPENDIX A

COMMITTEE AUTHORIZATION

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Office of the Speaker
North Carolina House of Representatives
Raleigh, North Carolina 27601-1096

THOM TILLIS
SPEAKER

September 12, 2011

Representative Tim Moore
Chairman
Legislative Research Commission
North Carolina House of Representatives
16 W. Jones Street, Room 1326
Raleigh, NC 27601-1096

Dear Representative Moore:

As you prepare your agenda for the Legislative Research Commission (the "Commission"), pursuant to G.S. 120-30.17, I hereby authorize the Commission to appoint subcommittees to study the following matters during the interim. House appointees to each study committee are also identified. Please restrict each study committee to a maximum of four meetings unless additional meetings are pre-approved by my office.

....

Studies Approved for the House:

....

4. Orderly and Expeditious Removal by Landlord of Personal Property of Deceased

The Committee may recommend changes to the General Statutes to provide for the orderly and expeditious removal by a landlord of the personal property of a decease tenant where the heirs are not readily identifiable or available to take possession of that personal property.

Chair: Howard

Members: T. Moore, Blust, Hastings, Stevens, Hilton, Randleman

I will look forward to reviewing the Commission's report regarding the study results, as well as any recommended legislation, prior to convening of the 2012 short session. Please let me know if my staff or I may be of assistance.

Thank you for your service.

Best regards,



Thom Tillis

APPENDIX B

COMMITTEE MEMBERSHIP

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2011-2012

Representative Julia Craven Howard, Chair
Representative John M. Blust
Representative Kelly E. Hastings
Representative Mark K. Hilton
Representative Shirley B. Randleman
Representative Timothy Keith Moore
Representative Sarah S. Stevens

APPENDIX C

LEGISLATIVE PROPOSAL

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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

BILL DRAFT 2011-LMfz-123D [v.12] (11/17)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
2/27/2012 10:25:29 AM

Short Title: Deceased Tenant/Landlord Remove Property. (Public)

Sponsors: Representative Howard.

Referred to:

A BILL TO BE ENTITLED

AN ACT ESTABLISHING A PROCESS WHEREBY A LANDLORD MAY REMOVE FROM A RESIDENTIAL DWELLING UNIT TANGIBLE PERSONAL PROPERTY BELONGING TO A DECEASED TENANT AFTER FILING AN AFFIDAVIT WITH THE CLERK OF COURT IN THE COUNTY IN WHICH THE RESIDENTIAL DWELLING UNIT IS LOCATED, AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION ORDERLY AND EXPEDITIOUS REMOVAL BY LANDLORD OF PERSONAL PROPERTY OF DECEASED COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 25 of Chapter 28A of the General Statutes is amended by adding a new section to read as follows:

"**§ 28A-25-1.2. Removal of tangible personal property by landlord after death of residential tenant.**

(a) When a decedent who is the sole occupant of a dwelling unit dies leaving tangible personal property in the dwelling unit, the landlord may take possession of the property upon the filing of an affidavit that complies with the provisions of subsection (b) of this section if all of the following conditions have been met:

(1) At least 10 days has elapsed from the date the paid rental period for the dwelling unit has expired.

(2) No personal representative, collector, or receiver has been appointed for the decedent's estate under the provisions of this Chapter, Chapter 28B, or Chapter 28C of the General Statutes in the county in which the dwelling unit is located.

(3) No affidavit related to the decedent's estate has been filed under the provisions of G.S. 28A-25-1 or G.S. 28A-25-1.1 in the county in which the dwelling unit is located.

(b) The affidavit required by subsection (a) of this section shall be on a form approved by the Administrative Office of the Courts and supplied by the clerk of court. The affidavit shall state all of the following:

(1) The name and address of the affiant and the fact that the affiant is the lessor of the dwelling unit.

(2) The name of the decedent and the fact that the decedent was the lessee of the dwelling unit and died leaving tangible personal property in the dwelling unit. The affiant shall attach to the affidavit a copy of the decedent's death certificate.

(3) The address of the dwelling unit.

(4) The date of the decedent's death.

(5) The date the paid rental period expired and the fact that at least 10 days has elapsed since that date.

(6) The affiant's good faith estimate of the value of the tangible personal property remaining in the dwelling unit. The affiant shall attach to the affidavit an inventory of the property which shall include, at a minimum, the categories of furniture, clothing and accessories, and miscellaneous items.

(7) That no personal representative, collector, or receiver has been appointed for the decedent's estate under the provisions of this Chapter, Chapter 28B, or Chapter 28C of the General Statutes in the county in which the dwelling unit is located and that no affidavit has been filed in the county under the provisions of G.S. 28A-25-1 or G.S. 28A-25-1.1.

(8) The name of the person identified in the rental application, lease agreement, or other landlord document as the authorized person to contact in the event of the death or emergency of the tenant; that the affiant has made a good faith attempt to contact that person to urge that action be taken to administer the decedent's estate; and that either the affiant was unsuccessful in contacting the person or, if contacted, the person has not taken action to administer the decedent's estate. The affiant shall state the efforts made to contact the person identified in the rental application, lease agreement, or other landlord document.

(c) The affidavit shall be filed in the office of the clerk of court in the county in which the dwelling unit is located. The affidavit shall be filed by the clerk upon the landlord's payment of the fee of thirty dollars ($30.00) and shall be indexed in the index to estates. The landlord shall mail a copy of the affidavit to the person identified in the rental application, lease agreement, or other landlord document as the authorized person to contact in the event of the death or emergency of the tenant. If no contact person is identified in the rental application, lease agreement, or other landlord document, the landlord shall cause notice of the filing of the affidavit to be posted at the door of the landlord's primary rental office or the place where the landlord conducts business and at the county courthouse in the area designated by the clerk for the posting of notices.

(d) The filing of an affidavit that complies with the provisions of subsection (b) of this section shall be sufficient to require the transfer of the property remaining in the decedent's dwelling unit to the landlord. Upon the transfer, the landlord may remove the property from the dwelling unit and deliver it for storage to any storage warehouse in the county in which the dwelling unit is located or in an adjoining county if no storage warehouse is located in that county. The landlord may also store the property in the

landlord's own storage facility. Notwithstanding any provision of Chapter 42 of the General Statutes, after removing the property from the dwelling unit as provided in this subsection, the landlord shall be in possession of the dwelling unit and may let the unit as the landlord deems fit.

(e) If, at least 90 days after the landlord filed the affidavit required by subsection (a) of this section, no personal representative, collector, or receiver has been appointed under the provisions of this Chapter, Chapter 28B, or Chapter 28C of the General Statutes in the county in which the dwelling unit is located and no affidavit has been filed in the county under the provisions of G.S. 28A-25-1 or G.S. 28A-25-1.1, the landlord may take any of the following actions related to the decedent's property:

(1) Sell the property as provided in subsection (f) of this section.

(2) Deliver the property into the custody of a nonprofit organization regularly providing free, or at a nominal price, clothing and household furnishings to people in need for disposition in the normal course of the organization's operations. The organization shall not be liable to anyone for the disposition of the property.

(f) If the landlord delivers the property to a nonprofit organization as authorized in subdivision (e)(2) of this section, the landlord shall provide an accounting to the clerk stating the nature of the action and the date on which the action was taken. A landlord who elects to sell the property as authorized in subdivision (e)(1) of this section may do so at a public or private sale. Whether the sale is public or private, the landlord shall, at least seven days prior to the day of sale, give written notice to the clerk and post written notice of the sale in the area designated by the clerk for the posting of notices and at the door of the landlord's primary rental office or the place where the landlord conducts business stating the date, time, and place of the sale, and that any surplus of proceeds from the sale, after payment of unpaid rents, damages, packing and storage fees, filing fees, and sale costs shall be delivered to the clerk. The landlord may apply the proceeds of the sale to the unpaid rents, damages, packing and storage fees, filing fees, and sale costs. Any surplus from the sale shall be paid to the clerk and the landlord shall provide an accounting to the clerk showing the manner in which the proceeds of the sale were applied. The clerk shall administer the funds in the same manner as provided in G.S. 28A-25-6.

(g) If, at any time after the landlord files the affidavit required by subsection (a) of this section but before the landlord takes any of the actions authorized in subsection (e) of this section, the landlord is presented with letters of appointment or another document issued by a court indicating that a personal representative, collector, or receiver has been appointed for the decedent's estate or an affidavit filed under the provisions of G.S. 28A-25-1 or G.S. 28A-25-1.1, the landlord shall deliver the decedent's property to the personal representative, collector, or receiver appointed or to the person who filed the affidavit.

(h) Notwithstanding the provisions of subsections (a) through (g) of this section, if the decedent dies leaving tangible personal property of five hundred dollar ($500.00) value or less in the dwelling unit, the landlord may, without filing an affidavit, deliver the property into the custody of a nonprofit organization regularly providing free, or at a nominal price, clothing and household furnishings to people in need upon that organization agreeing to identify and separately store the property for 30 days and to

release the property to a person authorized by law to act on behalf of the decedent at no charge within the 30-day period. Prior to delivering the property to the nonprofit organization, the landlord shall prepare an inventory of the property which shall include, at a minimum, the categories of furniture, clothing and accessories, and miscellaneous items. A landlord electing to act under this subsection shall immediately send a notice by first-class mail containing the name and address of the property recipient and a copy of the inventory to the person identified in the rental application, lease agreement, or other landlord document as the authorized person to contact in the event of the death or emergency of the tenant and shall post the same notice for 30 days or more at the door of the landlord's primary rental office or the place where the landlord conducts business. The notice posted shall not include an inventory of the property. Any nonprofit organization agreeing to receive personal property under this subsection shall not be liable to the decedent's estate for the disposition of the property provided that the property has been separately identified and stored for release to a person authorized by law to act on behalf of the decedent for a period of 30 days.

(i) If any lessor, landlord, or agent seizes possession of the decedent's tangible personal property in any manner not in accordance with the provisions of this section, any person authorized by law to act on behalf of the decedent shall be entitled to recover possession of the property or compensation for the value of the property and, in any action brought by any person authorized by law to act on behalf of the decedent, the landlord shall be liable to the decedent's estate for actual damages, but not including punitive damages, treble damages, or damages for emotional distress.

(j) The procedure authorized in this section may be used as an alternative to a summary ejectment action under Chapter 42 of the General Statutes. A landlord shall, in his or her discretion, determine whether to proceed under the provisions of this section or under Chapter 42 of the General Statutes. "

SECTION 2. G.S. 42-25.7 reads as rewritten:

"**§ 42-25.7. Distress and distraint not permitted.**

It is the public policy of the State of North Carolina that distress and distraint are prohibited and that landlords of residential rental property shall have rights concerning the personal property of their residential tenants only in accordance with G.S. 42-25.9(d), 42-25.9(g), 42-25.9(h), ~~or 42-36.2.~~42-36.2, or 28A-25-1.2."

SECTION 3. Article 3 of Chapter 42 of the General Statutes is amended by adding a new section to read as follows:

"**§ 42-36.3. Death of residential tenant; landlord may file affidavit to remove personal property from the dwelling unit.**

Notwithstanding any other provision of this Chapter, when a decedent who is the sole occupant of a dwelling unit dies leaving tangible personal property in the dwelling unit, the landlord may, instead of commencing a summary ejectment action, file an affidavit as provided in G.S. 28A-25-1.2."

SECTION 4. This act becomes effective October 1, 2012.

Appendix N

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE RESEARCH COMMISSION

STATE LEGISLATIVE BUILDING
RALEIGH, NC 27601

April 12, 2012

TO THE MEMBERS OF THE LEGISLATIVE RESEARCH COMMISSION:

Attached for your consideration is the report to the 2012 Regular Session of the 2011 General Assembly. This report was prepared by the Legislative Research Commission's Committee on Property Insurance Rate Making, pursuant to G.S. 120-30.17(1).

Senator Harry Brown
Co-Chair

Representative Jerry Dockham
Co-Chair

Co-Chairs
Committee on Property Insurance Rate Making
Legislative Research Commission

LEGISLATIVE RESEARCH COMMISSION

PROPERTY INSURANCE RATE MAKING COMMITTEE

NORTH CAROLINA GENERAL ASSEMBLY

REPORT TO THE 2012 SESSION of the 2011 GENERAL ASSEMBLY OF NORTH CAROLINA

MAY 8, 2012

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TRANSMITTAL LETTER

May 8, 2012

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TO THE MEMBERS OF THE 2012 REGULAR SESSION
OF THE 2011 GENERAL ASSEMBLY

The Legislative Research Commission herewith submits to you for your consideration its report and recommendations to the 2012 Regular Session of the 2011 General Assembly. The report was prepared by the Legislative Research Commission's Committee on Property Insurance Rate Making, pursuant to G.S. 120-30.70(1).

Respectfully submitted,

Senator Philip E. Berger
President Pro Tempore of the Senate

Representative Thomas R. Tillis
Speaker of the House of Representatives

Co-Chairs
Legislative Research Commission

LEGISLATIVE RESEARCH COMMISSION MEMBERSHIP

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2011 – 2012

President Pro Tempore of the Senate
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Representative Edith D. Warren

PREFACE

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The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is the general purpose study group in the Legislative Branch of State Government. The Commission is co-chaired by the President Pro Tempore of the Senate and the Speaker of the House of Representatives and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigation into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

The Legislative Research Commission authorized the study of Property Insurance Rate Making, under authority of G.S. 120-30.17(1). The Committee was chaired by Senator Harry Brown and Representative Jerry Dockham, Co-Chairs of the Committee. The full membership of the Committee is listed under Committee Membership. A committee notebook containing the committee minutes and all information presented to the committee will be filed in the Legislative Library by the end of the **2011-2012** biennium.

COMMITTEE PROCEEDINGS

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The Legislative Research Commission's Committee on Property Insurance Rate Making met 4 times after the 2011 Regular Session. The Committee's Charge can be found here. The following is a brief summary of the Committee's proceedings. Detailed minutes and information from each Committee meeting are available in the Legislative Library.

November 2, 2011

- Tim Hovis, Staff Attorney, Research Division, gave an overview of the proposed budget and Legislative Research Commission rules and reporting requirements.

- Sue Taylor, Director of Insurance Operations, North Carolina Rate Bureau ("Rate Bureau"), presented information on the general operations of the Rate Bureau and the process used by the Rate Bureau to file rates with the North Carolina Department of Insurance (NCDOI).

- Rose Vaughn-Williams, Legislative Counsel, North Carolina Department of Insurance, provided a brief history of property and casualty insurance rate making in North Carolina and summarized the role of NCDOI in the rate making process.

- Lee Dunn, Assistant General Manager, North Carolina Insurance Underwriting Association (Beach Plan) and North Carolina Joint Underwriting Association (FAIR Plan), gave background on the Beach and Fair Plans including: rate making by the Rate Bureau, conditions under which a surcharge may be assessed to a property owner, Plan market share, and premiums charged by the Plans.

December 1, 2011

- Ray Evans, General Manager, North Carolina Rate Bureau, continued the November Rate Bureau presentation by providing further details on the role of the Rate Bureau. Mr. Evans also explained the rate making formula and briefly went through the modeling used to calculate catastrophic events. Mr. Evans also reviewed property territories.

- Sue Taylor, Director of Insurance Operations, North Carolina Rate Bureau, supplied additional information on the residential property insurance market, including data on deductibles and Rate Bureau membership.

- Shantelle Thomas, Chair, Property Insurance Committee of North Carolina Rate Bureau and Senior Actuary for Allstate Insurance, made a presentation on catastrophe models and their role in damage estimations.

- Rose Vaughn-Williams, Legislative Counsel, North Carolina Department of Insurance, detailed the elements of premium determination and factors in rate and premium setting. Ms. Vaughn-Williams also explained the 2008 Rate Bureau homeowners filing, which resulted in a settlement.

- Susan Valauri, Senior Director of Government Relations, Nationwide Mutual Insurance Company, gave a presentation depicting catastrophic events in North Carolina occurring in the year 2011. She expressed concerns over the large impact the storms had on insurance carriers and on the property insurance climate in the State.

- Steve Carroll, Vice President and General Manager, Farm Bureau Mutual Insurance Company, expressed concerns over inland storms as well as coastal storms and their impact on carriers. Mr. Carroll explained that his company has had to cancel a large number of property policies statewide because the premium amount is too low.

- Don Griffin, Vice President, Personal Lines, Property Casualty Insurers Association of America, discussed House Bill 1305: Beach Plan Changes (2009) as well as the issues of territorial rating, risk-based pricing and the Rate Bureau's impact on property insurance rates.

- Lee Dunn, Assistant General Manager, North Carolina Insurance Underwriting Association (Beach Plan) and North Carolina Joint Underwriting Association (FAIR Plan), explained the commission's structure and the certification process required for agents working through the Associations.

- Kathleen Riely, Director, Governmental Affairs, Wilmington Regional Association of Realtors, questioned whether the State was using the best system for setting property insurance rates. Her concerns included the Rate Bureau, the adequacy of the Commissioner of Insurance's role, and modeling processes.

- Robert Privott, Director of Codes and Construction, North Carolina Home Builder's Association, offered background on the State's building codes and highlighted recent changes to the residential building code.

- Tyler Newman, Governmental Affairs Director, Business Alliance for a Sound Economy, provided a comparison of his Wilmington homeowner's policy with those of a Raleigh homeowner's policy along with a list of recommendations to the Committee.

March 21, 2012

- Wayne Goodwin, Commissioner, North Carolina Department of Insurance, brought various recommendations to the Committee involving the following topics; transparency in rate filing, modeling, rating territories, authority of the Commissioner regarding rate setting, the Beach Plan, and tax credits for new property insurance business.

- Nancy Watkins, Principal and Consulting Actuary, Milliman, Inc., made a presentation regarding the impact of the House Bill 1305: Beach Plan Changes, as well as overall Beach Plan exposure. Ms. Watkins also analyzed the effect of the rate making process on the Beach Plan.

- Willo Kelly, President, NC-20, spoke about tax-free bonding to manage calculated losses, creating various deductibles (named stormed vs. hurricane), and a statewide catastrophe fund.

- Kathleen Riely, Director, Governmental Affairs, Wilmington Regional Association of Realtors, discussed concerns regarding whether the State was using the best system for setting property insurance rates and offered various suggestions for consideration by the Committee.

- Tim Hovis, Staff Attorney, Research Division, reviewed recommendations the Committee had heard over the course of its meetings. The Committee discussed proposed recommendations and agreed upon options to pursue.

April 12, 2012

- The Committee reviewed its report to the 2012 Session and approved the report for submission to the Legislative Research Commission.

FINDINGS AND RECOMMENDATIONS

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BRIEF OVERVIEW OF CURRENT LAW

Standard Market

Article 36 of Chapter 58 requires the N.C. Rate Bureau to file jointly for all insurers the proposed rates and rating plans for insurance against loss to residential real property. Within 50 days of the filing, the Commissioner may give written notice to the Bureau specifying in what respect the Commissioner believes the filing fails to comply with the Article and fixing a date for a hearing. If no notice of hearing is issued by the Commissioner within 50 days, the rate is deemed to be approved. If notice is given, the hearing must be held not less than 30 days from the date of the notice. The burden of proving that the rate meets the necessary standard of not being "excessive, inadequate, or unfairly discriminatory" is on the Rate Bureau. When deciding upon a rate, due consideration must be given to a number of factors including actual and prospective loss and expense experience within the State, the hazards of catastrophe, and a reasonable margin for underwriting profit. Companies may deviate downward from the approved rate. A rate up to 250% above the approved Bureau rate may also be charged, but only with the written consent of the policyholder. This is known as "consent to rate." The Commissioner has the authority to approve or disapprove the rate submitted in the filing, but does not have the authority to specify a rate other than the filed rate.

Beach Plan

The North Carolina Insurance Underwriting Association (NCIUA), known as the Beach Plan, provides property insurance for those homeowners in the beach and coastal areas of the State who are unable to purchase insurance through the standard or voluntary market. The Beach Plan is not a State entity, but is made up of all insurers authorized to write property and casualty insurance in the State. By statute, the Beach Plan covers two areas: (1) the barrier islands, referred to under the Plan as the beach area; and (2) 18 coastal counties, referred to as the coastal area. The Beach Plan offers homeowners, dwelling, and wind only coverage in the beach area, and homeowners and wind only coverage in the coastal area.

For certain residential policies, the Plan charges the standard market rate approved by the Commissioner, plus a differential or surcharge for wind and hail coverage. The surcharge is a percentage amount above the voluntary market rate approved by the Commissioner which all beach and coastal property owners must pay to purchase coverage through the Plan. By statute, the surcharge is 5% above the approved voluntary rate for separate wind and hail coverage, and 15% for wind and hail coverage as a part of a homeowner's policy purchased through the Plan.

Member companies share in the expenses and losses of the Plan. If the Plan generates surplus revenues in excess of claims paid, this surplus must be retained by the Plan and, by law, cannot be distributed to the member companies. Any accumulated surplus may then be used to cover Plan losses in those years in which claims filed are greater than premiums received.

If claims exceed Beach Plan premium revenues, retained surplus, and any applicable reinsurance purchased by the Plan, member companies are assessed by the Plan to pay claims. When assessments against insurers exceed $1B, the Association may, subject to verification of the amount of losses and expenses by the Commissioner, institute a catastrophe recovery charge on residential and commercial policyholders statewide to finance the remaining losses. This recovery charge, as prescribed by the Commissioner, shall not exceed an aggregate amount of 10% of the annual policy premium on any one policy of insurance.

BACKGROUND

(The following is a brief overview of issues discussed by the Committee. Detailed minutes of the Committee's meetings, including written remarks and handouts, are available in the Legislative Library.)

Over the course of four meetings, the Committee heard a number of presentations from representatives of the insurance industry, policyholder groups, the Department of Insurance, the North Carolina Rate Bureau and the North Carolina Joint Underwriting Association (NCJUA, also known as the Beach Plan). **Ms. Rose Vaughn-Williams, Legislative Counsel, Department of Insurance**, noted a number of factors submitted for consideration by the Rate Bureau to the Department in a rate filing. These factors include modeled and non-modeled losses, reinsurance costs, agents' commissions, the number of discounts given, fixed expenses, and profits. As noted by Ms. Williams, when reviewing a filing, the Department may not agree with the factors submitted by the Bureau or the weight attributed to a specific factor by the Bureau.

A number of the rating factors submitted by the Bureau raise concern among policyholders, particularly residential policyholders in the beach and coastal territories of the state. Of particular concern are modeled losses and reinsurance costs. With regard to modeled losses, **Ms. Kathleen Riely, Governmental Affairs Director, Wilmington Association of Realtors**, objected to the use of only one catastrophe model skewed, in her opinion, to justify higher coastal rates. Ms. Riely asked that additional models or a combination of models be required in rate filings. On the issue of reinsurance, **Ms. Willo Kelly, President, NC-20**, noted that, while profits of the Beach Plan are by law retained by the Plan and are no longer distributed to companies, the increasing dependence of the Beach Plan on the purchase of reinsurance was depleting Beach Plan reserves or surplus and may ultimately render the Beach Plan financially unstable. Of concern to Ms. Kelly, Ms. Riely and other beach and coastal representatives was the use of modeling and reinsurance costs to justify increasing premiums and rate increases in the beach and coastal areas, particularly when these increases in eastern territories were juxtaposed with

rate stability and even rate decreases in other areas of the State. Those expressing concern over rate hikes and premium increases asked for consideration of a number of reforms, including the issuance of tax-free bonds by the Beach Plan, the creation of a catastrophe fund, an overhaul of the current rate making system, increased public participation in rate making, recognition of building code changes in eastern territories of the State, and other institutional reforms.

Insurers sounded a common theme when speaking to the Committee. **Ms. Susan Valauri, Senior Director, Governmental Relations, Nationwide Insurance**, maintained that the State's property insurance market is a volatile and catastrophe prone market in which rates are too low to allow for adequate profit. **Mr. Don Griffin, Vice-President, Personal Lines, Property Casualty Insurance of America**, maintained that rates in the State are as much as 15-20% lower than in other states. Insurers pointed to inadequate rates as the main reason for their refusal to write new policies and their decision to non-renew existing policies in the beach and coastal areas. Citing his company's plans to eliminate up to 20% of their total policies statewide, **Mr. Steve Carroll, Vice-President, General Manager, Farm Bureau Mutual Insurance Company**, noted that, while the major areas of concern remain the beach and coastal areas, concern has begun to move inland as tornadoes and hailstorms affect areas west of the coast. Ms. Valauri also noted the increased risk posed in inland areas. Other reasons cited by insurers for their decision to refuse new coverage and to non-renew existing coverage include the unreliability of investment income in today's economy and the exposure of companies to $1 billion dollars in non-recoupable assessments under the State's Beach Plan. **Ms. Nancy Watkins, Principal, Milliman, Inc.**, speaking on behalf of Property Casualty Insurance of America, maintained that inadequate pricing in the beach and coastal areas increases the risk of an assessment under the Beach Plan and poses a significant financial risk to companies. Ms. Watkins also noted the need for a market driven approach to rate making rather than the current system and also expressed support for territorial deviations, and explicit recognition of reinsurance costs.

The Honorable Wayne Goodwin, Insurance Commissioner, stressed the importance of addressing problems in the homeowners' insurance market, particularly in the beach and coastal areas of the State. Commissioner Goodwin pointed out that, as Insurance Commissioner, he must protect consumers from excessive, inadequate, and unfairly discriminatory rates. However, he is also required to ensure that companies have the opportunity to make a fair and reasonable profit. His goal is to have more companies providing coverage in the beach and coastal areas and reduce homeowners' reliance in these areas on the Beach Plan. The Commissioner's recommendations to the Committee include the following: (1) requiring more outcomes when a catastrophe model is used to provide to project losses; (2) requiring specific cost data when reinsurance costs are included in rate calculations; (3) designation of public comments periods before rate hearings; (4) granting the Commissioner the authority to select a rate based on the evidence submitted in a rate filing, not just accept or reject the rate filed by the Rate Bureau; (5) expanding the number of rating territories along the coast; (6) further study of options other than reinsurance to deal with catastrophic or multiple storms, including tax exempt bonds; (7) tax credits for insurers writing new full coverage in the beach and coastal areas.

FINDINGS AND RECOMMENDATIONS

The Committee discussed the presentations above, including recommendations offered by the Commissioner and others, and approved the following findings and recommendations:

RECOMMENDATION I

The current law governing property insurance rate making gives the Commissioner authority to either accept or reject a rate filed by the Rate Bureau. The Commissioner lacks the authority to set a rate between the current rate and the rate filed. Furthermore, the Commissioner is unable to order a decrease in the current rate, if the evidence supports such a change.

At a time when insurers maintain rates are inadequate and property owners in the beach and coastal areas of the state oppose rate increases, the Committee finds that the Commissioner should be given greater flexibility and discretion in the rate making process. The Committee recommends legislation giving the Commissioner authority to select the appropriate rate based on the evidence, not just accept or reject the rate submitted by the Rate Bureau. (See Appendix D, Section 4 of proposed legislation)

RECOMMENDATION II

As evidenced by the discussion in Committee, the use of catastrophe modeling as a factor in property insurance rate filings is the subject of much debate. Insurers maintain that catastrophe models incorporate years of historical data and are the best way to achieve credible estimates of losses due to hurricanes. Property owners believe these models are often skewed to justify higher beach and coastal rates and are suspect of a model's relevance to actual losses in N.C. given recent premium and rate increases in beach and coastal areas juxtaposed with decreases in many areas west of the coast. The Commissioner in his remarks asked for more information on the estimated loss resulting from each of the more than 50,000 hurricanes simulated in a given model.

The Committee finds that more information about the specific model used in a rate filing submitted by the Bureau to the Commissioner is needed. Moreover, specific information concerning a simulated loss should be provided. To facilitate this, the Committee recommends legislation to do the following:

- Require a prehearing prior to a rate hearing giving the Department the authority to see and review all materials and documents pertinent to the catastrophe model or models used in a rate filing. The confidentiality of these materials and documents should be protected and the prehearing closed to the public. (See Appendix D, Section 4 of proposed legislation)
- Require any simulated loss from a catastrophe model to included specific information such as annual probability, the amount of N.C. damages before and after the application of any deductible, specific information concerning first N.C.

landfall or entry, windspeed, and other information. (See Appendix D, Section 5 of proposed legislation)

- Require the Bureau to submit data from more than one catastrophe model in a rate filing if modeled losses are used, in response to arguments that certain models may be skewed to justify higher beach and coastal rates. (See Appendix D, Section 1 of proposed legislation)

RECOMMENDATION III

The increasing cost of reinsurance is often cited by the Bureau as a contributing factor in filings for rate increases and a reason many insurers cannot afford to write coverage in the beach and coastal areas. The Department maintains, however, that insurers provide insufficient data on the cost of reinsurance in rate filings. According to the Department, they are unable to determine if reinsurance costs are reasonable for the specific coverage which is the subject of a requested rate increase.

The Committee finds that more information on the cost of reinsurance is needed. The Committee recommends legislation requiring information in a rate filing on the cost of reinsurance specific to N.C. and the line of business for which the filing is being made. (See Appendix D, Section 5 of proposed legislation)

RECOMMENDATION IV

As noted by several presenters, including the Commissioner, the public should be given input in property insurance rate filings. Often the public bears the burden of paying increasing property insurance premiums, but has no official venue in which to express their support of or objection to a specific filing. The current Commissioner has provided for public comment periods prior to giving notice of a rate hearing. However, no statutory requirement for such a public comment period exists.

To ensure that all future Commissioners will provide for and accept public input, the Committee finds a public comment period should be designated in statute by the General Assembly. The Committee recommends legislation requiring the Department to accept public comments prior to a notice of hearing in a property insurance rate filing. (See Appendix D, Section 4 of proposed legislation)

RECOMMENDATION V

S.L. 2009-472 (House Bill 1305) amended G.S. 58-36-10 to direct the NC Rate Bureau to revise, monitor and review existing territorial boundaries to ensure that policyholders in the beach and coastal areas are charged premiums that are commensurate with the risk of loss and that are actuarially correct. Any proposed change in territories under this section is subject to the Commissioner's approval. Since this language was enacted, the Bureau has not reported to the Department on any changes or requested approval of any changes by the Department.

Several presenters, including the Commissioner and insurers, expressed support for a study of possible changes to the territorial boundaries. The Committee finds that territorial boundaries, and the rates approved for certain territories, may not in all cases accurately reflect the risk associated with each area. Furthermore, new technology and date sources may make alternatives to the geographic territory system possible. While this issue is particularly important in the beach and coastal areas of the State, any study of the territorial boundaries should not be limited to just the beach and coastal areas, but should include the entire State.

The Committee recommends that the Rate Bureau, with the assistance of the Department, study these issues and report on any recommendations for change to the 2013 General Assembly. (See Appendix D, Section 6 of proposed legislation)

RECOMMENDATION VI

In its discussions, Committee members voiced the frustration of their constituents who are unable to obtain a homeowner's fire policy without wind and hail coverage. These constituents, who live primarily in the beach and coastal areas, are willing to personally assume the risk for loss due to wind and hail in hopes of being able to afford coverage insuring them against other risks. However, many companies refuse to provide this type of coverage.

The Committee agrees and finds that, in light of increasing premiums, insurers should offer a residential fire policy that excludes wind coverage to those property owners willing to assume the risk for wind losses. Accordingly, the Committee recommends legislation requiring the Bureau to develop for approval by the Commissioner a policy form that provides residential property insurance coverage without the coverage for the perils of windstorm or hail. (See Appendix D, Sections 2 and 3 of proposed legislation)

RECOMMENDATION VII

The Committee understands that the issues surrounding property insurance rate making are difficult and complex. As noted in this report, several issues discussed by the Committee require additional analysis and discussion which time did not permit prior to the 2012 Session of the General Assembly. These issues include the issuance of tax exempt bonds by the Beach Plan, the creation of a catastrophe fund, reforms to the current rate making system, tax credits to insurers for writing new coverage in the beach and coastal areas, the creation of a citizens' review board or other public body to participate in rate filings, changes to deductibles, and the effect of hazards and catastrophes in inland areas of the State on property insurance. These are only some of the remaining issues.

In light of these issues, the Committee recommends that the General Assembly continue the study of property insurance rate making for possible recommendations to the 2013 General Assembly.

COMMITTEE MEMBERSHIP

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2011-2012

President Pro Tempore of the Senate Appointments:

Senator Harry Brown, Co-Chair

Senator Thomas Apodaca
Senator Ralph Hise
Senator Wesley Meredith
Senator Stanford White

Speaker of the House of Representatives Appointments:

Representative Jerry Dockham, Co-Chair

Representative Frank Iler
Representative Jonathan Jordan
Representative Patricia McElraft
Representative Michael Wray

COMMITTEE CHARGE

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Property Insurance Rate Making – Study the adequacy of citizen input in property insurance rate making and the manner in which property insurance rates are proposed, reviewed, approved, and appealed. Specifically, the subcommittee may study the following:

(1) The feasibility and advisability of replacing the North Carolina Rate Bureau with a market based rate setting system or with a regulatory commission similar to the North Carolina Utilities Commission.
(2) The adequacy under current law of legislative oversight of the Rate Bureau, the North Carolina Joint Underwriting Association, and the North Carolina Insurance Underwriting Association.
(3) The adequacy under current law of Commissioner of Insurance duties pertaining to protection of policyholders and the public against the adverse effects of excessive, inadequate, or unfairly discriminatory rates.
(4) Whether North Carolina citizens and policyholders should be given a voice in rate appeals under G.S. 58-2-80 through creation of a board or office independent of the Commissioner with standing to advocate on behalf of citizens and policyholders.
(5) The adequacy of the review process afforded by G.S. 58-36-1(2) to persons affected by a rate or loss costs made by the Rate Bureau.
(6) Whether information provided to the public by the Commissioner and the Rate Bureau is adequate to allow reasoned review by interested citizens of the assumptions, modeling, and processes used in setting rates.

STATUTORY AUTHORITY

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NORTH CAROLINA GENERAL STATUTES
ARTICLE 6B.

Legislative Research Commission.

§ 120-30.17. Powers and duties.

The Legislative Research Commission has the following powers and duties:

(1) Pursuant to the direction of the General Assembly or either house thereof, or of the chairmen, to make or cause to be made such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner.

(2) To report to the General Assembly the results of the studies made. The reports may be accompanied by the recommendations of the Commission and bills suggested to effectuate the recommendations.

(3), (4) Repealed by Session Laws 1969, c. 1184, s. 8.

(5), (6) Repealed by Session Laws 1981, c. 688, s. 2.

(7) To obtain information and data from all State officers, agents, agencies and departments, while in discharge of its duty, pursuant to the provisions of G.S. 120-19 as if it were a committee of the General Assembly.

(8) To call witnesses and compel testimony relevant to any matter properly before the Commission or any of its committees. The provisions of G.S. 120-19.1 through G.S. 120-19.4 shall apply to the proceedings of the Commission and its committees as if each were a joint committee of the General Assembly. In addition to the other signatures required for the issuance of a subpoena under this subsection, the subpoena shall also be signed by the members of the Commission or of its committee who vote for the issuance of the subpoena.

(9) For studies authorized to be made by the Legislative Research Commission, to request another State agency, board, commission or committee to conduct the study if the Legislative Research Commission determines that the other body is a more appropriate vehicle with which to conduct the study. If the other body agrees, and no legislation specifically provides otherwise, that body shall conduct the study as if the original authorization had assigned the study to that body and shall report to the General Assembly at the same time other studies to be conducted by the Legislative Research Commission are to be reported. The other agency shall conduct the transferred study within the funds already assigned to it.

LEGISLATIVE PROPOSALS

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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

U **D**

BILL DRAFT 2011-MHz-92 [v.2] (03/26)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
4/2/2012 12:46:26 PM

Short Title:	Improve Property Insurance Rate Making.	(Public)
Sponsors:	.	
Referred to:		

A BILL TO BE ENTITLED

AN ACT, AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION COMMITTEE ON PROPERTY INSURANCE RATE MAKING, TO IMPROVE THE RATE MAKING PROCESS AND THE AFFORDABILITY OF PROPERTY INSURANCE FOR LOW INCOME HOMEOWNERS BY REQUIRING THAT MORE THAN ONE CATASTROPHE MODEL BE USED TO ESTIMATE POTENTIAL LOSSES FOR PURPOSES OF A RATE FILING; AND BY REQUIRING THAT THE RATE BUREAU CREATE A RATING PLAN FOR A PROPERTY INSURANCE POLICY THAT EXCLUDES COVERAGE FOR THE PERILS OF WINDSTORM AND HAIL; AND BY REQUIRING THE DEPARTMENT OF INSURANCE TO ACCEPT PUBLIC COMMENT ON ALL PROPERTY INSURANCE RATE FILINGS; AND BY PROVIDING FOR A PREHEARING CONFERENCE FOR THE COMMISSIONER OF INSURANCE TO SCRUTINIZE CATASTROPHE MODELING WHEN SUCH MODELING IS THE BASIS FOR ANY FACTOR IN A RATE FILING FOR WHICH THE COMMISSIONER HAS ISSUED A NOTICE OF HEARING; AND BY PROVIDING THE COMMISSIONER WITH THE POWER TO SPECIFY THE APPROPRIATE RATE LEVEL OR LEVELS UPON A FINDING THAT A RATE FILING DOES NOT COMPLY WITH APPLICABLE LAW; AND BY REQUIRING THAT, WHEN THE COST OF

REINSURANCE IS INCLUDED AS A FACTOR IN A PROPOSED RATE, CERTAIN SUPPORTING INFORMATION BE PROVIDED AND THAT THE FILING INCLUDE ONLY THE REINSURANCE COST SPECIFIC TO PROPERTY INSURANCE LOSSES IN NORTH CAROLINA; AND BY REQUIRING THAT THE RATE BUREAU AND THE DEPARMENT OF INSURANCE STUDY THE FAIRNESS AND EFFICACY OF THE CURRENT PROPERTY INSURANCE GEOGRAPHIC RATE TERRITORIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-36-10(3) reads as rewritten:

"**§ 58-36-10. Method of rate making; factors considered.**

The following standards shall apply to the making and use of rates:

(1) Rates or loss costs shall not be excessive, inadequate or unfairly discriminatory.

(2) Due consideration shall be given to actual loss and expense experience within this State for the most recent three-year period for which that information is available; to prospective loss and expense experience within this State; to the hazards of conflagration and catastrophe; to a reasonable margin for underwriting profit and to contingencies; to dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers; to investment income earned or realized by insurers from their unearned premium, loss, and loss expense reserve funds generated from business within this State; to past and prospective expenses specially applicable to this State; and to all other relevant factors within this State: Provided, however, that countrywide expense and loss experience and other countrywide data may be considered only where credible North Carolina experience or data is not available.

(3) In the case of property insurance rates under this Article, consideration may be given to the experience of property insurance business during the most recent five-year period for which that experience is available. In the case of property insurance rates under this Article, consideration shall be given to the insurance public protection classifications of fire districts established by the Commissioner. The Commissioner shall establish and modify from time to time insurance public protection districts for all rural areas of the State and for cities with populations of 100,000 or fewer, according to the most recent annual population estimates certified by the State Budget Officer. In establishing and modifying these districts, the Commissioner shall use standards at least equivalent to those used by the Insurance Services Office, Inc., or any successor organization. The standards developed by the Commissioner are subject to Article 2A of Chapter 150B of the General Statutes. The

insurance public protection classifications established by the Commissioner issued pursuant to the provisions of this Article shall be subject to appeal as provided in G.S. 58-2-75, et seq. The exceptions stated in G.S. 58-2-75(a) do not apply. If the Rate Bureau presents any modeled losses with a property insurance rate filing, the Bureau shall present data from more than one catastrophe model.

SECTION 2. Article 36 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-36-42. Development of policy form or endorsement for residential property insurance that does not include coverage for perils of windstorm or hail.**

With respect to residential property insurance under its jurisdiction, the Bureau shall develop an optional policy form or endorsement to be filed with the Commissioner for approval that provides residential property insurance coverage without coverage for the perils of windstorm or hail. Insurers that sell such policies shall comply with the provisions of G.S. 58-44-60 and through such compliance shall be deemed to have given notice to all insured and persons claiming benefits under such policies that such policies do not include coverage for the perils of windstorm or hail."

SECTION 3. G.S. 58-44-60 reads as rewritten:

"**§ 58-44-60. Notice to property insurance policyholder about flood, earthquake, mudslide, mudflow, ~~and~~ landslide, and windstorm or hail insurance coverage.**

(a) Every insurer that sells residential or commercial property insurance policies that do not provide coverage for the perils of flood, earthquake, mudslide, mudflow, ~~or~~ landslide or windstorm or hail shall, upon the issuance and renewal of each policy, identify to the policyholder which of these perils are not covered under the policy. The insurer shall print the following warning, citing which peril is not covered, in Times New Roman 16-point font or other equivalent font and include it in the policy on a separate page immediately before the declarations page:

"WARNING: THIS PROPERTY INSURANCE POLICY DOES NOT PROTECT YOU AGAINST LOSSES FROM [FLOODS], [EARTHQUAKES], [MUDSLIDES], [MUDFLOWS], ~~[LANDSLIDES].~~ [LANDSLIDES], [WINDSTORM OR HAIL]. YOU SHOULD CONTACT YOUR INSURANCE COMPANY OR AGENT TO DISCUSS YOUR OPTIONS FOR OBTAINING COVERAGE FOR THESE LOSSES. THIS IS NOT A COMPLETE LISTING OF ALL OF THE CAUSES OF LOSSES NOT COVERED UNDER YOUR POLICY. YOU SHOULD READ YOUR ENTIRE POLICY TO UNDERSTAND WHAT IS COVERED AND WHAT IS NOT COVERED."

(b) As used in this section, "insurer" includes an entity that sells property insurance under Articles 21, 45, or 46 of this Chapter."

SECTION 4. G.S. 58-36.20 reads as rewritten:

"§ 58-36-20. Disapproval; hearing, order; adjustment of premium, review of filing.

(a) ~~At any time within 50 days after the date of any filing, the Commissioner may give written notice to the Bureau specifying in what respect and to what extent the Commissioner contends the filing fails to comply with the requirements of this Article and fixing a date for hearing not less than 30 days from the date of mailing of such notice.~~ With respect to any property insurance rate filing, except as provided in G.S. 58-36-25, or any Workers' Compensation loss cost filing, a filing made by the Bureau under G.S. 58-36-15 is not effective until approved by the Commissioner or unless 50 days have elapsed since the making of a proper filing under that subsection and the Commissioner has not called for a hearing on the filing. If the Commissioner calls for a hearing, he must give written notice to the Bureau, specify in the notice in what respect the filing fails to comply with this Article, and fix a date for the hearing that is not less than 30 days from the date the notice is mailed. Once begun, hearings must proceed without undue delay. At the hearing the burden of proving that the proposed rates or loss costs are not excessive, inadequate, or unfairly discriminatory is on the Bureau. At the hearing the factors specified in G.S. 58-36-10 shall be considered. ~~If the Commissioner after hearing finds that the filing does not comply with the provisions of this Article, he may issue his order determining wherein and to what extent such filing is deemed to be improper and fixing a date thereafter, within a reasonable time, after which the filing shall no longer be effective. Any order issued after a hearing shall be issued within 45 days after the completion of the hearing. If no order is issued within 45 days after the completion of the hearing, the filing shall be deemed to be approved.~~

~~(b) In the event that no notice of hearing shall be issued within 50 days from the date of any such filing, the filing shall be deemed to be approved. If the Commissioner disapproves such filing pursuant to subsection (a) as not being in compliance with G.S. 58-36-10, he may order an adjustment of the premium to be made with the policyholder either by collection of an additional premium or by refund, if the amount exceeds five dollars ($5.00). The Commissioner may thereafter review any filing in the manner provided; but if so reviewed, no adjustment of any premium on any policy then in force may be ordered.~~

~~(c) For workers' compensation insurance and employers' liability insurance written in connection therewith, the period between the date of any filing and the date the Commissioner may give written notice as described in subsection (a) of this section and the period between the date of any filing and the deadline for giving notice of hearing as described in subsection (b) of this section shall be 60 days.~~

(d) All property insurance rate filings shall be open to the public except as provided in this Article where necessary to maintain the confidentiality of certain testimony. At least thirty (30) days before a notice of hearing issues the Department shall accept comments from the public regarding a property insurance

rate filing. The comments may be provided to the Department by email, mail, or in person at a time and place set by the Department. All public comments shall be shared with the Rate Bureau in a timely manner. Only comments from the public that are made a part of the Notice of Hearing may be considered by the Commissioner or his designated hearing officer during the hearing.

(e) With respect to any property insurance rate filing, except as provided in G.S. 58-36-30, where a catastrophe model is used in the calculation for any factor in the filing and where the Commissioner has called for a hearing, the hearing process shall proceed as follows:

(1) No earlier than 30 days after a Notice of Hearing is issued, the Commissioner shall schedule a prehearing which may be attended only by the parties to the case and any experts who will present testimony regarding the catastrophe model or models used in the filing. The prehearing shall be called solely for the purpose of providing the Department and its expert witnesses with the opportunity to see and review all materials and documents pertinent to the catastrophe model or models used in the property rate filing. Because the materials and documents subject to discovery may be confidential in nature, the prehearing shall be closed to the public. The Commissioner shall preside over the prehearing and shall resolve any disputes that arise between the parties. A proper record shall be kept at the prehearing and said record shall be treated as confidential unless a ruling from a court of competent jurisdiction determines that the record of the conference shall be available to the public. Discovery not related to the catastrophe model shall be conducted pursuant to normal hearing procedures.

