

1997

**HOUSE
COMMERCE –
TRAVEL & TOURISM**

MINUTES

HOUSE
SUB-COMMITTEE ON
TRAVEL AND TOURISM

1997 - 1998

Representative Edgar V. Starnes
Chairman
Representative Thomas Wright
Ranking Minority Member

Staff Counsel
Walker Reagan

Committee Clerk
Pattie S. Fleming

HOUSE SUB-COMMITTEE ON TRAVEL & TOURISM
1997-98 SESSION

MEMBER _____(Clerk)_____	TEL.	OFFICE	SEAT
Edgar V. Starnes, Chairman Pattie Fleming	5-3012	418A	88
Lanier M. Cansler Barbara Cansler	5-3007	419A	53
Stan Fox Sue Buehlmann	3-5661	1019	46
Robert Grady Peggy Murray	5-3024	402	37
Jean Preston Alice Falcone	5-3026	403	38
Nurham Warwick Carolyn Honeycutt	3-5886	1015	113
Cynthia B. Watson Ebern Watson	5-3015	417C	19
Michael S. Wilkins Lillie Pearce	3-4948	1204	32
Thomas Wright Clarestene Stewart	3-5877	