(2) At the prehearing, the Rate Bureau and its experts shall present any relevant data, materials, computations, spreadsheets, or documents regarding the catastrophe model or models which were excluded from the filing. Copies of all materials presented at the prehearing shall be provided to the Department and its experts for further analysis. Any materials provided at the prehearing to the Department and its experts that is marked as confidential shall be treated as confidential unless a ruling from a court of competent jurisdiction determines that the materials shall be available to the public. Based upon the materials presented both in the filing and at the prehearing, the Department and its experts may request additional data, materials, computations, spreadsheets, or documents, or may make specific inquiries that require a written explanation in order to further understand the available materials.

(3) There shall be no limit on the number of discovery materials requested regarding the catastrophe model. However, the Commissioner may make a determination at the prehearing whether the requested materials are relevant, reasonable, and not unduly burdensome.

(4) The Commissioner shall set a date by which all discovery materials regarding the catastrophe model shall be delivered to the Department. All materials marked by the Rate Bureau as "confidential" shall be individually numbered by the Rate Bureau so that they may be referred to by number, if necessary, by the Commissioner in subsequent documents or orders. The Rate Bureau shall provide an index of the confidential documents marked confidential in order that the documents may be easily identified and referenced in subsequent pleadings, testimony and orders. All materials marked by the Rate Bureau as "confidential" shall be treated by the Department and its experts as confidential unless a ruling from a court of competent jurisdiction determines that the materials shall be available to the public. Once the requested discovery materials have been delivered to the Department as required, the Commissioner may schedule additional prehearings to address additional discovery materials that may be requested by the Department. Once all of the Department's discovery requests related to the catastrophe model or models have been finalized, the Commissioner shall schedule a final prehearing conference to ensure that there are no other discovery issues pending and that both parties are ready to proceed to hearing. All prehearings shall also be closed to the public in the event that potentially confidential materials may be discussed. Any data from catastrophe models that is not disclosed at the prehearing at least thirty (30) days prior to the submission of prefiled testimony of Department witnesses shall be inadmissible at the hearing on the filing.

(5) Once the discovery process for the catastrophe model has been completed, the hearing may proceed pursuant to statute. The Department witnesses shall file all prefiled testimony as required under G.S. 58-36-15(i). However, any prefiled testimony regarding the catastrophe model or models used in the filing shall be filed as a separate document and marked as "confidential." The prefiled testimony of the Department witnesses relating to the catastrophe models may contain references to data, testimony, or exhibits pertaining to confidential materials submitted by the Rate Bureau, and, therefore, shall be treated as "confidential" by the Department and its experts unless a ruling

from a court of competent jurisdiction determines that the prefiled testimony shall be made available to the public. All references to confidential materials used by the Department witnesses shall utilize the individual identification numbers assigned by the Rate Bureau in the discovery materials.

(6) Prior to commencement of the hearing, the Commissioner shall determine the order of testimony to be heard at the hearing. However, any oral testimony taken at the hearing on direct, cross-examination or on rebuttal with regards to the catastrophe model will be closed to the public, if necessary, in order to preserve confidentiality. Transcripts from hearing proceedings closed to the public shall be treated as "confidential" by the Department, its experts, and by the court reporters unless a ruling from a court of competent jurisdiction determines that the prefiled testimony shall be made available to the public.

(7) At the conclusion of the hearing, the Commissioner, in his final order, shall make his determination as to whether the catastrophe model is valid for the purpose it was used in the filing, the weight to be applied to the modeled results, and the extent to which the results of the model should be modified, if at all.

(f) If the Commissioner finds that a filing complies with the provisions of this Article, either after the hearing or at any other time after the filing has been properly made, he may issue an order approving the filing. If the Commissioner after the hearing finds that the filing does not comply with the provisions of this Article, he may issue an order disapproving the filing, determining in what respect the filing is improper, and specifying the appropriate rate level or levels that may be used by the members of the Bureau instead of the rate level or levels proposed by the Bureau filing, unless there has not been data admitted into evidence in the hearing that is sufficiently credible for arriving at the appropriate rate level or levels. Any order issued after a hearing shall be issued within 45 days after the completion of the hearing. If no order is issued within 45 days after the completion of the hearing, the filing shall be deemed to be approved. The Commissioner may thereafter review any filing in the manner provided; but if so reviewed, no adjustment of any premium on any policy then in force may be ordered. The escrow provisions of G.S. 58-36-25(b) apply to an appeal of any order of the Commissioner under this subsection."

SECTION 5. G.S. 58-36-15 reads as rewritten:

"**§ 58-36-15. Filing loss costs, rates, plans with Commissioner; public inspection of filings.**

(a) The Bureau shall file with the Commissioner copies of the rates, loss costs, classification plans, rating plans and rating systems used by its members. Each rate or loss costs filing shall become effective on the date specified in the filing, but not earlier than 210 days from the date the filing is received by the

Commissioner: Provided that (1) rate or loss costs filings for workers' compensation insurance and employers' liability insurance written in connection therewith shall not become effective earlier than 210 days from the date the filing is received by the Commissioner or on the date as provided in G.S. 58-36-100, whichever is earlier; and (2) any filing may become effective on a date earlier than that specified in this subsection upon agreement between the Commissioner and the Bureau.

(b) A filing shall be open to public inspection immediately upon submission to the Commissioner.

(c) The Bureau shall maintain reasonable records, of the type and kind reasonably adapted to its method of operation, of the experience of its members and of the data, statistics or information collected or used by it in connection with the rates, rating plans, rating systems, loss costs and other data as specified in G.S. 58-36-100, underwriting rules, policy or bond forms, surveys or inspections made or used by it.

(d) With respect to the filing of rates for nonfleet private passenger motor vehicle insurance, the Bureau shall, on or before February 1 of each year, or later with the approval of the Commissioner, file with the Commissioner the experience, data, statistics, and information referred to in subsection (c) of this section and any proposed adjustments in the rates for all member companies of the Bureau. The filing shall include, where deemed by the Commissioner to be necessary for proper review, the data specified in subsections (c), (e), (g) and (h) of this section. Any filing that does not contain the data required by this subsection may be returned to the Bureau and not be deemed a proper filing. Provided, however, that if the Commissioner concludes that a filing does not constitute a proper filing he shall promptly notify the Bureau in writing to that effect, which notification shall state in reasonable detail the basis of the Commissioner's conclusion. The Bureau shall then have a reasonable time to remedy the defects so specified. An otherwise defective filing thus remedied shall be deemed to be a proper and timely filing, except that all periods of time specified in this Article will run from the date the Commissioner receives additional or amended documents necessary to remedy all material defects in the original filing.

(d1) With respect to property insurance rates, the Bureau shall file no later than May 1, 2010, a schedule of credits for policyholders based on the presence of mitigation and construction features and on the condition of buildings that it insures in the beach and coastal areas of the State. The Bureau shall develop rules applicable to the operation of the schedule and the mitigation program with approval by the Commissioner. The schedule shall not be unfairly discriminatory and shall be reviewed by the Bureau annually, with the results reported annually to the Commissioner.

(d2) The following supporting data, at a minimum, shall be included in any property insurance rate filing where a catastrophe model is used or where a factor

for any costs of reinsurance is included in the rate calculations or where both a catastrophe model and a factor for costs of reinsurance are used.

(1) Any simulated loss from a catastrophe model should include the following:

a. An event identifier.

b. The simulation year.

c. The annual probability of occurrence for the event.

d. The gross amount of North Carolina damages before application of any deductible or other applicable policy provisions that impact the coverage, calculated with and without any applicable demand surge adjustments.

e. The net amount of North Carolina insured loss after application of any deductible or other applicable policy provisions that impact the coverage, calculated with and without any applicable demand surge adjustments.

f. The State and county of first and any subsequent landfalls.

g. The Saffir-Simpson category at first and any subsequent landfalls.

h. The maximum sustained windspeed at first and any subsequent landfalls.

i. The North Carolina county of first entry, if applicable, whether first entry is from water or land.

j. The Saffir-Simpson category at first entry into North Carolina, if applicable, whether first entry is from water or land.

k. The maximum sustained windspeed at first entry into North Carolina, if applicable, whether first entry is from water or land.

l. For storms with no landfall in North Carolina, the county of closest approach.

m. For storms with no landfall in North Carolina, the Saffir-Simpson Category at closest approach.

n. For storms with no landfall in North Carolina, the maximum sustained windspeed at closest approach.

o. Any other information required by rules promulgated by the Commissioner.

(2) Any factor for cost of reinsurance shall be based upon the aggregated property reinsurance costs of the member companies of the Bureau writing property insurance in North Carolina for the specific lines of insurance covered by the filing. The costs of reinsurance for the North Carolina Insurance Underwriting Association and North Carolina Joint Underwriting Association shall not be considered for any line of property coverage under

the jurisdiction of the Bureau. For each of the member companies, the costs of reinsurance that are specific to North Carolina and the line of business for which the filing is being made must be allocated using an appropriate method that shall be stated along with the applicable provisions for the current reinsurance contract that covers the North Carolina line of business for which the filing is being made. Any filing must also take into account expected recoveries from the reinsurance. Use of a model to make the allocation to the appropriate line of business and state shall not be permissible. The Commissioner may promulgate rules setting forth the information needed to evaluate reinsurance costs as well as the method used to determine the cost of reinsurance allocated to North Carolina.

(e) The Commissioner may require the filing of supporting data including:

(1) The Bureau's interpretation of any statistical data relied upon;

(2) Descriptions of the methods employed in setting the rates;

(3) Analysis of the incurred losses submitted on an accident year or policy year basis into their component parts; to wit, paid losses, reserves for losses and loss expenses, and reserves for losses incurred but not reported;

(4) The total number and dollar amount of paid claims;

(5) The total number and dollar amount of case basis reserve claims;

(6) Earned and written premiums at current rates by rating territory;

(7) Earned premiums and incurred losses according to classification plan categories; and

(8) Income from investment of unearned premiums and loss and loss expense reserves generated by business within this State.

Provided, however, that with respect to business written prior to January 1, 1980, the Commissioner shall not require the filing of such supporting data which has not been required to be recorded under statistical plans approved by the Commissioner.

(f) On or before September 1 of each calendar year, or later with the approval of the Commissioner, the Bureau shall submit to the Commissioner the experience, data, statistics, and information referred to in subsection (c) of this section and required under G.S. 58-36-100 and a residual market rate or prospective loss costs review based on those data for workers' compensation insurance and employers' liability insurance written in connection therewith. Any rate or loss costs increase for that insurance that is implemented under this Article shall become effective solely to insurance with an inception date on or after the effective date of the rate or loss costs increase.

(g) The following information must be included in policy form, rule, and rate or loss costs filings under this Article and under Article 37 of this Chapter:

(1) A detailed list of the rates, loss costs, rules, and policy forms filed, accompanied by a list of those superseded; and

(2) A detailed description, properly referenced, of all changes in policy forms, rules, prospective loss costs, and rates, including the effect of each change.

(h) Except to the extent the Commissioner determines that this subsection is inapplicable to filings made under G.S. 58-36-100 and except for filings made under G.S. 58-36-30, all policy form, rule, prospective loss costs, and rate filings under this Article and Article 37 of this Chapter that are based on statistical data must be accompanied by the following properly identified information:

(1) North Carolina earned premiums at the actual and current rate level; losses and loss adjustment expenses, each on paid and incurred bases without trending or other modification for the experience period, including the loss ratio anticipated at the time the rates were promulgated for the experience period;

(2) Credibility factor development and application;

(3) Loss development factor derivation and application on both paid and incurred bases and in both numbers and dollars of claims;

(4) Trending factor development and application;

(5) Changes in premium base resulting from rating exposure trends;

(6) Limiting factor development and application;

(7) Overhead expense development and application of commission and brokerage, other acquisition expenses, general expenses, taxes, licenses, and fees;

(8) Percent rate or prospective loss costs change;

(9) Final proposed rates;

(10) Investment earnings, consisting of investment income and realized plus unrealized capital gains, from loss, loss expense, and unearned premium reserves;

(11) Identification of applicable statistical plans and programs and a certification of compliance with them;

(12) Investment earnings on capital and surplus;

(13) Level of capital and surplus needed to support premium writings without endangering the solvency of member companies; and

(14) Such other information that may be required by any rule adopted by the Commissioner.

Provided, however, that no filing may be returned or disapproved on the grounds that such information has not been furnished if insurers have not been required to collect such information pursuant to statistical plans or programs or to report such information to the Bureau or to statistical agents, except where the Commissioner has given reasonable prior notice to the insurers to begin collecting and reporting such information, or except when the information is readily available to the insurers.

(i) The Bureau shall file with and at the time of any rate or prospective loss costs filing all testimony, exhibits, and other information on which the Bureau will rely at the hearing on the rate filing. The Department shall file all testimony, exhibits, and other information on which the Department will rely at the hearing on the rate filing 20 days in advance of the convening date of the hearing. Upon the issuance of a notice of hearing the Commissioner shall hold a meeting of the parties to provide for the scheduling of any additional testimony, including written testimony, exhibits or other information, in response to the notice of hearing and any potential rebuttal testimony, exhibits, or other information. This subsection also applies to rate filings made by the North Carolina Motor Vehicle Reinsurance Facility under Article 37 of this Chapter."

SECTION 6. The North Carolina Rate Bureau, with the assistance of the Department of Insurance, shall study the current geographic territories established by the Bureau for rating purposes. The study shall address the following issues:

(1) Whether risks of the same class and essentially the same hazard are charged premiums that are commensurate with the risk of loss, actuarially correct, and not unfairly discriminatory.

(2) Whether geographic territories in the beach and coastal areas (as defined in G.S. 58-45-5) currently meet the standards and mandates set forth in G.S. 58-36-10(6).

(3) Whether current technology and statistical data sources make possible any practical and cost-effective alternative to the geographic territory system for property insurance rate setting.

The Bureau shall submit a final report, including any recommendations for changes to the geographic territories or alternatives to the geographic territory rating system, to the 2013 General Assembly.

SECTION 7. Sections 2 and 3 of this act are effective December 1, 2012. Section 6 of this act is effective when it becomes law. The remainder of this act is effective July 1, 2012.

Committee Sergeants at Arms

NAME OF COMMITTEE ST. LEG. RESEARCH COMMISSION

DATE: 5-16-12 Room: 643

House Sgt-At Arms:

1. Name: LARRY ELLIOTT
2. Name: WAYNE DAVIS
3. Name: YOUNG BAE
4. Name:
5. Name:

Senate Sgt-At Arms:

1. Name: Charles HARPER
2. Name: Robert Young
3. Name: Ken Kirby
4. Name:
5. Name:

VISITOR REGISTRATION SHEET

Legislative Research Commission — May 16, 2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
ZEB ALLEY	NMRS
Jeff Gray	SACM
Allison Cuper	SACM
David Hoffman	EBCI
Kathy Hawkins	Duke Energy
John Muranski	NFO
Thomas Stith	Kenan Institute
George Smith	Williams Mullen
Heather Barrett	Williams Mullen
Kim Crouch	NC Bar Assn
Keith Coltrain	WALL, Templeton & Haldrup, PA

VISITOR REGISTRATION SHEET

Legislative Research Commission — May 16, 2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Erin Wynia	NCLM
William Creech	NCDOA
[illegible]	NCSOS
[illegible]	NCSOS
Elizabeth Biser	Brooks Pierce
Weldon Jones	Jordan Price
[illegible]	DST
Carl Dean	DSP
Mia Bailey	Electri Cities
Alex Miller	KLG
Sarah Preston	ACLU-NC

VISITOR REGISTRATION SHEET

Legislative Research Commission — May 16, 2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Katherine Joyce	NCASA
Matt Hayrile	NCSBA
Sue Harrison	NC SNA
Susanna Hailey	K&L Gates
[illegible]	K&L Gates
Bill Wethington	NC-AP1
Tommy Sevier	Moore and Van Allen
David Elmore	Moore & Van Allen
Kerri Burke	NCCOC
Angie Maier	NC Pork
Jay Hitchcock	NCDA

VISITOR REGISTRATION SHEET

Legislative Research Commission — May 16, 2012

Name of Committee — **Date**

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	NCICU
Daniel Baum	Troutman Sanders
Michelle Frazier	MF+S
Robert Montevaldo	NCMS
Amy Whited	NCMS
	NCMS
Doug Lassiter	NCSTA
Mike Carpenter	NCCBSA
	NCPA
	CATVC

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Legislative Research Commission — May 16, 2012

Name of Committee — **Date**

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NAME	FIRM OR AGENCY AND ADDRESS
Clare FitzGerald	DENR
Kain Barsness	DENR
Shannon Arata	NC Conservation Network
Margaret Harrzell	Environment North Carolina
Tom BEAN	EDF, NCWF
Mary Maureen Asbill	SELC
Cameron Hardy	Electricities of NC
Andrea Mrechan	Cap Strat
Veronica Butler Shingleton	Governor's Office
Meredith Switzer	The Policy Group
Jordan McBride	The Policy Group

VISITOR REGISTRATION SHEET

Legislative Research Commission — May 16, 2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Chuck Stone	SEANC
Edith Davis	NC Reinsurance Facility
Tim Lucas	NC Rate Bureau
RAY EVANS	NC RATE BUREAU
Sue Taylor	NC Rate Bureau
Robert PASchal	Young Moore
Steve Wells	NC Farm Bureau
Laurie Anorie	Jason Deans & Assoc
Paul Fogleman	Insurance
Chuck Johnson	NC Pretrial Services Association
LAD Russell	CIPC

VISITOR REGISTRATION SHEET

Legislative Research

(Committee Name)

May 16, 2012

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jaz Tunnell	PNG
John Monaghan	PNG
Kara Weishaar	Smith Anderson
Elizabeth R. Hatcher	WILPF
Judith DAVIS	Food+WaterWatch-NC
Renée Maas	Food & Water Watch
Stephen Korbar	Compass NC
Ed Shuff	BP
Alissa Willett	NCACC
Thang Vu	[illegible]
Kevin Leonard	NCACC
[illegible]	CFSA
[illegible]	CSS
[illegible]	NCPC/NCCA
Dana Sipes	SA
Angie Hans	Williams Mullen

VISITOR REGISTRATION SHEET

(Committee Name)

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Annaliese Dolph	DRNC
Jamie Ramquist	NCIMS
Jennifer ROSS	ENV NC
Chris Kachadoorian	ENV NC
William Kay	
Walter Gurzynski	ENV NC
Elizabeth Curtis	ENV NC
Ken Melton	K.M.A.
Jay Stem	NCAA

09-21-201

NORTH CAROLINA GENERAL ASSEMBLY

Raleigh, North Carolina 27601

August 8, 2012

MEMORANDUM

TO: Members, Legislative Research Commission
FROM: Senator Tom Apodaca, Co-Chair
Representative Tim Moore, Co-Chair
SUBJECT: Meeting Notice

DAY	DATE	TIME	ROOM
Thursday	August 23, 2012	10:00 a.m.	1228/1327 LB

Parking for non-legislative members of the committee/commission is available in the visitor parking deck #75 located on Salisbury Street across from the Legislative Office Building. Parking is also available in the parking lot across Jones Street from the State Library/Archives. You can view a map of downtown by visiting http://www.ncleg.net/graphics/downtownmap.pdf.

If you are unable to attend or have any questions concerning this meeting, please contact Nancy Garriss at 919-733-4838.

cc: Committee Record _X_
Interested Parties _X_

MINUTES
LEGISLATIVE RESEARCH COMMISSION
August 23, 2012

The Legislative Research Committee met on Thursday, August 23, 2012 at 10:08 a.m. in Room 1228 of the Legislative Building. The following members were present: Representative Tim Moore, Co-Chair, Senators Brunstetter, Nesbitt, Stevens, and Representatives Blust, Burr, and Hager. The meeting's agenda is attached as Appendix A.

Representative Tim Moore presided and called the meeting to order. Representative Moore said the committee would take up item two on the agenda. Senator Brunstetter was recognized for a motion to adopt the proposed revisions to the rules. Vote called and the motion carried.

Item three on the agenda was taken up by Representative Moore who read through the authorized LRC study committees. Senator Stevens was recognized for a motion to approve the committees. Vote called and the motion was adopted.

Kory Goldsmith, staff, was recognized to speak on Item 4 of the agenda: Distribution of publication summarizing activities and recommendations of 2011 LRC Study Committees.

Representative Moore recognized Senator Nesbitt to speak on other committee business. Senator Nesbitt spoke on study committee members.

Representative Moore accepted a motion to adjourn from Senator Brunstetter. Vote called and motion carried.

The committee meeting adjourned at 10:14 a.m.

Representative Tim Moore, Co-Chair

Nancy Garriss, Committee Clerk

Appendix A

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE RESEARCH COMMISSION

STATE LEGISLATIVE BUILDING

RALEIGH, NC 27601

SENATOR PHIL BERGER, COCHAIR
LEGISLATIVE BUILDING, ROOM 2008
16 WEST JONES STREET
RALEIGH, NORTH CAROLINA 27601-2808

REPRESENTATIVE THOM TILLIS, COCHAIR
LEGISLATIVE BUILDING, ROOM 2304
16 WEST JONES STREET
RALEIGH, NORTH CAROLINA 27601-1096

AGENDA
August 23, 2012,10:00 a.m.
Legislative Building, Room 1228/1327
Representative Tim Moore, House Cochair Designee, Presiding

1. Call to Order and Introductory Remarks
2. Review and Approval of Proposed Revisions to Rules
3. Review and Approval of Authorized Studies
4. Distribution of Publication Summarizing Activities and Recommendations of 2011 LRC Study Committees
5. Other Committee Business
6. Adjourn

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE RESEARCH COMMISSION

STATE LEGISLATIVE BUILDING

RALEIGH, NC 27601

August 23, 2012
Updated and Corrected September 18, 2012
Updated October 26, 2012

Senator Tom Apodaca
Chairman
Legislative Research Commission
North Carolina State Senate
16 W. Jones Street, Room 2010
Raleigh, NC 27601-2808

Representative Tim Moore
Chairman
Legislative Research Commission
North Carolina House of Representatives
16 W. Jones Street, Room 1326
Raleigh, NC 27601-2808

Dear Senator Apodaca and Representative Moore:

Pursuant to G.S. 120-30.13, as enacted in Section 66.7(b) of S.L. 2012-194, Senator Apodaca is designated as the Senate Cochair of the 2011-2012 Legislative Research Commission ("Commission"). Representative Moore is designated as the House Cochair of the Commission.

As you prepare your agenda for the Commission, pursuant to G.S. 120-30.17, we authorize the Commission to appoint the following Study Committees and Advisory Subcommittees to study the following matters and to refer one study to a state agency. The Cochairs and appointees to each Committee are also identified. Please restrict each study committee and advisory subcommittee to a maximum of four meetings unless additional meetings are pre-approved by our offices.

Authorized Joint Study Committees:

Pathological Materials – The LRC Study Committee on Pathological Materials shall study the issue of access by patients to pathological materials requested by a patient for the purpose of additional medical treatment evaluation or the evaluation of any legal rights of the patient. Specifically, the Committee shall consider:

1. State and federal laws and regulations that govern the administration, operation and certification of pathology laboratories;
2. State and federal laws that govern the maintenance and production of a patient's medical records;
3. Appropriate changes in state law that ensure patient access to pathological materials that are needed to obtain and evaluate the patient's medical needs and legal rights while also balancing pathology laboratories' duties to comply with federal and state licensure laws and regulations, patient care responsibilities, risk management obligations, and other relevant issues;
4. The impact of any state law change on the medical research industry including: pharmaceutical companies; government research institutions; and other industries dependent upon information obtained from pathological materials.

While conducting this study the Committee shall consult:

1. Persons who serve as advocates for patients who have requested pathological materials;
2. Patients who have requested pathological materials from health care providers;
3. Representatives of hospitals responsible for the management of pathology laboratories;
4. Pathologists responsible for the management of pathology laboratories;
5. Persons responsible for providing legal advice to mangers of pathology laboratories; and
6. Any other person or persons the Committee deems appropriate.

Senate Members		**House Members**	
Sen. Goolsby	Chair	Rep. Murray	Chair
Sen. Brunstetter	Member	Rep. Brisson	Member
Sen. Brock	Member	Rep. Jones	Member
Sen. Pate	Member	Rep. McGrady	Member
Sen. Purcell	Member	Rep. Stevens	Member

Contingency Fee Audits – The LRC Study Committee on Contingency Fee Audits shall study issues relating to the use of contingent fee-based contracts by the State Treasurer for purposes of unclaimed property audits, and by counties and municipalities for tax audit or assessment purposes.

Senate Members		**House Members**	
Sen. Gunn	Chair	Rep. Stam	Chair
Sen. Brown	Member	Rep. Brown	Member
Sen. Clodfelter	Member	Rep. Burr	Member
Sen. Hise	Member	Rep. McCormick	Member
Sen. Hartsell	Member	Rep. Wray	Member

Career and Technical Education – The LRC Study Committee on Career and Technical Education shall study the following aspects of the current State vocational training to improve the quality and relevance of training, align basic education and vocational and higher education training and ensure that students who are not college bound are career ready. Specifically, the Committee shall study the following:

1. The requirements and challenges North Carolina high school graduates face in today's changing and demanding job market. The study should include a review of what North Carolina industries look for in well-qualified candidates for employment as it pertains to education, certification, and skill level;
2. The Career and College Promise program, specifically the Career and Technical Education Pathway and the Cooperative Innovative High School Pathway, to determine if the program is meeting the unique needs of students seeking to enter the workforce after completing high school. The study should include a review of the career clusters and pathways, work-based learning, career academies, time-shortened programs, and certification and credentialing offered to determine if they meet the current needs of North Carolina's students and business community. The study should also examination current outreach and practices to raise student awareness of Career and Technical Education opportunities;
3. Progress in developing regional schools through S.L. 2011-241 which authorized local boards of education to jointly establish a regional school to serve enrolled students in two or more local school administrative units that will expand student opportunities for educational success through high quality instructional programming;
4. Article 10 of Chapter 115C of the North Carolina General Statues as it pertains to vocational and technical education to determine if modification is necessary to best reflect the intent of the General Assembly and provide the necessary opportunities and flexibility to establish innovative learning environments that provide students with practical work experiences and vocational skills;
5. Additional, cost-effective ways in which the Department of Public Instruction, North Carolina Community College System, and the business community can partner to offer enriched educational opportunities for students to enter the workforce with academic and marketable vocational skills after completing high school;
6. Potential legislative actions to further enhance connecting career technical education to education, workforce preparation, and economic development through innovative schools and high academic standards;
7. Any other issues associated with Vocational education deemed appropriate by the Committee.

Senate Members		**House Members**	
Sen. Brown	Co-Chair	Rep. Holloway	Chair
Sen. Tillman	Co-Chair	Rep. Blackwell	Member
Sen. Tucker	Member	Rep. Blust	Member
Sen. McKissick	Member	Rep. Cotham	Member
Sen. Soucek	Member	Rep. Langdon	Member

Digital Learning Environments in Public Schools – The LRC Study Committee on Digital Learning Environments in Public Schools shall study the following:

1. Available forms of digital learning environments in public schools by comparing the cost, infrastructure, technology, maintenance, usability, savings, effectiveness and demonstrated student outcomes associated with various digital learning models found in North Carolina as well as other states like Florida, Arizona, California, Maine, and Texas.
2. Parts 3 and 3A of Article 8 of Chapter 115Cof the North Carolina General Statutes as they pertain to school technology to determine if modifications are necessary to best reflect the intent of the General Assembly and provide the necessary opportunities and flexibility to establish digital learning environments in public schools.
3. Viable, cost-effective ways in which the Department of Public Instruction and local school administrative units can offer enriched educational opportunities to students through the use of digital learning tools such as laptops, handheld devices, digital textbooks, and other digital content.

Senate Members		**House Members**	
Sen. Soucek	Chair	Rep. Horn	Chair
~~Sen. Carney~~ Sen. Brock	Member	Rep. L. Johnson	Member
Sen. Graham	Member	Rep. Lucas	Member
Sen. Hise	Member	Rep. Saine	Member
Sen. Rucho	Member	Rep. H. Warren	Member
Sen. Nesbitt	Member	Rep. Brandon	Member
Senate Non-Voting Advisory Members			
Sen. Carney			

Authorized Joint Advisory Subcommittees:

Wetland and Stream Mitigation – The LRC Advisory Subcommittee on Wetland and Stream Mitigation shall study issues related to the overall policies and roles of agencies within State government, the federal government, and the private sector to plan, construct and monitor wetland and stream mitigation. The Advisory Subcommittee may specifically study the following items:

1. The process for annual adjustments of Ecosystem Enhancement Program fees, including whether the use of the Civil Works Construction Cost Index System published by the U.S. Army Corps of Engineers as a basis for fee escalation is necessary given the past direction of the General Assembly to base program fees on actual costs;

2. Whether compensatory mitigation should be allowed any hydrologic area located in the same river basin as the site being mitigated. For purposes of this study, the terms "compensatory mitigation" and "hydrologic area" are as defined in G.S. 143-214.11;
3. Whether the compensatory mitigation fee payment system represents the most efficient and effective way to provide compensatory mitigation and how the program could be revised to lessen its economic impact on the State's businesses and industries;
4. Whether the State should withdraw from the Memorandum of Agreement between the U.S. Department of Environment and Natural Resources, the U.S. Department of Transportation, and the U.S. Army Corps of Engineers, which established the Ecosystem Enhancement Program in 2003;
5. Whether the North Carolina Department of Transportation should purchase its stream and wetland mitigation credits from an approved mitigation bank within the private sector where available;
6. Whether the State should consider assuming the Clean Water Act Section 404 permitting role from the federal government;
7. Whether the mitigation projects overseen by the North Carolina Department of Transportation, Natural Systems Unit have been effective and cost efficient;
8. Whether the North Carolina Department of Environment and Natural Resources' internal review process of stream and wetland mitigation projects designed, stamped, and signed by a licensed professional engineer is necessary and/or appropriate;
9. Any other issues associated with stream and wetland mitigation deemed appropriate by the Committee.

Senate Appointees		**House Appointees**	
Sen. Jackson	Chair	Rep. Lewis	Chair
Sen. Daniel	Member	Rep. Hastings	Member
Sen. Harrington	Member	Rep. Iler	Member
Sen. Rabon	Member	Rep. R. Moore	Member
Sen. Walters	Member	Rep. T. Moore	Member
Butch Smith, General Manager, Cleveland County Water	Member	Christopher A. Huysman, Engineer	Member
Dr. Curtis J. Richardson, Professor, Duke University Nicholas School of the Environment	Member	David N. Levinson, Developer	Member

Authorized House Advisory Subcommittees:

Age of Juvenile Offenders – The LRC Study Committee on the Age of Juvenile Offenders shall study North Carolina's current juvenile justice system and identify reforms that may reduce long-term recidivism. Specifically, the Committee shall study:

1. What juvenile justice reforms are needed to implement the proposal in Senate Bill 434, Edition 3, for raising the age for misdemeanors;
2. Evidence-based models for reducing juvenile recidivism, such as the Juvenile Detention Alternatives Initiative of the Annie E. Casey Foundation, including models to reduce inappropriate or unnecessary use of secured detention;
3. How best to reserve secure facilities for the most troubled youth. This shall include assessing the recidivism rates and costs and benefits of alternatives to placement programs in the juvenile justice system, such as electronic monitoring;
4. Best practices among community-based programs, such as the Juvenile Crime Prevention Council System, that utilize evidence-based programs to reduce youth recidivism;
5. How to prepare local prisons for implementation of Department of Justice regulations related to the Prison Rape Elimination Act of 2003, P.L. 108-79, including ensuring that all youth under the age of 18 are held separately from adults.

Rep. Avila	Chair
Rep. Blust	Member
Rep. Boles	Member
Rep. Hall	Member
Rep. Jackson	Member
Rep. Lewis	Member
Judge Marcia Morey	Member
Eddie Caldwell	Member
Frank Plumbo	Member
Seth Edwards	Member

Referral of Studies to State Agencies:

Resource Extraction and Renewable Energy – Pursuant to G.S. 120-30.17(9), the Commission directs the University of North Carolina at Charlotte ("UNC-C") and the North Carolina Agricultural and Technical State University ("NC A&T") to draft plans for the creation of a collaborative engineering program in resource extraction and renewable energy. The immediate focus of the collaborative program will be natural gas extraction, nuclear reactor maintenance and design, and wind, geothermal, and solar power systems design. UNC-C and NC A&T shall submit a proposed implementation timetable and associated costs to the Commission no later than January 4, 2013.

We will look forward to reviewing the Commission's report regarding the study results, as well as any recommended legislation, prior to dissolution of the Commission on January 15, 2013 pursuant to G.S. 120-30.11. Please let us know if we or our staff may be of assistance.

Thank you for your service.

Sincerely,

Phil Berger for

Sen. Phil Berger
President Pro Tempore of the Senate

Thom Tillis

Rep. Thom Tillis
Speaker of the House of Representatives

Cc: George Hall, Legislative Services Officer

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE RESEARCH COMMISSION

STATE LEGISLATIVE BUILDING

RALEIGH, NC 27601

August 23, 2012
Updated and Corrected September 18, 2012

Senator Tom Apodaca
Chairman
Legislative Research Commission
North Carolina State Senate
16 W. Jones Street, Room 2010
Raleigh, NC 27601-2808

Representative Tim Moore
Chairman
Legislative Research Commission
North Carolina House of Representatives
16 W. Jones Street, Room 1326
Raleigh, NC 27601-2808

Dear Senator Apodaca and Representative Moore:

Pursuant to G.S. 120-30.13, as enacted in Section 66.7(b) of S.L. 2012-194, Senator Apodaca is designated as the Senate Cochair of the 2011-2012 Legislative Research Commission ("Commission"). Representative Moore is designated as the House Cochair of the Commission.

As you prepare your agenda for the Commission, pursuant to G.S. 120-30.17, we authorize the Commission to appoint the following Study Committees and Advisory Subcommittees to study the following matters and to refer one study to a state agency. The Cochairs and appointees to each Committee are also identified. Please restrict each study committee and advisory subcommittee to a maximum of four meetings unless additional meetings are pre-approved by our offices.

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3. Appropriate changes in state law that ensure patient access to pathological materials that are needed to obtain and evaluate the patient's medical needs and legal rights while also balancing pathology laboratories' duties to comply with federal and state licensure laws and regulations, patient care responsibilities, risk management obligations, and other relevant issues;
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While conducting this study the Committee shall consult:

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4. Pathologists responsible for the management of pathology laboratories;
5. Persons responsible for providing legal advice to mangers of pathology laboratories; and
6. Any other person or persons the Committee deems appropriate.

Senate Members		**House Members**	
Sen. Goolsby	Chair	Rep. Murray	Chair
Sen. Brunstetter	Member	Rep. Brisson	Member
Sen. Brock	Member	Rep. Jones	Member
Sen. Pate	Member	Rep. McGrady	Member
Sen. Purcell	Member	Rep. Stevens	Member

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Sen. Brown	Member	Rep. Brown	Member
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Sen. Hartsell	Member	Rep. Wray	Member

Career and Technical Education – The LRC Study Committee on Career and Technical Education shall study the following aspects of the current State vocational training to improve the quality and relevance of training, align basic education and vocational and higher education training and ensure that students who are not college bound are career ready. Specifically, the Committee shall study the following:

1. The requirements and challenges North Carolina high school graduates face in today's changing and demanding job market. The study should include a review of what North Carolina industries look for in well-qualified candidates for employment as it pertains to education, certification, and skill level;
2. The Career and College Promise program, specifically the Career and Technical Education Pathway and the Cooperative Innovative High School Pathway, to determine if the program is meeting the unique needs of students seeking to enter the workforce after completing high school. The study should include a review of the career clusters and pathways, work-based learning, career academies, time-shortened programs, and certification and credentialing offered to determine if they meet the current needs of North Carolina's students and business community. The study should also examination current outreach and practices to raise student awareness of Career and Technical Education opportunities;
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4. Article 10 of Chapter 115C of the North Carolina General Statues as it pertains to vocational and technical education to determine if modification is necessary to best reflect the intent of the General Assembly and provide the necessary opportunities and flexibility to establish innovative learning environments that provide students with practical work experiences and vocational skills;
5. Additional, cost-effective ways in which the Department of Public Instruction, North Carolina Community College System, and the business community can partner to offer enriched educational opportunities for students to enter the workforce with academic and marketable vocational skills after completing high school;
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Sen. Brown	Co-Chair	Rep. Holloway	Chair
Sen. Tillman	Co-Chair	Rep. Blackwell	Member
Sen. ~~Hise~~ Tucker	Member	Rep. Blust	Member
Sen. McKissick	Member	Rep. Cotham	Member
Sen. Soucek	Member	Rep. Langdon	Member

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1. Available forms of digital learning environments in public schools by comparing the cost, infrastructure, technology, maintenance, usability, savings, effectiveness and demonstrated student outcomes associated with various digital learning models found in North Carolina as well as other states like Florida, Arizona, California, Maine, and Texas.
2. Parts 3 and 3A of Article 8 of Chapter 115Cof the North Carolina General Statutes as they pertain to school technology to determine if modifications are necessary to best reflect the intent of the General Assembly and provide the necessary opportunities and flexibility to establish digital learning environments in public schools.
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Sen. Graham	Member	Rep. Lucas	Member
Sen. Hise	Member	Rep. Saine	Member
Sen. Rucho	Member	Rep. H. Warren	Member
Sen. Nesbitt	Member	Rep. Brandon	Member

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Wetland and Stream Mitigation – The LRC Advisory Subcommittee on Wetland and Stream Mitigation shall study issues related to the overall policies and roles of agencies within State government, the federal government, and the private sector to plan, construct and monitor wetland and stream mitigation. The Advisory Subcommittee may specifically study the following items:

1. The process for annual adjustments of Ecosystem Enhancement Program fees, including whether the use of the Civil Works Construction Cost Index System published by the U.S. Army Corps of Engineers as a basis for fee escalation is necessary given the past direction of the General Assembly to base program fees on actual costs;
2. Whether compensatory mitigation should be allowed any hydrologic area located in the same river basin as the site being mitigated. For purposes of this study, the terms "compensatory mitigation" and "hydrologic area" are as defined in G.S. 143-214.11;

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5. Whether the North Carolina Department of Transportation should purchase its stream and wetland mitigation credits from an approved mitigation bank within the private sector where available;
6. Whether the State should consider assuming the Clean Water Act Section 404 permitting role from the federal government;
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Cc: George Hall, Legislative Services Officer

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE RESEARCH COMMISSION

STATE LEGISLATIVE BUILDING

RALEIGH, NC 27601

August 23, 2012

Senator Tom Apodaca
Chairman
Legislative Research Commission
North Carolina State Senate
16 W. Jones Street, Room 2010
Raleigh, NC 27601-2808

Representative Tim Moore
Chairman
Legislative Research Commission
North Carolina House of Representatives
16 W. Jones Street, Room 1326
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Rep. Thom Tillis
Speaker of the House of Representatives

Cc: George Hall, Legislative Services Officer

RULES FOR THE
2011-12 LEGISLATIVE RESEARCH COMMISSION

[Adopted September 14, 2011]
Proposed Revisions, August 23, 2012

1. **Legislative Research Commission; member; ~~cochairmen~~Cochairmen and designees; terms.**—As provided by statute, the Legislative Research Commission (hereinafter referred to as "Commission") shall consist of five Senators appointed by the President Pro Tempore of the Senate and five Representatives appointed by the Speaker of the House. The President Pro Tempore and the Speaker shall be ex officio members of the Commission and shall serve as the Cochairmen of the Commission. Each Cochairman, respectively, may select a legislator to serve as a Cochairman designee.~~appoint an acting chairman to act in his stead in all respects under these Rules, subject to applicable law (each, an "Acting Chairman")~~. Where applicable law requires the action of the ~~Chairmen,~~ Cochairmen, the ~~Acting Chairmen~~Cochairmen designees shall make nonbinding recommendations to the respective ~~Chairmen~~ Cochairmen for final action. The ~~Cochairmen, or the Acting Chairmen as the case may be,~~ Cochairmen or Cochairmen designees shall set the agenda for the Commission's meetings. ~~and shall have the authority, in~~ In the absence of a Commission meeting, the Cochairmen shall have the authority to allocate funds, to modify allocations of funds to the Commission's advisory committees (hereinafter referred to as "committees"), to direct studies to be conducted, and to request another State agency, board, commission or committee to undertake a study authorized by the Commission.

2. **Areas of ~~study, duties of Commission members~~study.**—The Commission shall determine which of the subjects the Cochairmen have authorized to be studied ~~it is authorized to study~~ shall be funded and which the Commission shall request a more appropriate Study agency to study pursuant to G.S. 120-30.17(9). ~~The subjects that the Commission decides to study shall be apportioned by the Cochairmen into ten areas of study, and each Commission member shall be designated by the Cochairmen to be responsible for the committees that are appointed to study the subjects in his study area. In this context, the duties of each Commission member include:~~

~~(a) Assuring that each study is conducted within its budget and within the timetables set forth in these rules;~~

~~(b) Requesting that additional funds be allocated by the Commission Cochairmen or the full Commission if the funds are necessary to complete a study;~~

~~(c) Presenting to the Commission at its meetings a review of the progress and financial condition of the committees under the member's charge and the reports of those committees;~~

~~(d) Generally serving as a liaison between the Commission and the committees for which the member is responsible.~~

3. **Committees; committee ~~cochairmen;~~ Cochairmen; members.**—As provided by statute, the Cochairmen may appoint committees to conduct the studies that the Commission is authorized to undertake. The composition of each committee is at the discretion of the Commission Cochairmen, as advised by the ~~Acting~~

~~Chairmen~~Cochairmen designees. The Commission Cochairmen shall appoint the committee chairs.

Upon agreement between the cochairmen or chairman of each committee, either or both ~~of them~~ shall call the meetings of ~~their~~ the committee, set the agendas for the meetings, and preside over the meetings. Other duties of the committee ~~cochairmen~~ chairs include voting on all questions before ~~their committees~~ the committee and signing and transmitting all reports of ~~their~~ the committee to the Commission Cochairmen. ~~The cochairmen should develop their agenda to insure that each committee meeting lasts not less than four hours.~~

4. **Procedure before the Commission and its committees.—**

(a) **Commission meetings and presiding officer.** Commission meetings shall be called by both Cochairmen or by both Cochairmen designees. The Speaker, or the Speaker's ~~Acting~~ Chairman designee, shall preside over Commission meetings in odd-numbered years, and the President Pro Tempore, or President Pro Tempore's ~~Acting~~ Chairman designee, shall preside in even-numbered years. A Commission Cochairman or Cochairman designee may preside at any time (1) during the absence of the presiding Cochairman or Cochairman designee or (2) upon the presiding Cochairman's ~~designation~~or Cochairman designee's request.

(b) **Scheduling and notice of meetings.** The scheduling of meetings of the Legislative Research Commission and its committees wherever held, shall be coordinated through the Legislative Services Office. Notice of meetings of the Commission and its committees ~~shall be posted on the press room door and delivered to the Legislative Services Office as early as possible prior to the meeting. The Legislative Services Office shall publish the official notice for meetings of this Commission and its committees.~~shall be given by regular or electronic mail to those who have requested notice, and to the Legislative Services Office, which shall post the notice on the General Assembly web site. Any modification to the meeting schedule, as published, shall be ~~made through that Office~~ noticed as soon as possible. Committees shall limit the number of meetings to no more than four (4) prior to the reconvening of the 2012 Session of the 2011 General Assembly and four (4) prior to the convening of the 2013 General Assembly, unless additional meetings are approved in advance by the Commission Cochairmen. Only those committees specifically authorized by the Cochairmen and approved for funding by the Commission following adjournment sine die may meet during the period following adjournment sine die of the 2011 General Assembly and prior to January 4, 2013 ~~The Commission Cochairmen shall direct the Acting Chairmen as to the number of committee meetings that may be held after the adjournment sine die of the 2011 General Assembly~~.

(c) **Quorum.** As provided by statute, eight members, including ~~ex officio members~~ the Commission Cochairmen or Cochairmen designees, shall constitute a quorum of the Commission. With respect to any ~~committee~~ committee, a majority of the committee shall constitute a quorum of the committee.

(d) **Voting.** All questions before the Commission or any committee shall be

determined by a simple majority of the members present and voting. A two- thirds (2/3) vote of the members present shall ~~by~~ be necessary to sustain any appeal from a ruling by the presiding officer.

(e) **Closed sessions.** The Commission or any committee can hold ~~an~~ a closed session only as provided by law.

(f) ~~**Review of Committees' progress.** The Commission members shall review for the Commission the progress and financial condition of the committees under each member's charge. These reviews shall occur at the Commission meetings upon the call of the cochairs.~~

5. **Members' terms, compensation, and duties.**—As provided by statute, Commission and committee members' terms shall begin on the day of appointment and shall end on January 15, 2013. The Commission shall hold its final meeting prior to that date. As provided by statute, Commission and committee members shall be compensated as follows: All Commission and committee members who are members of the General Assembly are eligible to receive a travel allowance of twenty-nine (29¢) per mile for transportation by privately owned automobile and actual fare for any other conveyance. All others will receive mileage at the rate approved by the Office of State Budget and Management. The reimbursement to Commission and committee members for any mode of travel in-State shall not exceed the cost of travel by privately-owned automobile plus cost not exceeding one extra day per diem.

Members of the General Assembly shall receive a subsistence allowance of one hundred and four dollars ($104.00) per day. Committee members who are not members of the General Assembly or State officers or employees shall receive compensation at the rate of fifteen dollars ($15.00) per day. All non-legislator committee members shall receive a maximum subsistence allowance for each day of service of eighty-one dollars ($81.00) when travelling in-State and ninety-three dollars ($93.00) a day when travelling out-of-State. Costs of overnight lodging must be documented. All members, including committee members who are not legislators, shall vote on all questions before the Commission or committee. When attending a meeting each member should sit with the Commission or committee for at least three quarters of the time during which the Commission or committee is in session.

6. **Staff.**—Clerical assistance for the Commission and committees shall be determined and assigned by the Commission Cochairmen. The Director of Research shall coordinate the professional staffing of the committees by Legislative Services Office personnel or outside consultants, subject to the approval of the Commission Cochairmen. The costs of travel by a staff member on behalf of a committee shall be paid from the appropriate committee budget as approved by the ~~cochairmen~~ Cochairmen of the Commission. Committee clerks shall be authorized to work up to five days for each committee meeting, including the day of the meeting; provided that the Commission member responsible for the study shall be authorized, after consultation with either Commission Cochairman, to approve additional work time as the member deems to be necessary. Committee clerks shall remain under the supervision and control of the supervisor of clerks of the respective house.

7. **Reports of committees.—**

(a) **Adoption by committee.** If a committee is to make recommendations to the Commission, the committee cochairmen shall ~~insure~~ ensure that a draft of the committee report is sent to the committee members and any person designated by the Commission Cochairmen or the Cochairmen designees ~~the Commission member responsible for the study~~ at least seven (7) days before the committee's meeting at which the report is to be approved. The actual text of the final report shall be adopted by the committee at its meeting prior to transmittal of the report to the Commission and shall include all recommended legislation. With the approval of the committee cochairmen, typographical errors may thereafter be corrected, but no other change may be made in the report by any individual or committee.

(b) **Transmittal to Commission.** Reports to the 2012 Session of the 2011 General Assembly shall be submitted to the Commission Cochairmen or Cochairmen designees not later than Friday, April 27, 2012. Final reports to the 2013 General Assembly shall be transmitted to the Commission Cochairmen or Cochairmen designees not later than Friday, January 4, 2013. ~~The committee cochairmen shall provide thirty (30) copies of each report to the Commission Cochairmen for distribution to the Commission members.~~ No committee shall meet after Friday, January 4, 2013.

(c) **Action by the Commission and transmittal to the General Assembly.** The Commission may accept for transmittal to the General Assembly the reports of its committees with whatever modifications to those reports the Commission deems to be appropriate. Such transmittals to the General Assembly are for its consideration of the recommendations of the committees and do not amount to endorsements of those recommendations.

(d) **Printing, distribution, and summaries of reports.** The Director of Research shall prepare a publication summarizing the activities and recommendations of the committees that are contained in the reports that are transmitted to the General Assembly. Copies of this summary shall be available upon request and the Director shall post the publication on the Commission website.~~distributed to all members of the General Assembly as soon as practicable after its printing.~~

2011-2012
LEGISLATIVE RESEARCH COMMISSION

REPORT TO THE 2011-2012
GENERAL ASSEMBLY OF NORTH CAROLINA
2012 SESSION

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AT THE COMMITTEE'S WEBSITE:
http://www.ncleg.net/committees/legislativeresearchcommission

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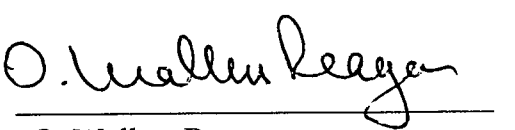
May 16, 2012

TO THE MEMBERS OF THE 2012 GENERAL ASSEMBLY:

The Legislative Research Commission directed its staff to prepare a final report outlining the work of its committees during the interim prior to the 2012 session. This report contains a brief summary of each committee's progress and describes the number of committee meetings, subjects studied, findings and recommendations.

These summaries were prepared by the staff to provide brief overviews of the committees' work. These summaries do not modify nor should they be considered as modifying any committee's report. The individual report by the Legislative Research Commission is authoritative. Copies of the Legislative Research Commission's reports may be obtained from the Legislative Library, Room 2126, State Legislative Building, Raleigh, North Carolina, 27611. (Telephone: 733-7778).

Respectfully Submitted,



O. Walker Reagan
Director of Research

2011-2012
LEGISLATIVE RESEARCH COMMISSION
MEMBERSHIP

G.S. 120-30.10 - 120-30.19

President Pro Tempore of the Senate

Sen. Philip E. Berger, Co-Chair
Room 2008
State Legislative Building
Raleigh, NC 27601
(919) 733-5708

Sen. Thomas M. Apodaca, Acting Co-Chair
Sen. Peter S. Brunstetter
Sen. Linda D. Garrou
Sen. Martin L. Nesbitt, Jr.
Sen. Richard Y. Stevens

Speaker of the House of Representatives

Rep. Thomas R. Tillis, Co-Chair
Room 2304
State Legislative Building
Raleigh, NC 27601
(919) 733-3451

Rep. Timothy K. Moore, Acting Co-Chair
Rep. John M. Blust
Rep. Justin P. Burr
Rep. Mike D. Hager
Rep. Edith D. Warren

Staff

Mr. O. Walker Reagan, Director
Research Division
Room 545
Legislative Office Building
Raleigh, NC 27603
(919) 733-2578

Clerks

Ms. Nancy Garriss
Staff to Rep. Timothy K. Moore

Ms. Carolyn Gooden
Staff to Sen. Thomas M. Apodaca

PREFACE

The North Carolina Legislative Research Commission is an interim study organization of the General Assembly. Authorized by North Carolina General Statutes § 120-30.10 through 120-30.18, the Commission undertakes studies by direction of resolutions from the preceding legislative session or by direction of the Commission Chairs.

The President Pro Tempore of the Senate and the Speaker of the House of Representatives chair the Commission. The chairs appoint five members from their respective houses. By tradition, the Commission has produced its studies working through committees responsible to Commission members and made up of other members of the General Assembly assisted by advisory members from outside the General Assembly.

ARTICLE 6B.

LEGISLATIVE RESEARCH COMMISSION.

§ 120-30.10. Creation; appointment of members; members ex officio.

(a) There is hereby created a Legislative Research Commission to consist of five Senators to be appointed by the President pro tempore of the Senate and five Representatives to be appointed by the Speaker of the House. The President pro tempore of the Senate and the Speaker of the House shall be ex officio members of the Legislative Research Commission. Provided, that when the President of the Senate has been elected by the Senate from its own membership, then the President of the Senate shall make the appointments of the Senate members of the Legislative Research Commission, shall serve ex officio as a member of the Commission and shall perform the duties otherwise vested in the President pro tempore by G.S. 120-30.13 and 120-30.14.

(b) The cochairmen of the Legislative Research Commission may appoint additional members of the General Assembly to work with the regular members of the Research Commission on study committees. The terms of the additional study committee members shall be limited by the same provisions as apply to regular commission members, and they may be further limited by the appointing authorities.

(c) The cochairmen of the Legislative Research Commission may appoint persons who are not members of the General Assembly to advisory subcommittees. The terms of advisory subcommittee members shall be limited by the same provisions as apply to regular Commission members, and they may be further limited by the appointing authorities. (1965, c. 1045, s. 1; 1975, c. 692, s. 1.)

§ 120-30.11. Time of appointments; terms of office.

Appointments to the Legislative Research Commission shall be made not earlier than the close of each regular session of the General Assembly held in the odd-numbered year nor later than 15 days subsequent to the close. The term of office shall begin on the day of appointment, and shall end on January 15 of the next odd-numbered year. No moneys appropriated to the Legislative Research Commission may be expended for meetings of the Commission, its committees or subcommittees held after January 15 of the next odd-numbered year and before the appointment of the next Legislative Research Commission. (1965, c. 1045, s. 2; 1975, c. 692, s. 2; 1977, c. 915, s. 4; 1981, c. 688, s. 19; 1983, c. 63, s. 1; 1983 (Reg. Sess., 1984), c. 1034, s. 178; 1991 (Reg. Sess., 1992), c. 900, s. 16.)

§ 120-30.12. Vacancies.

Vacancies in the appointive membership of the Legislative Research Commission occurring during a term shall be filled for the unexpired term by appointment by the officer who made the original appointment. Vacancies in the ex officio membership shall be filled for the unexpired term by election by the remaining members of the Commission. Every vacancy shall be filled by a member of the same house as that of the person causing the vacancy.

If for any reason the office of President pro tempore of the Senate becomes vacant, the five Senate members of the Legislative Research Commission shall elect one of their own number to perform and exercise the duties imposed and powers granted pursuant to this Article, and such Senator so elected shall serve until the Senate shall elect a President pro tempore. If for any

reason the office of Speaker of the House of Representatives becomes vacant, the five members of the House of Representatives of the Legislative Research Commission shall elect one of their own number to perform and exercise the duties imposed and powers granted pursuant to this Article, and such member of the House of Representatives so elected shall serve until the House of Representatives shall elect a Speaker. (1965, c. 1045, s. 3; 1969, c. 1037.)

§ 120-30.13. Cochairmen; rules of procedure; quorum.

The President pro tempore of the Senate and the Speaker of the House shall serve as cochairmen of the Legislative Research Commission. The Commission shall adopt rules of procedure governing its meetings. Eight members, including ex officio members, shall constitute a quorum of the Commission. (1965, c. 1045, s. 4.)

§ 120-30.14. Meetings.

The first meeting of the Legislative Research Commission shall be held at the call of the President Pro Tempore of the Senate in the State Legislative Building or in another building designated by the Legislative Services Commission. Thereafter the Commission shall meet at the call of the chairmen. Every member of the preceding General Assembly has the right to attend all sessions of the Commission, and to present his views at the meeting on any subject under consideration. (1965, c. 1045, s. 5; 1981, c. 772, s. 1.)

§ 120-30.15. Repealed by Session Laws 1969, c. 1184, s. 8.

§ 120-30.16. Cooperation with Commission.

The Legislative Research Commission may call upon any department, agency, institution, or officer of the State or of any political subdivision thereof for such facilities and data as may be available, and these departments, agencies, institutions, and officers shall cooperate with the Commission and its committees to the fullest possible extent. (1965, c. 1045, s. 7.)

§ 120-30.17. Powers and duties.

The Legislative Research Commission has the following powers and duties:

(1) Pursuant to the direction of the General Assembly or either house thereof, or of the chairmen, to make or cause to be made such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner.

(2) To report to the General Assembly the results of the studies made. The reports may be accompanied by the recommendations of the Commission and bills suggested to effectuate the recommendations.

(3), (4) Repealed by Session Laws 1969, c. 1184, s. 8.

(5), (6) Repealed by Session Laws 1981, c. 688, s. 2.

(7) To obtain information and data from all State officers, agents, agencies and departments, while in discharge of its duty, pursuant to the provisions of G.S. 120-19 as if it were a committee of the General Assembly.

(8) To call witnesses and compel testimony relevant to any matter properly before the Commission or any of its committees. The provisions of G.S. 120-19.1

through G.S. 120-19.4 shall apply to the proceedings of the Commission and its committees as if each were a joint committee of the General Assembly. In addition to the other signatures required for the issuance of a subpoena under this subsection, the subpoena shall also be signed by the members of the Commission or of its committee who vote for the issuance of the subpoena.

(9) For studies authorized to be made by the Legislative Research Commission, to request another State agency, board, commission or committee to conduct the study if the Legislative Research Commission determines that the other body is a more appropriate vehicle with which to conduct the study. If the other body agrees, and no legislation specifically provides otherwise, that body shall conduct the study as if the original authorization had assigned the study to that body and shall report to the General Assembly at the same time other studies to be conducted by the Legislative Research Commission are to be reported. The other agency shall conduct the transferred study within the funds already assigned to it. (1965, c. 1045, s. 8; 1969, c. 1184, s. 8; 1977, c. 915, s. 3; 1981, c. 688, s. 2; 1983, c. 905, s. 7; 1985, c. 790, s. 7.)

§ 120-30.18. Facilities; compensation of members; payments from appropriations.

The facilities of the State Legislative Building, and any other State office building used by the General Assembly, shall be available to the Commission for its work. Members of the General Assembly serving on the Legislative Research Commission or its study committees shall be reimbursed for travel and subsistence expenses at the rates set out in G.S. 120-3.1. Advisory subcommittee members shall be reimbursed and compensated at the rates set out in G.S. 138-5 (public members) and G.S. 138-6 (State officials or employees). All expenses of the Commission shall be paid from funds appropriated for the Commission. (1965, c. 1045, s. 9; 1975, c. 692, s. 3; 1981, c. 772, s. 2.)

§§ 120-30.19 through 120-30.23. Reserved for future codification purposes.

Legislative Research Commission Study Committees
Authorized and Funded September 15, 2012

Joint Membership Committees

1. **North Carolina Alcoholic Beverage Control System**—Study the following aspects of the current State and local alcoholic beverage control (ABC) in North Carolina:

   (1) Whether the involvement in the distribution and sale of spirituous liquor is a core government function of State and local government.

   (2) The privatization and divestiture of the ABC system, including potential recurring and nonrecurring revenue from the divestiture of the ABC system's current assets.

   (3) A comparison of the North Carolina ABC system with other similarly situated states that have recently privatized or studied the privatization of their ABC systems, including the states of Ohio and Virginia.

   (4) The impact that privatizing the wholesale and retail components of the distribution of spirituous liquor would have on:

      a. State and local revenues used for providing core services;
      b. Mental health and substance abuse services;
      c. Underage drinking;
      d. Consumer access to spirituous liquor in both urban and rural areas; and
      e. Product availability.

   (5) The potential for phasing out of local governments from the operation of the retail distribution of spirituous liquor.

   (6) An analysis of local ABC Boards and local governments that may benefit from divestiture of the ABC system.

   (7) A comparison of the current excise taxes and bailment fees applied to spirituous liquor in North Carolina versus other states.

Committee Membership

Senate Members		House Members	
Sen. Neal Hunt	Co-Chair	Rep. James "Jamie" Boles	Co-chair
Sen. Don East	Member	Rep. Marian McLawhorn	Member
Sen. Clark Jenkins	Member	Rep. Edgar Starnes	Member
Sen. Wesley Meredith	Member	Rep. Harry Warren	Member

2. **Efficiencies in State Government**—Study additional uses of analytics to increase efficiencies across all areas of State government, including performance management; waste, fraud, and abuse; outcome management; and outsourcing.

Committee Membership

Senate Members		House Members	
Sen. Ralph E. Hise, Jr.	Co-Chair	Rep. Hugh Blackwell	Co-chair
Sen. Bob Atwater	Member	Rep. Marilyn Avila	Member
Sen. Andrew Brock	Member	Rep. James Crawford	Member
Sen. Dan Soucek	Member	Rep. Mike D. Hager	Member

3. **In Home and Community Based Mental Health Services for Youth** – Study the development and implementation of a demonstration program for mental health providers providing in home and community based services to youth up to age 20 under the State Medicaid program, the purpose of which is to establish reimbursement and regulatory flexibility for providers that demonstrate beneficial outcomes for Medicaid recipients served.

Committee Membership

Senate Members		House Members	
Sen. Fletcher L. Harsell, Jr.	Co-Chair	Rep. Mark W. Hollo	Co-chair
Sen. Austin M. Allran	Member	Rep. William D. Brisson	Member
Sen. Stan Bingham	Member	Rep. Justin P. Burr	Member
Sen. Martin Nesbitt	Member	Rep. Pat B. Hurley	Member
Sen. Tommy Tucker	Member	Rep. Verla Insko	Member

4. **Retitling of Manufactured Homes Removed from Property**—Study ways to clarify the retitling of a manufactured home that is removed from real property after the original title has been cancelled.

Committee Membership

Senate Members		House Members	
Sen. Thom Goolsby	Co-Chair	Rep. Mark K. Hilton	Co-chair
Sen. Warren Daniel	Member	Rep. Mitch Gillespie	Member
Sen. Kathy Harrington	Member	Rep. Annie Mobley	Member
Sen. Bill Rabon	Member	Rep. Timothy K. Moore	Member
Sen. Michael P. Walters	Member	Rep. Jason Saine	Member

5. **Property Insurance Rate Making**—Study the adequacy of citizen input in property insurance rate making and the manner in which property insurance rates are proposed, reviewed, approved, and appealed. Specifically, the subcommittee may study the following:

(1) The feasibility and advisability of replacing the North Carolina Rate Bureau with a market based rate-setting system or with a regulatory commission similar to the North Carolina Utilities Commission.

(2) The adequacy under current law of legislative oversight of the Rate Bureau, the North Carolina Joint Underwriting Association, and the North Carolina Insurance Underwriting Association.

(3) The adequacy under current law of Commissioner of Insurance duties pertaining to protection of policyholders and the public against the adverse effects of excessive, inadequate, or unfairly discriminatory rates.

(4) Whether North Carolina citizens and policyholders should be given a voice in rate appeals under G.S. 58-2-80 through creation of a board or office independent of the Commissioner with standing to advocate on behalf of citizens and policyholders.

(5) The adequacy of the review process afforded by G.S. 58-36-1(2) to persons affected by a rate or loss costs made by the Rate Bureau.

(6) Whether information provided to the public by the Commissioner and the Rate Bureau is adequate to allow reasoned review by interested citizens of the assumptions, modeling, and processes used in setting rates.

Committee Membership

Senate Members		House Members	
Sen. Harry Brown	Co-Chair	Rep. Jerry C. Dockham	Co-chair
Sen. Tom Apodaca	Member	Rep. Frank Iler	Member
Sen. Ralph E. Hise	Member	Rep. Jonathan Jordan	Member
Sen. Wesley Meredith	Member	Rep. Pat McElraft	Member
Sen. Stan M. White	Member	Rep. Michael H. Wray	Member

6. **Municipal Power Agency Relief** – Study potential options to provide relief to customers of the joint municipal power agencies from high electric rates, including:

(1) The feasibility of refinancing or restructuring the debt of the power agencies.

(2) The feasibility of selling assets of the municipalities or the power agencies to lower electric rates or the total amount of debt.

Committee Membership

Senate Members		House Members	
Sen. E. S. "Buck" Newton	Co-Chair	Rep. Jeffrey L. Collins	Co-chair
Sen. Andrew Brock	Member	Rep. Bill Brawley	Member
Sen. Eric Mansfield	Member	Rep. Jimmy Dixon	Member
Sen. Wesley Meredith	Member	Rep. Bill Owens	Member
Sen. Bob Rucho	Member	Rep. Paul Stam	Member

7. **Marine Fisheries**—Study issues relating to marine fisheries. Specifically, the subcommittee may study the following:

(1) The potential impact to both the State's fisheries resources and the State's economy related to the designation of Red Drum (Sciaenops ocellatus), Spotted Sea Trout (Cynoscion nebulosus), and Striped Bass (Morone saxatilis) as coastal game fish.

(2) Changes to the appointment process and qualification for membership on the North Carolina Marine Fisheries Commission.

(3) Creation of a hook and line commercial fishery.

(4) Elimination of the trawl boat fishery in North Carolina.

(5) Entering into reciprocal agreements with other jurisdictions with regard to the conservation of marine and estuarine resources; and regulating placement of nets and other sports or commercial fishing apparatus in coastal fishing waters with regard to navigational and recreational safety as well as from a conservation standpoint.

(6) Entering into agreements regarding the delegation of law enforcement powers from the National Marine Fisheries Service over matters within the jurisdiction of the Service.

(7) Potential modification of the Fisheries Reform Act of 1997.

(8) Whether Marine Fisheries should be a division of the Coastal Resources Commission or the Wildlife Resources Commission.

(9) Other findings that promote the allocation of the State's resources to the optimum use.

Committee Membership

Senate Members		House Members	
Sen. Harry Brown	Co-Chair	Rep. Darrell McCormick	Co-chair
Sen. Don East	Member	Rep. Bryan R. Holloway	Member
Sen. Thom Goolsby	Member	Rep. Dan W. Ingle	Member
Sen. Jean R. Preston	Member	Rep. Daniel F. McComas	Member
Sen. Bill Rabon	Member	Rep. Pat McElraft	Member
Sen. Tommy Tucker	Member	Rep. Ruth C. Samuelson	Member
Sen. Stan M. White	Member	Rep. Timothy L. Spear	Member

8. **Automobile Insurance Modernization**

(a) Study issues relating to the method and manner of establishing automobile insurance rates in North Carolina, to ensure consumers are receiving the fullest possible benefit from marketplace competition among insurers on pricing, product, and coverage options. The study may include, but is not limited to, review of the insurance regulatory systems in other states; model laws and recommendations of the National Association of Insurance Commissioners and the National Conference of Insurance Legislators, the North Carolina Rate Bureau, the North Carolina Reinsurance Facility, and the Safe Driver Incentive Program; current and proposed restrictions and regulations on automobile insurance pricing, underwriting, and related issues; the method and effectiveness of assuring voluntary and involuntary automobile insurance markets; and the effect of modernizing the automobile insurance regulatory system upon the revenues, expenses, and operations of the Department of Insurance and the State of North Carolina; and the use of electronic verification systems by law enforcement agencies and officers to electronically identify motor vehicles operating on the public streets and public vehicular areas without financial responsibility as required pursuant to G.S. 20-309.

(b) Study issues related to enforcement and administration of safety and emissions inspection requirements set forth G.S. 20-183.2, et seq. The study may include, but is not limited to, review of current penalties assessed against motor vehicle owners, safety inspection station licensees and emission inspection licensees; review of new technologies available to increase the efficiency and effectiveness of the Department of Motor Vehicles' enforcement of inspection requirements; and review of the appeals processes governing the issuance, suspension and revocation of any of safety and/or emissions licenses issued by the Division and any fines assessed thereby.

Committee Membership

Senate Members		House Members	
Sen. Tom Apodaca	Co-Chair	Rep. Fred F. Steen	Co-chair
Sen. Rick Gunn	Member	Rep. Justin Burr	Member
Sen. Ellie Kinnaird	Member	Rep. Susi H. Hamilton	Member
Sen. Bob Rucho	Member	Rep. Harry Warren	Member
		Rep. Jerry Dockham	Member

9. **Pretrial Release**—Study methods for achieving increased efficiencies and outcomes in the pretrial release process and procedures.

Committee Membership

Senate Members		House Members	
Sen. Bob Rucho	Co-Chair	Rep. N. Leo Daughtry	Co-chair
Sen. Doug Berger	Member	Rep. W. David Guice	Member
Sen. Harry Brown	Member	Rep. Timothy L. Spear	Member
Sen. Thom Goolsby	Member	Rep. Sarah Stevens	Member

10. **Mechanics Liens on Real Property**—Study issues related to mechanic's liens on real property in North Carolina, including ways to address "hidden" liens in real estate transactions, and any other issues the subcommittee deems relevant to the study.

Committee Membership

Senate Members		House Members	
Sen. Pete S. Brunstetter	Co-Chair	Rep. Sarah Stevens	Co-chair
Sen. Thom Goolsby	Member	Rep. Hugh Blackwell	Member
Sen. Kathy Harrington	Member	Rep. Bill Faison	Member
Sen. Josh Stein	Member	Rep. Paul Stam	Member

11. **Transition to Federal and Local Funding for Local Mass Transit**—Study issues related to the utilization of federal and local funding sources for local mass transit projects and the elimination of State funding for such projects.

Committee Membership

Senate Members		House Members	
Sen. Bob Rucho	Co-Chair	Rep. Marilyn Avila	Co-chair
Sen. Kathy Harrington	Member	Rep. Bill Brawley	Member
Sen. Neal Hunt	Member	Rep. Rodney W. Moore	Member
Sen. Clark Jenkins	Member	Rep. Timothy K. Moore	Member
Sen. Bill Rabon	Member	Rep. Tom Murry	Member

12. **Consolidation of Elections, Ethics and Lobbyist Registration Functions**—Study transfer of the authority, powers, duties and functions, records, personnel, property and budgets of the State Ethics Commission and the lobbying registration and lobbying enforcement authority, functions and budget of the Secretary of State to a new State Board of Elections and Ethics Enforcement.

Committee Membership

Senate Members		House Members	
Sen. Andrew Brock	Co-Chair	Rep. David Lewis	Co-chair
Sen. Pete Brunstetter	Member	Rep. Julia Howard	Member
Sen. Rick Gunn	Member	Rep. Grier Martin	Member
Sen. Martin Nesbitt	Member	Rep. Timothy K. Moore	Member
Sen. Bob Rucho	Member	Rep. Paul Stam	Member

Senate Membership Committees

1. **Retirement Benefits for Teachers and State Employees**—Study retirement and health benefits for teachers and State employees. As a part of its study, the Commission may examine issues related to:

(1) Whether the changing demographics among State employees require changes to the current defined benefit plan.

(2) Whether there is a need to establish a normal retirement age when retirement benefits are to begin.

(3) Whether the retirement plan should have a defined contribution component.

(4) Whether the current retirement plan serves the need to recruit and retain the best teachers and State employees.

(5) Any other issues the Subcommittee deems relevant to improvement of the retirement system.

Committee Membership

Senate Members		House Members	
Sen. Tom Apodaca	Chair		
Sen. Pete Brunstetter	Member		
Sen. Linda Garrou	Member		
Sen. Ralph E. Hise, Jr.	Member		
Sen. Wesley Meredith	Member		

2. **Consolidated Environmental Commission**—Study the desirability and the feasibility of consolidating the State's environmental policy making, rulemaking, and quasi-judicial functions into one comprehensive fulltime environmental commission, perhaps to be modeled after the North Carolina Utilities Commission. As part of this study, the subcommittee shall evaluate all issues that pertain to a consolidation of the roles and duties that the current multiple environmental boards, commissions, and councils have. The subcommittee shall also consider any one or more of the following issues:

(1) Whether a consolidated environmental commission should have its own fulltime staff.

(2) Whether a consolidated environmental commission would enhance the efficiency, objectivity, or fairness of environmental policymaking and regulation in North Carolina or reduce any unnecessary duplication.

(3) How a consolidated environmental commission would access the scientific expertise it would need to address the broad range of environmental subjects under its purview.

(4) What should be the number of commissioners to serve on such a commission, their qualifications, and their term length; how such commissioners should be appointed; and what should be the commission's duties?

(5) How such a commission and its staff would be funded.

(6) What is a reasonable timetable for creating and phasing in such a commission?

Committee Membership

Senate Members		House Members	
Sen. Don East	Chair		
Sen. Daniel Clodfelter	Member		
Sen. Brent Jackson	Member		
Sen. David Rouzer	Member		

3. **Reclaimed Water Issues**—Study issues regarding the use of reclaimed water, the current permitting requirements for the discharge of wastewater and reclaimed water, and possible revisions to the permitting system that shall help to accommodate and encourage the beneficial use of reclaimed water while protecting against any potential threat to the environment or public health resulting from the use, overflow, or discharge of reclaimed water.

Committee Membership

Senate Members		House Members	
Sen. Richard Y. Stevens	Chair		
Sen. Neal Hunt	Member		
Sen. Brent Jackson	Member		
Sen. Josh Stein	Member		

4. **Energy Policy Issues**—Study strategies that will increase energy production and efficiency within the State to develop a secure, stable, and predictable energy supply in order to facilitate economic growth, job creation, and expansion of business and industry opportunities in a way that protects and preserves the State's natural resources, cultural heritage, and quality of life. In doing so, the subcommittee may consider the following issues:

(1) Development of a regional, interstate offshore energy commission and/or compact between North Carolina, Virginia, South Carolina and other coastal states deemed relevant to accelerate geophysical exploration of the outer continental shelf, amend the US Department of the Interior's Five Year Leasing Plan to include the Atlantic coast, advocate proactively for federal revenue sharing for royalties and revenues generated from offshore leasing, exploration, and production (and how these monies should be allocated within the State); and recommend the reinstatement of the US Department of the Interior's Offshore Policy Committee that shall include members of the commission and/or compact discussed above.

(2) Potential legislative actions that can encourage or require the federal government to decrease or eliminate spent nuclear fuel stored on site within the State by using the funds collected from North Carolina electricity ratepayers through the Nuclear Waste Policy Act of 1982 to open the Yucca Mountain central nuclear waste repository in Nevada.

(3) The feasibility of developing a limited pilot project for shale gas exploration in Chatham, Lee, and Moore counties that shall include information gathered by the Department of Environment and Natural Resources as required in H242 and S709 if it becomes law.

(4) Review of the process(es) within North Carolina and other relevant states for the development of agronomic rates for nutrient application to non-edible, high-yield energy grasses and study potential options to increase the efficiency and regulatory consistency of these rates.

(5) Studying the feasibility of development of a market for clean natural gas (CNG) vehicles within the State that includes expansion of natural gas production, expansion of natural gas delivery infrastructure, conversion of a portion of the State motor fleet to CNG, flat motor fuel tax rates for CNG (and other alternative fuel) vehicles, encouragement of local government and industry to open fleet CNG fueling stations to public, and the development of tax or regulatory incentives for fleet conversions, refueling stations (home- or fleet-based), dedicated vehicle purchases, or CNG-related industry expansion within the State.

(6) Other potential pilot projects as the subcommittee finds relevant to the goals set forth above for traditional, renewable and alternative energy to increase exploration, development, production, and/or utilization.

Committee Membership

Senate Members		House Members	
Sen. Bob Rucho	Chair		
Sen. Harris D. Blake	Member		
Sen. Thom Goolsby	Member		
Sen. Bill Rabon	Member		
Sen. Michael Walters	Member		

House Membership Committees

1. **Third Party Sale of Electricity (HB 906 – Samuelson, Avila)**—The Legislative Research Commission shall study the feasibility and the desirability of authorizing sales of electricity by any third party that owns or operates the equipment of a renewable energy facility with two megawatts or less capacity when the renewable energy facility is located on a customer's property. This study shall focus on the obstacles that currently prevent these third-party sales of electricity from renewable energy resources and the possible solutions that address these obstacles. One major obstacle the Commission shall consider is whether the third party that owns or operates the equipment of a renewable energy facility is subject to being regulated as a public utility under Chapter 62 of the General Statutes unless legislation is enacted to exclude the third-party owner or operator of the on-site generating equipment from such regulation. In its study, the Commission may consider all of the following issues:

(1) Whether these third-party sales of electricity have the potential to substantially assist North Carolina in gaining greater energy security and energy independence through the use of indigenous resources available within the State.

(2) Whether these third-party sales of electricity have the potential to sufficiently address on-peak demand loads to result in lowering costs for utility customers and avoiding the need to build additional generating facilities.

(3) Whether the development of renewable energy in the State through third-party sales of electricity is likely to encourage private investment in new small scale generating facilities, thereby creating new property tax bases and creating new energy-related jobs throughout the State.

(4) Whether these third-party sales of electricity would promote the development of renewable energy in North Carolina by allowing competition in markets that heretofore have been closed to competition and served exclusively by an energy supplier assigned to serve such market.

(5) Any other issue the Commission considers relevant to its study.

Committee Membership

Senate Members		House Members	
		Rep. Ruth Samuelson	Chair
		Rep. Marilyn Avila	Member
		Rep. Ken Goodman	Member
		Rep. Mike Hagar	Member
		Rep. Fred Steen	Member

2. **Metropolitan Sewerage/Water System (HB 925 – Moffitt)**—The Legislative Research Commission shall study whether requiring large cities that have a municipal water system and that are located entirely within a Metropolitan Sewerage District to convey that water system to the district will improve the efficiency of providing public services. The Commission shall specifically examine House Bill 925, First Edition, 2011 Regular Session, and the following issues:

(1) Financial stability of the current independent systems on a historic basis and the anticipated financial stability of a combined system.

(2) Cost-benefit analysis of a combined system, including a review of assets and liabilities; personnel needs; equipment and infrastructure replacement schedules; facilities leased and owned; and fee schedules.

(3) Debt obligation.

(4) Taxpayer investments in the systems.

(5) Audit of current financials.
(6) Comparative analysis of the current system to existing public and private systems.
(7) Conservation and water efficiency practices.
(8) Best management practices.
(9) The disposition of property in Article 12 of Chapter 160A of the General Statutes as it relates to a conveyance of a water system.
(10) The transfer of permits when a water system is conveyed.
(11) Any local acts applicable to the city or metropolitan sewerage district.
(12) Other items the Commission deems relevant to the study.

Committee Membership

Senate Members		House Members	
		Rep. Tim Moffit	Chair
		Rep. Bill Brawley	Member
		Rep. William Brisson	Member
		Rep. Chuck McGrady	Member
		Rep. Tom Murry	Member

3. <u>Make Manufacture While Using Stolen IT an Unfair Act</u> (HB 672 – Steen, T. Moore, Wilkins)

Committee Membership

Senate Members		House Members	
		Rep. Tim Moore	Chair
		Rep. Marilyn Avila	Member
		Rep. Grey Mills	Member
		Rep. G.L. Pridgen	Member
		Rep. Edgar Starnes	Member

4. <u>Orderly and Expeditious Removal by Landlord of Personal Property of Deceased</u> (HB 493 – Howard)—The Committee may recommend changes to the General Statutes to provide for the orderly and expeditious removal by a landlord of the personal property of a decease tenant where the heirs are not readily identifiable or available to take possession of that personal property.

Committee Membership

Senate Members		House Members	
		Rep. Julia Howard	Chair
		Rep. John Blust	Member
		Rep. Kelly Hastings	Member
		Rep. Mark Hilton	Member
		Rep. Tim Moore	Member
		Rep. Shirley Randleman	Member
		Rep. Sarah Stevens	Member

5. **Incapacity to Proceed (HJR – Randleman, Hurley)**—The Legislative Research Commission may study the adequacy of the involuntary commitment process for a criminal defendant who lacks the capacity to proceed to trial. In its study, the Commission may consider the impact of current law on the limited resources of local law enforcement, hospitals, mental health facilities, and the State's court system while balancing the rights of the accused, victims, and the safety and the general welfare of the public. The Commission may also consider options for determining whether a defendant is likely to attain the capacity to proceed to trial in the foreseeable future and at what point in the process that determination should be made. The Commission shall evaluate the statutory option of taking dismissals in these types of cases for defendants who are charged with nonviolent crimes and for defendants who are charged with violent crimes, how often that option is used, and at what point and under what circumstances that option should be used. In addition, the Commission may consider all of the following: issues related to transportation, including the frequency, distance, and cost associated with the required psychiatric evaluations; duration of involuntary commitment for defendants found incapable of proceeding to trial pursuant to Article 56 of Chapter 15A of the General Statutes and involuntarily committed pursuant to Part 7 of Article 5 of Chapter 122C of the General Statutes; and any other issues the Commission considers relevant to this topic.

Committee Membership

Senate Members		House Members	
		Rep. Shirley Randelman	Chair
		Rep. Justin Burr	Member
		Rep. John Faircloth	Member
		Rep. Pat Hurley	Member
		Rep. Frank McGuirt	Member

6. **Life Cycle Cost Analysis (Murry)**—The Commission may study the implementation of revised policies on life cycle cost analysis including material cost indexing, open bidding for alternate pavement designs for all TIP projects that exceed $500,000 in pavement costs, and the 30 year design periods and 45 year analysis periods based upon actual historic schedules and costs.

Committee Membership

Senate Members		House Members	
		Rep. John Torbett	Chair
		Rep. Mark Hilton	Member
		Rep. Frank Iler	Member
		Rep. Richard Killian	Member
		Rep. Grey Mills	Member
		Rep. Tom Murry	Member

7. **Feasibility of Requiring Certain Reports to Be Filed Electronically (HB 346 – Randleman)**—The Commission may study the feasibility and applicability of requiring electronic filing of all reports required to be filed with the State Board of Elections under G.S. 163-278.9, regardless of the amount.

Committee Membership

Senate Members		House Members	
		Rep. David Lewis	Chair
		Rep. John Blust	Member
		Rep. Bert Jones	Member
		Rep. Shirley Randleman	Member
		Rep. Deborah Ross	Member

8. **Criminal Record Expunctions (HJR 760 – Rules)**—The Legislative Research Commission may study whether current law strikes an appropriate balance between an employer's need for access to accurate criminal history information about potential employees and the need for a person who committed a relatively minor offense in the distant past to obtain employment in spite of the person's criminal history. If the Legislative Research Commission finds that it may be possible to achieve a better balance between these interests, then the Legislative Research Commission may further consider what type of expunction procedure may be developed and implemented that addresses the interests and concerns of employers, but also affords some appropriate relief to persons with a relatively minor past criminal conviction. In its study, the Commission may consider all of the following:

(1) The effect of a person's criminal record with regard to a person's ability to obtain employment.

(2) The reasons that an employer may need to know about a potential employee's criminal record.

(3) What types of criminal records may or may not be relevant with regard to 24 certain types of employment.

(4) What criminal offenses, if any, it may be reasonable to allow to be expunged from a person's record, the time period or other criteria that should be used to determine whether it is appropriate to allow the expunction, and whether the offense should be completely erased from the criminal record so that the person has no criminal record, or retained but limit the accessibility of the record only for certain purposes.

(5) Any other issues the Commission considers relevant to this topic.

Committee Membership

Senate Members		House Members	
		Rep. Leo Daughtry	Chair
		Rep. John Blust	Member
		Rep. Rick Glazier	Member
		Rep. Tim Moore	Member
		Rep. Shirley Randleman	Member
		Rep. Tim Spear	Member
		Rep. Sarah Stevens	Member

9. **Contracting for Maintenance Services at Prison Facilities (HB 335 – Guice, Horn, Burr, Daughtry)**—The Commission may study the potential benefits and costs of contracting for maintenance services at prison facilities and report its findings to the 2013 Session of the General Assembly.

Committee Membership

Senate Members		House Members	
		Rep. David Guice	Chair
		Rep. Justin Burr	Member
		Rep. Leo Daughtry	Member
		Rep. D. Craig Horn	Member
		Rep. Timothy Spear	Member

10. **Designating Director of AOC as Custodian of Court Records (HB 859 – Boles)**—The Legislative Research Commission may study the issue of making the Director of the Administrative Office of the Courts a custodian of court records for public records purposes and making court records public records and available to third parties upon request and payment of the reproduction costs. As a part of its study, the Commission shall review the issues raised by the first edition of House Bill 859, 2011 Regular Session.

Committee Membership

Senate Members		House Members	
		Rep. James "Jamie" Boles	Chair
		Rep. John Blust	Member
		Rep. Shirley Randleman	Member
		Rep. Timothy Spear	Member
		Rep. Sarah Stevens	Member

11. **Drivers Education Requirements (Boles)**—The Legislative Research Commission shall study the desirability of requiring all drivers to complete an approved driver education course before being issued a North Carolina driver's license. The study shall also consider how the requirement would apply to a person moving into this State with a valid driver's license issued by another state.

Committee Membership

Senate Members		House Members	
		Rep. James "Jamie" Boles	Chair
		Rep. John Blust	Member
		Rep. Becky Carney	Member
		Rep. Brent Jackson	Member
		Rep. Darrel McCormick	Member

12. **Automatic Renewal Credit Card Contracts—The** Commission may study automatic renewal provisions in contracts that provide credit card or other payment system processing for merchants. The Commission is authorized to review current practices in the formation of these contracts, determine whether the current practices should be amended by law, and examine any other issue the Commission deems relevant to this study.

Committee Membership

Senate Members		House Members	
		Rep. Edgar Starnes	Chair
		Rep. William McGee	Member
		Rep. Tim Moffitt	Member
		Rep. Fred Steen	Member
		Rep. Michael Stone	Member

SUMMARIES OF REPORTING LRC STUDY COMMITTEES

I. AUTOMOBILE INSURANCE MODERNIZATION

Authority: G.S.120-30.17(1)

COMMITTEE MEMBERSHIP

President Pro Tempore of the Senate Appointments:

Senator Thomas Apodaca, Co-Chair

Senator Richard Gunn
Senator Eleanor Kinnaird
Senator Robert Rucho

Speaker of the House of Representatives Appointments:

Representative Fred Steen, Co-Chair

Representative Justin Burr
Representative Susi Hamilton
Representative Harry Warren
Representative Jerry Dockham

The Legislative Research Commission's (LRC) Committee on Automobile Insurance Modernization met four times after the 2011 Regular Session

At its first meeting, the Committee heard presentations regarding automobile insurance from representatives of the North Carolina Department of Insurance and the North Carolina Rate Bureau. Legislative staff also provided an overview of legislation introduced during the last session.

At its second meeting, the Committee heard several presentations given by insurance industry representatives and others.

At its third meeting, legislative staff provided a brief summary of the information received to date. After discussion and debate on the issue of reform, the Committee agreed not to recommend specific legislation, but to note areas in which there was agreement and recommend further study of this complicated issue. The Committee then turned to the issue of uninsured motorists and heard a presentation on new technology to detect and fine violators. Finally, the Committee heard a review of the law on diminished value.

At its fourth and final meeting prior to the 2012 Short Session, the Committee voted to approve its report and forward the report to the Legislative Research Commission.

RECOMMENDATIONS

Recommendation 1:

The Committee finds that proposals to reduce the population of the Reinsurance Facility and thereby reduce or eliminate the recoupment surcharge should be considered. Moreover, the Committee agrees that price competition between insurers benefits consumers and should be promoted. However, the Committee finds that reform of the current system should not create confusion among consumers or increase the number of uninsured drivers.

Understanding that this is a complex issue, the Committee recommends that the 2013 General Assembly build upon the information and proposals discussed in these meetings and enact legislation providing for a smooth and measured transition from the current system for automobile insurance rate regulation to a system more reliant on free market principles that reduces the population of the Facility, eliminates the need for the hidden recoupment surcharge, encourages competition, and also allows for more innovative products and benefits for the consumer.

Recommendation 2:

As noted in the Proceedings section of this report, at its meeting on March 6, 2012, the Committee heard presentations concerning the use of electronic verification systems as a means of identifying vehicles without the financial responsibility required pursuant to G.S. 20-309. It was explained in these presentations that technology currently in place in North Carolina, such as Automatic License Plate Recognition (ALPR) and the National Law Enforcement Technology System (NLETS), has the ability to combine with cutting-edge electronic verification technology and equipment for law enforcement agencies to enhance the detection of these uninsured motorists efficiently.

As reflected in the Committee's discussion of reforms to the automobile insurance system noted in Recommendation I of this report, uninsured motorists increase costs for all drivers in our State. The Committee finds that emerging technology to detect uninsured drivers may prove beneficial in addressing this problem and recommends that the General Assembly continue to monitor the development of technology to detect uninsured motorists.

Recommendation 3:

The Committee also discussed the issue of diminished value at its meeting on March 6, 2012. As explained at that meeting, the term "diminished value" refers to those situations in which a car has been damaged in an accident and then, after repair, the resale value of the vehicle is still less than if it had not been damaged. The damage results in a reduction or diminution in the resale value of the car.

The right to assert a third party claim of diminished value against another driver is recognized in North Carolina's common law, but does not exist in statute. For this reason, the Committee considered whether some insurers have been reluctant to compensate drivers for diminished value in third party claims. In such instances, often, drivers must aggressively pursue such claims to obtain relief.

The Committee finds that legislative action may be needed to improve the efficient and reasonable administration, payment, and processing of claims of diminished value and recommends that the General Assembly continue to study this issue, including the possible implementation of statutory provisions recognizing a claim of diminished value.

II. CRIMINAL RECORD EXPUNCTIONS

Authority: G.S. 120-30.17(1).

COMMITTEE MEMBERSHIP

Speaker of the House of Representatives Appointments:

Representative N. Leo Daughtry, Chair

Representative John Blust
Representative Richard Glazier
Representative Timothy Moore
Representative Shirley Randleman
Representative Timothy Spear
Representative Sarah Stevens

The Committee met two times.

At its initial meeting, Committee staff provided an overview of North Carolina laws pertaining to the expunction of criminal records. Committee members engaged in an open discussion of issues and concerns for consideration during the course of the Committee's deliberations. The Committee provided interested parties an opportunity to be heard on the issue.

At its final meeting, the Committee adopted its report to the Legislative Research Commission.

RECOMMENDATION

Legislative Proposal:

AN ACT TO PROVIDE FOR EXPUNCTION OF NONVIOLENT FELONIES OR NONVIOLENT MISDEMEANORS AFTER 15 YEARS FOR PERSONS WHO HAVE HAD NO OTHER CONVICTIONS FOR FELONIES OR MISDEMEANORS OTHER THAN TRAFFIC VIOLATIONS UNDER THE LAWS OF THE UNITED STATES, THIS STATE, OR ANY OTHER JURISDICTION.

III. EFFICIENCIES IN STATE GOVERNMENT

Authority: G.S. 120-30.17(1).

COMMITTEE MEMBERSHIP

President Pro Tempore of the Senate Appointments:

Senator Ralph Hise, Co-Chair

Senator Robert Atwater
Senator Andrew Brock
Senator Dan Soucek

Speaker of the House of Representatives Appointments:

Representative Hugh Blackwell, Co-Chair

Representative Marilyn Avila
Representative James Crawford
Representative Mike Hager

The Legislative Research Commission's Committee on Efficiencies in State Government met 4 times after the 2011 Regular Session. The Committee focused primarily on two areas within the scope of its charge—zero-based budgeting and data analytics—and ultimately recommended three pieces of legislation.

RECOMMENDATIONS

Legislative Proposal 1:

AN ACT TO ESTABLISH THE JOINT LEGISLATIVE EFFICIENCY AND COST-SAVINGS IN STATE GOVERNMENT STUDY COMMISSION AS RECOMMENDED BY THE LRC COMMITTEE ON EFFICIENCIES IN STATE GOVERNMENT.

Legislative Proposal 2:

AN ACT TO REQUIRE STATE AGENCIES AND CERTAIN NON-STATE ENTITIES TO DEVELOP, IMPLEMENT, AND MAINTAIN INFORMATION SYSTEMS THAT PROVIDE UNIFORM, PROGRAM-LEVEL ACCOUNTABILITY INFORMATION REGARDING THE PROGRAMS OPERATED BY THOSE AGENCIES AS RECOMMENDED BY THE LRC COMMITTEE ON EFFICIENCIES IN STATE GOVERNMENT.

Legislative Proposal 3:

AN ACT TO ESTABLISH ENTERPRISE-WIDE BUSINESS INTELLIGENCE AS A KEY COMPONENT OF ALL STATE GOVERNMENTAL OPERATIONS IN ORDER TO MAXIMIZE DATA INTEGRATION AND ANALYTICS, THEREBY YIELDING MORE EFFICIENT GOVERNMENT AND ADVANCING INNOVATION IN NORTH CAROLINA, AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION STUDY COMMITTEE ON EFFICIENCIES IN STATE GOVERNMENT.

IV. ENERGY POLICY ISSUES

Authority: G.S.120-30.17(1)

COMMITTEE MEMBERSHIP

President Pro Tempore of the Senate Appointments:

Senator Robert Rucho, Co-Chair

Senator Harris Blake
Senator Thom Goolsby
Senator William Rabon
Senator Michael Walters

The Legislative Research Commission's Committee on Energy Policy Issues met four times after the 2011 Regular Session. The Committee conducted a thorough review of energy policy issues during the 2011-2012 legislative interim including the receipt of over 25 presentations from many different local, State, and national expert speakers.

RECOMMENDATIONS

Legislative Proposal 1:

A JOINT RESOLUTION EXPRESSING THE OPINION OF THE GENERAL ASSEMBLY THAT THERE SHOULD BE A NATIONAL ENERGY POLICY THAT SUPPORTS THE RESPONSIBLE EXPLORATION FOR AND DEVELOPMENT OF DOMESTIC ENERGY RESOURCES, AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMITTEE ON ENERGY POLICY ISSUES.

Legislative Proposal 2:

AN ACT TO: (1) ESTABLISH AN OIL AND GAS BOARD WITH JURISDICTION AND AUTHORITY OVER MATTERS RELATED TO OIL AND GAS EXPLORATION AND DEVELOPMENT IN THE STATE, INCLUDING THE USE OF HORIZONTAL DRILLING AND HYDRAULIC FRACTURING FOR THAT PURPOSE, AND TO DIRECT THE BOARD TO CREATE A MODERN REGULATORY PROGRAM FOR MANAGEMENT OF OIL AND GAS EXPLORATION AND DEVELOPMENT IN THE STATE, INCLUDING THE USE OF HORIZONTAL DRILLING AND HYDRAULIC FRACTURING FOR THAT PURPOSE; (2) AUTHORIZE THE PROCESSES OF HORIZONTAL DRILLING AND HYDRAULIC FRACTURING FOR THE PURPOSE OF OIL AND GAS EXPLORATION AND DEVELOPMENT IN THE STATE, AND PLACE A

MORATORIUM ON PERMITTING RELATED TO THOSE PROCESSES UNTIL JULY 1, 2014; (3) ENACT VARIOUS OTHER PROVISIONS RELATED TO MANAGEMENT OF OIL AND GAS EXPLORATION ACTIVITIES, INCLUDING PROVISIONS RELATED TO LOCAL GOVERNMENT AUTHORITY OVER THESE ACTIVITIES; (4) ESTABLISH THE JOINT LEGISLATIVE COMMISSION ON ENERGY POLICY WITH LEGISLATIVE OVERSIGHT OF ALL MATTERS RELATED TO OIL AND GAS EXPLORATION AND DEVELOPMENT IN THE STATE, AND OTHER ENERGY-RELATED ISSUES; (5) DIRECT THE DEPARTMENT OF PUBLIC INSTRUCTION TO PURCHASE SCHOOL BUSES THAT OPERATE ON COMPRESSED NATURAL GAS (CNG); (6) DIRECT THE DEPARTMENT OF TRANSPORTATION TO PURCHASE NEW THREE-QUARTER (3/4) TON PICK UP TRUCKS AND NEW ONE-HALF (1/2) TON PICK UP TRUCKS THAT OPERATE ON COMPRESSED NATURAL GAS (CNG) OR COMPRESSED NATURAL GAS (CNG) AND GASOLINE; (7) CREATE AN INTERAGENCY TASK FORCE TO ESTABLISH PUBLIC-PRIVATE PARTNERSHIPS FOR THE CONSTRUCTION AND DEVELOPMENT OF COMPRESSED NATURAL GAS (CNG) FUELING INFRASTRUCTURE; (8) ESTABLISH CRITERIA FOR THE OPERATION OF ELECTRIC VEHICLE CHARGING STATIONS LOCATED AT STATE-OWNED REST STOPS ALONG THE HIGHWAYS; (9) ENSURE THE USE OF FUEL EFFICIENT AND COST EFFICIENT RETREAD TIRES ON STATE VEHICLES; AND (10) AMEND THE ENERGY JOBS ACT OF 2011 IF THE ENERGY JOBS ACT OF 2011 BECOMES LAW, AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION ENERGY ISSUES POLICY COMMITTEE.

Legislative Proposal 3:

AN ACT TO DIRECT THE DIVISION OF WATER QUALITY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, IN CONSULTATION WITH THE DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES, TO ADMINISTER A PILOT PROJECT OF LIMITED SCOPE FOR DETERMINING THE AGRONOMIC RATES FOR THE APPLICATION OF SWINE WASTE TO CERTAIN ENERGY CROPS IN NORTH CAROLINA IN ORDER TO PROMOTE FEEDSTOCK DEVELOPMENT AND EXPEDITE DATA COLLECTION FOR FINAL AGRONOMIC RATE DETERMINATIONS AND TO EXTEND THE SUNSET ON THE TAX CREDIT FOR CONSTRUCTING RENEWABLE FUEL FACILITIES FROM JANUARY 1, 2013 TO JANUARY 1, 2015.

V. INCAPACITY TO PROCEED

Authority: G.S.120-30.17(1)

COMMITTEE MEMBERSHIP

Speaker of the House of Representatives Appointments:

Representative Shirley Randleman, Co-Chair

Representative Justin Burr
Representative John Faircloth
Representative Pat Hurley
Representative Frank McGuirt

The Legislative Research Commission's Committee on Incapacity to Proceed met 4 times after the 2011 Regular Session. At each meeting, the Committee provided interested parties an opportunity to be heard on the issues and received public comment.

At its first meeting, the Committee heard presentations from staff regarding constitutional issues and the current statutory framework. Other speakers provided information regarding local issues and concerns.

In its second meeting, the Committee had a round-table discussion of various agencies' roles and interest in the incapacity to proceed process, any perceived problems, and potential solutions to those problems.

At its third meeting, the Committee focused on discussing proposed legislation and recommendations designed to make improvements in the capacity to proceed process.

RECOMMENDATIONS

Recommendation 1: Legislative Proposal

AN ACT TO AMEND THE LAWS GOVERNING INCAPACITY TO PROCEED AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION.

Recommendation 2:

The Committee recommends that the Committee on Justice and Public Safety study the possibility of mandating that all law enforcement officers have crisis intervention training in order to recognize mental health issues and to identify individuals with intellectual or developmental disabilities during period of transportation and custody and to interact with them appropriately.

Recommendation 3:

The Committee recommends that the Administrative Office of the Courts, in consultation with the School of Government, study whether defense attorneys, prosecutors and judges should be required to receive specific training on recognizing signs of mental illness and intellectual or developmental disabilities and dealing with defendants who may be incapable of proceeding, and report the results of that study to the Committee on Justice and Public Safety.

Recommendation 4:

The Committee recommends that the Joint Legislative Oversight Committee on Health and Human Services continue to study whether it would be appropriate and feasible to open forensic units specifically focused on evaluating and providing habilitative services for individuals with intellectual or developmental disabilities and specialized in the care of incarcerated individuals diagnosed with intellectual or developmental disabilities.

Recommendation 5:

The Committee recommends that the Joint Legislative Oversight Committee on Health and Human Services study the issue of transporting defendants who are being evaluated for determination of capacity to proceed, or who have been found incapable of proceeding. Possible issues to study include: (1) whether the same-gender transportation requirement of G.S. 122C-251 should be repealed; (2) whether it would be appropriate and feasible to develop a system where evaluators from the State facility could evaluate offenders charged with lower level felonies on-site in the county where the charges are pending as an alternative to transporting the offender to the State facility; and (3) whether forensic evaluators can be assigned to each of the three State psychiatric hospitals to minimize the transportation demands on local law enforcement agencies.

Recommendation 6:

The Committee recommends that the Joint Legislative Oversight Committee on Health and Human Services study whether individuals with serious mental health issues, intellectual or developmental disabilities, and lack of capacity to proceed should be released from jail to an appropriate mental health placement on a more expedited basis, and if so, the best method and process to facilitate that recommendation.

VI. IN-HOME AND COMMUNITY BASED MENTAL HEALTH SERVICES FOR YOUTH

Authority: G.S.120-30.17(1)

COMMITTEE MEMBERSHIP

President Pro Tempore of the Senate Appointments:

Senator Fletcher Hartsell, Co-Chair

Senator Austin Allran
Senator Stan Bingham
Senator Martin Nesbitt
Senator Tommy Tucker

Speaker of the House of Representatives Appointments:

Representative Mark Hollo, Co-Chair

Representative William Brisson
Representative Justin Burr
Representative Pat Hurley
Representative Verla Insko

The Legislative Research Commission's Committee on In-Home and Community Based Mental Health Services for Youth met four times and heard numerous presentations from state and local agencies, as well as some providers. The Committee made four recommendations.

RECOMMENDATIONS

Recommendation 1:

North Carolina should use State, federal, and other resources to maximize the availability of home and community-based mental health services for youths and their families.

Recommendation 2:

As the mental health service delivery system in North Carolina transitions to a behavioral health managed care environment, LMEs are encouraged to increase the availability and use of home and community-based child mental health services that evidenced-based and outcome driven.

Recommendation 3:

DHHS, in cooperation with the NC –TOPPS Taskforce, LMEs, and local providers, shall determine what data needs to be collected to track the outcomes of services, develop standardized measures for data collection, determine whether LMEs or providers will be responsible for collecting and maintaining the data, and how to make the data accessible to consumers so they can compare services.

Recommendation 4:

The Committee encourages all LMEs to explore, develop and utilize innovative programs based on evidence- and outcome-based practices that provide successful interventions and improve services for youth in an in-home or community based setting.

Recommendation 5:

The Committee recommends that the General Assembly direct the Department of Health and Human Services to develop criteria for the measurement of the effectiveness of LMEs' evidence- and outcome-based programs for youth, and to report to the General Assembly. The Committee further recommends that on an annual basis, the General Assembly review the effectiveness of various evidence- and outcome-based services and treatment programs to determine beneficial approaches towards achieving approved and desired outcomes for children served.

VII. LIFE CYCLE COST ANALYSIS

Authority: G.S. 120-30.17(1).

COMMITTEE MEMBERSHIP

Speaker of the House of Representatives Appointments:

Representative John Torbett, Chair

Representative Mitch Gillespie
Representative Mark Hilton
Representative Frank Iler
Representative Richard Killian
Representative P. Mills
Representative Tom Murry

The Legislative Research Commission's Committee on Life Cycle Cost Analysis met four times after the 2011 Regular Session.

At the first meeting, the Committee heard a presentation on the North Carolina Department of Transportation construction process.

At its second meeting, the Committee heard presentations from the Department of Transportation and businesses in the field of highway construction on highway contracting methods.

At its third meeting, the Committee heard presentations on life cycle costs and pavement.

At its fourth meeting, the Committee adopted a report

RECOMMENDATIONS

Legislative Proposal 1:

AN ACT TO AUTHORIZE A MARKET INTEREST RATE OF INTEREST ON DEPARTMENT OF TRANSPORTATION CONDEMNATION JUDGMENTS.

Legislative Proposal 2:

AN ACT TO DIRECT THE DEPARTMENT OF TRANSPORTATION AND THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO JOINTLY STUDY EXPEDITING WATER QUALITY REGULATION

MONITORING AND IMPLEMENTATION FOR TRANSPORTATION PROJECTS.

Continued Study:

The Committee recommends that the 2013 General Assembly create a new committee, or task an appropriate existing committee, to continue the Life Cycle Cost study of issues related to more effective and efficient construction of transportation projects in this State.

VIII. MARINE FISHERIES

Authority: G.S.120-30.17(1)

COMMITTEE MEMBERSHIP

President Pro Tempore of the Senate Appointments:

Senator Harry Brown, Co-Chair

Senator Don W. East
Senator Thom Goolsby
Senator Brent Jackson
Senator Jean R. Preston
Senator William P. Rabon
Senator Tommy Tucker
Senator Stanford M. White

Speaker of the House of Representatives Appointments:

Representative Darrell G. McCormick, Co-Chair

Representative Bryan R. Holloway
Representative Dan W. Ingle
Representative Daniel F. McComas
Representative Pat McElraft
Representative Tom Murry
Representative Ruth Samuelson
Representative Tim L. Spear

The Committee met four times after the 2011 Regular Session. It heard from a variety of state agencies and stakeholders. Legislative staff made multiple presentations. At its fourth meeting, the Committee adopted four recommendations.

RECOMMENDATIONS

Legislative Proposal 1:

AN ACT TO DIRECT THE EXECUTIVE DIRECTOR OF THE WILDLIFE RESOURCES COMMISSION, THE DIRECTOR OF THE DIVISION OF MARINE FISHERIES OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, AND THE COMMISSIONER OF AGRICULTURE TO JOINTLY STUDY THE REORGANIZATION OF FISH AND WILDLIFE MANAGEMENT IN THE STATE.

Legislative Proposal 2:

AN ACT TO DIRECT THE DIRECTOR OF THE DIVISION OF MARINE FISHERIES OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES AND THE EXECUTIVE DIRECTOR OF THE WILDLIFE RESOURCES COMMISSION TO JOINTLY STUDY FEES ASSOCIATED WITH THE ISSUANCE OF COASTAL FISHING LICENSES AND THE NUMBERING AND TITLING OF VESSELS.

Legislative Proposal 3:

AN ACT TO MAKE IT UNLAWFUL TO TAKE MENHADEN OR ATLANTIC THREAD HERRING WITH A PURSE SEINE NET DEPLOYED BY A MOTHER SHIP AND ONE OR MORE RUNNER BOATS IN COASTAL FISHING WATERS.

Legislative Proposal 4:

AN ACT TO ESTABLISH THE JOINT LEGISLATIVE COMMISSION ON FISH AND WILDLIFE.

IX. MECHANICS LIEN ON REAL PROPERTY

Authority: G.S. 120-30.17(1).

COMMITTEE MEMBERSHIP

President Pro Tempore of the Senate Appointments:

Senator Peter Brunstetter, Co-Chair

Senator Thom Goolsby
Senator Kathy Harrington
Senator Josh Stein

Speaker of the House of Representatives Appointments:

Representative Sarah Stevens, Co-Chair

Representative Hugh Blackwell
Representative Bill Faison
Representative Paul Stam

The Legislative Research Commission's Committee on Mechanics Lien on Real Property met three times after the 2011 Regular Session.

At its meetings, the Committee heard from various stakeholders on this complex topic and reviewed multiple drafts of proposed legislation. It also heard presentations from general contractors seeking changes in the law to avoid double payment liability.

RECOMMENDATIONS

The Committee recommended changes to Article 2 and Article 3 of Chapter 44A of the General Statutes, to address problems such as subcontractor claims of lien upon funds being impaired by decisions of federal bankruptcy courts interpreting current law, and prime contractors on public projects incurring double payment liability as a result of claims under payment bonds by subcontractors and suppliers whose participation in the project was unknown by the contractor when it made payments to first-tier subcontractors.

The Committee also recommended changes to clarify when a former owner of real property subject to a mechanics lien is a necessary party to an action to enforce the lien, and to improve the procedure by which a subdivided parcel of real property is released from a tax lien.

The Committee also recommended further study of the "hidden liens" issue.

The Committee made one legislative proposal:

Legislative Proposal:

AN ACT TO MAKE VARIOUS AMENDMENTS TO NORTH CAROLINA'S MECHANICS LIEN, TAX LIEN, AND PAYMENT BOND LAWS.

X. METROPOLITAN SEWERAGE/WATER SYSTEM

Authority: G.S. 120-30.17(1).

COMMITTEE MEMBERSHIP

Speaker of the House of Representatives Appointments:

Representative Tim D. Moffitt, Co-Chair
Representative William Brawley
Representative William Brisson
Representative Chuck McGrady
Representative Tom Murry

The Legislative Research Commission's Committee on Metropolitan Sewerage/Water System met four times after the 2011 Regular Session.

At its first meeting, the Committee heard a brief overview of the Sullivan Acts and history of the Asheville water system. It also heard from the State and Local Finance Division of the Department of State Treasurer regarding the financial status of the Asheville Water and Sewer System. It also received presentations from individuals from the Asheville area.

The Committee held its second meeting in the Virginia C. Boone Mountain Heritage Building of the Western North Carolina Agriculture Center in Fletcher, North Carolina. It heard from local officials and members of the public regarding regional water and sewer issues.

At its third meeting, the Committee heard from representatives of Buncombe County and Henderson County water systems on the local perspective of public water and sewer service.

At its fourth meeting, the Committee adopted four recommendations.

RECOMMENDATIONS

Recommendation 1:

The Committee recommends the Metropolitan Sewerage District Act be amended to:

1. Reflect population shifts in single-county districts.
2. Modify representation in multicounty districts.
3. Allow metropolitan sewerage districts to exercise the same authority as metropolitan water districts.

Recommendation 2:

After careful consideration of the information presented, the Committee recommends merging the Public Utility Water System with the Metropolitan Sewerage District of Buncombe County.

The benefits of combining the two utilities are undeniable. The benefits include, among numerous others, the following:

1. Each utility essentially serves the same residential, commercial and industrial customers;
2. Wastewater volumetric charges are directly linked to domestic water metered consumption;
3. Treatment of raw potable water and wastewater requires similar expertise, and similar interaction with Federal and State Authorities;
4. Economies of scale can be achieved in the areas of administration, planning and engineering; and
5. Single location for water and wastewater availability and planning.

The Committee recommends that the 2013 Session of the North Carolina General Assembly consolidate the Public Utility Water System with the Metropolitan Sewerage District of Buncombe County. Should the interested governments craft their own solution for consolidation, which achieves all the objectives of the Committee, before the 2013 North Carolina General Assembly convenes, due consideration would be given to the local plan. Action will not be taken if the parties are engaged in good-faith negotiations on this matter.

Recommendation 3:

The Committee recognizes the efforts of the Conservation Trust for North Carolina in protecting the drinking water in and around Asheville. It recommends that the Conservation Trust for North Carolina continue to work with the City of Asheville as the parties consider clarifying the 1996 Asheville Watershed Conservation Easement.

Recommendation 4:

Legislative Proposal

AN ACT TO AMEND THE NORTH CAROLINA METROPOLITAN SEWERAGE DISTRICTS ACT TO REFLECT POPULATION SHIFTS IN SINGLE-COUNTY DISTRICTS, TO MODIFY REPRESENTATION IN MULTICOUNTY DISTRICTS, AND TO ALLOW METROPOLITAN SEWERAGE DISTRICTS TO ALSO EXERCISE THE SAME POWERS AS METROPOLITAN WATER DISTRICTS, ALL AS RECOMMENDED BY THE

LEGISLATIVE RESEARCH COMMISSION'S METROPOLITAN SEWERAGE/WATER SYSTEM COMMITTEE.

XI. MUNICIPAL POWER AGENCY RELIEF

Authority: G.S.120-30.17(1)

COMMITTEE MEMBERSHIP

President Pro Tempore of the Senate Appointments:

Senator E.S. (Buck) Newton, Co-Chair
Senator Andrew Brock
Senator Eric Mansfield
Senator Wesley Meredith
Senator Robert Rucho

Speaker of the House of Representatives Appointments:

Representative Jeffrey Collins, Co-Chair
Representative William Brawley
Representative Jimmy Dixon
Representative William Owens
Representative Paul Stam

The Legislative Research Commission's Committee on Municipal Power Agency Relief met four times after the 2011 Regular Session.

At its first meeting, the Committee heard presentations on the history of the joint municipal power agencies and on the debt incurred by the joint municipal power agencies. The Committee also heard from local business leaders on the impact of the debt of the municipal power agencies on economic development in the Eastern part of the State.

At its second meeting, the Committee heard a presentation on the high rates of the joint municipal power agency member cities. The Committee then heard a presentation on the history of the ElectriCities organization, and debt of the joint municipal power agencies, and the future of ElectriCities and the joint municipal power agencies. It also heard a presentation on the rate setting procedures of city members of the joint municipal power agencies.

At its third meeting, the Committee reviewed proposed findings and recommendations and directed a number of changes.

The Committee approved a final report at its fourth meeting. It made two recommendations.

RECOMMENDATIONS

Recommendation 1:

When feasible, the effects of the high electric rates on the NCEMPA member cities should be studied further. When conducted, the study should include exploration of the following areas:

- Value of the generation facilities owned by NCEMPA.
- The effect of the electric rates on the economic development of Eastern North Carolina and the State as a whole. The Kenan Institute of Private Enterprise may provide an in depth study of the economic impact of the higher rates.
- Need for electric generation capacity in the State now and in the future.
- Expected electricity demand in the future.
- Potential of new energy sources to meet future electricity demands.
- Effect of rate preferences on all rate payers including small to medium size businesses, and residential users.
- Other matters the Commission deems relevant.

Recommendation 2:

S.L. 2011-129 is a local bill that requires the cities of Clayton, Selma, and Smithfield to limit the use of revenue from electric rates. This revenue may only be used to (1) pay the direct and indirect costs of the electric system, (2) provide a set rate of return to the city for its capital investment, and (3) reduce rates for electric service or make payments on the debt incurred for the electric system. This restriction should be applied to all NCEMPA member cities.

Legislative Proposal:

AN ACT PROVIDING THAT THE CITIES AND TOWNS THAT ARE MEMBERS OF THE NORTH CAROLINA EASTERN MUNICIPAL POWER AGENCY SHALL USE REVENUE DERIVED FROM RATES FOR ELECTRIC SERVICE FOR PAYING THE DIRECT AND INDIRECT COSTS OF OPERATING THE ELECTRIC SYSTEM, TRANSFERRING AMOUNTS THAT REPRESENT A RATE OF RETURN ON THE INVESTMENT IN THE ELECTRIC SYSTEM, AND MAKING DEBT SERVICE PAYMENTS.

XII. ORDERLY AND EXPEDITIOUS REMOVAL BY LANDLORD OF PERSONAL PROPERTY OF DECEASED

Authority: G.S. 120-30.17(1).

LEGISLATIVE RESEARCH COMMISSION MEMBERSHIP

2011 – 2012

Speaker of the House of Representatives Appointments
Representative Julia Howard
Chair

Representative John M. Blust
Representative Kelly Hastings
Representative Mark Hilton
Representative Tim Moore
Representative Shirley Randleman
Representative Sarah Stevens

The Committee met three times after the 2011 Regular Session.

At its initial meeting, the Committee's heard a presentation on the problems faced by landlords regarding the disposition of a tenant's property where a tenant had died without readily identifiable next of kin or persons available or qualified to open an estate. It also received comments from representatives of the legal community.

At its second meeting, the Committee reviewed proposed legislation that resulted from the discussions of the stakeholders.

At its third meeting, the Committee adopted one recommendation.

RECOMMENDATION

Legislative Proposal:

AN ACT ESTABLISHING A PROCESS WHEREBY A LANDLORD MAY REMOVE FROM A RESIDENTIAL DWELLING UNIT TANGIBLE PERSONAL PROPERTY BELONGING TO A DECEASED TENANT AFTER FILING AN AFFIDAVIT WITH THE CLERK OF COURT IN THE COUNTY IN WHICH THE RESIDENTIAL DWELLING UNIT IS LOCATED, AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION

ORDERLY AND EXPEDITIOUS REMOVAL BY LANDLORD OF PERSONAL PROPERTY OF DECEASED COMMITTEE.

XIII. PROPERTY INSURANCE RATE MAKING

Authority: G.S. 120-30.17(1).

COMMITTEE MEMBERSHIP

President Pro Tempore of the Senate Appointments:

Senator Harry Brown, Co-Chair

Senator Thomas Apodaca
Senator Ralph Hise
Senator Wesley Meredith
Senator Stanford White

Speaker of the House of Representatives Appointments:

Representative Jerry Dockham, Co-Chair

Representative Frank Iler
Representative Jonathan Jordan
Representative Patricia McElraft
Representative Michael Wray

The Legislative Research Commission's Committee on Property Insurance Rate Making met four times after the 2011 Regular Session.

At its first meeting, the Committee heard from the North Carolina Rate Bureau, the North Carolina Department of Insurance, and the Beach Plans regarding property insurance rate making.

At its second meeting, the Committee heard from the North Carolina Rate Bureau, the Department of Insurance, and a number of stakeholders.

At its third meeting, the Commissioner of Insurance made various recommendations to the Committee involving transparency in rate filing, modeling, rating territories, authority of the Commissioner regarding rate setting, the Beach Plan, and tax credits for new property insurance business. The Committee also heard a presentation on the impact of recent legislation on the rate making process and the Beach Plan. It also heard from additional stakeholders. The Committee made a number of recommendations.

RECOMMENDATIONS

Recommendation 1:

The current law governing property insurance rate making gives the Commissioner authority to either accept or reject a rate filed by the Rate Bureau. The Commissioner lacks the authority to set a rate between the current rate and the rate filed. Furthermore, the Commissioner is unable to order a decrease in the current rate, if the evidence supports such a change.

At a time when insurers maintain rates are inadequate and property owners in the beach and coastal areas of the state oppose rate increases, the Committee finds that the

Commissioner should be given greater flexibility and discretion in the rate making process. The Committee recommends legislation giving the Commissioner authority to select the appropriate rate based on the evidence, not just accept or reject the rate submitted by the Rate Bureau. (See Appendix D, Section 4 of proposed legislation)

Recommendation 2:

As evidenced by the discussion in Committee, the use of catastrophe modeling as a factor in property insurance rate filings is the subject of much debate. Insurers maintain that catastrophe models incorporate years of historical data and are the best way to achieve credible estimates of losses due to hurricanes. Property owners believe these models are often skewed to justify higher beach and coastal rates and are suspect of a model's relevance to actual losses in N.C. given recent premium and rate increases in beach and coastal areas juxtaposed with decreases in many areas west of the coast. The Commissioner in his remarks asked for more information on the estimated loss resulting from each of the more than 50,000 hurricanes simulated in a given model.

The Committee finds that more information about the specific model used in a rate filing submitted by the Bureau to the Commissioner is needed. Moreover, specific information concerning a simulated loss should be provided. To facilitate this, the Committee recommends legislation to do the following:

- Require a prehearing prior to a rate hearing giving the Department the authority to see and review all materials and documents pertinent to the catastrophe model or models used in a rate filing. The confidentiality of these materials and documents should be protected and the prehearing closed to the public. (See Section 4 of proposed legislation)
- Require any simulated loss from a catastrophe model to included specific information such as annual probability, the amount of N.C. damages before and after the application of any deductible, specific information concerning first N.C. landfall or entry, windspeed, and other information. (See Section 5 of proposed legislation)
- Require the Bureau to submit data from more than one catastrophe model in a rate filing if modeled losses are used, in response to arguments that certain models may be skewed to justify higher beach and coastal rates. (See Section 1 of proposed legislation)

Recommendation 3:

The increasing cost of reinsurance is often cited by the Bureau as a contributing factor in filings for rate increases and a reason many insurers cannot afford to write coverage in the beach and coastal areas. The Department maintains, however, that insurers provide insufficient data on the cost of reinsurance in rate filings. According to the Department, they are unable to determine if reinsurance costs are reasonable for the specific coverage which is the subject of a requested rate increase.

The Committee finds that more information on the cost of reinsurance is needed. The Committee recommends legislation requiring information in a rate filing on the cost of reinsurance specific to N.C. and the line of business for which the filing is being made. (See Appendix D, Section 5 of proposed legislation)

Recommendation 4:

As noted by several presenters, including the Commissioner, the public should be given input in property insurance rate filings. Often the public bears the burden of paying increasing property insurance premiums, but has no official venue in which to express their support of or objection to a specific filing. The current Commissioner has provided for public comment periods prior to giving notice of a rate hearing. However, no statutory requirement for such a public comment period exists.

To ensure that all future Commissioners will provide for and accept public input, the Committee finds a public comment period should be designated in statute by the General Assembly. The Committee recommends legislation requiring the Department to accept public comments prior to a notice of hearing in a property insurance rate filing. (See Section 4 of proposed legislation)

Recommendation 5:

S.L. 2009-472 (House Bill 1305) amended G.S. 58-36-10 to direct the NC Rate Bureau to revise, monitor and review existing territorial boundaries to ensure that policyholders in the beach and coastal areas are charged premiums that are commensurate with the risk of loss and that are actuarially correct. Any proposed change in territories under this section is subject to the Commissioner's approval. Since this language was enacted, the Bureau has not reported to the Department on any changes or requested approval of any changes by the Department.

Several presenters, including the Commissioner and insurers, expressed support for a study of possible changes to the territorial boundaries. The Committee finds that territorial boundaries, and the rates approved for certain territories, may not in all cases accurately reflect the risk associated with each area. Furthermore, new technology and date sources may make alternatives to the geographic territory system possible. While this issue is particularly important in the beach and coastal areas of the State, any study of the territorial boundaries should not be limited to just the beach and coastal areas, but should include the entire State.

The Committee recommends that the Rate Bureau, with the assistance of the Department, study these issues and report on any recommendations for change to the 2013 General Assembly.

Recommendation 6:

In its discussions, Committee members voiced the frustration of their constituents who are unable to obtain a homeowner's fire policy without wind and hail coverage. These constituents, who live primarily in the beach and coastal areas, are willing to personally assume the risk for

loss due to wind and hail in hopes of being able to afford coverage insuring them against other risks. However, many companies refuse to provide this type of coverage.

The Committee agrees and finds that, in light of increasing premiums, insurers should offer a residential fire policy that excludes wind coverage to those property owners willing to assume the risk for wind losses. Accordingly, the Committee recommends legislation requiring the Bureau to develop for approval by the Commissioner a policy form that provides residential property insurance coverage without the coverage for the perils of windstorm or hail.

Recommendation 7:

The Committee understands that the issues surrounding property insurance rate making are difficult and complex. As noted in this report, several issues discussed by the Committee require additional analysis and discussion which time did not permit prior to the 2012 Session of the General Assembly. These issues include the issuance of tax exempt bonds by the Beach Plan, the creation of a catastrophe fund, reforms to the current rate making system, tax credits to insurers for writing new coverage in the beach and coastal areas, the creation of a citizens' review board or other public body to participate in rate filings, changes to deductibles, and the effect of hazards and catastrophes in inland areas of the State on property insurance. These are only some of the remaining issues.

In light of these issues, the Committee recommends that the General Assembly continue the study of property insurance rate making for possible recommendations to the 2013 General Assembly.

Legislative Proposal

AN ACT, AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION COMMITTEE ON PROPERTY INSURANCE RATE MAKING, TO IMPROVE THE RATE MAKING PROCESS AND THE AFFORDABILITY OF PROPERTY INSURANCE FOR LOW INCOME HOMEOWNERS BY REQUIRING THAT MORE THAN ONE CATASTROPHE MODEL BE USED TO ESTIMATE POTENTIAL LOSSES FOR PURPOSES OF A RATE FILING; AND BY REQUIRING THAT THE RATE BUREAU CREATE A RATING PLAN FOR A PROPERTY INSURANCE POLICY THAT EXCLUDES COVERAGE FOR THE PERILS OF WINDSTORM AND HAIL; AND BY REQUIRING THE DEPARTMENT OF INSURANCE TO ACCEPT PUBLIC COMMENT ON ALL PROPERTY INSURANCE RATE FILINGS; AND BY PROVIDING FOR A PREHEARING CONFERENCE FOR THE COMMISSIONER OF INSURANCE TO SCRUTINIZE CATASTROPHE MODELING WHEN SUCH MODELING IS THE BASIS FOR ANY FACTOR IN A RATE FILING FOR WHICH THE COMMISSIONER HAS ISSUED A NOTICE OF HEARING; AND BY PROVIDING THE COMMISSIONER WITH THE POWER TO SPECIFY THE APPROPRIATE RATE LEVEL OR LEVELS UPON A FINDING THAT A RATE FILING DOES NOT COMPLY WITH APPLICABLE LAW; AND BY REQUIRING THAT, WHEN THE COST OF REINSURANCE IS INCLUDED AS A FACTOR IN A PROPOSED RATE, CERTAIN SUPPORTING INFORMATION BE PROVIDED AND THAT THE FILING INCLUDE ONLY THE REINSURANCE COST SPECIFIC TO PROPERTY INSURANCE LOSSES IN NORTH CAROLINA;

AND BY REQUIRING THAT THE RATE BUREAU AND THE DEPARTMENT OF INSURANCE STUDY THE FAIRNESS AND EFFICACY OF THE CURRENT PROPERTY INSURANCE GEOGRAPHIC RATE TERRITORIES.

Committee Sergeants at Arms

NAME OF COMMITTEE Legislative Research Commission

DATE: 8-23-2012 **Room:** 1228

House Sgt-At Arms:

1. **Name:** Reggie Sills
2. **Name:** John Brandon
3. **Name:** _____
4. **Name:** _____
5. **Name:** _____

Senate Sgt-At Arms:

1. **Name:** Steve Wilson
2. **Name:** Jim Blackburn
3. **Name:** _____
4. **Name:** _____
5. **Name:** _____

VISITOR REGISTRATION SHEET

Legislative Research Commission 8/23/12

Name of Committee Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
BRUCE THOMPSON	PARKER POE
Matthew Eisley	Smith Anderson
Frank Gray	NCRLA
Lauren Absher	NASW-NC
Kay Paksoy	NASW-NC
Caitlin Mayo	NASW-NC
Brandy Bynum	Action for Children NC
Rhea Taintor	NCAEC
Richard Dew	Work-Force Preparedness Association
Elise Quick	Troutman Sanders
Laurie Onorio	Jarrett Deans + Assoc.

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Rose Williams	NC DOT

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Joe McClees	McClees Consulting
Robert PASCHAL	Young Moore
Butch Gunnells	NC Beverage Assn
Mitch Leonard	SEANC
Carl Dean	OSP
Chris Agee	NCDOA
Trina Ozer	NCDENR
Lesley Cates	UNC GA
Andrew Cagle	NC Sheriffs' Assn.
Anthony Jones	Eckerd Youth Alternatives
James Stanfill	NC Ecosystem Enhancement Program
David Ferrell	NCLTA

VISITOR REGISTRATION SHEET

Legislative Research Commission 8-23-12

Name of Committee Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kim Crowd	NC Bar Assn
Elizabeth Bise	Brooks Pierce
George Smith	Nexsen Pruet
Sandy Sands	~~DLG~~ AP
Allison Weiler	Nelson Mullins
Doug Hallmark	NC DOS

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE RESEARCH COMMISSION

STATE LEGISLATIVE BUILDING

RALEIGH, NC 27601

SENATOR PHIL BERGER, COCHAIR
LEGISLATIVE BUILDING, ROOM 2008
16 WEST JONES STREET
RALEIGH, NORTH CAROLINA 27601-2808

REPRESENTATIVE THOM TILLIS, COCHAIR
LEGISLATIVE BUILDING, ROOM 2304
16 WEST JONES STREET
RALEIGH, NORTH CAROLINA 27601-1096

AGENDA
August 23, 2012,10:00 a.m.
Legislative Building, Room 1228/1327
Representative Tim Moore, House Cochair Designee, Presiding

1. Call to Order and Introductory Remarks
2. Review and Approval of Proposed Revisions to Rules
3. Review and Approval of Authorized Studies
4. Distribution of Publication Summarizing Activities and Recommendations of 2011 LRC Study Committees
5. Other Committee Business
6. Adjourn

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE BUILDING
RALEIGH 27601

November 28, 2012

The Honorable Tom Apodaca, Chair
The Honorable Phil Berger, Co-Chair
The Honorable Thom Tillis, Co-Chair

Re: LRC Study Committee on Contingency Fee Audits

Dear Legislative Research Commission Chairs:

It is our opinion that it is too early for the LRC Study Committee on Contingency Fee Audits to complete its work. Given the change in effective date of the legislation under consideration, we believe some additional time is required before the committee can efficiently review the statute. Therefore we do not intend to meet or submit any reports before the January 4th LRC Committee deadline.

Sincerely,

Sen. Rick Gunn, Co-Chair

Rep. Paul Stam, Co-Chair

cc: Hon. Tim Moore
Hon. Harry Brown
Hon. Daniel G. Clodfelter
Hon. Fletcher L. Hartsell, Jr.
Hon. Ralph Hise
Hon. Rayne Brown
Hon. Justin P. Burr
Hon. Darrell G. McCormick
Hon. Michael H. Wray
Mr. O. Walker Reagan
Mr. George Hall
Mr. Chris Hayes
Mr. Gerry Cohen
Mr. Mark Trogdon
Ms. Nichole Hines
Mr. Phillip Christofferson
Ms. Tracy Kimbrell
Mr. Andrew Tripp
Ms. Cindy Avrette
Mr. Greg Roney
Ms. Shelly DeAdder
Ms. Bly Hall
Mr. Dan Ettefagh
Mr. Jonathan Tart
Mr. Rodney Bizzell
Mr. Mark Bondo
Mr. Brian Peck
Ms. Becky Cook

NORTH CAROLINA GENERAL ASSEMBLY

Raleigh, North Carolina 27601

January 2, 2013

MEMORANDUM

TO: Members, Legislative Research Commission
FROM: Senator Tom Apodaca, Co-Chair
Representative Tim Moore, Co-Chair
SUBJECT: Meeting Notice

DAY	DATE	TIME	ROOM
Tuesday	January 8, 2013	3:00 p.m.	1228/1327 LB

Parking for non-legislative members of the committee/commission is available in the visitor parking deck #75 located on Salisbury Street across from the Legislative Office Building. Parking is also available in the parking lot across Jones Street from the State Library/Archives. You can view a map of downtown by visiting http://www.ncleg.net/graphics/downtownmap.pdf.

If you are unable to attend or have any questions concerning this meeting, please contact Nancy Garriss at 919-733-4838.

cc: Committee Record _X_
Interested Parties _X_

MINUTES
LEGISLATIVE RESEARCH COMMISSION
January 8, 2013

The Legislative Research Commission met on Tuesday, January 8, 2013 at 3:10 p.m. in Room 1228 of the Legislative Building. The following members were present: Senator Tom Apodaca, Co-Chair, Representative Tim Moore, Co-Chair, Senator Brunstetter, and Representatives Blust, Burr, Hager and Warren. The meeting's agenda is attached as Appendix A.

Representative Tim Moore presided and called the meeting to order. Representative Moore said the committee would take up the Commission review and recommendations of committee reports.

Representative Moore then recognized the following 4 LRC Study Committees to present reports to the Commission:

Age of Juvenile Offenders (Representative Avila presented)	Appendix B
Career and Technical Education (Senator Tillman presented)	Appendix C
Digital Learning Environments in Public Schools (Representative Horn presented)	Appendix D
Pathological Materials (Representative Murry presented)	Appendix E

The Committees made their presentations of recommendations, and each committee was accepted for transmittal to the 2013 General Assembly upon presentation.

Representative Moore recognized Walker Reagan, Staff, to speak on item 3 of the agenda: Report from UNC-C and NC A&T on Plans for a Collaborative Engineering Program in Resource Extraction and Renewable Energy Study. Appendix F. Mr. Reagan said there would be no comment and no action taken on this report.

The meeting adjourned at 3:25 p.m.

Senator Tom Apodaca, Co-Chair

Nancy Gariss, Committee Clerk

Representative Tim Moore, Co-Chair

Appendix A

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE RESEARCH COMMISSION

STATE LEGISLATIVE BUILDING

RALEIGH, NC 27601

SENATOR PHIL BERGER, COCHAIR
LEGISLATIVE BUILDING, ROOM 2008
16 WEST JONES STREET
RALEIGH, NORTH CAROLINA 27601-2808

REPRESENTATIVE THOM TILLIS, COCHAIR
LEGISLATIVE BUILDING, ROOM 2304
16 WEST JONES STREET
RALEIGH, NORTH CAROLINA 27601-1096

AGENDA

January 8, 2013, 3:00 p.m.
Legislative Building, Room 1228/1327
Representative Tim Moore, House Cochair Designee, Presiding

1. Call to Order and Introductory Remarks
2. Commission Review and Recommendations of Committee Reports
   a. Age of Juvenile Offenders, Rep. Avila, Chair
   b. Career and Technical Education, Sen. Brown, Sen. Tillman, and Rep. Holloway, Cochairs
   c. Digital Learning Environments in Public Schools, Sen. Soucek and Rep. Horn, Cochairs
   d. Pathological Materials, Sen. Goolsby and Rep. Murry, Cochairs
3. Report on Referral to State Agencies
   a. Report from UNC-C and NC A&T on Plans for a Collaborative Engineering Program in Resource Extraction and Renewable Energy Study
4. Adjourn

Appendix B

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE RESEARCH COMMISSION

STATE LEGISLATIVE BUILDING
RALEIGH, NC 27601

December 18, 2012

TO THE MEMBERS OF THE LEGISLATIVE RESEARCH COMMISSION:

Attached for your consideration is the report to the 2013 General Assembly. This report was prepared by the Legislative Research Commission's Committee on Age of Juvenile Offenders, pursuant to G.S. 120-30.17(1).

Marilyn Avila

Representative Marilyn Avila
Chair

LEGISLATIVE RESEARCH COMMISSION

AGE OF JUVENILE OFFENDERS COMMITTEE

NORTH CAROLINA GENERAL ASSEMBLY

REPORT TO THE 2013 GENERAL ASSEMBLY OF NORTH CAROLINA

DECEMBER 2012

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TRANSMITTAL LETTER

December 18, 2012

TO THE MEMBERS OF THE 2012 REGULAR SESSION
OF THE 2011 GENERAL ASSEMBLY

The Legislative Research Commission herewith submits to you for your consideration its report and recommendations to the 2013 General Assembly. The report was prepared by the Legislative Research Commission's Committee on Age of Juvenile Offenders, pursuant to G.S. 120-30.70(1).

Respectfully submitted,

Senator Philip E. Berger
President Pro Tempore of the Senate

Representative Thomas R. Tillis
Speaker of the House of Representatives

Co-Chairs
Legislative Research Commission

LEGISLATIVE RESEARCH COMMISSION MEMBERSHIP

2011 – 2012

President Pro Tempore of the Senate
Senator Philip E. Berger
Co-Chair

Senator Thomas M. Apodaca
Acting Co-Chair

Senator Peter S. Brunstetter
Senator Linda D. Garrou
Senator Martin L. Nesbitt, Jr.
Senator Richard Y. Stevens

Speaker of the House of Representatives
Representative Thomas R. Tillis
Co-Chair

Representative Timothy K. Moore
Acting Co-Chair

Representative John M. Blust
Representative Justin P. Burr
Representative Mike D. Hager
Representative Edith D. Warren

PREFACE

The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is the general purpose study group in the Legislative Branch of State Government. The Commission is co-chaired by the President Pro Tempore of the Senate and the Speaker of the House of Representatives and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigation into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

The Legislative Research Commission authorized the study of Age of Juvenile Offenders, under authority of G.S. 120-30.17(1). The Committee was chaired by Representative Marilyn Avila. The full membership of the Committee is listed under Committee Membership. A committee notebook containing the committee minutes and all information presented to the committee will be filed in the Legislative Library by the end of the **2011-2012** biennium.

COMMITTEE PROCEEDINGS

The Legislative Research Commission's Committee on Age of Juvenile Offenders met three times after the 2012 Regular Session. The following is a brief summary of the Committee's proceedings. Detailed minutes and information from each Committee meeting are available in the Legislative Library.

October 17, 2012

The first meeting was held on Wednesday, October 17, 2012 at 2:00 PM in Room 544 of the Legislative Office Building. Susan Sitze, Staff Attorney, provided the Committee with an overview of the current law in North Carolina and summarized Senate Bill 434, Edition 3. Next, Joel Rosch, Senior Research Scholar and Policy Liaison at the Center for Child & Family Policy at Duke University presented a policy overview. Robin Jenkins, Deputy Director, Division of Juvenile Justice, North Carolina Department of Public Safety presented an overview of the current juvenile justice system. Finally, the Committee heard remarks from Phil Berger, Jr., District Attorney, Prosecutorial District 17A, representing the Conference of District Attorneys; and Eric Zogry, Juvenile Defender, Office of Indigent Defense Services.

November 29, 2012

The second meeting was held on Thursday, November 29, 2012 at 9:30 AM in Room 544 of the Legislative Office Building. The Committee heard presentations on juvenile justice legislation from Connecticut, Illinois, and Florida. Next, Jon Powell, Professor at Campbell Law School discussed Restorative Justice programs. The Committee then heard a presentation on Teen Court programs from Jillian Musa, Coordinator, Carteret County Teen Court. Finally, the Committee heard a presentation by Teresa Price, Director of Community Programs, and William Lassiter, State Contracts Administrator, on Juvenile Justice Community Programs. The Committee also discussed potential findings and recommendations.

December 18, 2012

The final meeting was held on Tuesday, December 18, 2012 at 2:00 PM in Room 643 of the Legislative Office Building. The Committee approved the final report.

RECOMMENDATIONS

The Committee recommends that the proposals contained in the 3rd Edition of Senate Bill 434 of the 2011 Session (see Appendix D) be adopted by the North Carolina General Assembly after consideration of the issues set out below, and any changes necessary to appropriately address those issues.

The issues the Committee believes should be considered before adoption by the General Assembly are:

- Whether it would be better to incorporate 16 and 17 year olds into the juvenile system using a staggered time period or by adding all 16 and 17 year olds at one time. If a staggered time period is best, whether the increments contained in S434 are appropriate, or whether it should be staggered by some other method or time period.

- Whether A1 misdemeanors should be considered differently from other misdemeanor offenses for which 16 and 17 year olds will be considered juveniles. If it is determined that they should be considered differently, then how. Possible idea for consideration include, charging in adult court with a process for transferring to juvenile court and charging in juvenile court with a rebuttable presumption of transfer to adult court.

- How to deal with a 16 or 17 year old initially charged with a felony in adult court where the charges are reduced to a misdemeanor. Whether there should be a process to allow the court to transfer the 16 or 17 year old to juvenile court after the charge reduction.

- Whether there should be a process to allow law enforcement to release 16 and 17 year olds, who are alleged delinquent for offenses that will be initiated in juvenile court, on some form of summons or citation without compliance with some of the requirements when dealing with juveniles under the age of 16, such as retaining the juvenile until they can be released to a parent or guardian.

- Whether S434 should only apply to first offenders with no previous convictions (excluding minor traffic violations).

COMMITTEE MEMBERSHIP

2011-2012

Speaker of the House of Representatives Appointments:

Representative Marilyn Avila, Co-Chair

Representative John Blust
Representative James Boles
Representative Larry Hall
Representative Darren Jackson
Representative David Lewis

Seth Edwards, District Attorney, 2nd Judicial District
Frank Palombo, Former Chief of Police, New Bern
Edmond W. Caldwell, Jr., NC Sheriffs Association
Hon. Marcia Morey, District Court Judge, 14th Judicial District

COMMITTEE CHARGE

The LRC Study Committee on the Age of Juvenile Offenders shall study North Carolina's current juvenile justice system and identify reforms that may reduce long-term recidivism. Specifically, the Committee shall study:

1. What juvenile justice reforms are needed to implement the proposal in Senate Bill 434, Edition 3, for raising the age for misdemeanors;

2. Evidence-based models for reducing juvenile recidivism, such as the Juvenile Detention Alternatives Initiative of the Annie E. Casey Foundation, including models to reduce inappropriate or unnecessary use of secured detention;

3. How best to reserve secure facilities for the most troubled youth. This shall include assessing the recidivism rates and costs and benefits of alternatives to placement programs in the juvenile justice system, such as electronic monitoring;

4. Best practices among community-based programs, such as the Juvenile Crime Prevention Council System, that utilize evidence-based programs to reduce youth recidivism;

5. How to prepare local prisons for implementation of Department of Justice regulations related to the Prison Rape Elimination Act of 2003, P.L. 108-79, including ensuring that all youth under the age of 18 are held separately from adults.

STATUTORY AUTHORITY

NORTH CAROLINA GENERAL STATUTES
ARTICLE 6B.

Legislative Research Commission.

§ 120-30.17. Powers and duties.

The Legislative Research Commission has the following powers and duties:

(1) Pursuant to the direction of the General Assembly or either house thereof, or of the chairmen, to make or cause to be made such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner.

(2) To report to the General Assembly the results of the studies made. The reports may be accompanied by the recommendations of the Commission and bills suggested to effectuate the recommendations.

(3), (4) Repealed by Session Laws 1969, c. 1184, s. 8.

(5), (6) Repealed by Session Laws 1981, c. 688, s. 2.

(7) To obtain information and data from all State officers, agents, agencies and departments, while in discharge of its duty, pursuant to the provisions of G.S. 120-19 as if it were a committee of the General Assembly.

(8) To call witnesses and compel testimony relevant to any matter properly before the Commission or any of its committees. The provisions of G.S. 120-19.1 through G.S. 120-19.4 shall apply to the proceedings of the Commission and its committees as if each were a joint committee of the General Assembly. In addition to the other signatures required for the issuance of a subpoena under this subsection, the subpoena shall also be signed by the members of the Commission or of its committee who vote for the issuance of the subpoena.

(9) For studies authorized to be made by the Legislative Research Commission, to request another State agency, board, commission or committee to conduct the study if the Legislative Research Commission determines that the other body is a more appropriate vehicle with which to conduct the study. If the other body agrees, and no legislation specifically provides otherwise, that body shall conduct the study as if the original authorization had assigned the study to that body and shall report to the General Assembly at the same time other studies to be conducted by the Legislative Research Commission are to be reported. The other agency shall conduct the transferred study within the funds already assigned to it.

LEGISLATIVE PROPOSALS

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S **3**

SENATE BILL 434
Judiciary I Committee Substitute Adopted 4/19/11
House Committee Substitute Favorable 6/20/12

Short Title: Juvenile Age to 18. (Public)

Sponsors:

Referred to:

March 29, 2011

A BILL TO BE ENTITLED

AN ACT TO AMEND THE DEFINITION OF DELINQUENT JUVENILE TO RAISE THE AGE FROM SIXTEEN TO EIGHTEEN YEARS IN SIX-MONTH INCREMENTS OF AGE OVER A FOUR-YEAR PERIOD FOR SIXTEEN-AND SEVENTEEN-YEAR-OLDS ALLEGED TO HAVE COMMITTED A MISDEMEANOR, TO PROVIDE THAT SIXTEEN- AND SEVENTEEN-YEAR-OLDS WHO HAVE BEEN PREVIOUSLY CONVICTED OF A FELONY IN ADULT COURT SHALL REMAIN IN ADULT COURT, TO MAKE CONFORMING CHANGES TO OTHER STATUTES RELEVANT TO CHANGING THE DEFINITION OF DELINQUENT JUVENILE, AND TO EXTEND THE YOUTH ACCOUNTABILITY TASK FORCE.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Effective July 1, 2016, G.S. 7B-1501(7) reads as rewritten:

"(7) Delinquent juvenile. –

a. Any juvenile who, while less than 16 years of age but at least 6 years of age, commits a crime or infraction under State law or under an ordinance of local government, including violation of the motor vehicle laws, or who commits indirect contempt by a juvenile as defined in ~~G.S. 5A-31.~~G.S. 5A-31; or

b. Any juvenile who, while less than 16 years and six months of age but at least 16 years of age, commits a misdemeanor or infraction under State law or under an ordinance of local government, excluding violation of the motor vehicle laws, or who commits indirect contempt by a juvenile as defined in G.S. 5A-31."

SECTION 1.(b) Effective July 1, 2017, G.S. 7B-1501(7) reads as rewritten:

"(7) Delinquent juvenile. –

a. Any juvenile who, while less than 16 years of age but at least 6 years of age, commits a crime or infraction under State law or

under an ordinance of local government, including violation of the motor vehicle laws, or who commits indirect contempt by a juvenile as defined in G.S. 5A-31; or

b. Any juvenile who, while less than ~~16 years and six months~~17 years of age but at least 16 years of age, commits a misdemeanor or infraction under State law or under an ordinance of local government, excluding violation of the motor vehicle laws, or who commits indirect contempt by a juvenile as defined in G.S. 5A-31."

SECTION 1.(c) Effective July 1, 2018, G.S. 7B-1501(7) reads as rewritten:

"(7) Delinquent juvenile. –

a. Any juvenile who, while less than 16 years of age but at least 6 years of age, commits a crime or infraction under State law or under an ordinance of local government, including violation of the motor vehicle laws, or who commits indirect contempt by a juvenile as defined in G.S. 5A-31; or

b. Any juvenile who, while less than 17 years and six months of age but at least 16 years of age, commits a misdemeanor or infraction under State law or under an ordinance of local government, excluding violation of the motor vehicle laws, or who commits indirect contempt by a juvenile as defined in G.S. 5A-31."

SECTION 1.(d) Effective July 1, 2019, G.S. 7B-1501(7) reads as rewritten:

"(7) Delinquent juvenile. –

a. Any juvenile who, while less than 16 years of age but at least 6 years of age, commits a crime or infraction under State law or under an ordinance of local government, including violation of the motor vehicle laws, or who commits indirect contempt by a juvenile as defined in G.S. 5A-31; or

b. Any juvenile who, while less than ~~17 years and six months~~18 years of age but at least 16 years of age, commits a misdemeanor or infraction under State law or under an ordinance of local government, excluding violation of the motor vehicle laws, or who commits indirect contempt by a juvenile as defined in G.S. 5A-31."

SECTION 2. Effective July 1, 2016, G.S. 7B-1501(11) reads as rewritten:

"(11) Holdover facility. – A place located in a ~~jail~~ jail, which has been approved by the Department of Health and Human Services as meeting the State standards for ~~detention~~ the operation of local confinement facilities, as required in ~~G.S. 153A-221~~G.S. 153A-221, providing close supervision where ~~the~~ a juvenile cannot converse with, see, or be seen by the adult population."

SECTION 3.(a) Effective July 1, 2016, G.S. 7B-1601 reads as rewritten:

"**§ 7B-1601. Jurisdiction over delinquent juveniles.**

(a) The court has exclusive, original jurisdiction over any case involving a juvenile who is alleged to be delinquent. For purposes of determining jurisdiction, the age of the juvenile at the time of the alleged offense governs.

(b) When the court obtains jurisdiction over a juvenile alleged to be ~~delinquent,~~delinquent for an offense committed prior to the juvenile reaching the age of 16 years, jurisdiction shall continue until terminated by order of the court or until the juvenile reaches the age of 18 years, except as provided otherwise in this Article.

(b1) When the court obtains jurisdiction over a juvenile alleged to be delinquent for an offense that would be a misdemeanor offense if committed by an adult and the offense was committed while the juvenile was at least 16 years of age, jurisdiction shall continue until terminated by order of the court or until the juvenile reaches the age of 19 years.

(c) When delinquency ~~proceedings~~ proceedings, for a juvenile alleged to be delinquent for an offense committed prior to the juvenile reaching the age of 16 years, cannot be concluded before the juvenile reaches the age of 18 years, the court retains jurisdiction for the sole purpose of conducting proceedings pursuant to Article 22 of this Chapter and either transferring the case to superior court for trial as an adult or dismissing the petition.

(c1) When delinquency proceedings, for a juvenile alleged to be delinquent for an offense committed while the juvenile was at least 16 years of age, cannot be concluded before the juvenile reaches the age of 19 years, the court retains jurisdiction for the sole purpose of dismissing the petition.

(d) When the court has not obtained jurisdiction over a juvenile before the juvenile reaches the age of 18, for a felony and any related misdemeanors the juvenile allegedly committed on or after the juvenile's thirteenth birthday and prior to the juvenile's sixteenth birthday, the court has jurisdiction for the sole purpose of conducting proceedings pursuant to Article 22 of this Chapter and either transferring the case to superior court for trial as an adult or dismissing the petition.

(e) The court has jurisdiction over delinquent juveniles in the custody of the Division and over proceedings to determine whether a juvenile who is under the post-release supervision of the juvenile court counselor has violated the terms of the juvenile's post-release supervision.

(f) The court has jurisdiction over persons 18 years of age or older who are under the extended jurisdiction of the juvenile court.

(g) The court has jurisdiction over the parent, guardian, or custodian of a juvenile who is under the jurisdiction of the court pursuant to this section if the parent, guardian, or custodian has been served with a summons pursuant to G.S. 7B-1805."

SECTION 3.(b) Effective July 1, 2018, G.S. 7B-1601(b1) reads as rewritten:

"(b1) When the court obtains jurisdiction over a juvenile alleged to be delinquent for an offense that would be a misdemeanor offense if committed by an adult and the offense was committed while the juvenile was at least 16 years of ~~age,~~age but less than 17 years of age, jurisdiction shall continue until terminated by order of the court or until the juvenile reaches the age of 19 years. If the offense was committed while the juvenile was at least 17 years of age, jurisdiction shall continue until terminated by order of the court or until the juvenile reaches the age of 20 years."

SECTION 3.(c) Effective July 1, 2018, G.S. 7B-1601(c1) reads as rewritten:

"(c1) When delinquency proceedings, for a juvenile alleged to be delinquent for an offense committed while the juvenile was at least 16 years of ~~age,~~age but less than 17 years of age, cannot be concluded before the juvenile reaches the age of 19 years, the court retains jurisdiction for the sole purpose of dismissing the petition. When delinquency proceedings, for a juvenile alleged to be delinquent for an offense committed while the juvenile was at least 17 years of age, cannot be concluded before the juvenile reaches the age of 20 years, the court retains jurisdiction for the sole purpose of dismissing the petition."

SECTION 4.(a) Effective July 1, 2016, G.S. 7B-1604 reads as rewritten:

"**§ 7B-1604. Limitations on juvenile court jurisdiction.**

(a) Any juvenile, including a juvenile who is under the jurisdiction of the court, who commits a criminal offense on or after the ~~juvenile's sixteenth birthday~~juvenile has reached the age of 16 years and six months is subject to prosecution as an adult. A juvenile who is emancipated shall be prosecuted as an adult for the commission of a criminal offense.

(b) A juvenile (i) who is transferred to and convicted in superior ~~court~~ court or (ii) who has previously been convicted in either district or superior court for a felony, including a violation of the motor vehicle laws under State law shall be prosecuted as an adult for any criminal offense the juvenile commits after the district or superior court conviction."

SECTION 4.(b) Effective July 1, 2017, G.S. 7B-1604(a) reads as rewritten:

"(a) Any juvenile, including a juvenile who is under the jurisdiction of the court, who commits a criminal offense on or after the juvenile has reached the age of ~~16 years and six months~~ 17 years is subject to prosecution as an adult. A juvenile who is emancipated shall be prosecuted as an adult for the commission of a criminal offense."

SECTION 4.(c) Effective July 1, 2018, G.S. 7B-1604(a) reads as rewritten:

"(a) Any juvenile, including a juvenile who is under the jurisdiction of the court, who commits a criminal offense on or after the juvenile has reached the age of 17 years and six months is subject to prosecution as an adult. A juvenile who is emancipated shall be prosecuted as an adult for the commission of a criminal offense."

SECTION 4.(d) Effective July 1, 2019, G.S. 7B-1604(a) reads as rewritten:

"(a) Any juvenile, including a juvenile who is under the jurisdiction of the court, who commits a criminal offense on or after the juvenile has reached the age of ~~17 years and six months~~18 years is subject to prosecution as an adult. A juvenile who is emancipated shall be prosecuted as an adult for the commission of a criminal offense."

SECTION 5. Effective July 1, 2016, G.S. 7B-2506 reads as rewritten:

"**§ 7B-2506. Dispositional alternatives for delinquent juveniles.**

The court exercising jurisdiction over a juvenile who has been adjudicated delinquent may use the following alternatives in accordance with the dispositional structure set forth in G.S. 7B-2508:

(1) In the case of any juvenile under the age of 18 years who needs more adequate care or supervision or who needs placement, the judge may:

...

(2) Excuse ~~the~~ a juvenile under the age of 16 years from compliance with the compulsory school attendance law when the court finds that

suitable alternative plans can be arranged by the family through other community resources for one of the following:

a. An education related to the needs or abilities of the juvenile including vocational education or special education;

b. A suitable plan of supervision or placement; or

c. Some other plan that the court finds to be in the best interests of the juvenile.

(3) Order the juvenile to cooperate with a community-based program, an intensive substance abuse treatment program, or a residential or nonresidential treatment program. ~~Participation in the programs shall not exceed 12 months.~~

...."

SECTION 6. Effective July 1, 2016, G.S. 7B-2507 reads as rewritten:

"**§ 7B-2507. Delinquency history levels.**

(a) Generally. – The delinquency history level for a delinquent juvenile is determined by calculating the sum of the points assigned to each of the juvenile's prior adjudications or convictions and to the juvenile's probation status, if any, that the court finds to have been proved in accordance with this section.

(b) Points. – Points are assigned as follows:

(1) For each prior adjudication of a Class A through E felony offense, 4 points.

(2) For each prior adjudication of a Class F through I felony offense or Class A1 misdemeanor offense, 2 points.

(2a) For each prior conviction of a Class A1 misdemeanor, excluding conviction for violation of the motor vehicle laws, 2 points.

(2b) For each prior misdemeanor conviction of impaired driving (G.S. 20-138.1), impaired driving in a commercial vehicle (G.S. 20-138.2), and misdemeanor death by vehicle (G.S. 20-141.4(a2)), 2 points.

(3) For each prior adjudication of a Class 1, 2, or 3 misdemeanor offense, 1 point.

(3a) For each prior conviction of a Class 1, 2, or 3 misdemeanor offense, excluding conviction for violation of the motor vehicle laws, 1 point.

(4) If the juvenile was on probation at the time of offense, 2 points.

No points shall be assigned for a prior adjudication that a juvenile is in direct contempt of court or indirect contempt of court.

(c) Delinquency History Levels. – The delinquency history levels are:

(1) Low – No more than 1 point.

(2) Medium – At least 2, but not more than 3 points.

(3) High – At least 4 points.

In determining the delinquency history level, the classification of a prior offense is the classification assigned to that offense at the time the juvenile committed the offense for which disposition is being ordered.

(d) Multiple Prior Adjudications or Convictions Obtained in One Court Session. – For purposes of determining the delinquency history level, if a juvenile is adjudicated

delinquent or convicted for more than one offense in a single session of district court, only the adjudication or conviction for the offense with the highest point total is used.

(e) Classification of Prior Adjudications or Convictions From Other Jurisdictions. – Except as otherwise provided in this subsection, an adjudication or conviction occurring in a jurisdiction other than North Carolina is classified as a Class I felony if the jurisdiction in which the offense occurred classifies the offense as a felony, or is classified as a Class 3 misdemeanor if the jurisdiction in which the offense occurred classifies the offense as a misdemeanor. If the juvenile proves by the preponderance of the evidence that an offense classified as a felony in the other jurisdiction is substantially similar to an offense that is a misdemeanor in North Carolina, the adjudication or conviction is treated as that class of misdemeanor for assigning delinquency history level points. If the State proves by the preponderance of the evidence that an offense classified as either a misdemeanor or a felony in the other jurisdiction is substantially similar to an offense in North Carolina that is classified as a Class I felony or higher, the adjudication or conviction is treated as that class of felony for assigning delinquency history level points. If the State proves by the preponderance of the evidence that an offense classified as a misdemeanor in the other jurisdiction is substantially similar to an offense classified as a Class A1 misdemeanor in North Carolina, the adjudication or conviction is treated as a Class A1 misdemeanor for assigning delinquency history level points.

(f) Proof of Prior ~~Adjudications.~~Adjudications or Convictions. – A prior adjudication or conviction shall be proved by any of the following methods:

(1) Stipulation of the parties.

(2) An original or copy of the court record of the prior ~~adjudication.~~adjudication or conviction.

(3) A copy of records maintained by the Division of Criminal Information or by the Division.

(4) Any other method found by the court to be reliable.

The State bears the burden of proving, by a preponderance of the evidence, that a prior adjudication or conviction exists and that the juvenile before the court is the same person as the juvenile named in the prior ~~adjudication.~~adjudication or conviction. The original or a copy of the court records or a copy of the records maintained by the Division of Criminal Information or of the Division, bearing the same name as that by which the juvenile is charged, is prima facie evidence that the juvenile named is the same person as the juvenile before the court, and that the facts set out in the record are true. For purposes of this subsection, "a copy" includes a paper writing containing a reproduction of a record maintained electronically on a computer or other data processing equipment, and a document produced by a facsimile machine. The prosecutor shall make all feasible efforts to obtain and present to the court the juvenile's full record. Evidence presented by either party at trial may be utilized to prove prior ~~adjudications.~~adjudications or convictions. If asked by the juvenile, the prosecutor shall furnish the juvenile's prior adjudications or convictions to the juvenile within a reasonable time sufficient to allow the juvenile to determine if the record available to the prosecutor is accurate."

SECTION 7.(a) Effective July 1, 2016, G.S. 7B-2513(a) reads as rewritten:

"(a) Pursuant to G.S. 7B-2506 and G.S. 7B-2508, the court may commit a delinquent juvenile who is at least 10 years of age to the Division for placement in a youth development center. Commitment shall be for an indefinite term of at least six months.

(a1) ~~In no event shall the term exceed:~~For an offense the juvenile committed prior to reaching the age of 16 years, the term shall not exceed:

(1) The twenty-first birthday of the juvenile if the juvenile has been committed to the Division for an offense that would be first-degree murder pursuant to G.S. 14-17, first-degree rape pursuant to G.S. 14-27.2, or first-degree sexual offense pursuant to G.S. 14-27.4 if committed by an adult;

(2) The nineteenth birthday of the juvenile if the juvenile has been committed to the Division for an offense that would be a Class B1, B2, C, D, or E felony if committed by an adult, other than an offense set forth in subdivision (1) of this subsection; or

(3) The eighteenth birthday of the juvenile if the juvenile has been committed to the Division for an offense other than an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult.

(a2) For an offense the juvenile committed while the juvenile was at least 16 years of age, the term shall not exceed the juvenile's 19th birthday.

(a3) Reserved.

(a4) No juvenile shall be committed to a youth development center beyond the minimum six-month commitment for a period of time in excess of the maximum term of imprisonment for which an adult in prior record level VI for felonies or in prior conviction level III for misdemeanors could be sentenced for the same offense, except when the Division pursuant to G.S. 7B-2515 determines that the juvenile's commitment needs to be continued for an additional period of time to continue care or treatment under the plan of care or treatment developed under subsection (f) of this section. At the time of commitment to a youth development center, the court shall determine the maximum period of time the juvenile may remain committed before a determination must be made by the Division pursuant to G.S. 7B-2515 and shall notify the juvenile of that determination."

SECTION 7.(b) Effective July 1, 2017, G.S. 7B-2513(a2) reads as rewritten:

"(a2) For an offense the juvenile committed while the juvenile was at least 16 years of age but less than 17 years of age, the term shall not exceed the juvenile's 19th birthday."

SECTION 7.(c) Effective July 1, 2018, G.S. 7B-2513(a3) reads as rewritten:

"(a3) For an offense the juvenile committed while the juvenile was at least 17 years of age, the term shall not exceed the juvenile's 20th birthday."

SECTION 8. Effective July 1, 2016, G.S. 7B-2515(a) reads as rewritten:

"(a) In determining whether a juvenile who was committed to the Division for an offense that was committed prior to the juvenile reaching the age of 16 years should be released before the juvenile's 18th birthday, the Division shall consider the protection of the public and the likelihood that continued placement will lead to further rehabilitation. If the Division does not intend to release the juvenile who was committed for an offense

that was committed prior to the juvenile reaching the age of 16 years prior to the juvenile's eighteenth birthday, or if the Division determines that the juvenile's commitment should be continued beyond the maximum commitment period as set forth in ~~G.S. 7B-2513(a),~~G.S. 7B-2513(a1), the Division shall notify the juvenile and the juvenile's parent, guardian, or custodian in writing at least 30 days in advance of the juvenile's eighteenth birthday or the end of the maximum commitment period, of the additional specific commitment period proposed by the Division, the basis for extending the commitment period, and the plan for future care or treatment."

SECTION 9. Effective July 1, 2016, G.S. 7B-2603(b) reads as rewritten:

"(b) Once an order of transfer has been entered by the district court, the juvenile has the right to be considered for pretrial release as provided in G.S. 15A-533 and G.S. 15A-534. Pending release, the juvenile shall be detained pursuant to G.S. 7B-2204. ~~The release order shall specify the person or persons to whom the juvenile may be released. Pending release, the court shall order that the juvenile be detained in a detention facility while awaiting trial. The court may order the juvenile to be held in a holdover facility as defined by G.S. 7B-1501 at any time the presence of the juvenile is required in court for pretrial hearings or trial, if the court finds that it would be inconvenient to return the juvenile to the detention facility.~~"

SECTION 10.(a) Effective July 1, 2016, the introductory language of G.S. 5A-31(a) reads as rewritten:

"(a) Each of the following, when done by an unemancipated minor who (i) is at least six years of age, (ii) is not yet 16 years and six months of age, and (iii) has not been convicted of any crime in superior court, is contempt by a juvenile:".

SECTION 10.(b) Effective July 1, 2017, the introductory language of G.S. 5A-31(a) reads as rewritten:

"(a) Each of the following, when done by an unemancipated minor who (i) is at least six years of age, (ii) is not yet ~~16 years and six months~~17 years of age, and (iii) has not been convicted of any crime in superior court, is contempt by a juvenile:".

SECTION 10.(c) Effective July 1, 2018, the introductory language of G.S. 5A-31(a) reads as rewritten:

"(a) Each of the following, when done by an unemancipated minor who (i) is at least six years of age, (ii) is not yet 17 years and six months of age, and (iii) has not been convicted of any crime in superior court, is contempt by a juvenile:".

SECTION 10.(d) Effective July 1, 2019, the introductory language of G.S. 5A-31(a) reads as rewritten:

"(a) Each of the following, when done by an unemancipated minor who (i) is at least six years of age, (ii) is not yet ~~17 years and six months~~18 years of age, and (iii) has not been convicted of any crime in superior court, is contempt by a juvenile:".

SECTION 11.(a) Effective July 1, 2016, G.S. 5A-34(b) reads as rewritten:

"(b) The provisions of Article 1 and Article 2 of this Chapter apply to acts or omissions by a minor who:

(1) Is 16 years and six months of age or older;

(2) Is married or otherwise emancipated; or

(3) Before the act or omission, was convicted in superior court of any criminal offense."

SECTION 11.(b) Effective July 1, 2017, G.S. 5A-34(b) reads as rewritten:

"(b) The provisions of Article 1 and Article 2 of this Chapter apply to acts or omissions by a minor who:

(1) Is ~~16 years and six months~~17 years of age or older;

(2) Is married or otherwise emancipated; or

(3) Before the act or omission, was convicted in superior court of any criminal offense."

SECTION 11.(c) Effective July 1, 2018, G.S. 5A-34(b) reads as rewritten:

"(b) The provisions of Article 1 and Article 2 of this Chapter apply to acts or omissions by a minor who:

(1) Is 17 years and six months of age or older;

(2) Is married or otherwise emancipated; or

(3) Before the act or omission, was convicted in superior court of any criminal offense."

SECTION 11.(d) Effective July 1, 2019, G.S. 5A-34(b) reads as rewritten:

"(b) The provisions of Article 1 and Article 2 of this Chapter apply to acts or omissions by a minor who:

~~(1) Is 17 years and six months of age or older;~~

(2) Is married or otherwise emancipated; or

(3) Before the act or omission, was convicted in superior court of any criminal offense."

SECTION 12.(a) Effective July 1, 2016, G.S. 143B-805(6) reads as rewritten:

"(6) Delinquent juvenile. –

a. Any juvenile who, while less than 16 years of age but at least 6 years of age, commits a crime or infraction under State law or under an ordinance of local government, including violation of the motor vehicle ~~laws.~~laws; or

b. Any juvenile who, while less than 16 years and six months of age but at least 16 years of age, commits a misdemeanor or infraction under State law or under an ordinance of local government, excluding violation of the motor vehicle laws."

SECTION 12.(b) Effective July 1, 2017, G.S. 143B-805(6) reads as rewritten:

"(6) Delinquent juvenile. –

a. Any juvenile who, while less than 16 years of age but at least 6 years of age, commits a crime or infraction under State law or under an ordinance of local government, including violation of the motor vehicle laws; or

b. Any juvenile who, while less than ~~16 years and six months~~17 years of age but at least 16 years of age, commits a misdemeanor or infraction under State law or under an ordinance of local government, excluding violation of the motor vehicle laws."

SECTION 12.(c) Effective July 1, 2018, G.S. 143B-805(6) reads as rewritten:

"(6) Delinquent juvenile. –

a. Any juvenile who, while less than 16 years of age but at least 6 years of age, commits a misdemeanor or infraction under State law or under an ordinance of local government, including violation of the motor vehicle laws; or

b. Any juvenile who, while less than 17 years and six months of age but at least 16 years of age, commits a misdemeanor or infraction under State law or under an ordinance of local government, excluding violation of the motor vehicle laws."

SECTION 12.(d) Effective July 1, 2019, G.S. 143B-805(6) reads as rewritten:

"(6) Delinquent juvenile. –

a. Any juvenile who, while less than 16 years of age but at least 6 years of age, commits a crime or infraction under State law or under an ordinance of local government, including violation of the motor vehicle laws; or

b. Any juvenile who, while less than ~~17 years and six months~~18 years of age but at least 16 years of age, commits a misdemeanor or infraction under State law or under an ordinance of local government, excluding violation of the motor vehicle laws."

SECTION 13. Effective July 1, 2016, G.S. 143B-806(b) reads as rewritten:

"(b) The Secretary shall have the following powers and duties:

...

(20) Provide for the transportation to and from any State or local juvenile facility of any person under the jurisdiction of the juvenile court for any purpose required by Chapter 7B of the General Statutes or upon order of the court."

SECTION 14.(a) Effective July 1, 2016, G.S. 14-316.1 reads as rewritten:

"**§ 14-316.1. Contributing to delinquency and neglect by parents and others.**

Any person who is at least 16 years and six months old who knowingly or willfully causes, encourages, or aids any juvenile within the jurisdiction of the court to be in a place or condition, or to commit an act whereby the juvenile could be adjudicated delinquent, undisciplined, abused, or neglected as defined by G.S. 7B-101 and G.S. 7B-1501 shall be guilty of a Class 1 misdemeanor.

It is not necessary for the district court exercising juvenile jurisdiction to make an adjudication that any juvenile is delinquent, undisciplined, abused, or neglected in order to prosecute a parent or any person, including an employee of the Division of Juvenile Justice of the Department of Public Safety under this section. An adjudication that a juvenile is delinquent, undisciplined, abused, or neglected shall not preclude a subsequent prosecution of a parent or any other person including an employee of the Division of Juvenile Justice of the Department of Public Safety, who contributes to the delinquent, undisciplined, abused, or neglected condition of any juvenile."

SECTION 14.(b) Effective July 1, 2017, G.S. 14-316.1 reads as rewritten:

"**§ 14-316.1. Contributing to delinquency and neglect by parents and others.**

Any person who is at least ~~16 years and six months~~17 years old who knowingly or willfully causes, encourages, or aids any juvenile within the jurisdiction of the court to

be in a place or condition, or to commit an act whereby the juvenile could be adjudicated delinquent, undisciplined, abused, or neglected as defined by G.S. 7B-101 and G.S. 7B-1501 shall be guilty of a Class 1 misdemeanor.

It is not necessary for the district court exercising juvenile jurisdiction to make an adjudication that any juvenile is delinquent, undisciplined, abused, or neglected in order to prosecute a parent or any person, including an employee of the Division of Juvenile Justice of the Department of Public Safety under this section. An adjudication that a juvenile is delinquent, undisciplined, abused, or neglected shall not preclude a subsequent prosecution of a parent or any other person including an employee of the Division of Juvenile Justice of the Department of Public Safety, who contributes to the delinquent, undisciplined, abused, or neglected condition of any juvenile."

SECTION 14.(c) Effective July 1, 2018, G.S. 14-316.1 reads as rewritten:

"**§ 14-316.1. Contributing to delinquency and neglect by parents and others.**

Any person who is at least 17 years and six months old who knowingly or willfully causes, encourages, or aids any juvenile within the jurisdiction of the court to be in a place or condition, or to commit an act whereby the juvenile could be adjudicated delinquent, undisciplined, abused, or neglected as defined by G.S. 7B-101 and G.S. 7B-1501 shall be guilty of a Class 1 misdemeanor.

It is not necessary for the district court exercising juvenile jurisdiction to make an adjudication that any juvenile is delinquent, undisciplined, abused, or neglected in order to prosecute a parent or any person, including an employee of the Division of Juvenile Justice of the Department of Public Safety under this section. An adjudication that a juvenile is delinquent, undisciplined, abused, or neglected shall not preclude a subsequent prosecution of a parent or any other person including an employee of the Division of Juvenile Justice of the Department of Public Safety, who contributes to the delinquent, undisciplined, abused, or neglected condition of any juvenile."

SECTION 14.(d) Effective July 1, 2019, G.S. 14-316.1 reads as rewritten:

"**§ 14-316.1. Contributing to delinquency and neglect by parents and others.**

Any person who is at least ~~17 years and six months~~18 years old who knowingly or willfully causes, encourages, or aids any juvenile within the jurisdiction of the court to be in a place or condition, or to commit an act whereby the juvenile could be adjudicated delinquent, undisciplined, abused, or neglected as defined by G.S. 7B-101 and G.S. 7B-1501 shall be guilty of a Class 1 misdemeanor.

It is not necessary for the district court exercising juvenile jurisdiction to make an adjudication that any juvenile is delinquent, undisciplined, abused, or neglected in order to prosecute a parent or any person, including an employee of the Division of Juvenile Justice of the Department of Public Safety under this section. An adjudication that a juvenile is delinquent, undisciplined, abused, or neglected shall not preclude a subsequent prosecution of a parent or any other person including an employee of the Division of Juvenile Justice of the Department of Public Safety, who contributes to the delinquent, undisciplined, abused, or neglected condition of any juvenile."

SECTION 15. For purposes of this act, the determination of a juvenile's age shall be from the date of birth in the month of birth to the same date in each calendar month.

SECTION 16.(a) Effective January 14, 2011, Section 18.9(h) of S.L. 2009-451 reads as rewritten:

"**SECTION 18.9.(h)** Report. – The Task Force shall submit an interim report to the 2010 Regular Session of the 2009 General Assembly, with copies to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee and to the Appropriations Subcommittees on Justice and Public Safety of both houses and shall submit a final report of its findings and recommendations, including legislative, administrative, and funding recommendations, by ~~January 15, 2011,~~January 15, 2020, to the General Assembly, the Governor, and the citizens of the State. The Task Force shall terminate upon filing its final report."

SECTION 16.(b) Effective January 1, 2012, Section 18.9 of S.L. 2009-451 reads as rewritten:

"**SECTION 18.9.(a)** Task Force Established. – There is established within the Division of Juvenile Justice of the Department of Public Safety~~Department of Juvenile Justice and Delinquency Prevention~~ the Youth Accountability Planning Task Force. The Division of Juvenile Justice of the Department of Public Safety~~Department of Juvenile Justice and Delinquency Prevention~~ shall provide professional and clerical staff and other services and supplies, including meeting space, as needed for the Task Force to carry out its duties in an effective manner.

"**SECTION 18.9.(b)** Membership. – The Task Force shall consist of 21 members. The following members or their designees shall serve as ex officio members:

(1) The Chief Deputy Secretary of the Division of Juvenile Justice of the Department of Public Safety.~~Secretary of the Department of Juvenile Justice and Delinquency Prevention.~~

(2) The Director of the Administrative Office of the Courts.

(3) The Secretary of the Department of Health and Human Services.

(4) The Chief Deputy Secretary of the Division of Adult Corrections of the Department of Public Safety.~~Secretary of the Department of Correction.~~

(5) The Secretary of the Department of ~~Crime Control and~~ Public Safety.

(6) The Superintendent of Public Instruction.

(7) The Secretary of the Department of Administration, or a designee having knowledge of programs and services for youth and young adults.

(8) The Juvenile Defender in the Office of Indigent Defense.

(9) One representative from the Governor's Crime Commission, appointed by the Governor.

(10) One representative from the North Carolina Sentencing and Policy Advisory Commission, appointed by the Governor.

The remaining members shall be appointed as follows:

(11) Three members of the House of Representatives appointed by the Speaker of the House of Representatives.

(12) Three members of the Senate appointed by the President Pro Tempore of the Senate.

(13) Two chief court counselors, appointed by the Governor, one to be from a rural county and one from an urban county.

(14) One present or former chief district court judge or superior court judge appointed by the Chief Justice of the North Carolina Supreme Court.

(15) One police chief appointed by the President Pro Tempore of the Senate.

(16) One district attorney appointed by the Speaker of the House of Representatives.

Appointments to the Task Force shall be made no later than October 1, 2009. A vacancy in the Task Force or a vacancy as chair of the Task Force resulting from the resignation of a member or otherwise shall be filled in the same manner in which the original appointment was made.

"**SECTION 18.9.(c)** Chair; Meetings. – The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate one member to serve as cochair of the Task Force.

The cochairs shall call the initial meeting of the Task Force on or before November 1, 2009. The Task Force shall subsequently meet upon such notice and in such manner as its members determine. A majority of the members of the Task Force shall constitute a quorum.

"**SECTION 18.9.(d)** The Office of the Governor shall provide staff to the Task Force at the request of the Task Force.

"**SECTION 18.9.(e)** Cooperation by Government Agencies. – The Task Force may call upon any department, agency, institution, or officer of the State or any political subdivision thereof for facilities, data, or other assistance.

"**SECTION 18.9.(f)** Duties of Task Force. – The Task Force shall determine whether the State should amend the laws concerning persons 16 and 17 years of age who commit crimes or infractions, including a determination of whether the Juvenile Code or the Criminal Procedure Act should be revised to provide appropriate sanctions, services, and treatment for those offenders and a study of expanding the jurisdiction of the Division of Juvenile Justice of the Department of Public Safety~~Department of Juvenile Justice and Delinquency Prevention~~ to include persons 16 and 17 years of age who commit crimes or infractions. As part of its study, the Task Force shall also develop an implementation plan that may be used if it is determined that it is appropriate to expand the jurisdiction of the Division of Juvenile Justice of the Department of Public Safety ~~Department of Juvenile Justice and Delinquency Prevention~~ to include persons 16 and 17 years of age who commit crimes or infractions. In particular, the Task Force shall consider all of the following:

(1) The costs to the State court system and State and local law enforcement.

(2) The relevant State laws that should be conformed or amended as a result of revising the definition of delinquent juvenile to include 16- and 17-year-old persons, including the motor vehicle and criminal laws, the laws regarding expunction of criminal records, and other juvenile laws. The Task Force shall make recommendations to the General Assembly regarding proposed legislative amendments.

(3) Proposals to eliminate the racial disparity in complaints, commitments, community program availability, utilization and success rates, and other key decision and impact points in the juvenile justice process.

(4) Proposals regarding community programs that would provide rehabilitative services to juveniles in a treatment-oriented environment

and incorporate best practices as recommended in subdivision (3) of this subsection.

(5) The total cost of expanding the jurisdiction of the Division of Juvenile Justice of the Department of Public Safety~~Department of Juvenile Justice and Delinquency Prevention~~ to include persons who are 16 and 17 years of age who commit crimes or infractions under State law or under an ordinance of local government.

(6) The implications of revising the definition of delinquent juvenile to include 16- and 17-year-olds, as it relates to other laws based on age, including laws requiring school attendance and drivers license laws.

(7) Whether standards should be established for determining when a juvenile should be transferred to superior court, including whether there should be presumptions that certain offenses should or should not result in a transfer to superior court.

(8) Whether a 16- or 17-year-old who is alleged to have committed a felony motor vehicle offense should be considered a juvenile or an adult.

(9) Any other related issues that the Task Force considers necessary.

Upon enactment of legislation expanding the jurisdiction of the Division of Juvenile Justice of the Department of Public Safety to include persons 16 and 17 years of age who commit crimes or infractions, the Task Force shall monitor and review the implementation of the expansion and shall make additional recommendations to the General Assembly as necessary.

"**SECTION 18.9.(g)** Consultation. – The Task Force shall consult with appropriate State departments, agencies, and board representatives on issues related to juvenile justice administration.

"**SECTION 18.9.(h)** Report. – The Task Force shall submit an interim report to the 2010 Regular Session of the 2009 General Assembly, with copies to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee and to the Appropriations Subcommittees on Justice and Public Safety of both houses and shall submit a final report of its findings and recommendations, including legislative, administrative, and funding recommendations, by January 15, 2020, to the General Assembly, the Governor, and the citizens of the State. The Task Force shall terminate upon filing its final report.

"**SECTION 18.9.(i)** Funding. – The Task Force may apply for, receive, and accept grants of non-State funds or other contributions as appropriate to assist in the performance of its duties. The Division of Juvenile Justice of the Department of Public Safety ~~Department of Juvenile Justice and Delinquency Prevention~~ may also use funds appropriated to it to carry out the study and devise the implementation plan."

SECTION 17. Except as otherwise provided in this act, this act is effective when it becomes law. Prosecutions, or delinquency proceedings initiated, for offenses committed before any particular section of this act becomes effective are not abated or affected by this act, and the statutes that are in effect on the dates the offenses are committed remain applicable to those prosecutions.

Appendix C

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE RESEARCH COMMISSION

STATE LEGISLATIVE BUILDING
RALEIGH, NC 27601

December 12, 2013

TO THE MEMBERS OF THE LEGISLATIVE RESEARCH COMMISSION:

Attached for your consideration is the report to the 2013 Session of the North Carolina General Assembly. This report was prepared by the Legislative Research Commission's Committee on Career and Technical Education, pursuant to G.S. 120-30.17(1).

Senator Harry Brown
Co-Chair

Representative Bryan Holloway
Co-Chair

Senator Jerry Tillman
Co-Chair

Co-Chairs
Committee on Career and Technical Education
Legislative Research Commission

LEGISLATIVE RESEARCH COMMISSION

CAREER AND TECHNICAL EDUCATION COMMITTEE

NORTH CAROLINA GENERAL ASSEMBLY

REPORT TO THE 2013 SESSION of the GENERAL ASSEMBLY OF NORTH CAROLINA

DECEMBER, 2012

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TRANSMITTAL LETTER

January, 2013

TO THE MEMBERS OF THE 2013 SESSION
OF THE NORTH CAROLINA GENERAL ASSEMBLY

The Legislative Research Commission herewith submits to you for your consideration its report and recommendations to the 2013 Session of the North Carolina General Assembly. The report was prepared by the Legislative Research Commission's Committee on Career and Technical Education, pursuant to G.S. 120-30.17(1).

Respectfully submitted,

Senator Philip E. Berger President Pro Tempore of the Senate	Representative Thomas R. Tillis Speaker of the House of Representatives

Co-Chairs
Legislative Research Commission

LEGISLATIVE RESEARCH COMMISSION MEMBERSHIP

2011 – 2012

President Pro Tempore of the Senate
Senator Philip E. Berger
Co-Chair

Senator Thomas M. Apodaca
Acting Co-Chair

Senator Peter S. Brunstetter
Senator Linda D. Garrou
Senator Martin L. Nesbitt, Jr.
Senator Richard Y. Stevens

Speaker of the House of Representatives
Representative Thomas R. Tillis
Co-Chair

Representative Timothy K. Moore
Acting Co-Chair

Representative John M. Blust
Representative Justin P. Burr
Representative Mike D. Hager
Representative Edith D. Warren

PREFACE

The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is the general purpose study group in the Legislative Branch of State Government. The Commission is co-chaired by the President Pro Tempore of the Senate and the Speaker of the House of Representatives and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigation into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

The Legislative Research Commission authorized the study of Career and Technical Education, under authority of G.S. 120-30.17(1). The Committee was chaired by Senators Harry Brown and Jerry Tillman, and Representative Bryan Holloway, Co-Chairs of the Committee. The full membership of the Committee is listed under Committee Membership. A committee notebook containing the committee minutes and all information presented to the committee will be filed in the Legislative Library by the end of the **2011-2012** biennium.

COMMITTEE PROCEEDINGS

The Legislative Research Commission Study Committee on Career and Technical Education held 4 meetings between September 27, 2012 and December 12, 2012.

September 27, 2012

Overview of Study Committee Charge
Dr. Patsy Pierce, Committee Staff
NCGA Research Division

Current "State of the State" in Career and Technical Education
Dr. June Atkinson, Superintendent
Department of Public Instruction
Jo Anne Honeycutt, CTE Program Director
Department of Public Instruction
Dr. Scott Ralls, President
North Carolina Community College System

October 23, 2012

Regional High Schools
Northeast Regional School of Biotechnology and Agriscience
Hallet Davis, Principal
Dr. Michael Dunsmore, Superintendent, Tyrrell County Schools,
Board Member, Northeast Regional School of Biotechnology and Agriscience

Yadkin Valley Regional Career Academy
Newell Clark, Co-Chair, YVRCA Steering Committee, Mayor, City of Lexington
Theresa Reynolds, Career Counselor/Business Liaison, Valley Academy
Barry Sink, Co-Chair, YVRCA Steering Committee, President, Olde Lexington Products

CTE High Schools
Wayne School of Engineering
Gary Hales, Principal
Julie Heath, CTE Instructor
Justin Mitchell, CTE Student

Iredell-Statesville Career Academy and Technical School
Larry Rogers, Principal
Martin Page, CTE Instructor
Corey Deal and Bryan Sanchez, CTE students

CTE Instructor Requirements
Jo Anne Honeycutt, CTE Program Director, Department of Public Instruction

NC Occupational Landscape
Pathways to Prosperity
Roger Shackelford, Assistant Secretary, Workforce Solutions, NC Department of Commerce

November 15, 2012

North Carolina Association of Career and Technical Educators
Dave Simpson, Carolinas AGC (Associated General Contractors), NCACTE (NC Association for Career and Technical Education)
Aaron Fleming, CTE Director, Lee County Schools
Bill Downey, L.A. Downey & Son, Durham General Contractor
Melinda Wonderly, CTE Student, Gray's Creek High School
Patrice Somerville, CTE Student, Douglas Byrd High School
Kristina Yarborough, NCACTE President

Group Discussion
Committee Members

December 12, 2012

Final Report – Committee Consideration and Adoption

SUMMARY OF COMMITTEE PROCEEDINGS

The Legislative Research Commission's Committee on Career and Technical Education met 4 times after the 2012 Session. The Committee's Charge can be found here. The following is a brief summary of the Committee's proceedings. Detailed minutes and information from each Committee meeting are available in the Legislative Library.

September 27, 2012

Dr. Patsy Pierce, a legislative analyst with the Research Division, was recognized to explain the seven issues the Committee has been assigned to study. They are: 1) preparing high school graduates for job market challenges; 2) reviewing the effectiveness of the Career and College Promise program; 3) studying the progress in developing regional schools; 4) reviewing Article 10 of G.S. 115C to determine if it needs any modifications; 5) studying cost-effective, educational partnerships between public education, community colleges and businesses to provide marketable skills for students; 6) developing potential legislation to enhance career education through innovative schools and high academic standards; and 7) any other issues deemed appropriate by the Committee.

Dr. June Atkinson, Superintendent of the Department of Public Instruction (DPI) and Jo Anne Honeycutt, CTE Program Director, DPI, explained the current requirements of CTE, the 16 career clusters and the required courses. They also described the Career and College Promise program which helps students to earn community college credits through dual-enrollment. Dr. Atkinson offered recommendations to assist the Committee with its goals: including an expansion of apprenticeship programs, career development counseling for every student; incentives for businesses that participate in internships; increased support of CTE student organizations; and an increase of value in earning certificates with a type of reward or recognition system.

Members asked presenters about problems with finding and keeping CTE instructors and students with requisite skill levels.

Dr. Scott Ralls, President of the North Carolina Community College System, explained how CTE is spread across many program areas, and provided data on numbers of students enrolled and graduating from technical programs. He outlined problems and how to address them, including (i) the need for tiered-funding for different programs, (ii) technical education certificates to be redesigned using industry standards to better assist area businesses, (iii) high school courses more aligned with college courses so students may get an associate's degree one year after graduating high school, (iv) summer funding for targeted CTE programs, (v) strengthening school collaborations (particularly in technical programs), and (vi) funding to update and equip community college shops and labs that are used by high schools in the mornings and adults in the evenings.

Members discussed the costs of equipment and use of existing industry equipment for training purposes.

October 23, 2012

Mr. Hallet Davis, Principal, Northeast Regional School of Biotechnology and Agriscience, and Dr. Michael Dunsmore, Superintendent, Tyrrell County Schools described this regional school which just opened in late August, 2011. Mr. Davis and Dr. Dunsmore talked about the hands-on scientific research activities available to the students of this regional school. They indicated that other local school districts are interested in partnering with them in the future.

Newell Clark, Co-Chair, Yadkin Valley Regional Career Academy (YVRCA) Steering Committee, Mayor, City of Lexington, Theresa Reynolds, Career Counselor/Business Liaison, Valley Academy, and Barry Sink, Co-Chair, YVRCA Steering Committee, President, Olde Lexington Products described how this regional school was founded. They discussed the importance of working with local businesses to determine industry and educational needs of the region.

Gary Hales, Principal, Julie Heath, CTE Instructor, and Justin Mitchell, CTE Student from the Wayne School of Engineering in Goldsboro, NC described the advanced levels of mechanical drafting and other CTE courses available to students enrolled in this public high school. They also described the wide variety of CTE offerings, including business and industry certifications, available to middle and high school students in Wayne County public schools.

Larry Rogers, Principal, Martin Page, CTE Instructor, Corey Deal and Bryan Sanchez, CTE students described the multiple CTE programs available at the Iredell-Statesville Career Academy and Technical School. The presenters indicated that a high percentage of students graduating from this school obtain employment in the fields of their choice including automotive and health science industries.

Jo Anne Honeycutt, CTE Program Director, Department of Public Instruction provided committee members with a flow chart outlining pathways for CTE instructors to become licensed teachers in NC public schools.

Roger Shackelford, Assistant Secretary, Workforce Solutions, NC Department of Commerce, provided data on the types of jobs that are currently open in NC. He also described the State's "Pathway to Prosperity" program in which public schools and community colleges are working with local businesses and industry to meet training and education needs.

November 15, 2012

Dave Simpson, Government Relations, NC Association of Career and Technical Educators and presenters representing CTE instructors, students, and industry provided a list of recommendations for legislators to continue to support and grow CTE in North Carolina's public schools. These recommendations included increasing CTE student recognition with special recognition on a high school diploma; increasing work-based learning opportunities, and encouraging high school and community college collaboration to create high-demand CTE programs in fields such as advanced manufacturing and construction.

Members of the committee then discussed proposed legislation to add endorsements to high school diplomas reflecting focused courses of study and to also increase the number of students enrolled in CTE courses, especially in high demand employment fields.

December 12, 2012

The Committee adopted the final report.

FINDINGS AND RECOMMENDATIONS

Based on information presented to the Legislative Research Commission Study Committee on Career and Technical Education (CTE) during its regularly-scheduled meetings, the Committee reports the following findings and makes the following recommendations to the 2013 General Assembly:

1. Increase the skills of high school graduates in occupations with high employment potential.

According to current data shared from the State Board of Education, even though slightly over half of high school graduates (51%) complete a CTE program, this number represents nearly a 5% decrease in completers since 2006. Currently there are also only about 5000 students enrolled in the dual-credit enrollment Career and College Promise Career and Technical Education Pathway. In addition to these statistics, according to current data shared by the NC Department of Commerce and the State Board of Community Colleges, a "skill gap" exists, and is projected to continue to exist, in occupations relying on science, technology, engineering, and mathematics. The jobs that are available in these fields require specific coursework, internships, and industry certification that may be obtained during high school and/or at two-year or four-year colleges/universities. The Committee finds that in order to decrease the current unemployment rate and help meet the needs of the current and future job market that:

- The State Board of Education and the State Board of Community Colleges should collaborate to increase the number of students engaged in CTE, especially in engineering and industrial technologies by:
    - Creating incentives such as endorsements added to high school diplomas;
    - Sharing resources to increase access to a wide variety of CTE courses and internships; and
    - Exploring strategies to engage younger students in the CTE program, including early and ongoing college and career counseling.
- See attached **LEGISLATIVE PROPOSAL 2013-TLz-1B [v.20]**

2. Streamline the CTE teacher licensure process to increase the pool of available instructors, especially in high need employment areas.

The Committee understands that it is extremely difficult to recruit CTE instructors due to salary differentials, employment shortages in some professions, e.g., nursing, and the extended time commitment needed to obtain teacher licensure. The Committee therefore strongly encourages the State Board of Education to review its teacher licensure policies for CTE instructors in order to make this process as accessible as possible. The State Board of Education should also explore alternative professional development, mentoring, and curricular models that would support CTE instructors who may not have an extensive teaching or classroom management background. Finally, the Committee encourages the State Board of Education and the State Board of Community Colleges to explore the feasibility of sharing instructors to increase full time employment and salary possibilities.

- See attached **LEGISLATIVE PROPOSAL 2013-TLz-1B [v.20]**

3. Target CTE coursework to match current and future local and Statewide job market needs.

According to information provided by the State Board of Education, not all CTE courses or pathways are available across the State, but that students who are engaged in CTE demonstrate a 10% higher four-year cohort graduation rate. The Committee also heard from several different high school models such as regional schools and CTE academy schools. The common message regarding their success in keeping students engaged through graduation, and in their post-graduation college and career success, was the partnerships these schools had forged with local businesses and industry. The Committee therefore recommends that each local board of education seek out ways to partner with their local businesses and industry, such as participating in programs like NC's Pathways to Prosperity, in order to gear CTE coursework and internships to meet current and future job market needs. The Committee requests that local boards of education report local business and industry training needs to the State Board of Education to keep them informed of current CTE program support needs.

COMMITTEE MEMBERSHIP

Legislative Research Commission
Career and Technical Education Committee
2012-2013

Senator Harry Brown, Cochair
300-B Legislative Office Building
Raleigh, North Carolina 27603
(919) 715-3034
Harry.Brown@ncleg.net

Senator Jerry W. Tillman, Cochair
627 Legislative Office Building
Raleigh, North Carolina 27603
(919) 733-5870
Jerry.Tillman@ncleg.net

Senator Floyd B. McKissick, Jr.
520 Legislative Office Building
Raleigh, North Carolina 27603
(919) 733-4599
Floyd.McKissick@ncleg.net

Senator Dan Soucek
310 Legislative Office Building
Raleigh, North Carolina 27603
(919) 733-5742
Dan.Soucek@ncleg.net

Senator Tommy Tucker
311 Legislative Office Building
Raleigh, North Carolina 27603
(919) 733-7659
Tommy.Tucker@ncleg.net

Representative Bryan R. Holloway, Cochair
529 Legislative Office Building
Raleigh, North Carolina 27603
(919) 733-5609
Byran.Holloway@ncleg.net

Representative Hugh Blackwell
541 Legislative Office Building
Raleigh, North Carolina 27603
(919) 733-5805
Hugh.Blackwell@ncleg.net

Representative John Blust
1229 Legislative Building
Raleigh, North Carolina 27601
(919) 733-5781
John.Blust@ncleg.net

Representative Tricia A. Cotham
403 Legislative Office Building
Raleigh, North Carolina 27603
(919) 715-0706
Tricia.Cotham@ncleg.net

Representative James H. Langdon, Jr.
417-B Legislative Office Building
Raleigh, North Carolina 27603
(919) 733-5849
James.Langdon@ncleg.net

Staff:

Dr. Patsy Pierce
Research Division
545 Legislative Office Building
Raleigh, North Carolina 27603
(919) 733-2578
Patsy.Pierce@ncleg.net

Ms. Denise Adams
Research Division
545 Legislative Office Building
Raleigh, North Carolina 27603
(919) 733-2578
Denise.Adams@ncleg.net

Ms. Dee Atkinson
Research Division
545 Legislative Office Building
Raleigh, North Carolina 27603
(919) 733-2578
Dee.Atkinson@ncleg.net

Ms. Kara McCraw
Research Division
545 Legislative Office Building
Raleigh, North Carolina 27603
(919) 733-2578
Kara.McCraw@ncleg.net

Mr. Kristopher Nordstrom
Fiscal Research Division
619 Legislative Office Building
Raleigh, North Carolina 27603
(919) 733-4910
Kristopher.Nordstrom@ncleg.net

Ms. Andrea Poole
Fiscal Research Division
619 Legislative Office Building
Raleigh, North Carolina 27603
(919) 733-4910
Andrea.Poole@ncleg.net

Isabel Villa-Garcia
Committee Assistant
529 Legislative Office Building
Raleigh, North Carolina 27603
(919) 733-5609
Isabel.Villa-Garcia@ncleg.net

Ms. Drupti Chauhan
Research Division
545 Legislative Office Building
Raleigh, North Carolina 27603
(919) 733-2578
Drupti.Chauhan@ncleg.net

Ms. Leslie Karkanawi
Bill Drafting Division
401 Legislative Office Building
Raleigh, North Carolina 27063
(919) 733-6660
Leslie.Karkanawi@ncleg.net

Mr. Brian Matteson
Fiscal Research Division
619 Legislative Office Building
Raleigh, North Carolina 27603
(919) 733-4910
Brian.Matteson@ncleg.net

DeAnne Mangum
Committee Assistant
300-B Legislative Office Building
Raleigh, North Carolina 27603
(919) 733-2405
DeAnne.Mangum@ncleg.net

COMMITTEE CHARGE

Career and Technical Education – The LRC Study Committee on Career and Technical Education shall study the following aspects of the current State vocational training to improve the quality and relevance of training, align basic education and vocational and higher education training and ensure that students who are not college bound are career ready. Specifically, the Committee shall study the following:

1. The requirements and challenges North Carolina high school graduates face in today's changing and demanding job market. The study should include a review of what North Carolina industries look for in well-qualified candidates for employment as it pertains to education, certification, and skill level;
2. The Career and College Promise program, specifically the Career and Technical Education Pathway and the Cooperative Innovative High School Pathway, to determine if the program is meeting the unique needs of students seeking to enter the workforce after completing high school. The study should include a review of the career clusters and pathways, work-based learning, career academies, time-shortened programs, and certification and credentialing offered to determine if they meet the current needs of North Carolina's students and business community. The study should also examine current outreach and practices to raise student awareness of Career and Technical Education opportunities;
3. Progress in developing regional schools through S.L. 2011-241 which authorized local boards of education to jointly establish a regional school to serve enrolled students in two or more local school administrative units that will expand student opportunities for educational success through high quality instructional programming;
4. Article 10 of Chapter 115C of the North Carolina General Statutes as it pertains to vocational and technical education to determine if modification is necessary to best reflect the intent of the General Assembly and provide the necessary opportunities and flexibility to establish innovative learning environments that provide students with practical work experiences and vocational skills;
5. Additional, cost-effective ways in which the Department of Public Instruction, the North Carolina Community College System, and the business community can partner to offer enriched educational opportunities for students to enter the workforce with academic and marketable vocational skills after completing high school;
6. Potential legislative actions to further enhance connecting career technical education to education, workforce preparation, and economic development though innovative schools and high academic standards;
7. Any other issues associated with vocational education deemed appropriate by the Committee.

STATUTORY AUTHORITY

NORTH CAROLINA GENERAL STATUTES
ARTICLE 6B.

Legislative Research Commission.

§ 120-30.17. Powers and duties.

The Legislative Research Commission has the following powers and duties:

(1) Pursuant to the direction of the General Assembly or either house thereof, or of the chairmen, to make or cause to be made such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner.

(2) To report to the General Assembly the results of the studies made. The reports may be accompanied by the recommendations of the Commission and bills suggested to effectuate the recommendations.

(3), (4) Repealed by Session Laws 1969, c. 1184, s. 8.

(5), (6) Repealed by Session Laws 1981, c. 688, s. 2.

(7) To obtain information and data from all State officers, agents, agencies and departments, while in discharge of its duty, pursuant to the provisions of G.S. 120-19 as if it were a committee of the General Assembly.

(8) To call witnesses and compel testimony relevant to any matter properly before the Commission or any of its committees. The provisions of G.S. 120-19.1 through G.S. 120-19.4 shall apply to the proceedings of the Commission and its committees as if each were a joint committee of the General Assembly. In addition to the other signatures required for the issuance of a subpoena under this subsection, the subpoena shall also be signed by the members of the Commission or of its committee who vote for the issuance of the subpoena.

(9) For studies authorized to be made by the Legislative Research Commission, to request another State agency, board, commission or committee to conduct the study if the Legislative Research Commission determines that the other body is a more appropriate vehicle with which to conduct the study. If the other body agrees, and no legislation specifically provides otherwise, that body shall conduct the study as if the original authorization had assigned the study to that body and shall report to the General Assembly at the same time other studies to be conducted by the Legislative Research Commission are to be reported. The other agency shall conduct the transferred study within the funds already assigned to it.

LEGISLATIVE PROPOSALS

LEGISLATIVE PROPOSAL

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

U **D**

BILL DRAFT 2013-TLz-1B [v.20] (10/23)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
11/30/2012 4:35:31 PM

Short Title:	Increase Access To Career/Technical Ed.	(Public)
Sponsors:	Unknown (Primary Sponsor).	
Referred to:		

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE STATE BOARD OF EDUCATION TO DEVELOP CAREER AND COLLEGE ENDORSEMENTS FOR HIGH SCHOOL DIPLOMAS, INCREASE ACCESS TO CAREER AND TECHNICAL EDUCATION TEACHERS IN PUBLIC SCHOOLS, AND TO WORK WITH THE STATE BOARD OF COMMUNITY COLLEGES TO INCREASE THE NUMBER OF STUDENTS ENROLLING IN CAREER AND TECHNICAL EDUCATION IN HIGH NEED EMPLOYMENT AREAS, AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION STUDY COMMITTEE ON CAREER AND TECHNICAL EDUCATION.

The General Assembly of North Carolina enacts:

SECTION 1.(a). G.S. 115C-12 is amended by adding a new subdivision to read:

"(40) **To Establish High School Diploma Endorsements.** – The State Board of Education shall establish, implement, and determine the impact of adding (i) college (ii) career and (iii) college and career endorsements to high school diplomas, to encourage students to obtain requisite job skills and to reduce the need for remedial education in institutions of higher education. These endorsements shall reflect courses completed, grades accomplished in each course, and other criteria as developed by the State Board of Education. The State Board of Education shall report to the Joint Legislative Education Oversight Committee on the impact of awarding these endorsements on high school graduation, college acceptance and remediation, and post high

school employment rates by September 1, 2016, and annually thereafter."

SECTION 1.(b). The State Board of Education shall make high school diploma endorsements as provided under this section available to students graduating high school beginning with the 2014-2015 school year. The State Board of Education shall report to the Joint Legislative Education Oversight Committee on the progress towards establishing specific college and career endorsements for high school diplomas and for awarding these endorsements by February 1, 2014.

SECTION 2.(a). G.S. 115C-296.7(d) reads as rewritten:

"(d) The State Board of Education shall identify local school administrative units with unmet recruitment ~~needs~~ needs, especially for career and technical education teachers, and high needs schools and shall coordinate placement of NC Teacher Corps members in those schools."

SECTION 2.(b). The State Board of Education shall (i) revise post-secondary education and evaluation requirements for teacher licensure of career and technical education teachers to increase accessibility to the licensure process while maintaining quality of instruction and (ii) develop alternative professional development, mentoring, and curricular models to support career and technical education teachers who may not have an extensive teaching or classroom management background.

SECTION 2.(c). The State Board of Education shall report to the Joint Legislative Education Oversight Committee by January 15, 2014 on progress made in increasing accessibility to the licensure process, and in developing alternative professional development supports for career and technical education teachers who may not have an extensive teaching or classroom management background.

SECTION 3.(a). The State Board of Education, in collaboration with the State Board of Community Colleges, shall develop strategies to (i) increase the number of high school students engaging in career and technical education, especially in the areas of engineering and industrial technologies, and (ii) enroll additional high school students, including freshmen and sophomores, in coursework leading to skills in occupations with high numbers of employment opportunities. In developing these strategies, the Boards shall consider sharing of instructors, facilities, equipment, and business internship opportunities between the public schools and community colleges to facilitate these goals.

SECTION 3.(b). The State Board of Education and the State Board of Community Colleges shall jointly report to the Joint Legislative Education Oversight Committee by October 1, 2014 on progress made on developing strategies to increase student engagement in career and technical education, especially in engineering and industrial technologies, and on enrolling high school students, including freshman and sophomores, in coursework preparing them for occupations with high numbers of employment opportunities.

SECTION 4. This act is effective when it becomes law.

Appendix D

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE RESEARCH COMMISSION

STATE LEGISLATIVE BUILDING
RALEIGH, NC 27601

December 13, 2012

TO THE MEMBERS OF THE LEGISLATIVE RESEARCH COMMISSION:

Attached for your consideration is the report to the 2013 Session of the North Carolina General Assembly. This report was prepared by the Legislative Research Commission's Committee on Digital Learning Environments in Public Schools, pursuant to G.S. 120-30.17(1).

Senator Dan Soucek
Co-Chair

Representative D. Craig Horn
Co-Chair

Co-Chairs
Committee on Digital Learning Environments in Public Schools
Legislative Research Commission

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LEGISLATIVE RESEARCH COMMISSION

DIGITAL LEARNING ENVIRONMENTS IN PUBLIC SCHOOLS COMMITTEE

NORTH CAROLINA GENERAL ASSEMBLY

REPORT TO THE 2013 SESSION of the GENERAL ASSEMBLY OF NORTH CAROLINA

DECEMBER 13, 2012

A LIMITED NUMBER OF COPIES OF THIS REPORT ARE AVAILABLE FOR DISTRIBUTION THROUGH THE LEGISLATIVE LIBRARY

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TRANSMITTAL LETTER

January, 2013

TO THE MEMBERS OF THE 2013 SESSION
OF THE NORTH CAROLINA GENERAL ASSEMBLY

The Legislative Research Commission herewith submits to you for your consideration its report and recommendations to the 2013 Session of the North Carolina General Assembly. The report was prepared by the Legislative Research Commission's Committee on Digital Learning Environments in Public Schools, pursuant to G.S. 120-30.17(1).

Respectfully submitted,

Senator Philip E. Berger
President Pro Tempore of the Senate

Representative Thomas R. Tillis
Speaker of the House of Representatives

Co-Chairs
Legislative Research Commission

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LEGISLATIVE RESEARCH COMMISSION MEMBERSHIP

2011 – 2012

President Pro Tempore of the Senate
Senator Philip E. Berger
Co-Chair

Senator Thomas M. Apodaca
Acting Co-Chair

Senator Peter S. Brunstetter
Senator Linda D. Garrou
Senator Martin L. Nesbitt, Jr.
Senator Richard Y. Stevens

Speaker of the House of Representatives
Representative Thomas R. Tillis
Co-Chair

Representative Timothy K. Moore
Acting Co-Chair

Representative John M. Blust
Representative Justin P. Burr
Representative Mike D. Hager
Representative Edith D. Warren

PREFACE

The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is the general purpose study group in the Legislative Branch of State Government. The Commission is co-chaired by the President Pro Tempore of the Senate and the Speaker of the House of Representatives and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigation into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

The Legislative Research Commission authorized the study of Digital Learning Environments in Public Schools, under authority of G.S. 120-30.17(1). The Committee was chaired by Senator Dan Soucek and Representative D. Craig Horn, Co-Chairs of the Committee. The full membership of the Committee is listed under Committee Membership. A committee notebook containing the committee minutes and all information presented to the committee will be filed in the Legislative Library by the end of the **2011-2012** biennium.

COMMITTEE PROCEEDINGS

The Legislative Research Commission's Committee on Digital Learning Environments in Public Schools met 4 times after the 2012 Session. The Committee's Charge can be found here. The following is a brief summary of the Committee's proceedings. Detailed minutes and information from each Committee meeting are available in the Legislative Library.

October 4, 2012

The Legislative Research Commission's Committee on Digital Learning Environments in Public Schools held its first meeting at the Friday Institute for Educational Innovation at NC State University.

Governor Bob Wise, President of the Alliance for Excellence in Education and former Governor of West Virginia, addressed the Committee on a national perspective on digital learning. Governor Wise defined digital learning as any instructional practice that effectively uses technology to strengthen a student's learning experience. He spoke about the challenges facing North Carolina and many other states in implementing new curriculum, working with shrinking budgets, developing high-quality teachers, and equipping students for workforce readiness. Governor Wise suggested a process for developing a strategy to infuse digital learning which includes goal-setting, identification of challenges, and looking at the role of teachers, time, and technology, and offered examples of innovative programs in North Carolina and other states that may serve as models.

Myra Best, Special Advisor to the Governor for E-Learning and Innovation, addressed the Committee on historical perspectives on digital learning in North Carolina. Ms. Best spoke about the formation of the Business Education Technology Alliance (BETA) in 2005, and the development of the NC Virtual Public School (NCVPS) and work on school connectivity through the North Carolina Research and Education Network that began in 2006-2007. In 2008, School Connectivity Initiative funding was expanded by the General Assembly. Since 2009, changes have been made to expand the NCVPS and revise its funding formula. The General Assembly has also created a Longitudinal Data System and has funded reading diagnostic digital devices. Ms. Best reviewed some of the lessons learned, including the need to provide access, the necessity of a robust infrastructure, and the critical nature of public-private partnerships. Ms. Best recommended continuing to build on state developments, developing policy structures to support digital learning, and supporting past eLearning Commission recommendations.

Dr. Glenn Kleiman, Executive Director of the Friday Institute for Educational Innovation, spoke next on current digital learning initiatives in North Carolina. Dr. Kleiman discussed the digital transformation of education and how it has begun in North Carolina in a variety of initiatives around the State, including examples from specific public school systems.

Dr. Jeni Corn, Director of Evaluation Programs, Friday Institute for Educational Innovation, followed Dr. Kleiman's introduction with information on evaluations conducted by the Friday Institute of the IMPACT model, 1:1 learning initiatives, the NC Virtual Public School, and school connectivity. Dr. Corn reviewed findings about teaching in these evaluations, including increased use of technology by teachers, moves to collaborative, project-based lessons, and a shift to technology-enhanced modes of assessment. Dr. Corn also discussed findings about students, including growth in student standardized test scores, increase in online course enrollments, increase in student engagement, and development of 21st century learning skills. Dr. Corn also discussed more recent evaluations of the NC Race to the Top Initiative, IMPACT V, and the Golden Leaf Foundation STEM Initiative that include digital learning components. She indicated that the Friday Institute's findings are consistent with research on initiatives in other states in finding increased student engagement, more active and collaborative student activities, and improvement in student achievement over time.

Dr. Tracy Weeks, Chief Academic Officer and Interim Executive Director at the North Carolina Virtual Public School, spoke about NCVPS. Dr. Weeks provided information on the population served and enrollment numbers and distribution. She spoke about the courses offered by NCVPS and the three types of instructional models used; traditional, blended, and recovery. Dr. Weeks discussed the quality of online instructors for the NCVPS and the current funding model. Dr. Weeks concluded with obstacles facing the NCVPS, including the rising costs of technology infrastructure, finding and training qualified teachers to teach online, and school system policies which may limit access to NCVPS courses. Dr. Weeks suggested the NCVPS could play a role in digital learning through expanding course offerings, providing digital content for face to face classrooms, and professional development.

Angela Quick, Deputy Chief Academic Officer, NC Department of Public Instruction, spoke next and discussed statewide programs and progress in digital learning. Ms. Quick provided information on the instructional improvement system to provide tools and resources through one technology platform to administrators, teachers, parents, and students. Ms. Quick also discussed the development of the Statewide longitudinal data system and its multiple partners in providing data on students as they move from pre-kindergarten into the workforce.

Dr. Glenn Kleiman, Executive Director of the Friday Institute for Educational Innovation, concluded the presentation by noting items for consideration in developing digital learning. Dr. Kleiman stated that curriculum and instruction should be updated to incorporate rigorous content standards and 21st century skills and that digital resources and tools should be used to support teaching and learning. Dr. Kleiman also discussed how new types of formative and diagnostic assessments could inform teachers' instructional decisions and how virtual learning could be expanded to curriculum opportunities for students.

The meeting concluded with discussion of the members and chairs regarding future direction and focus of the Committee.

November 8, 2012

The second meeting of the Committee was held at the Mooresville High School in Mooresville Graded School District. Superintendents from four school districts throughout the State were invited to speak on their perspective of their local school administrative units on digital learning.

Dr. Mark Edwards, Superintendent of Mooresville Graded School District, described the process and successes of the district's conversion to digital learning. Currently in the fifth year of digital conversion, the process began as a moral imperative to even the playing field of the digital divide amongst students. Dr. Edwards attributed the success of the conversion to several factors including buy-in from stakeholders, such as teachers, parents, and the at-large community, as well as reliable digital connectivity in the schools, student interest in innovative learning, and collaboration between teachers, students, and administrators. Dr. Edwards stressed that while the Mooresville district is small, he believes this type of conversion could be achieved in other districts regardless of size, particularly if done through zones as other states throughout the country have done.

Dr. Greg Firn, Superintendent of Anson County Schools, spoke next and described the challenges facing his largely rural district. Anson County is the fifth poorest county in the state and comprised of a diverse group of students, about 80% of whom do not have a washer or dryer at home. Dr. Firn stated he firmly believed that technology disrupts the cycle of poverty and implemented a 1:1 initiative after the district was the recipient of a Golden Leaf grant. Over the five years that Anson County has been working on their 1:1 initiative, they have struggled with a community that initially did not embrace the idea that students deserved laptops. While all schools now have some wi-fi, Anson County's biggest challenge with digital learning has been and remains connectivity. Many students do not have wireless capabilities outside of school. In order to combat this, Anson County has worked closely with local laundry mats to provide wi-fi students can use there when doing laundry. Dr. Firn stressed the importance of e-rate and professional development for teachers to learn how to effectively teach with digital tools. Anson County currently sets aside 1.5% of its $38 million budget for professional development, and would like to do more.

Dr. Valerie Truesdale, Chief Information Officer and Chief Accountability Officer of Charlotte-Mecklenburg School System, and Eric Ward, Principal of West Mecklenburg High School, spoke next about the challenges in Charlotte-Mecklenburg. Dr. Truesdale stressed the challenges in digital conversion between large and small school districts are very different due to the increased number of digital tools needed for districts with more children. Dr. Truesdale commented that infrastructure for wireless access is a basic need in the 21st century and she was particularly concerned with the lack of direction and funding for the required online testing set to occur in 2014. Until schools were told what type of devices would be required for this testing, the necessary hardware could not be bought. She pointed out that for this online testing to occur, the State needs all schools to be uplifted to "good coverage," defined as ability for 30 students in classroom to be

online at one time. Currently, only 15 of 159 schools in Charlotte-Mecklenburg meet such a standard. Mr. Ward spoke next and talked about the infrastructure problems at West Mecklenburg, only one of many high schools in Charlotte. The buildings are from 1951, only 90% of the buildings have some wi-fi, and there is no wi-fi in 13 of the school's mobile units.

Dr. Teri Mosley, Assistant Superintendent, Instructional Services, and Mrs. Jill Reinhardt, Director of Secondary Education/CTE for Surry County Schools, spoke next about their district's experiences, successes, and challenges. Dr. Mosley discussed how Surry County began their digital conversion four years ago with a year of professional development to increase teacher knowledge and buy-in and then started rolling the program out, beginning with 7th graders. Surry County enjoys a business partnership with Surry Telephone, which helps with connectivity concerns. Prior to this conversion, Surry County was considered a strong performing school system, but they have seen continued improvement. Over the past four years, Surry County has seen a higher graduation rate and a decrease in the number of long-term suspensions. Dr. Mosley and Mrs. Reinhardt described Surry County's learning management system, HAIKU, where teachers can share lesson plans and input, which will be helpful with the implementation of the Common Core standards. Dr. Mosley stated that Surry County's biggest challenge was the need for more tech support.

November 26, 2012

Brian Matteson, Fiscal Analyst with the Fiscal Research Division of the General Assembly, provided an overview of the State funding sources for digital learning. Currently, public schools receive State funding through different allotments, each of which have certain rules on allowable uses along with built-in flexibility for local school administrative units (LEAs) to move funds among different allotments. The primary State allotment for digital learning is the State Technology Fund which provides to LEAs funding that can only be used for hardware expenses. In addition, there is the School Connectivity Fund that helps LEAs build broadband capacity. Monies from this Fund cannot be used for hardware or personnel expenses. State textbook allotments can also be used to buy digital materials. Finally, because of budget flexibility granted to LEAs, other monies can be used for digital resources but declines in overall funding have impacted the amount of other monies spent in this area. Other sources of funding for digital learning include federal grants and programs and local and non-profit investments but these are not necessarily on-going or consistent across the State. According to Mr. Matteson, the Public School Building Capital Fund can be used to purchase school technology but this funding has been re-directed to the State's General Fund since 2009. Possible legislative actions include: (i) allowing proceeds from the Education Lottery that are currently limited to school capital needs to also be used for technology and (ii) revising the textbook allotment name to reinforce that those funds can be used for all types of learning resources.

Angela Quick, Deputy Chief Academic Officer at the NC Department of Public Instruction presented on digital textbooks and instructional resources. Ms. Quick

discussed the push to have broadband access throughout the State; 1:1 computing initiatives; and digital resources that currently exist. Next, she presented on upcoming initiatives such as (i) "Home Base", a new portal that will combine student information, standards and curriculum, instructional design and resources, assessments, data analysis and reporting, and professional development and educator evaluation and (ii) LEARN NC Digital Textbooks. Ms. Quick stated that technology has three key categories: (i) there must be strong instruction that helps students learn; (ii) a robust infrastructure with support services to make sure the technology works; and (iii) digital devices that facilitate the learning.

Finally, the Committee discussed possible findings and recommendations for the final report.

December 13, 2012

The Committee considered the recommendations and proposed legislation in the draft report. After discussion of each recommendation, the Committee approved the report for submission to the Legislative Research Commission.

FINDINGS AND RECOMMENDATIONS

Based on information presented to the Legislative Research Commission Study Committee on Digital Learning Environments in Public Schools during its regularly-scheduled meetings, the Committee reports the following findings and makes the following recommendations to the 2013 General Assembly:

1. Instructional Leadership

Effective educators include classroom teachers, instructional technology facilitators, media specialists, teaching assistants, principals, and superintendents committed to creating an environment that uses multiple digital learning resources. These resources are critical to successful digital learning that provides an education that will equip students with 21st Century skills to be prepared for success in both career and college. The Committee finds that high-quality, ongoing professional development and support is a key factor in developing successful digital learning environments.

The Committee commends local school administrative units (LEAs) that have taken the initiative in providing support, resources, and professional development that enables teachers to successfully integrate digital learning into the classroom. The Committee encourages all LEAs to continue to share ideas and resources to expand digital learning Statewide in all classrooms.

The Committee recommends that the General Assembly enact legislation directing the State Board of Education to develop digital competency standards that provide a framework for schools of education, school administrators, and classroom teachers on the needed skills to provide high-quality, integrated digital learning. The Committee also recommends that the General Assembly enact legislation to include digital competencies and related required professional development as an integral component of licensure requirements for all new and current teachers and school administrators by 2017.

See attached **LEGISLATIVE PROPOSAL I: 2013-LEz-1[v.7].**

2. School Connectivity

Digital learning is increasingly becoming an integral component of a 21st Century education for all students in all schools across North Carolina. Effective digital learning requires a variety of resources, including infrastructure requirements, digital devices, educational software, high-quality teachers, and perhaps most essentially, reliable internet connectivity. The Committee finds that while all LEAs currently have internet access, wireless access on a school building level may be either unavailable or unreliable due to funding or infrastructure limitations.

The Committee also finds that effective digital learning continues after the school day ends, and that access to digital devices and connectivity outside of the school environment are also critical for 21st Century learning. The Committee finds, however, that many LEAs report limited connectivity in their students' homes and community.

Currently, there is no Statewide estimate on the costs for wireless access and sufficient bandwidth to support robust digital learning on a school building level, nor a detailed inventory of the current bandwidth and wireless capabilities of each LEA at the school building level.

The Committee strongly encourages the State Board of Education to survey LEAs on current levels of wireless access and bandwidth capacity, and to provide this survey of information to the House and Senate Appropriation Subcommittees on Education by March 15, 2013.

The Committee further recommends that the General Assembly direct the State Board of Education to establish a standard for sufficient classroom wireless connectivity for a digital learning environment and conduct an in-depth inventory of the wireless access and bandwidth capacity of each public school in the State based on that standard. The State Board of Education should be directed to report to the Joint Legislative Education Oversight Committee by December 1, 2013 on the inventory results and make recommendations on ways to achieve that standard of wireless access and bandwidth in all classrooms. The Committee also recommends that the General Assembly establish a survey of community connectivity and identify ways to assist in expansion of readily accessible internet in all North Carolina counties.

See attached **LEGISLATIVE PROPOSAL II: 2013-LEz-2[v.9].**

3. Professional Development and Funding Flexibility

The Committee finds that LEAs are seeking creative approaches to financing digital learning within their school system, and that several LEAs have requested more flexibility with use of lottery funds for school construction.

The North Carolina Education Lottery legislation requires the distribution of lottery net proceeds for specific education purposes, including forty percent (40%) of the net proceeds to the Public School Building Capital Fund for school construction. Lottery funds may not currently be used for school connectivity, digital textbooks, digital devices, or professional development for teachers to learn how to most effectively use digital learning for teaching.

The Committee finds that since the lottery's enactment in 2005, the innovation of digital learning and its growing use throughout schools in North Carolina has significantly altered the landscape of public education in the State. While the lottery money is currently designated for other necessary education causes, the Committee finds the expansion of digital learning is also a crucial component to ensure North Carolina's students graduate from high school globally competitive for work and postsecondary education and prepared for life in the 21st Century.

The Committee recommends the General Assembly provide LEAs and counties flexibility for three years to use the percentage of lottery funds allocated for school construction for digital learning needs such as school connectivity, digital textbooks and instructional resources, or digital devices. LEAs that choose to exercise this flexibility

would be required to use a portion of this funding to ensure high-quality, ongoing professional development for teachers, such as the use of instructional technology facilitators at the school building level.

The Committee further recommends that after the initial three years, the General Assembly require LEAs and counties to earn continued flexibility in use of school construction lottery funds for digital learning needs. The Committee recommends that LEAs earn such continued flexibility by demonstrating consistent growth in student outcomes, as determined by the State Board of Education.

See attached **LEGISLATIVE PROPOSAL III: 2013-LEz-3[v.6].**

4. Digital Textbooks and Instructional Resources and Virtual Learning

The Committee finds there are a number of approaches that LEAs have used to provide or access digital learning devices. These include diverting and restructuring current funding, use of private grants, parental contributions, local funding or local tax revenue, and "bring-your-own-device" policies. Educational materials in the form of digital textbooks and instructional resources have also become increasingly available and can benefit North Carolina students in elementary, middle, and high school grades by providing high-quality, up-to-date information that can be customized for individual students throughout their educational experience. The Committee finds that LEAs may currently use textbook funding for digital instructional materials and digital textbooks. Digital textbooks and instructional resources have proven to be tools that, when used effectively, can raise the level of academic performance of the State's students.

The Committee also finds that the use of online and blended courses can provide greater access to courses for students in subject areas that might otherwise be unavailable in many regions of the State. Online courses and blended instruction may also provide students with opportunities for credit recovery, earning college credit, and coursework in career and technical education.

The Committee encourages LEAs to explore the competitive environment for innovative practices, including virtual learning, that blend technology, digital devices, online learning, and traditional resources in classroom instruction. The Committee strongly urges LEAs to implement available and appropriate high-quality virtual, digital, and instructional resources that align with the curriculum and to provide all students opportunities to enroll in online courses that fulfill graduation requirements.

The Committee also recommends that the General Assembly establish its intent to transition from funding for textbooks, both traditional and digital, to funding for digital materials, including textbooks and instructional resources, to provide educational resources that remain current, aligned with curriculum, and effective for all learners by 2017.

See attached **LEGISLATIVE PROPOSAL IV: 2013-LEz-4[v.5].**

Appendix A

COMMITTEE MEMBERSHIP

2011-2012

President Pro Tempore of the Senate Appointments:

Senator Dan Soucek, Co-Chair

Senator Andrew Brock
Senator Malcolm Graham
Senator Ralph Hise
Senator Robert Rucho
Senator Martin Nesbitt

Speaker of the House of Representatives Appointments:

Representative D. Craig Horn, Co-Chair

Representative Linda Johnson
Representative Marvin Lucas
Representative Jason Saine
Representative Harry Warren
Representative Marcus Brandon

Advisory Member:
Senator Chris Carney

COMMITTEE CHARGE

Digital Learning Environments in Public Schools – The LRC Study Committee on Digital Learning Environments in Public Schools shall study the following:

1. Available forms of digital learning environments in public schools by comparing the cost, infrastructure, technology, maintenance, usability, savings, effectiveness and demonstrated student outcomes associated with various digital learning models found in North Carolina as well as other states like Florida, Arizona, California, Maine, and Texas.
2. Parts 3 and 3A of Article 8 of Chapter 115Cof the North Carolina General Statutes as they pertain to school technology to determine if modifications are necessary to best reflect the intent of the General Assembly and provide the necessary opportunities and flexibility to establish digital learning environments in public schools.
3. Viable, cost-effective ways in which the Department of Public Instruction and local school administrative units can offer enriched educational opportunities to students through the use of digital learning tools such as laptops, handheld devices, digital textbooks, and other digital content.

STATUTORY AUTHORITY

NORTH CAROLINA GENERAL STATUTES
ARTICLE 6B.

Legislative Research Commission.

§ 120-30.17. Powers and duties.

The Legislative Research Commission has the following powers and duties:

(1) Pursuant to the direction of the General Assembly or either house thereof, or of the chairmen, to make or cause to be made such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner.

(2) To report to the General Assembly the results of the studies made. The reports may be accompanied by the recommendations of the Commission and bills suggested to effectuate the recommendations.

(3), (4) Repealed by Session Laws 1969, c. 1184, s. 8.

(5), (6) Repealed by Session Laws 1981, c. 688, s. 2.

(7) To obtain information and data from all State officers, agents, agencies and departments, while in discharge of its duty, pursuant to the provisions of G.S. 120-19 as if it were a committee of the General Assembly.

(8) To call witnesses and compel testimony relevant to any matter properly before the Commission or any of its committees. The provisions of G.S. 120-19.1 through G.S. 120-19.4 shall apply to the proceedings of the Commission and its committees as if each were a joint committee of the General Assembly. In addition to the other signatures required for the issuance of a subpoena under this subsection, the subpoena shall also be signed by the members of the Commission or of its committee who vote for the issuance of the subpoena.

(9) For studies authorized to be made by the Legislative Research Commission, to request another State agency, board, commission or committee to conduct the study if the Legislative Research Commission determines that the other body is a more appropriate vehicle with which to conduct the study. If the other body agrees, and no legislation specifically provides otherwise, that body shall conduct the study as if the original authorization had assigned the study to that body and shall report to the General Assembly at the same time other studies to be conducted by the Legislative Research Commission are to be reported. The other agency shall conduct the transferred study within the funds already assigned to it.

LEGISLATIVE PROPOSALS

LEGISLATIVE PROPOSAL I

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

U **D**

BILL DRAFT 2013-LEz-1 [v.7] (11/27)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
12/13/2012 11:11:59 AM

Short Title:	Digital Learning Competencies/School Emp'ees.	(Public)
Sponsors:	(Primary Sponsor).	
Referred to:		

A BILL TO BE ENTITLED

AN ACT DIRECTING THE STATE BOARD OF EDUCATION TO DEVELOP AND IMPLEMENT DIGITAL LEARNING STANDARDS FOR TEACHERS AND SCHOOL ADMINISTRATORS, AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION STUDY COMMITTEE ON DIGITAL LEARNING ENVIRONMENTS IN PUBLIC SCHOOLS.

Whereas, digital learning environments are essential for equipping students with 21st Century skills and preparing them for success in both career and college; and

Whereas, effective educators, including classroom teachers, instructional technology facilitators, media specialists, teaching assistants, principals, and superintendents, must be committed to creating an environment that uses multiple digital learning resources; and

Whereas, high-quality, ongoing professional development and support are key factors in developing successful digital learning environments; and

Whereas, some North Carolina local school administrative units (LEAs) have taken the initiative to provide support, resources, and professional development that enable teachers to successfully integrate digital learning into the classroom; and

Whereas, some of these initiatives have resulted in remarkable gains in student performance; and

Whereas, it is essential that LEAs continue to share ideas and resources on digital learning and that digital learning be implemented in all classrooms in the State; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-12 is amended by adding a new subdivision to read:

"**§ 115C-12. Powers and duties of the Board generally.**

The general supervision and administration of the free public school system shall be vested in the State Board of Education. The State Board of Education shall establish policy for the system of free public schools, subject to laws enacted by the General

Assembly. The powers and duties of the State Board of Education are defined as follows:

. . .

"(40) Duty to Develop and Implement Digital Competency Standards. – The State Board of Education shall develop digital competency standards to provide a framework for schools of education, school administrators, and classroom teachers on the needed skills to provide high-quality, integrated digital learning. Beginning with the 2017-2018 school year, the State Board shall include digital competencies and related required professional development as an integral component of initial licensure and licensure renewal requirements for teachers and school administrators."

SECTION 2. This act is effective when it becomes law.

LEGISLATIVE PROPOSAL II

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

U D

BILL DRAFT 2013-LEz-2 [v.9] (11/27)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
12/3/2012 3:57:35 PM

Short Title:	Internet Access for Public Schools.	(Public)
Sponsors:	(Primary Sponsor).	
Referred to:		

A BILL TO BE ENTITLED

AN ACT PROVIDING FOR AN INVENTORY OF INFRASTRUCTURE TO SUPPORT ROBUST DIGITAL LEARNING IN THE PUBLIC SCHOOLS AND AN INVENTORY OF INTERNET ACCESS IN ALL NORTH CAROLINA COUNTIES, AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION STUDY COMMITTEE ON DIGITAL LEARNING ENVIRONMENTS IN PUBLIC SCHOOLS.

Whereas, digital learning is becoming an integral component of a 21st Century education for all students in all schools across North Carolina; and

Whereas, effective digital learning requires a variety of resources, including infrastructure requirements, digital devices, educational software, high-quality teachers, and perhaps most essentially, reliable internet connectivity; and

Whereas, while all LEAs currently have internet access, wireless access on a school building level may be either unavailable or unreliable due to funding or infrastructure limitations; and

Whereas, effective digital learning continues after the school day ends, and access to digital devices and connectivity outside of the school environment are also critical for 21st Century learning; and

Whereas, many local school administrative units (LEAs) report limited connectivity in their students' homes and community; and

Whereas, currently, there is no Statewide estimate on the costs for wireless access and sufficient bandwidth to support robust digital learning on a school building level, nor a detailed inventory of the current bandwidth and wireless capabilities of each LEA at the school building level; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1.(a) The State Board of Education shall establish a standard for sufficient classroom wireless connectivity for a digital learning environment and

conduct an inventory of the wireless access and bandwidth capacity of each public school in the State based on that standard.

The State Board of Education shall report to the Joint Legislative Education Oversight Committee and to the Joint Legislative Committee on Information Technology by December 1, 2013 on the inventory results, its recommendations on ways to achieve a sufficient standard of wireless access and bandwidth in all classrooms, and the cost of achieving that standard.

SECTION 1.(b) There is appropriated from the General Fund to the Department of Public Instruction the sum of one hundred thousand dollars ($100,000) for the 2012-2013 fiscal year to implement the provisions of this section.

SECTION 2. The Department of Commerce shall conduct a survey of currently available and planned community broadband connectivity and identify ways to assist in the expansion of readily accessible internet in all North Carolina counties. The Department shall report to the Joint Legislative Education Oversight Committee and to the Joint Legislative Committee on Information Technology by December 1, 2013 on the survey results and make recommendations on ways to expand access across the State and the cost of doing so.

SECTION 3. Section 1(b) of this act becomes effective July 1, 2013. The remainder of this act is effective when it becomes law.

LEGISLATIVE PROPOSAL III

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

U **D**

BILL DRAFT 2013-LEz-3 [v.6] (11/27)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
12/3/2012 3:58:30 PM

Short Title: Lottery Funds Used for Digital Learning. (Public)

Sponsors: (Primary Sponsor).

Referred to:

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE USE OF SOME LOTTERY FUNDS TO EXPAND DIGITAL LEARNING IN THE PUBLIC SCHOOLS, AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION STUDY COMMITTEE ON DIGITAL LEARNING ENVIRONMENTS IN PUBLIC SCHOOLS.

Whereas, local school administrative units (LEAs) are seeking creative approaches for financing digital learning within their school system; and

Whereas, the North Carolina Education Lottery legislation requires the distribution of lottery net proceeds for specific education purposes, including forty percent (40%) of the net proceeds to the Public School Building Capital Fund for school construction; and

Whereas, lottery funds may not currently be used for school connectivity, digital textbooks, digital devices, or professional development for teachers to learn how to most effectively use digital learning for teaching; and

Whereas, several LEAs have requested more flexibility with use of lottery funds for school construction; and

Whereas, since the lottery's enactment in 2005, the innovation of digital learning and its growing use throughout schools in North Carolina have significantly altered the landscape of public education in the State; and

Whereas, while the lottery money is currently designated for other necessary education causes, the expansion of digital learning is also a crucial component to ensure North Carolina's students graduate from high school globally competitive for work and postsecondary education and prepared for life in the 21st Century; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 115C-546.2(d) reads as rewritten:

"(d) Monies transferred into the Fund in accordance with Chapter 18C of the General Statutes shall be allocated for capital projects for school construction projects as follows:

(1) A sum equal to sixty-five percent (65%) of those monies transferred in accordance with G.S. 18C-164 shall be allocated on a per average daily membership basis according to the average daily membership for the budget year as determined and certified by the State Board of Education.

(2) A sum equal to thirty-five percent (35%) of those monies transferred in accordance with G.S. 18C-164 shall be allocated to those local school administrative units located in whole or part in counties in which the effective county tax rate as a percentage of the State average effective tax rate is greater than one hundred percent (100%), with the following definitions applying to this subdivision:

a. "Effective county tax rate" means the actual county rate for the previous fiscal year, including any countywide supplemental taxes levied for the benefit of public schools, multiplied by a three-year weighted average of the most recent annual sales assessment ratio studies.

b. "State average effective tax rate" means the average effective county tax rates for all counties.

c. "Sales assessment ratio studies" means sales assessment ratio studies performed by the Department of Revenue under G.S. 105-289(h).

(3) No county shall have to provide matching funds required under subsection (c) of this section.

(4) A county may use monies in this Fund to pay for school construction projects in local school administrative units and to retire indebtedness incurred for school construction projects.

(5) ~~A county may not use monies in this Fund to pay for school technology needs.~~For July 1, 2012 through June 20, 2016, a county may use monies in this Fund for digital learning needs such as school connectivity, digital textbooks and instructional resources, or digital devices. A county that uses these funds for digital learning needs shall also use a portion of the funds to ensure high-quality, ongoing professional development for teachers.

Effective July 1, 2016, a county may use monies in this Fund for digital learning needs only if the State Board of Education determines that the local school administrative unit has demonstrated consistent improvement and growth in student outcomes."

SECTION 2. This act is effective when it becomes law.

LEGISLATIVE PROPOSAL IV

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

U **D**

BILL DRAFT 2013-LEz-4 [v.5] (11/27)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
12/3/2012 3:59:52 PM

Short Title:	Transition to Digital Learning in Schools.	(Public)
Sponsors:	(Primary Sponsor).	
Referred to:		

A BILL TO BE ENTITLED

AN ACT STATING THE INTENT OF THE GENERAL ASSEMBLY TO TRANSITION FROM FUNDING TEXTBOOKS TO FUNDING DIGITAL LEARNING IN THE PUBLIC SCHOOLS, AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION STUDY COMMITTEE ON DIGITAL LEARNING ENVIRONMENTS IN PUBLIC SCHOOLS.

Whereas, local school administrative units (LEAs) have used a number of approaches to provide or access digital learning devices; and

Whereas, these approaches include the diversion and restructuring of current funding, use of private grants, parental contributions, local funding, and "bring-your-own-device" policies; and

Whereas, educational materials in the form of digital textbooks and instructional resources have also become increasingly available and can benefit North Carolina students in elementary, middle, and high school grades by providing high-quality, up-to-date information that can be customized for individual students throughout their educational experience; and

Whereas, LEAs may currently use textbook funding for digital instructional materials and digital textbooks; and

Whereas, digital textbooks and instructional resources have proven to be tools that, when used effectively, can raise the level of academic performance of the State's students; and

Whereas, the use of online and blended courses can provide greater access to courses for students in subject areas that might otherwise be unavailable in many regions of the State; and

Whereas, online courses and blended instruction may also provide students with opportunities for credit recovery, earning college credit, and coursework in career and technical education; and

Whereas, LEAs should explore the competitive environment for innovative practices, including virtual learning, that blend technology, digital devices, online learning, and traditional resources in classroom instruction; and

Whereas, LEAs should implement available and appropriate high-quality virtual, digital, and instructional resources that align with the curriculum; Now therefore,

The General Assembly of North Carolina enacts:

SECTION 1. It is the intent of the General Assembly to transition from funding for textbooks, both traditional and digital, to funding for digital materials, including textbooks and instructional resources, to provide educational resources that remain current, aligned with curriculum, and effective for all learners by 2017.

SECTION 2. This act is effective when it becomes law.

Appendix E

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE RESEARCH COMMISSION

STATE LEGISLATIVE BUILDING
RALEIGH, NC 27601

January 4, 2013

TO THE MEMBERS OF THE LEGISLATIVE RESEARCH COMMISSION:

Attached for your consideration is the report to the 2013 General Assembly. This report was prepared by the Legislative Research Commission's Committee on Pathological Materials, pursuant to G.S. 120-30.17(1).

Senator Thom Goolsby
Co-Chair

Representative Tom Murry
Co-Chair

Co-Chairs
Committee on Pathological Materials Legislative Research Commission

LEGISLATIVE RESEARCH COMMISSION

PATHOLOGICAL MATERIALS COMMITTEE

NORTH CAROLINA GENERAL ASSEMBLY

REPORT TO THE 2013 GENERAL ASSEMBLY OF NORTH CAROLINA

JANUARY 2013

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TRANSMITTAL LETTER

January 4, 2013

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TO THE MEMBERS OF THE 2013 REGULAR SESSION
OF THE 2013 GENERAL ASSEMBLY

The Legislative Research Commission herewith submits to you for your consideration its report and recommendations to the 2013 Regular Session of the 2013 General Assembly. The report was prepared by the Legislative Research Commission's Committee on Pathological Materials, pursuant to G.S. 120-30.70(1).

Respectfully submitted,

Senator Thomas M. Apodaca

Representative Timothy K. Moore

Acting Co-Chairs
Legislative Research Commission

LEGISLATIVE RESEARCH COMMISSION MEMBERSHIP

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2011 – 2012

President Pro Tempore of the Senate
Senator Philip E. Berger
Co-Chair

Senator Thomas M. Apodaca
Acting Co-Chair

Senator Peter S. Brunstetter
Senator Linda D. Garrou
Senator Martin L. Nesbitt, Jr.
Senator Richard Y. Stevens

Speaker of the House of Representatives
Representative Thomas R. Tillis
Co-Chair

Representative Timothy K. Moore
Acting Co-Chair

Representative John M. Blust
Representative Justin P. Burr
Representative Mike D. Hager
Representative Edith D. Warren

STAFF
Bill Patterson, Research Division

Amy Jo Johnson, Research Division

Joseph Kyzer, Committee Clerk

Barbara Riley, Research Division

Susan Barham, Research Division

PREFACE

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The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is the general purpose study group in the Legislative Branch of State Government. The Commission is co-chaired by the President Pro Tempore of the Senate and the Speaker of the House of Representatives and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigation into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

The Legislative Research Commission authorized the study of Pathological Materials under authority of G.S. 120-30.17(1). The Co-chairs of the Committee were Senator Thom Goolsby and Representative Tom Murry. The full membership of the Committee is listed under Committee Membership. A notebook containing the Committee minutes and all information presented to the Committee will be filed in the Legislative Library.

COMMITTEE PROCEEDINGS

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The Legislative Research Commission's Committee on Pathological Materials met two times after the 2012 Regular Session. The Committee's charge can be found here. The following is a brief summary of the Committee's proceedings. Detailed minutes and information from each Committee meeting are available in the Legislative Library.

December 5, 2012

The Committee met on Wednesday, December 5, 2012, in Room 544 of the Legislative Office Building at 3:30 pm. Bill Patterson, Staff Attorney, Research Division, provided a summary of the Committee Authorization and an overview of the Committee's charge. He explained that the Committee is required under Legislative Research Commission (LRC) rules to transmit any final report with recommendations to the LRC Co-chairmen no later than January 4, 2013. Lastly, Mr. Patterson gave a summary of House Bill 795, "Patient Access to Pathological Materials," listed its sponsors, and reviewed its legislative history.

Hugh Tilson, North Carolina Hospital Association, presented a draft of best practices for hospitals and labs in North Carolina to ensure that the procedures utilized by interested parties to request patients' pathological materials are consistent with the regulations governing the retention of pathological materials (See Appendix E). Mr. Tilson explained that these draft principles are in compliance with federal regulations. Mr. Tilson expressed the Hospital Association's desire to work with those interested in gaining access to samples to ensure that attorneys and representatives get the information they need from those samples. After conversations with national experts, the Hospital Association's position is that the original samples should be stored on-site.

The next speaker was Dr. Shannon McCall, a pathologist at Duke University Medical Center. She gave a step-by-step explanation of how requests for pathological materials are handled at Duke. As the Quality Assurance Officer for the pathology practice at Duke University Medical Center, she explained that she was quite familiar with the federal regulations that govern the issues today. In addition, Dr. McCall provided handouts to the Committee regarding Duke's policies on pathological materials. Dr. McCall indicated that these policies reflect the best practices policies and procedures regarding the retention of pathological materials.

Dr. Kevin Smith introduced himself as a practicing pathologist in Charlotte, North Carolina, and the current president of the North Carolina Society of Pathologists. Dr. Smith explained that the North Carolina Society of Pathologists, in conjunction with the North Carolina Medical Society, the College of American Pathologists, and the North Carolina Hospital Association, worked collaboratively to establish that practices are already in place for labs to assist patients and provide materials to patients when requested. These draft practices had earlier been provided to the Committee by Hugh Tilson. He noted these practices have been in place for some time.

Next the Committee heard remarks from Sam Taylor, President of the North Carolina Biosciences Organization (NCBIO). Mr. Taylor expressed concerns about possible unintended consequences of House Bill 795. He said the definition of pathological materials in House Bill 795 is extremely broad and applies to materials whether or not patient consent has already been obtained for the retention of the materials. As researchers, manufacturers, and clinical trial companies, they obtain consent to retain the materials and have concerns that the obtained consent should be binding. Investigators often compile large libraries of samples of individual tissue specimens and compare those samples to each other and other sample groups. This process allows researchers to learn about diseases and possible treatments for disease. The integrity of the research findings is dependent upon their ability to produce those samples and to reference them later. If samples are removed from the libraries, the value of those libraries and their findings is substantially impaired. As such, Mr. Taylor stressed that the bill could have an unintended impact on the areas of research, clinical trials, and manufacturing.

Bill Graham from the law firm of Wallace and Graham was the next speaker. He stated that several years ago, the ordinary way to obtain pathological materials was to present to the provider a medical release signed by the patient, advocate, or attorney. The tissue or specimen being requested would then be provided. Now, however, the risk/loss analysts for hospitals and pathologists are requiring a court order to obtain material. Mr. Graham expressed his opinion that it is time consuming, laborious, expensive and unnecessary to secure a court order. Mr. Graham expressed a desire to obtain pathological materials without a court order and stated that legislation should require that any material requested or investigated be returned to the lab at the end of any inquiry, investigation, case or otherwise.

The Committee then entered into a lengthy discussion about federal regulations and best practices for the retention of pathological materials. Staff was then directed to prepare a draft report based on the information and discussion from today's meeting, particularly focusing on the North Carolina Hospital Association's best practices and upon the guidelines from the College of American Pathologists. The Chair explained that the Committee will vote on the draft report at the January 4th meeting.

January 4, 2013

The Committee met on Friday, January 4, 2013, in Room 544 of the Legislative Office Building at 2:00 pm, at which time it discussed and voted to approve this final report to the 2013 General Assembly.

FINDINGS AND RECOMMENDATIONS

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FINDINGS

The federal Clinical Laboratory Improvement Amendments (CLIA) of 1988 contain regulations for the retention of pathological materials by clinical laboratories. Under 42 CFR 493.1105, a laboratory must retain for at least two years, the following materials:

- Test requisitions and authorizations.
- Test procedures.
- Analytic system records.
- Proficiency testing records.
- Laboratory quality systems assessment records.

Additionally a laboratory must retain cytology and histopathology slide preparations for at least five years from the date of examination. A laboratory must retain pathology specimen blocks for at least two years from date of examination.

In addition to the regulations found under CLIA, laboratories wishing to bill Medicare for patient services and to perform testing on human specimens must be CLIA certified or accredited. The College of American Pathologists (CAP) has been granted deemed status from the Centers for Medicare and Medicaid (CMS) to offer accreditation to laboratories under CLIA. The CAP regulations are more stringent than those found under CLIA for retention of pathological materials. For example, the CAP Retention of Laboratory Records and Materials requires fine needle aspiration slides and paraffin blocks to be retained for ten years.

The Committee heard testimony regarding requests made to pathologists for various pathological materials retained by the laboratories. There appear to be no concerns with requests made by physicians for purposes of research or medical treatment. However, there is concern about the need for a uniform procedure when the request is made by an attorney for large amounts of pathological materials. On one hand, the hospitals and laboratories must comply with federal retention laws and regulations. On the other hand, the attorney requires the information to best serve his or her client. Often the pathological material contains valuable information that is crucial to a patient's potential lawsuit. Laboratories need to ensure adherence to the law and regulations, while attorneys need to be able to access pathological material on behalf of their clients.

In light of the concerns surrounding requests for pathological materials, the North Carolina Hospital Association has expressed its member hospitals' commitment to providing access to laboratory materials while also protecting the accreditation and licensures of the facilities. The Committee heard from the North Carolina Hospital Association regarding its work on developing Best Practice Principles ("Principles") with regards to requests for and release of pathological materials. A copy of the draft Principles presented to the Committee at its meeting on December 5, 2012, is enclosed at Appendix E.

The Principles are consistent with the 2003 Professional Relations Manual of the College of American Pathologists regarding records and materials requests. The Principles contain guidelines for materials requested for ongoing patient care, research requests, and requests from law firms and document retrieval firms, as well as address accreditation and regulatory compliance. With regards to concerns raised about the requirement of an attorney to obtain a court order, the Principles indicate that, unless the lab "has an objection based on other grounds, such as compliance with federal law, accreditation standards, evidentiary standards, or in order to protect medically necessary specimens for the patient's further diagnosis and treatment), no court order should be required for new slides," but that a court order or subpoena will be required to produce original slides and paraffin blocks.

The Committee finds that it is essential to strike a balance between maintaining appropriate adherence to federal regulations and best practices on the part of clinical laboratories and access to pathological materials by patients and their representatives. The North Carolina Hospital Association Best Practice Principles and the College of American Pathologists 2003 Professional Relations Manual appear to achieve this balance. Therefore the Committee offers the following recommendation:

RECOMMENDATION:

The Committee recommends that the General Assembly direct the Division of Health Service Regulation, Department of Health and Human Services (Department), and the North Carolina Medical Board (Board) to enact rules governing the procedures regarding the request for and release of pathological materials made to clinical laboratories within the jurisdiction of each respective entity. These rules must be consistent with the North Carolina Hospital Association Best Practices Principles and the College of American Pathologists 2003 Professional Relations Manual. The Department and the Board must develop these rules in consultation with one another to ensure consistency in procedures governing pathological materials.

Appendix A

COMMITTEE MEMBERSHIP

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2011-2012

President Pro Tempore of the Senate Appointments:

Senator Thom Goolsby, Co-Chair

Senator Peter Brunstetter
Senator Andrew Brock
Senator Louis Pate
Senator William Purcell

Speaker of the House of Representatives Appointments:

Representative Tom Murry, Co-Chair

Representative William Brisson
Representative Bert Jones
Representative Chuck McGrady
Representative Sarah Stevens

Appendix B

COMMITTEE CHARGE

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Pathological Materials – The LRC Study Committee on Pathological Materials shall study the issue of access by patients to pathological materials requested by a patient for the purpose of additional medical treatment evaluation or the evaluation of any legal rights of the patient. Specifically, the Committee shall consider:

1. State and federal laws and regulations that govern the administration, operation and certification of pathology laboratories;
2. State and federal laws that govern the maintenance and production of a patient's medical records;
3. Appropriate changes in state law that ensure patient access to pathological materials that are needed to obtain and evaluate the patient's medical needs and legal rights while also balancing pathology laboratories' duties to comply with federal and state licensure laws and regulations, patient care responsibilities, risk management obligations, and other relevant issues;
4. The impact of any state law change on the medical research industry including: pharmaceutical companies; government research institutions; and other industries dependent upon information obtained from pathological materials.

While conducting this study the Committee shall consult:

1. Persons who serve as advocates for patients who have requested pathological materials;
2. Patients who have requested pathological materials from health care providers;
3. Representatives of hospitals responsible for the management of pathology laboratories;
4. Pathologists responsible for the management of pathology laboratories;
5. Persons responsible for providing legal advice to mangers of pathology laboratories; and
6. Any other person or persons the Committee deems appropriate.

Senate Members		**House Members**	
Sen. Goolsby	Chair	Rep. Murray	Chair
Sen. Brunstetter	Member	Rep. Brisson	Member
Sen. Brock	Member	Rep. Jones	Member
Sen. Pate	Member	Rep. McGrady	Member
Sen. Purcell	Member	Rep. Stevens	Member

STATUTORY AUTHORITY

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NORTH CAROLINA GENERAL STATUTES
ARTICLE 6B.

Legislative Research Commission.

§ 120-30.17. Powers and duties.

The Legislative Research Commission has the following powers and duties:

(1) Pursuant to the direction of the General Assembly or either house thereof, or of the chairmen, to make or cause to be made such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner.

(2) To report to the General Assembly the results of the studies made. The reports may be accompanied by the recommendations of the Commission and bills suggested to effectuate the recommendations.

(3), (4) Repealed by Session Laws 1969, c. 1184, s. 8.

(5), (6) Repealed by Session Laws 1981, c. 688, s. 2.

(7) To obtain information and data from all State officers, agents, agencies and departments, while in discharge of its duty, pursuant to the provisions of G.S. 120-19 as if it were a committee of the General Assembly.

(8) To call witnesses and compel testimony relevant to any matter properly before the Commission or any of its committees. The provisions of G.S. 120-19.1 through G.S. 120-19.4 shall apply to the proceedings of the Commission and its committees as if each were a joint committee of the General Assembly. In addition to the other signatures required for the issuance of a subpoena under this subsection, the subpoena shall also be signed by the members of the Commission or of its committee who vote for the issuance of the subpoena.

(9) For studies authorized to be made by the Legislative Research Commission, to request another State agency, board, commission or committee to conduct the study if the Legislative Research Commission determines that the other body is a more appropriate vehicle with which to conduct the study. If the other body agrees, and no legislation specifically provides otherwise, that body shall conduct the study as if the original authorization had assigned the study to that body and shall report to the General Assembly at the same time other studies to be conducted by the Legislative Research Commission are to be reported. The other agency shall conduct the transferred study within the funds already assigned to it.

Appendix D

LEGISLATIVE PROPOSALS

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Appendix D

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

U D

BILL DRAFT 2013-TKz-1 [v.3] (12/10)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
12/10/2012 4:21:18 PM

Short Title: Develop Rules for Release of Path Materials. (Public)

Sponsors: (Primary Sponsor).

Referred to:

A BILL TO BE ENTITLED

AN ACT DIRECTING THE DEPARTMENT OF HEALTH AND HUMAN SERVICES AND THE NORTH CAROLINA MEDICAL BOARD TO DEVELOP RULES GOVERNING REQUESTS FOR AND RELEASE OF PATHOLOGICAL MATERIALS AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION ON PATHOLOGICAL MATERIALS.

The General Assembly of North Carolina enacts:

SECTION 1. The Division of Health Service Regulation, Department of Health and Human Services (Department) shall enact rules governing the procedures regarding the request for and release of pathological materials made to clinical laboratories within the jurisdiction of the Department. These rules shall be consistent with the North Carolina Hospital Association Best Practices Principles and the College of American Pathologists 2003 Professional Relations Manual and shall be developed in consultation with the North Carolina Medical Board to ensure consistency in procedures governing pathological materials.

SECTION 2. The North Carolina Medical Board (Board) shall enact rules governing the procedures regarding the request for pathological materials made to clinical laboratories within the jurisdiction of the Board. These rules shall be consistent with the North Carolina Hospital Association Best Practices Principles and the College of American Pathologists 2003 Professional Relations Manual and shall be developed in consultation with the Division of Health Service Regulation, Department of Health and Human Services to ensure consistency in procedures governing pathological materials.

SECTION 3. This act is effective when it becomes law.

Appendix E

SUPPORTING MATERIALS

Appendix E

NC Hospital Association Best Practices Principles

From: Hugh Tilson, Senior Vice President, NC Hospital Association

December 4, 2012 – FINAL DRAFT

PRINCIPLES:

Hospitals and labs in North Carolina will ensure that the procedures to request patients' pathological materials comply with the following general principles.

Hospitals and labs that cannot comply with the following principles for any request, in order to ensure that patient specimens are retained for compliance with federal law, accreditation standards, evidentiary standards, or in order to protect medically necessary specimens for the patient's further diagnosis and treatment, shall provide the reason(s) for not complying to the requestor.

A. MATERIALS FOR ONGOING PATIENT CARE

To meet ongoing patient care and accreditation/regulatory compliance requirements, original slides and blocks remain in [LAB/SYSTEM NAME] files as part of the patient's permanent medical record.

A copy of [LAB/SYSTEM NAME] report will be sent to the patient or another medical institution caring for the patient upon request.

Recut sections and unstained slides when requested will be sent to other medical institutions or physicians for continued patient care or for consultation upon request unless inadequate supply of sample exists or if recutting would damage the sample. The original sample or block shall not be forwarded, unless deemed appropriate by the [LAB/SYSTEM NAME].

B. RESEARCH REQUESTS:

For researchers not within [LAB/SYSTEM NAME], the researchers must document IRB approval at their institution. Once that is received, a [LAB/SYSTEM NAME] pathologist will ascertain what materials are present in [LAB/SYSTEM NAME] files and which may be recut for research purposes. No blocks will be forwarded from [LAB/SYSTEM NAME] for research purposes, unless deemed appropriate by [LAB/SYSTEM NAME]. If sufficient tissue is present, the outside researcher will be offered recut or unstained sections.

For researchers within [LAB/SYSTEM NAME], the request must be reviewed by a designated pathologist or the pathologist who signed the case out who will determine whether sufficient tissue is present to recut the blocks.

DECEMBER 4, 2012 DRAFT PRINCIPLES

C. REQUESTS FROM LAW FIRMS AND DOCUMENT RETRIEVAL FIRMS:

An appropriate authorization for release of medical records and unstained or new prepared hematoxylin and eosin (H&E) stained slides must accompany the request and must meet the following criteria (including, but not limited to)

- Signed within the last year
- Signed by the patient, a legal guardian or the executer of the patient's estate

In addition, a written signed request must be submitted by a law firm, together with information about reimbursement of cost for the slides. Unless the [LAB/SYSTEM NAME] has an objection on other grounds (including compliance with federal law, accreditation standards, evidentiary standards, or in order to protect medically necessary specimens for the patient's further diagnosis and treatment), no court order should be required for new slides.

In any case, the laboratories should make available to the attorney's expert witness a place in the laboratory where the original slides (and blocks if that matters) can be examined at a mutually agreeable time, which obviates harm to the integrity of the patient's medical record or specimen retention requirements. Digital scanning of slides at levels equivalent to the original slides themselves is a technology becoming available, which also obviates any damage to the tissues. The foregoing authorizations are required in these cases as well.

D. ACCREDITATION/REGULATORY COMPLIANCE

Recut sections will be provided when available.

To ensure compliance with federal law, accreditation standards, evidentiary standards, or in order to protect medically necessary specimens for the patient's further diagnosis and treatment, original slides and/or paraffin blocks will be provided only upon receipt of a Court Order or subpoena from a court with appropriate jurisdiction.

Reasonable fees may be charged for the provision of documents, recut sections or other materials provided.

Appendix F

The University of North Carolina
GENERAL ADMINISTRATION
POST OFFICE BOX 2688, CHAPEL HILL, NC 27515-2688
Division of Academic Affairs
Telephone: (919) 962-1000 • Fax: (919) 962-0120

Constituent Universities
Appalachian State University

East Carolina University

Elizabeth City State University

Fayetteville State University

North Carolina Agricultural and Technical State University

North Carolina Central University

North Carolina State University at Raleigh

University of North Carolina [redacted]ville

[redacted]ersity of North Carolina at Chapel Hill

University of North Carolina at Charlotte

University of North Carolina at Greensboro

University of North Carolina at Pembroke

University of North Carolina at Wilmington

University of North Carolina School of the Arts

Western Carolina University

Winston-Salem [redacted] University

[redacted]*ent High School*
[redacted]h Carolina School of Science and Mathematics

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January 3, 2013

TO: Members of the Legislative Research Commission

FROM: Suzanne Ortega, Senior Vice President for Academic Affairs
Christopher Brown, Vice President for Research and Graduate Education

RE: LRC Directive, Resource Extraction and Renewable Energy (RERE) Collaborative Engineering Program

Per the directive of the Legislative Research Commission, please find the attached report, pursuant to G.S. 120-30.17(9), which stated:

"The Commission directs UNC Charlotte and NC A&T to draft plans for a collaborative engineering program in resource extraction and renewable energy. The immediate focus of the collaborative program will be natural gas extraction, nuclear reactor maintenance and design, and wind, geothermal, and solar power systems designs."

The University of North Carolina is currently conducting our project prioritization review. We will share the complete list of priorities upon completion of our process.

UNC CHARLOTTE

Office of the Chancellor

9201 University City Boulevard, Charlotte, NC 28223-0001
t/ 704.687.5727 f/ 704.687.3219 www.uncc.edu

January 3, 2013

Suzanne Ortega, Senior Vice President for Academic Affairs
Chris Brown, Vice President for Research and Graduate Education
University of North Carolina General Administration
P.O. Box 2688
Chapel Hill, NC 27515-2688

SUBJECT: LRC Directive, Resource Extraction and Renewable Energy (RERE) Collaborative Engineering Program

Dear Ms. Ortega and Mr. Brown:

Per your request of August 28, please find enclosed the preliminary outcome of our collaboration with NC A&T addressing the RERE directive of August 23 from the North Carolina Legislative Research Commission. The LRC directive follows, as context:

> **Pursuant to G.S. 120-30.17(9), the Commission directs UNC Charlotte and NC A&T to draft plans for a collaborative engineering program in resource extraction and renewable energy. The immediate focus of the collaborative program will be natural gas extraction, nuclear reactor maintenance and design, and wind, geothermal, and solar power systems design.**

It is our understanding that you will be forwarding this proposal to the LRC in keeping with their January 4 deadline.

Sincerely,

Philip L. Dubois, Chancellor
UNC Charlotte

Harold L. Martin, Sr., Chancellor
North Carolina A&T State University

cc: Joan Lorden, Provost and Vice Chancellor for Academic Affairs
Bob Wilhelm, Vice Chancellor for Research and Economic Development
Bob Johnson, Dean of the College of Engineering
Jay Raja, Senior Associate Provost
Johan Enslin, Director, Energy Production and Infrastructure Center
Betty Doster, Special Assistant to the Chancellor for Constituent Relations

Winser Alexander, Interim Provost and Vice Chancellor
Barry Burks, Vice Chancellor for Research and Economic Development

Thomas Ross, UNC President
Lesley Cates, Director of State Relations

ENCLOSURE

PROPOSAL

IMPLEMENTATION SCHEDULE AND BUDGET

Collaborative Engineering Program for
Resource Extraction and Renewable Energy (RERE)

EDUCATION, RESEARCH AND PRACTICE

A Conceptual Framework for Multi-Institutional Success in Advancing the Academic Topic Areas of:

- *natural gas extraction*
- *wind power systems design*
- *geothermal power systems design*
- *solar power systems design*
- *nuclear reactor maintenance and design*

Submitted to North Carolina Legislative Research Commission
04 January, 2013

University of North Carolina – Charlotte

North Carolina Agricultural and Technical State University

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Executive Summary

UNC Charlotte and NC A&T State University were directed by the Legislative Research Commission (LRC) of North Carolina (see Appendix 5) to develop a plan for establishing a collaborative engineering program to focus on resource extraction and renewable energy (RERE). This RERE plan will focus specifically on five (5) thematic areas: natural gas extraction, wind, geothermal and solar energy, and nuclear reactor maintenance and design. The requested submittal date is January 4, 2013. Faculty and staff working groups from the two universities collaborated to generate the enclosed plan that leverages existing faculty expertise at UNC Charlotte, NC A&T, and other UNC system institutions to provide new undergraduate, graduate and certificate degree options. There are gaps both in curriculum and in research expertise that must be filled with new hires and it will be necessary to modify the content of many currently offered courses to create the required core courses and electives for the RERE Program. This plan focuses primarily on development of RERE education programs; however, to be of optimum benefit to the state of North Carolina there also must be corresponding research and practice activities in each of the RERE topic areas. While there is much research and practice underway in certain topics such as solar and wind energy, there is little research underway in North Carolina on shale gas extraction. That gap will be addressed in this RERE plan. In response to the charge by the LRC, the efforts of UNC Charlotte and NC A&T focused on specific enhancements of the state's engineering curricula among the five cited topic areas in an aggressive timeframe. This proposal recognizes that the typical approach for curriculum development would not satisfy the need to fast-track the RERE initiative. This plan requests funding starting in the spring of 2013 to plan and launch implementation of the RERE Program with funding for new hires and new research facilities to follow in the next 3 years. Student recruitment into the RERE programs will begin as early as January 2014.

Leadership of the planning effort has been provided by the Energy Production and Infrastructure Center (EPIC) and the College of Engineering at UNC Charlotte and the Division of Research and Economic Development and the College of Engineering at NC A&T. The focus of the Center for Energy Research and Technology (CERT) at NC A&T will be expanded to include the RERE Program so that going forward the two energy centers, EPIC and CERT, will provide leadership for both the educational and research components of the RERE Program. The two universities will work under the supervision of the UNC General Administration and will integrate expertise from other UNC system institutions to foster collaboration and leverage resources. The NC Community College System has initiated development of two year degree programs in sustainability and renewable energy. For graduates from those programs, the RERE Program will offer a continuation option leading to undergraduate and master's degrees. The program will offer continuing education credits to practicing engineers seeking specialized education in RERE topics. The initial launch will build upon existing degree options but will evolve quickly into a joint degree program in which students are taught by faculty from both UNC Charlotte and NC A&T and possibly other UNC institutions. Likewise, students will perform research and/or practice work under the guidance of faculty from both universities. To assist with strategic planning and to assure continuous improvement in the RERE program, an external Board of Advisors will be organized.

Vision A RERE collaborative engineering program will play an important role in achieving a safe, secure and sustainable energy future for North Carolina through education, applied research and practice.

Leadership The NC A&T CERT/UNC Charlotte EPIC partnership will provide leadership for the RERE program and organize collaboration among participating UNC System schools.

Timetable

Planning Phase (initial planning)	Mar. 1, 2013–Dec. 31, 2013
Pilot Phase (planning and pilot implementation)	July 1, 2013–June 30, 2014
Expansion Phase (implementation and expansion)	July 1, 2014–June 30, 2016

Budget

Planning Phase: 3/1/13 – 12/31/13
2 campuses: UNC Charlotte and NCA&T

Program Development: 3/1/13 – 6/30/13	$ 350 K
Program Development: 7/1/13 – 12/31/13	$ 240 K
SUBTOTAL	$ 590 K

Pilot Phase: 7/1/13 – 6/30/14
2 campuses: UNC Charlotte and NCA&T

Program development	$ 240 K
New faculty positions	$ 320 K
Research lab equipment	$ 520 K
SUBTOTAL	$1,080 K

Expansion Phase: 7/1/14 – 6/30/16
Continuing support and expansion at UNC Charlotte and NCA&T

Program support at $120K per year	$ 240 K
Two-year operating budget	$ 400 K
Continuing faculty positions from FY 14	$ 640 K
New faculty positions	$ 960 K
Research lab equipment at $520K per year	$1,040 K
Long-term expansion to other UNC institutions	$1,600 K
SUBTOTAL	$4,880 K
TOTAL	$ 6.55 M

This proposal describes a total budget of $6.55 M supporting a three-tier, four-year roll-out, piloted by UNC Charlotte and NCA&T during fiscal years 1 (partial) and 2. Then, during fiscal years 3 and 4, the program will be managed by UNC Charlotte and NCA&T and expanded to other UNC System institutions. The continuing operating budget is anticipated to be approximately $4.0 M per year after the initial implementation and expansion periods (after 6/30/16).

Section 1: RERE Program Components

Objectives

The RERE program will be created on a multi-university infrastructure, building upon existing capabilities and facilities, to deliver baccalaureate, post-baccalaureate, and professional education, research, and practice in resource extraction, renewable energy, and nuclear facilities. With the State's needs as the primary focus, the RERE Program will expedite the transfer of knowledge and innovations to students, professionals, industry, and local and state communities for positive workforce, economic and technological development.

Topic Areas

As directed by the LRC, this RERE program will bridge from current energy offerings to a new in-depth focus addressing resource (natural gas) extraction, renewable energy power systems (wind, geothermal, solar) and nuclear reactor maintenance and design. This program will include in the educational components acknowledgement of other renewable energy sources such as wave energy and biomass; however, since research and development activities already exist in North Carolina that address these alternatives, this program will not fund new activity in those areas but will foster information sharing across the various renewable energy alternatives. In addition to technical focus on efficient and safe resource extraction, renewable energy generation technologies, and nuclear reactors design and maintenance, the curriculum will include topics in economics and public policy so that graduates are exposed to techniques to assess economic benefits, technical and economic feasibility, regulatory options and other issues that impact large scale implementation of energy production technologies (i.e. transmission, distribution and smart grid).

1. Resource Extraction

Natural gas extraction, using hydraulic fracturing, is currently one of the upcoming technological opportunities to provide low-cost, abundant energy produced within North Carolina and North America at a low risk if performed in a sustainable and environmentally sound way. Fresh water utilization, waste water treatment and effective and environmentally sound horizontal drilling natural gas in shales of the central and eastern areas within North Carolina and can provide a large percentage of the state's energy needs.

Extracting energy from other resources is equally important to provide a balanced and mixed portfolio in the generation mix for the purposes of energy security and price stability. Improved technologies to extract energy from coal, nuclear, ocean, biogas, oil and geothermal sources and a creative mix with other renewables need to be improved to make them more cost-effective, environmentally friendly and sustainable.

Minimizing and mitigating the environmental impacts of resource extraction will be the main focus of this program and still provide reliable energy production at an affordable price. Energy conversion technologies like efficient turbines, power electronics and electrical machines will also be addressed as part of resource extraction in order to provide viable and cost effective power plants for these different extracted resources.

2. Renewable Energy Systems

In order to better prepare graduates for the workplace, the RERE Program will address a variety of renewable energy sources. However, the focus of all activities will be in three primary areas: wind, solar, and geothermal.

A. Wind Power Systems Design

Wind generation has seen large-scale development over the last 10 years in the USA. The economics from wind power production have seen major improvements over this time with wind close to being at grid parity based on an energy production basis. Wind power generation in North Carolina is somewhat limited to the Appalachian Mountains and coastal areas with offshore wind development the most promising opportunity for the state.

B. Geothermal Power Systems Design

Geothermal energy in heat pump applications is very important to improve power utilization and energy efficiency. Geothermal systems have been proven effective in both residential and commercial construction but have not been widely implemented in North Carolina. Practical and cost effective utilization of geothermal systems will be explored in this program.

C. Solar Power Systems Design

Photovoltaic solar generation is well suited to be a large player in distributed generation developed in micro-grids around North Carolina. The challenge in sustaining the growth in solar energy is in terms of mitigating the negative impacts of renewable energy integration into the power grid. Solar power generation is a highly intermittent power resource that needs to be integrated into the grid and provide regular economic dispatch characteristics like regular power stations at a cost competitive way. So-called virtual power plants combining unsteady renewables like solar and wind with storage-offering sources like biogas and natural gas enable a reliable base-load power supply at a minimum emission of greenhouse gases and waste.

D. Other Renewable Energy Alternatives

Bio-energy in the form of biogas, biomass and biofuels is a good cost-effective option to help North Carolina have a more diverse energy mix, and there are plentiful resources in the central and western areas of the state. A number of universities in the UNC system have active bio-energy research programs underway and the state has created the NC Biofuels Center. These resources will be leveraged in the education and research components of the RERE Program but no new bio-energy initiatives will be created as part of the RERE Program. Similarly, the UNC System created the Coastal Wave Energy Research Project through the UNC Coastal Studies Institute to develop wave energy generation. The RERE Program will incorporate information from that program but will not create new wave energy activities.

Balancing distributed resources through the distribution network using all available systems including, distributed power like PV generation, energy storage, fast acting load management options and fast ramping distributed generation are anticipated to be implemented and demonstrated on distribution feeders. These networks require fast, secure and reliable point-to-point communications that can handle large amounts of data in a close to real-time scenario and form the limiting factor to integrate larger amounts of intermittent resources like PV and wind in the power networks. These high-speed communication networks will need

to integrate the data transfer rates and provide a backbone for other Smart Grid applications like voltage regulation, reactive power management and a region oriented supply-and-demand balancing of electric energy.

3. Nuclear Reactor Maintenance and Design

There are approximately 104 nuclear power reactors in operation in the USA. These plants have generated about 20% of U.S. electricity each year since 1991. North Carolina has 3 large nuclear power plants with plans from Duke Energy to build more in the future within its operating regions. Nuclear energy is a carbon free technology and a key part of a balanced generation mix. The nuclear industry has been successful at extending the operating design life of existing plants through maintenance and selective refurbishment. The efficacy of continuing to extend nuclear plant life will be examined as well as specific maintenance and design techniques to extend plant life.

Disposal of nuclear waste is often said to be the Achilles' heel of the industry. Presently, waste is mainly stored at individual reactor sites and there are over 430 locations around the world where radioactive material continues to accumulate. As of 2009 there were no commercial scale purpose built underground repositories in operation. Reprocessing can potentially recover up to 95% of the remaining uranium and plutonium in spent nuclear fuel, putting it into new mixed oxide fuel. France is the most successful reprocessor of spent fuel and efforts in the USA are lagging far behind.

The only existing nuclear engineering degree program in North Carolina is at NC State University. There are no plans to create additional Nuclear Engineering degree programs through this initiative. However, this program will focus on nuclear applications of mechanical, electrical and civil engineering disciplines and would collaborate with NCSU to leverage existing course offerings and research activities.

Education Approach

For many years, the lead institutions UNCC and NCA&T, have played a significant role in the education and preparation of the engineering workforce at the state and national level; these two institutions have a core of academic departments and programs, courses, and educational facilities related to the focus of this RERE collaborative effort. The institutions will integrate workforce preparation in RERE from the undergraduate level through the doctoral level, including professional development for practitioners. This approach is designed with the specific expectation that, over the long term, it can readily be extended to any number of UNC institutions.

Ten academic units at UNC Charlotte (Civil and Environmental Engineering, Electrical and Computer Engineering, Engineering Technology, Infrastructure and Environmental Systems, Systems Engineering and Engineering Management, Mechanical Engineering, Geology, Public Policy, Economics and Architecture) and ten academic units at NCAT (Chemical, Biological, and Bioengineering, Chemistry, Civil, Architectural and Environmental Engineering, Computational Science and Engineering, Economics and Finance, Electrical and Computer Engineering, Energy and Environmental Systems, Industrial & Systems Engineering, Mechanical Engineering, and Physics) have relevant academic resources for this effort and will participate in the RERE Program.

1. Undergraduate Programs Founded on Existing Options

To pilot the RERE Program, NCA&T and UNC Charlotte will identify existing courses at the undergraduate level at their campuses that can be expanded or adjusted to address the RERE topic areas with rapid payback in workforce development results for spring 2014 graduates. See Appendix 1 for a representative listing of existing courses.

The RERE Program will develop into one that offers a variety of education experiences, addressing the needs of students and professionals at several levels. A seamless flow in, out, and through the program will accelerate the development of an educated workforce at multiple levels of expertise, allowing participants to construct a plan of study that meets their needs. The RERE Program accommodates students at all levels, from BS to PhD and allows professionals to enter the program for continuing education credits, certificates, or academic degrees. RERE will develop articulation agreements with community colleges to allow seamless transfer of students with relevant 2-year degrees into RERE programs.

Undergraduate students will select elective courses from a prescribed menu of courses relevant to focus area and will be recognized as having completed an "undergraduate concentration" in that particular area, such as renewable energy. To build these menus of acceptable undergraduate courses, the RERE program will depend heavily on 3 sources of coursework:

1) initially, existing courses at UNC Charlotte and NCA&T, with some courses modified to address desired topics and with common courses shared via distance education;
2) eventually, existing relevant courses at other UNC System campuses shared via distance education; and
3) eventually, new courses developed at UNC Charlotte and NCA&T, with common courses shared via distance education.

2. Master's Program Founded on Existing Options Plus the NC PSM Model

By taking existing courses in existing MS programs at NCA&T and UNC Charlotte, students will focus their master's work in one of the five RERE areas. Additionally, the RERE Management Team will give a top priority to develop another option for RERE MS programs: a new professional science master's (PSM) degree offered jointly between NCA&T and UNC Charlotte. The Professional Science Masters (PSM) is an outgrowth of the *UNC Tomorrow* strategic planning process. Now successfully integrated into graduate programs at a number of UNC system schools, the PSM program demonstrates how the UNC System can meet the education, research and economic development needs of North Carolina. See Appendix 2 for a summary of current PSM offerings at UNC System schools. See Appendix 1 for a representative listing of existing courses.

3. PhD Program Founded on Research Collaboration

UNC Charlotte has disciplinary PhDs in Mechanical and Electrical Engineering; NC A&T has disciplinary PhD programs in Electrical, Mechanical, and Industrial & Systems Engineering. These PhD programs have capabilities that will enable then to contribute to research in RERE topics. In addition, three inter-disciplinary PhD programs on the two campuses that have linkages to the RERE research areas: Computational Science and Engineering (NCA&T), Energy and Environmental

Systems (NCA&T), and Infrastructure and Environmental Systems (UNC Charlotte). These PhD programs will share with RERE their extensive experience in providing interdisciplinary, advanced education, and in return they will benefit from the new and enhanced RERE courses and expanded facilities offered by this collaboration.

4. Professional Development Program Founded on Flexibility

A unique feature of the RERE program will be the ease with which it accommodates professionals seeking to upgrade or expand their knowledge into these new areas. Applicable courses will be taught in one of several modes, making them more accessible to working professionals. Several optional course formats will be investigated.

1) traditional 3-credit, semester-long courses will be taught as a series of 1-credit, 5-week modules, allowing students to register for 1, 2, or 3 credits, thereby selecting topics and schedules most desirable to them;
2) traditional 3-credit, semester-long courses will be taught in a concentrated setting, requiring 6-8 hours per day over weekends or portions of the summer; and
3) traditional 3-credit, semester-long courses will be taught using a combination of on-campus, distance, and on-industry locations.

Research Approach

The multi-campus applied research initiative will focus on advancing natural gas extraction, wind power systems, geothermal power systems, solar power systems, and nuclear systems maintenance and design. It will be important to assess existing s research facilities in the UNC System which can be up-fitted most readily for RERE topic area research and help align related research efforts among all collaborating schools. This phase should be complete by spring 2016.

Facilities and resources will be assessed based on a target of creating a coherent, inter-institutional program for applied research with the goals of workforce, technology, and economic development. Such efforts in interdisciplinary research are gaining acceptance, and they are anticipated by funding agencies and expected by industry partners and sponsors. Still, many research programs focus on a single discipline or on a suite of disciplines within specified areas. The RERE Program, on the other hand, seeks to engage faculty and students in research within a broader interdisciplinary context. This approach enables them to appreciate, extract, and integrate techniques from the various aspects of a topic and then develop optimal solutions. Thus, the RERE program will be attractive to faculty, students, and industry partners looking to expand their knowledge and technologies to the inter-related systems of renewable energy, resource extraction, and nuclear facilities.

Practice Approach

It is the intent of the proposers that extensive field experience is provided at every level of the RERE engineering curriculum. The education components and the research components both require a "real-world" interface in order to place graduates into RERE jobs as soon as possible.

Every student in the RERE Program will be required to complete a "practice" component of the program. Such opportunities include internships, fellowships, field-based research projects,

capstone projects, and technology development/entrepreneurship projects. These programs will include elements that are optional/required, paid/unpaid, and for credit/no credit. Details will vary depending on the degree or certificate awarded and will be developed at a later time, but an element of hands-on experience will be incorporated in each degree or certificate program.

Collaboration Approach

Analysis of strengths, weaknesses, and areas of collaboration will be essential to the long-term viability of the RERE engineering program. Based on the outcome of the original planning phase more detailed collaboration plans will be presented. It is anticipated that the key collaborators, but not limited to the following people and organizations may include:

- Dr. Bill Leonard, Director of Energy Systems, NC State
- Dr. Alex Huang, Director, FREEDM System Center, NC State
- Dr. Ayman Hawari, Director, Nuclear Reactor Program, NC State
- Dr. Bill Edge, Director, Renewable Ocean Energy Program
- Tommy Cleveland, Solar Energy Engineer, NC Solar Center, NC State
- Dr. Dennis Scanlin, Coordinator, Appropriate Technology Program, Appalachian State University
- Dr. Thomas Meyer, Director, Energy Frontier Research Center, UNC –Chapel Hill

Administration

The proposers anticipate that the RERE initiative will be best served by utilizing the multi-disciplinary strengths already embedded in the two universities with collaboration from other UNC System universities, including NCSU, UNC-CH and Appalachian State. At UNC Charlotte, energy related research and curriculum options have been consolidated under the Energy Production and Infrastructure Center (EPIC) see website: epic.uncc.edu. The NC A&T Center for Energy Research and Technology (CERT), housed in the College of Engineering, has operated for over 25 years with an emphasis on energy conservation, sustainable design, and energy use reduction in the built environments. NC A&T plans to expand the focus of CERT to include the five elements of the RERE initiative. Leadership of the implementation plan for the RERE initiative will then be the responsibility of the two centers: the Center for Energy Research and Technology (CERT) at NC A&T and the Energy Production and Infrastructure Center (EPIC) at UNC-Charlotte. As indicated in Table 1, each center will manage the RERE program at their respective campuses. To assure continuous improvement in the RERE effort, an external Board of Advisors will be organized.

The collaborative nature of these Centers will in turn facilitate opportunities to expand the RERE efforts on each campus, with other universities, and also with community colleges, other centers, and aligned public-sector entities such as the Catawba County Eco-Complex.

The proposers also recognize that the ultimate accountability for launching and overseeing the RERE initiative will involve the UNC General Administration (GA) in order to streamline all aspects of multi-institutional coordination. A single point of contact (SPOC) at the UNC GA will need to be designated.

Table 1. RERE Management Team

UNC System RERE Single Point-of-Contact			
NC A&T CERT		UNC Charlotte EPIC	
Name	**RERE Role**	**Name**	**RERE Role**
RERE PROGRAM MANAGEMENT			
CERT Director Dr. B. Burks Dr. B. Ram	RERE Leader RERE Adv. Committee RERE Adv. Committee	EPIC Asst. Director Dr. J. Enslin Dr. D. Young	RERE Leader RERE Adv. Committee RERE Adv. Committee
RERE PROGRAM ADVISORS			
Dr. A. Ahmidouch Dr. M. Sundaresan Dr. S. Ilias Dr. K. Schimmel Dr. S. Hamoush Dr. M. Bikdash Dr. A. Megri Dr. G. Lebby	Nuclear Area Leader Renewables Area Leader Extraction Area Co-Leader Extraction Area Co-Leader Area Member and Advisor Area Member and Advisor Area Member and Advisor Area Member and Advisor	Dr. Z. Salami Dr. P. Selembo Dr. M. Pando Dr. V. Cecchi Dr. F. Goch Dr. M. Uddin Dr. J. Bird Dr. S. Chen	Nuclear Area Leader Renewables Area Leader Extraction Area Leader Area Member and Advisor Area Member and Advisor Area Member and Advisor Area Member and Advisor Area Member and Advisor

Nationwide Benchmarking

Curriculum advisors involved in the RERE planning efforts have made preliminary inquiries to understand the depth and scope of similar programs at such out-of-state institutions as Stanford University, Penn State University, Arizona State University, and the Massachusetts Institute of Technology. Although more work is needed to thoroughly benchmark North Carolina's program, early work suggests the state is well-positioned to compete in the RERE arena nationwide.

Assessment

To validate the RERE program performance, a joint external advisory board will help assess the successes and challenges related to planning and launching the effort. The board will oversee and track key indicators, and help insure continuous improvement as the program matures and grows.

Section 2: RERE Planning and Pilot Implementation Schedule

Planning and Pilot Implementation

The first 16 months of the program are critical to its success. Assuming a start date of March 1, 2013, the four months remaining in FY 13 will be devoted to assessing and organizing existing courses at UNC Charlotte, NCA&T, and other UNC institutions and initializing the development of new courses. Then, the first half of FY 14 will be spent completing modifications to existing courses, developing new courses, and preparing course schedules for student enrollment.

Table 2. Planning and Pilot Implementation Phases Work Plan

March 1, 2013 – June 30, 2014 Work Plan																
Task	Month															
	FY 13				FY 14											
	3/13	4/13	5/13	6/13	7/13	8/13	9/13	10/13	11/13	12/13	1/14	2/14	3/14	4/13	5/14	6/14
Assess transferable elements of existing courses	X															
Establish RERE SPOC for UNC System	X															
Select UNCC and NCA&T courses (existing courses)	X															
Integrate other UNC System courses (existing courses)		X	X	X	X	X	X									
Build out RERE curriculum content (revised and new courses)		X	X	X	X	X	X									
Approve pilot RERE classes for Spring 2014							X	X								
Send RERE courses to student registration									X	X						
RERE pilot courses underway											X	X	X	X	X	X

NOTE: This work plan assumes that immediate funding support for the initial planning phase can be identified and disbursed no later than February of 2013.

Section 3: RERE Budget

Implementation Budget

The RERE Program will be fully operational by June 30, 2016. This schedule engages four (4) fiscal years with a total budget of $6.55M and with each year requiring a different budget as summarized in Table 3. The continuing operating budget is anticipated to be approximately $4.0 M per year after the initial implementation and expansion periods end on 6/30/16. **This budget will include funding to other UNC system organizations for the collaboration efforts.**

Table 3. RERE Planning, Pilot Implementation and Expansion Implementation Budget (3/1/13 – 6/30/16)

Initiative	Task/Description	Estimate			
		FY 13	FY 14	FY 15	FY 16
Program Development	Assess transferable elements of existing courses	$350,000	$480,000		
	Establish RERE SPOC for UNC System				
	Select UNCC and NCA&T courses (existing courses)				
	Integrate other UNC System courses (existing courses)				
	Build out RERE curriculum content (revised and new courses)				
	Approve pilot RERE classes for spring, 2014				
	Send RERE courses to student registration				
New Faculty Positions	Recruiting & hiring program leads		$ 320,000		
	Continuing faculty positions			$320,000	$640,000
	Recruiting & hiring new faculty			$320,000	$320,000
	Research Lab Equipment		$520,000	$520,000	$520,000
Program Support	$60K/campus/year administrative support			$120,000	$120,000
Expansion	to Other UNC Institutions			$600,000	$1,000,000
Operations Support	$100K/campus/year			$200,000	$200,000
Total		**$350,000**	**$1,320,000**	**$2,080,000**	**$2,800,000**

Section 4: Budget Justification

Planning and Pilot Implementation

The initial launch of the RERE Engineering Program relies heavily in the intensive integration of curriculum planning at the two pilot universities. This work involves the assessment of transferable elements of existing courses, clarifying the RERE SPOC for UNC System, assigning tasks and responsibilities to NCA&T and UNC Charlotte, specifying curriculum enhancement and deploying related outcomes to classes as soon as spring 2014.

Faculty Hiring

Crucial to this launch will be the addition of RERE faculty members, to be recruited and hired according to the schedule anticipated in Table 4. The faculty will be augmented with some administrative and staff positions.

Table 4. RERE Faculty Recruiting and Hiring Schedule

	Year			
	FY 2013	FY 2014	FY 2015	FY 2016
Year of launch	**1**	**2**	**3**	**4**
Cumulative New Faculty UNCC and NCA&T, each	0	1	2	3
Cumulative Total RERE faculty	0	2	4	6

Future Criteria for RERE Success

The long-term success of the RERE effort will require support to benchmark and validate a number of factors that typically justify continued support for academic curriculum. These include but are not limited to anticipated demand for this program, the number of universities in the U.S. offering similar or complimentary programs and the number of students they serve; how the North Carolina approach is different from typical engineering degree programs, ruling in or out the question of whether or not RERE undergraduate programs should be accredited; how industry partners can be involved to inform the curriculum content and research direction; how standards, professional credentials, and state/federal laws and regulations influence the course content (particularly in resource extraction), and how to determine if there are national research trends with which NC RERE research should or could align.

Appendices

Appendix 1: Course Analysis for RERE Adaptation

Appendix 2: Putting the PSM Model to Work

Appendix 3: RERE Research Considerations

Appendix 4: Joint On-site Planning Meeting Minutes

Appendix 5: Initial Documentation

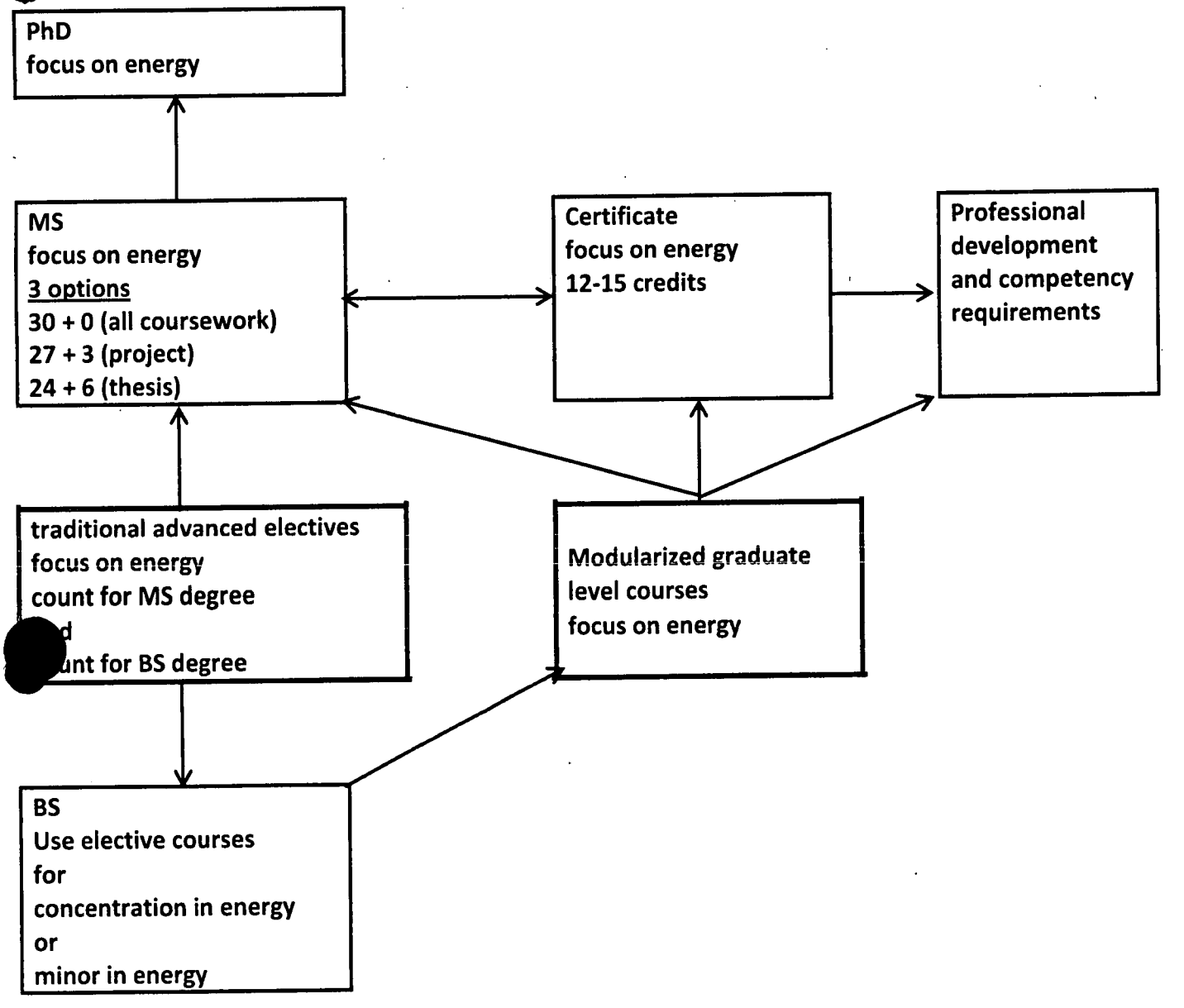
Appendix 1

COURSE ANALYSIS FOR RERE ADAPTATION

A. Mapping of RERE Expertise at UNC-Charlotte and NC A&T

University	Departments	Programs								
		Geothermal	Nuclear	Energy Policy & Regulations	Renewable Energy	Resource Extraction	Smart Grid	Solar	Waste Treatment	Wind
UNC Charlotte	Civil & Environmental	X			X	X			X	X
	Electrical & Computer		X		X	X	X	X		X
	Engineering Technology				X					X
	Infrastructure & Environmental Systems				X	X		X	X	X
	Systems Engineering & Engineering Mgmt			X						
	Mechanical Engineering		X		X	X		X		X
	Earth Science	X				X			X	
	Public Policy			X						
	Economics			X						
	Architecture				X			X		
NC A&T	Chemical, Biological & Bio Engineering				X	X			X	
	Chemistry									
	Civil, Architectural & Environmental Engineering	X			X	X				
	Computational Science & Engineering				X				X	X
	Economics & Finance			X						
	Electrical & Computer Engineering				X		X	X		X
	Energy & Environmental Systems				X	X		X		X
	Industrial & Systems Engineering			X						
	Mechanical Engineering				X	X		X		X
	Physics		X							

Flow Chart/Possible RERE Framework



C. Top Course Candidates for RERE Adaption

Possible NC A&T Courses

Cross-Cut	
EES 711	Energy & Environmental Economics I
EES 712	Energy & Environmental Economics II
Nuclear	
MEEN520	Fundamentals of Nuclear Energy
CIEN735	Earthquake Design
CIEN785	Advanced Concrete Mixtures
Renewable Energy	
CHEN515/615	Energy and Energy Fuels Fundamentals
CHEN522/622	Green Engineering Fundamentals
CHEN508/608	Bioseparations Fundamentals
MEEN675	Solar Energy Fundamentals and Design
MEEN571	Turbomachinery
MEEN838	Renewable and Sustainable Energy
AREN570	Energy and the Environment
AREN572	Energy Conservation in Buildings
EES 720	Sustainable Energy Systems
EES 740	Fundamentals of Biomaterial Sciences & Bioprocess Systems
EES 741	Biomaterials Characterization
EES 742	Biomass Thermal Conversion Processes
EES 743	Biomass Biological Conversion Processes
EES 744	Environmental and Policy Studies of Biomass Use
Resource Extraction	
MEEN835	Physico-chemical hydrodynamics
CIEN721	Advanced Soil Testing for Engineering
CIEN710	Hazardous Waste Management
CIEN712	Systems Approach to Waste Management

C. Continued

Possible UNC Charlotte Courses

Cross-Cut	
PPOL 8652	Energy and Environmental Economics
INES 8102	Infrastructure Systems
ENER 5140	Energy Management
CEGR 5237	Environmental Risk Management
Nuclear	
CEGR 6129	Structural Dynamics
CEGR 5108	Finite Element Analysis
CEGR 5224	Concrete Design II
CEGR 6090	Nondestructive Testing
CEGR 6252	Soil Dynamics and Earthquake Engineering
CEGR 6090	Structural Health Monitoring
CEGR 6090	Structural Strengthening
PHYS 6261	Nuclear Physics
MEGR 5090	Introduction to Nuclear Systems
ECGR 4199	Fundamentals of Nuclear Science and Energy
ECGR 5090	Nuclear Reactor Engineering
Renewable Energy	
ENER 5250	Analysis of Renewable Energy Systems
ENER 5260	Hydrogen Production and Storage
ENER 5280	Fuel Cell Technology
ARCH 5302	Environmental Systems Principles
ECGR 5090	Introduction to Renewable Energy
CEGR 5090	Sustainable Systems Design
CEGR 5090	Introduction to Bioenergy
ECGR 3090	Solar Cell Fundamentals
ECGR 4090	Solar Decathlon Design
ECGR 6890	Renewable Energy and Microgrids
Resource Extraction	
CEGR 5141	Process Engineering
CEGR 6268	Advanced Soil Mechanics
CEGR 5234	Hazardous Waste Management
CEGR 5146	Advanced Engineering Hydraulics
CEGR 6146	Advanced Groundwater Analysis
CEGR 6090	Contaminant Transport in Soils
MEGR 6116	Fundamentals of Heat Transfer and Fluid Flow
MEGR 7101	Transport Processes
ESCI 5233	Geoenvironmental Site Characterization

D. Probable Structure – RERE Master of Science Program

Nuclear D&M	Renewable Energy	Resource Extraction	Transition Topics	Credit Hours
Core 3 courses	Core 3 courses	Core 3 courses	N/A	9
Elective #1	Elective #1	Elective #1	Energy Related • Business • Energy Trading • Sustainability	12
Elective #2	Elective #2	Elective #2		
Elective #3	Elective #3	Elective #3		
Elective #4	Elective #4	Elective #4		
Transmission & Distribution, Energy Focused Math, and Power Generation				3
Thesis and Advisor Approved Special Studies				6
Total Credits for Master of Science				**30**

Appendix 2

PUTTING THE PSM MODEL TO WORK

Current PSM Status, Potential RERE Collaboration Partners

	CURRENT PSM STATUS		
SCHOOL	CAPACITY	PROGRAM DESCRIPTION	PHASE
UNCC	YES	**mathematical finance**	**active**
		bioinformatics	**active**
		health informatics	**active**
		biotechnology	planning
		business analytics	planning
NC A&T	YES	energy systems	planning
		construction science	feasibility
NC STATE	YES	**electric power systems engineering**	**active**
		financial mathematics	**active**
		microbial biotechnology	**active**
		geospatial information science & tech	**active**
		analytics	**active**
		biomanufacturing	**active**
		human nutrition	**active**
		feed science	**active**
		environmental assessment	**active**
		computer networking	**active**
		crop science	**active**
		computer gaming	feasibility
		global health technology	feasibility
		advanced medical technology	planning
		forensic science and engineering	planning
		poultry science	planning
		performance and protection science	planning
ASU	YES	**engineering physics/instrumentation**	**active**
		engineering physics/nanoscience	**active**
		nutrition and food systems	feasibility
		environmental science/hazard mitigation	feasibility
		entrepreneurial information technology	feasibility
UNC CH	YES	ecology and environmental biology	feasibility
		geology and the environment	feasibility
		applied mathematics	feasibility
		applied computer science	feasibility
		geology and petroleum	feasibility
		plant biology	feasibility
		molecular and cellular biology	feasibility
		toxicology	feasibility
TBD			
TBD	NOTE: UNC-Greensboro has an active PSM program in nanoscience. East Carolina University, Elizabeth City State University and UNC-Wilmington are the additional UNC schools with PSM programs in some stage of planning.		
TBD			

Additional PSM Resources

http://ncsu.edu/grad/psm/

http://www.npsma.org/

Appendix 3

RERE RESEARCH CONSIDERATIONS

NCAT Research Centers and Unique Academic Programs

Center for Energy Research and Technology (CERT)

The Center for Energy Research and Technology (CERT) is a multidisciplinary research, training and outreach provider located in Greensboro, North Carolina. Grounded in engineering and built-environment sciences, CERT has galvanized a distinguished group of faculty, staff, graduate and undergraduate students in the pursuit of reducing energy & water consumption, promoting sustainable design practices and energy use/conservation/reduction measures. CERT has become the epicenter for energy research and study in the Triad area. CERT is accomplished at supplying energy analysis, research, instruction and outreach skills that will enable you to benefit from establishing a relationship with us.

PhD in Energy and Environmental Systems

The Ph.D. Program has three concentrations: Atmospheric Sciences, Sustainable Bioproducts, and Energy & Environmental Science & Economics. The program is designed to prepare men and women for positions in research and consulting in industry, government and service organizations, and teaching and research positions in colleges and universities. Graduates will be able to: (a) conceive, develop, and conduct original research leading to useful applications in energy and environmental systems, and (b) incorporate into their professional work considerations relating to scientific and social aspects of energy and environmental systems.

NSF CREST for Bioenergy Center Research

Bioenergy Center will be an educational and research resource for the Nation in the field of thermochemical conversion of biomass to bioenergy. The topics of interest include: High-Quality Synthesis Gas via Biomass Gasification, Nanocatalysts for Biofuel and Steam Reforming Reactions, Reforming and Processing of Biofuels for Fuel Cells. Faculty from Chemical Engineering, Biological Engineering and Energy, and Environmental Systems are involved in the CREST Center. The research at this center overlaps with the Resource Extraction and Renewable Energy focus areas.

UNC Charlotte Research Centers and Unique Academic Programs

Energy Production and Infrastructure Center (EPIC)

The Energy Production and Infrastructure Center (EPIC) at UNC Charlotte was formed in response to the need from industry to supply highly trained engineers qualified to meet the demands of the energy industry – through traditional and continuing education, and provide sustainable support the Carolina energy industry by increasing capacity and support for applied research. EPIC is a highly collaborative industry/education partnership that produces a technical workforce,

advancements in technology for the global energy industry while supporting the Carolinas' multi-state economic and energy security.

EPIC has more than 50 faculty members working in energy related disciplines and has expanded the team with 17 new faculty members with expertise in Power and Energy Systems Modeling, Building Information Modeling, Large Power Structures Engineering, Water Containment and Corrosion, Power Infrastructure Design, Manufacturing and Construction Quality Assurance, Standards and Regulatory Engineering, Renewable Power Integration, Welding and Robotic Manufacturing, Power Electronics and Utility Applications, Power Systems Operations, Protection and Control, Energy Markets and Systems Engineering.

These EPIC associated faculty members are organized in several research clusters and focused centers that are summarized below:

- Power Systems Modernization, the host of the Duke Energy Smart Grid Laboratory with RTDS and system analysis tools.
- Large Energy Component Design and Manufacturing, spearheading manufacturing with the Siemens Large-scale Manufacturing Laboratory.
- Renewables and Energy Efficiency with clean-rooms focusing on PV cell and LED research as well as large-scale PV generation, off-shore wind power, biomass and small-scale hydro and ocean energy technologies, as well as grid integration issues.
- Power Infrastructure and Environmental Development with a world-class large-structures laboratory in a High-Bay facility, partly funded by Westinghouse and AREVA.
- Energy Markets and Systems Engineering, with Quality Assurance, Nuclear Safety, Regulatory and Standards for power systems including distributed energy markets and improved supply chain utilization.
- Sustainable Integrated Buildings and Sites (SIBS), an I/UCRC NSF Center with industry related research of PV integration in dense urban settings with limited roof space, poor orientation, insurance issues, etc. Energy modeling for DSM, energy storage, and renewables as well as thermal-energy storage for peak-shaving.

PhD in Infrastructure and Environmental Systems (INES)

The Infrastructure and Environmental Systems (INES) PhD Program prepares students at an advanced level to undertake the complex challenges facing urbanized regions, specifically those issues related to the interplay between the environment and infrastructure needed to support economic and social development. INES students develop interdisciplinary solutions to these challenges that incorporate the engineering, science, and management aspects of a problem. They are educated and trained to provide the design, construction, operation, and maintenance of critical infrastructure systems for energy production, water and flood management, communications, buildings, transportation, waste containment, and earth monitoring and measurement networks, among others. Their work assists in policy and decision making, financing, and systems analysis to enhance governance, economic, ecological and social values.

Infrastructure, Design, Environment, and Sustainability (IDEAS) Center

The IDEAS Center focuses university expertise on framing the challenges, providing the leadership, and creating the solutions that will accelerate the technical and social shifts needed to make our natural and built environment more sustainable. The Center brings together the inter-disciplinary capabilities and resources needed by decision-makers to create, distill, translate, and disseminate technology and guidance documents. Through it support of research and education activities, the IDEAS Center provides a platform to assist faculty, students, and industry partners in transforming and advancing sustainable infrastructure, materials, energy, environment, and building and site design innovations and practices.

Appendix 4

JOINT ON-SITE PLANNING MEETING MINUTES

Meeting Minutes
Renewable Energy and Resource Extraction (RERE) Meeting
10/3/12 at UNC Charlotte

Objectives of meeting:
1) layout program framework
2) select focus areas
3) designate people in charge
4) decide how to reach out to other institutions beyond UNCC and NCA&T

1) Program framework discussion
- No time to propose new degree; must be embedded in or expanded on existing programs
  - concentrations at undergraduate level
  - minors at undergraduate level
  - focus areas in MS and PhD

- Must be collaborative across several institutions
  - Students take courses by distance from each campus
  - courses "transfer" to the home institution who offers the degree

- Framework must support a theme and emphasize unique aspects of the program
  - Themes: help State Energy Office and NC meet 20-yeqr goal; support energy workforce development; support US Gov't energy workforce plan
  - Uniqueness: industry interaction; seminars; overarching topics; applied nature; interdisciplinary collaboration

- Should include options for (see sketch below):
  - professional master's
    - 30 credits of coursework
  - research/project-based master's
    - 27 credits of coursework + 3 credits of project (not necessarily research-based)
    - 24 credits of coursework + 6 credits of thesis (research-based)

- Consider various delivery options
  - conventional semester
  - by distance
  - concentrated/executive = summers, weekends, short-time frames
  - modularized courses = 3 credit course = 3 "courses" @ 1-credit

2) Focus areas
1) nuclear energy with focus on design/repair/maintenance (engage NRC)
2) resource extraction with focus on natural gas fracking
3) renewable energy with focus on wind, solar, geo-thermal

Minutes of RERE meeting at UNCC, 10/3/12 page 2

Focus Areas (Cont'd)

- Courses must reflect interdisciplinary nature of renewables and include areas that transcend all focus areas:
  - business/economics/management
  - measurement/monitoring/performance
  - quality/reliability/safety
  - policy/regulation
  - environment/waste

- At least one (3-credit) MATH course should be required (calculus, statistics/probability, etc.)

3) People in charge:

Area or Item		NCA&T	UNC Charlotte
1	Overall Theme and Unique Aspects	**Dr. Burks**	**Dr. Enslin**
2	Nuclear Energy Focus Area	Dr. Homaifar, Dr. Wang, **Dr. Hamoush**	**Dr. Salami**
3	Renewable Energy Focus Area	Dr. Ilias, Dr. Sundaresan, **Dr. Schimmel**	**Dr. Valentina,** Dr. Goch, Dr. Uddin, Dr. Bird
4	Resource Extraction Focus Area	**Dr. Picornell,** Dr. Fernandez	Dr. Young, **Dr. Chen,** Dr. Pando
5	Topics that Cross All Areas	**Dr. Bala**	**Dr. Young**
6	Program Structure	**Dr. Bala**	**Dr. Young,** Dr. Selembo

END OF MINUTES

Minutes of
North Carolina A&T – UNC–Charlotte RE/RE Proposal Meeting
Monday, October 29th, 2012, 2:00PM to 6:30PM

Attendees:

UNCC: Jonathan Bird, Aba Ebong, Johan Enlin, Chris Hardin, Jy Wu, David Young

NC A&T: Abdella Ahmidouch, Mufeed Basti , Marwan Bikdash, Barry Burkes, Sameer Hamoush, John Kelly, John Kizito, Luba Kurkalova, Gary Lebby, Samuel Owusu-Ofori, Ahmed Megri, Bala Ram, Messiha Saad, Keith Schimmel, Paul Stanfield, Abu-Lebdeh Taher , Shih-Liang Wang

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AGENDA

1. Welcome, Theme, Objectives (2PM – 3PM)	410 IRC	(Drs. Burks, Enslin, Young, Ram, Schimmel)
2. Breakout Sessions (3PM – 5PM)		
- Nuclear	328 IRC	
- Resource Extraction	408 IRC	
- Renewable Energy	410 IRC	
- Cross-cut	IRC 4th floor foyer	
- Academic Programs & Proposal	Dr. Burks' Conference Room	

At the breakout session, please fill out the attached sheets, so we can share during the wrap-up sessions, handwritten would be fine)

3. Dinner and wrap-up (5PM – 6PM) 410 IRC (Drs. Burks, and Enslin)
(share completed sheets from breakout sessions)

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1. Dr. Barry Burks welcomed the attendees' and explained the charge of the UNC-GA. Dr. Johan Enslin presented his draft document entitled "Collaborative Engineering Program in Resource Extraction and Renewable Energy". Dr. David Young reviewed the minutes of the prior meeting on October 3rd at UNCC and the academic program framework discussed at the meeting. Dr. Keith Schimmel presented information about the Catawba EcoComplex and the projects underway there, as an example of a living laboratory for research. Dr. Bala Ram discussed the locations of the breakout sessions and the outcomes requested from the breakout sessions.
2. The breakout groups consisted of the following individuals:
   (i) Nuclear (Drs. A. Ahmidouch, Zia Salami, and S. Hamoush
   (ii) Resource Extraction (Mr. Chris Hardin, Drs. Keth Schimmel, Abu-Lebdeh Taher, and Mufeed Basti)
   (iii) Renewable Energy (Drs. Mannur Sundaresan, Jonathan Bird, and Aba Ebong)
   (iv) Cross-cut (Drs. Marwan Bikdash, Luva Kurkalova, Gary Lebby, and Paul Stanfield)
   (v) Academic Programs and Proposal (Drs. Barry Burks, Johan Enlsin, David Young, and Bala Ram)

Groups (i), (ii), (iii), and (iv) initiated discussions on existing course at the two campuses, and potential new courses in each of the areas. The groups also began discussion on research topic of interest in each of the areas.

Following is a summary of the discussions in group (v) on Academic Programs and Proposal.

a) Academic Programs:
- Use existing BS, MS, PhD programs, not a new program at this time
- In longer term we will work on developing a joint graduate program
- 9 to 12 credits in collaborative mode
- 3 credits minimum physically in the other location

b) Collaboration ideas:
- Offer courses in distance mode either full course or team-teaching
- Block scheduling in summer with courses in each of the two campuses
- Joint thesis advising
- Visiting summer scholars on each campus (invite faculty with expertise in the "gap" areas)
- Out-of-state and international scholars
- International students
- Common location for projects: Catawba EcoComplex, Davidson Community College?
- GTCC, CPCC and Davidson as transfer students

c) Proposal format:
- Will use UNC-GA "Request to Establish" template for proposal

d) Weekly teleconference on Mondays, 130PM

END OF MINUTES

Appendix 5

INITIAL DOCUMENTATION

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE RESEARCH COMMISSION

STATE LEGISLATIVE BUILDING

RALEIGH, NC 27601

August 23, 2012

Senator Tom Apodaca
Chairman
Legislative Research Commission
North Carolina State Senate
16 W. Jones Street, Room 2010
Raleigh, NC 27601-2808

Representative Tim Moore
Chairman
Legislative Research Commission
North Carolina House of Representatives
16 W. Jones Street, Room 1326
Raleigh, NC 27601-2808

Dear Senator Apodaca and Representative Moore:

Pursuant to G.S. 120-30.13, as enacted in Section 66.7(b) of S.L. 2012-194, Senator Apodaca is designated as the Senate Cochair of the 2011-2012 Legislative Research Commission ("Commission"). Representative Moore is designated as the House Cochair of the Commission.

As you prepare your agenda for the Commission, pursuant to G.S. 120-30.17, we authorize the Commission to appoint the following Study Committees and Advisory Subcommittees to study the following matters and to refer one study to a state agency. The Cochairs and appointees to each Committee are also identified. Please restrict each study committee and advisory subcommittee to a maximum of four meetings unless additional meetings are pre-approved by our offices.

Authorized Joint Study Committees:

Pathological Materials – The LRC Study Committee on Pathological Materials shall study the issue of access by patients to pathological materials requested by a patient for the purpose of additional medical treatment evaluation or the evaluation of any legal rights of the patient. Specifically, the Committee shall consider:

1. State and federal laws and regulations that govern the administration, operation and certification of pathology laboratories;

2. State and federal laws that govern the maintenance and production of a patient's medical records;
3. Appropriate changes in state law that ensure patient access to pathological materials that are needed to obtain and evaluate the patient's medical needs and legal rights while also balancing pathology laboratories' duties to comply with federal and state licensure laws and regulations, patient care responsibilities, risk management obligations, and other relevant issues;
4. The impact of any state law change on the medical research industry including: pharmaceutical companies; government research institutions; and other industries dependent upon information obtained from pathological materials.

While conducting this study the Committee shall consult:

1. Persons who serve as advocates for patients who have requested pathological materials;
2. Patients who have requested pathological materials from health care providers;
3. Representatives of hospitals responsible for the management of pathology laboratories;
4. Pathologists responsible for the management of pathology laboratories;
5. Persons responsible for providing legal advice to mangers of pathology laboratories; and
6. Any other person or persons the Committee deems appropriate.

Senate Members		**House Members**	
Sen. Goolsby	Chair	Rep. Murray	Chair
Sen. Brunstetter	Member	Rep. Brisson	Member
Sen. Brock	Member	Rep. Jones	Member
Sen. Pate	Member	Rep. McGrady	Member
Sen. Purcell	Member	Rep. Stevens	Member

Contingency Fee Audits – The LRC Study Committee on Contingency Fee Audits shall study issues relating to the use of contingent fee-based contracts by the State Treasurer for purposes of unclaimed property audits, and by counties and municipalities for tax audit or assessment purposes.

Senate Members		**House Members**	
Sen. Gunn	Chair	Rep. Stam	Chair
Sen. Brown	Member	Rep. Brown	Member
Sen. Clodfelter	Member	Rep. Burr	Member
Sen. Hise	Member	Rep. McCormick	Member
Sen. Hartsell	Member	Rep. Wray	Member

Career and Technical Education – The LRC Study Committee on Career and Technical Education shall study the following aspects of the current State vocational training to improve the quality and relevance of training, align basic education and vocational and higher education training and ensure that students who are not college bound are career ready. Specifically, the Committee shall study the following:

1. The requirements and challenges North Carolina high school graduates face in today's changing and demanding job market. The study should include a review of what North Carolina industries look for in well-qualified candidates for employment as it pertains to education, certification, and skill level;
2. The Career and College Promise program, specifically the Career and Technical Education Pathway and the Cooperative Innovative High School Pathway, to determine if the program is meeting the unique needs of students seeking to enter the workforce after completing high school. The study should include a review of the career clusters and pathways, work-based learning, career academies, time-shortened programs, and certification and credentialing offered to determine if they meet the current needs of North Carolina's students and business community. The study should also examination current outreach and practices to raise student awareness of Career and Technical Education opportunities;
3. Progress in developing regional schools through S.L. 2011-241 which authorized local boards of education to jointly establish a regional school to serve enrolled students in two or more local school administrative units that will expand student opportunities for educational success through high quality instructional programming;
4. Article 10 of Chapter 115C of the North Carolina General Statues as it pertains to vocational and technical education to determine if modification is necessary to best reflect the intent of the General Assembly and provide the necessary opportunities and flexibility to establish innovative learning environments that provide students with practical work experiences and vocational skills;
5. Additional, cost-effective ways in which the Department of Public Instruction, North Carolina Community College System, and the business community can partner to offer enriched educational opportunities for students to enter the workforce with academic and marketable vocational skills after completing high school;
6. Potential legislative actions to further enhance connecting career technical education to education, workforce preparation, and economic development through innovative schools and high academic standards;
7. Any other issues associated with Vocational education deemed appropriate by the Committee.

Senate Members		**House Members**	
Sen. Brown	Co-Chair	Rep. Holloway	Chair
Sen. Tillman	Co-Chair	Rep. Blackwell	Member
Sen. Hise	Member	Rep. Blust	Member
Sen. McKissick	Member	Rep. Cotham	Member
Sen. Soucek	Member	Rep. Langdon	Member

Digital Learning Environments in Public Schools – The LRC Study Committee on Digital Learning Environments in Public Schools shall study the following:

1. Available forms of digital learning environments in public schools by comparing the cost, infrastructure, technology, maintenance, usability, savings, effectiveness and demonstrated student outcomes associated with various digital learning models found in North Carolina as well as other states like Florida, Arizona, California, Maine, and Texas.
2. Parts 3 and 3A of Article 8 of Chapter 115Cof the North Carolina General Statutes as they pertain to school technology to determine if modifications are necessary to best reflect the intent of the General Assembly and provide the necessary opportunities and flexibility to establish digital learning environments in public schools.
3. Viable, cost-effective ways in which the Department of Public Instruction and local school administrative units can offer enriched educational opportunities to students through the use of digital learning tools such as laptops, handheld devices, digital textbooks, and other digital content.

Senate Members		**House Members**	
Sen. Soucek	Chair	Rep. Horn	Chair
Sen. Carney	Member	Rep. L. Johnson	Member
Sen. Clodfelter	Member	Rep. Lucas	Member
Sen. Hise	Member	Rep. Saine	Member
Sen. Rucho	Member	Rep. H. Warren	Member

Authorized Joint Advisory Subcommittees:

Wetland and Stream Mitigation – The LRC Advisory Subcommittee on Wetland and Stream Mitigation shall study issues related to the overall policies and roles of agencies within State government, the federal government, and the private sector to plan, construct and monitor wetland and stream mitigation. The Advisory Subcommittee may specifically study the following items:

1. The process for annual adjustments of Ecosystem Enhancement Program fees, including whether the use of the Civil Works Construction Cost Index System published by the U.S. Army Corps of Engineers as a basis for fee escalation is necessary given the past direction of the General Assembly to base program fees on actual costs;
2. Whether compensatory mitigation should be allowed any hydrologic area located in the same river basin as the site being mitigated. For purposes of this study, the terms "compensatory mitigation" and "hydrologic area" are as defined in G.S. 143-214.11;

3. Whether the compensatory mitigation fee payment system represents the most efficient and effective way to provide compensatory mitigation and how the program could be revised to lessen its economic impact on the State's businesses and industries;
4. Whether the State should withdraw from the Memorandum of Agreement between the U.S. Department of Environment and Natural Resources, the U.S. Department of Transportation, and the U.S. Army Corps of Engineers, which established the Ecosystem Enhancement Program in 2003;
5. Whether the North Carolina Department of Transportation should purchase its stream and wetland mitigation credits from an approved mitigation bank within the private sector where available;
6. Whether the State should consider assuming the Clean Water Act Section 404 permitting role from the federal government;
7. Whether the mitigation projects overseen by the North Carolina Department of Transportation, Natural Systems Unit have been effective and cost efficient;
8. Whether the North Carolina Department of Environment and Natural Resources' internal review process of stream and wetland mitigation projects designed, stamped, and signed by a licensed professional engineer is necessary and/or appropriate;
9. Any other issues associated with stream and wetland mitigation deemed appropriate by the Committee.

Senate Appointees		**House Appointees**	
Sen. Jackson	Chair	Rep. Lewis	Chair
Sen. Daniel	Member	Rep. Hastings	Member
Sen. Harrington	Member	Rep. Iler	Member
Sen. Rabon	Member	Rep. R. Moore	Member
Sen. Walters	Member	Rep. T. Moore	Member
Buck Smith, General Manager, Cleveland County Water	Member	Christopher A. Huysman, Engineer	Member
Dr. Curtis J. Richardson, Professor, Duke University Nicholas School of the Environment	Member	David N. Levinson, Developer	Member

Authorized House Study Committees:

Age of Juvenile Offenders – The LRC Study Committee on the Age of Juvenile Offenders shall study North Carolina's current juvenile justice system and identify reforms that may reduce long-term recidivism. Specifically, the Committee shall study:

1. What juvenile justice reforms are needed to implement the proposal in Senate Bill 434, Edition 3, for raising the age for misdemeanors;

2. Evidence-based models for reducing juvenile recidivism, such as the Juvenile Detention Alternatives Initiative of the Annie E. Casey Foundation, including models to reduce inappropriate or unnecessary use of secured detention;
3. How best to reserve secure facilities for the most troubled youth. This shall include assessing the recidivism rates and costs and benefits of alternatives to placement programs in the juvenile justice system, such as electronic monitoring;
4. Best practices among community-based programs, such as the Juvenile Crime Prevention Council System, that utilize evidence-based programs to reduce youth recidivism;
5. How to prepare local prisons for implementation of Department of Justice regulations related to the Prison Rape Elimination Act of 2003, P.L. 108-79, including ensuring that all youth under the age of 18 are held separately from adults.

Rep. Avila	Chair
Rep. Blust	Member
Rep. Boles	Member
Rep. Hall	Member
Rep. Jackson	Member
Rep. Lewis	Member
Judge Marcia Morey	Member
Eddie Caldwell	Member
Frank Plumbo	Member
	Member

Referral of Studies to State Agencies:

Resource Extraction and Renewable Energy – Pursuant to G.S. 120-30.17(9), the Commission directs the University of North Carolina at Charlotte ("UNC-C") and the North Carolina Agricultural and Technical State University ("NC A&T") to draft plans for the creation of a collaborative engineering program in resource extraction and renewable energy. The immediate focus of the collaborative program will be natural gas extraction, nuclear reactor maintenance and design, and wind, geothermal, and solar power systems design. UNC-C and NC A&T shall submit a proposed implementation timetable and associated costs to the Commission no later than January 4, 2013.

We will look forward to reviewing the Commission's report regarding the study results, as well as any recommended legislation, prior to dissolution of the Commission on January 15, 2013 pursuant to G.S. 120-30.11. Please let us know if we or our staff may be of assistance.

Thank you for your service.

Sincerely,

Sen. Phil Berger
President Pro Tempore of the Senate

Rep. Thom Tillis
Speaker of the House of Representatives

Cc: George Hall, Legislative Services Officer

The University of North Carolina
GENERAL ADMINISTRATION
POST OFFICE BOX 2688, CHAPEL HILL, NC 27515-2688
Division of Academic Affairs
Telephone: (919) 962-1000 • Fax: (919) 962-0120

Constituent Universities
Appalachian State University

East Carolina University

Elizabeth City State University

Fayetteville State University

North Carolina Agricultural and Technical State University

North Carolina Central University

North Carolina State University at Raleigh

University of North Carolina at Asheville

University of North Carolina at Chapel Hill

University of North Carolina at Charlotte

University of North Carolina at Greensboro

University of North Carolina at Pembroke

University of North Carolina at Wilmington

University of North Carolina School of the Arts

Western Carolina University

Winston-Salem State University

...nt High School
...l Carolina
...ol of Science and Mathematics

An Equal Opportunity/ Affirmative Action Employer

Date: August 28, 2012

To: Phil Dubois, Chancellor, UNC Charlotte
Joan Lorden, Provost and Vice Chancellor for Academic Affairs
Bob Wilhelm, Vice Chancellor for Research and Economic Development

Harold Martin, Chancellor, NC A&T University
Winser Alexander, Interim Provost and Vice Chancellor
Barry Burks, Vice Chancellor for Research and Economic Development

From: Suzanne Ortega, Senior Vice President for Academic Affairs

Chris Brown, Vice President for Research and Graduate Education

Subject: Resource Extraction and Renewable Energy Program

The August 23, 2012 report of the Legislative Research Commission (LRC) directs UNC Charlotte and NC A&T State to draft plans for the creation of a collaborative engineering program in resource extraction and renewable energy. Focus areas should include natural gas extraction, nuclear reactor maintenance and design, and wind, geothermal, and solar power systems design. This draft plan, with implementation timetable and associated costs, must be submitted to the LRC no later than January 4, 2013.

The charge of the LRC is an ambitious one. As you move towards completion of this required submission, you may wish to consult with other universities and individuals with expertise in these fields. From NC-Reach we have identified the following individuals with such expertise:

- Dr. Alex Huang, Director, FREEDM Systems Center, NC State
- Dr. Ayman Hawari, Director, Nuclear Reactor Program, NC State
- Dr. Billy Edge, Director, Renewable Ocean Energy Program, and Professor, NC State
- Tommy Cleveland, Solar Energy Engineer, NC Solar Center at NC State
- Dr. Dennis Scanlin, Coordinator, Appropriate Technology Program, Appalachian State University
- Dr. Thomas Meyer, Director, Energy Frontier Research Center, UNC Chapel Hill

We are sure this list is not exhaustive.

We would ask that you keep us closely in the loop as you cost out the various programmatic options. Whether the proposal suggests collaboration with other universities in the system which definitely should be considered, or is a stand-alone proposal, the costs will be considerable. It is essential, therefore, that the budget request provides a realistic assessment of the true costs of the program. We would ask that we receive the proposed budget at least 30 days in advance of the report deadline so that we have ample time to review it with our Budget and Finance and State Relations staff, as well as with President Ross and work with you to refine your request.

cc: Thomas W. Ross, President, The University of North Carolina
Lesley Cates, Director of State Relations

Committee Sergeants at Arms

NAME OF COMMITTEE Legislative Research Com.

DATE: 1/8/13 Room: 1228

House Sgt-At Arms:

1. Name: LARRY ELLIOTT
2. Name: BARRY MOORE
3. Name: Patrick Mason
4. Name:
5. Name:

Senate Sgt-At Arms:

1. Name: Anderson Meadows
2. Name: Leslie Wright
3. Name:
4. Name:
5. Name:

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Cody HAND	NCHA
Michael Houser	NCDOR
Alex Miller	KLG
Doug HERON	DUKE
Sarah Preston	ACLU-NC
Will Morgan	TNC
Danielle Musselwhite	Jason Deans + Assoc
Jason Deans	Jason Deans + Assoc
Dean Plunkett	PS

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Steve Wells	NC Federation of Garden Clubs
Henri McClees	McClees Consulting, Inc.
DSP	NCTB
Weldon Jones	Jordan Price
Michelle Frazier	MFS
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Elizabeth Biser	Brooks Pierce
Jennifer Willis	UNC-CH
Mary Shuping	NC Community Colleges
Elise McDowell	Troutman Sanders
Will Parry-Hill	NCHFA
Andy Chase	KMA

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Edith Davis	NC Reinsurance Facility
Robert PASchal	Young Moore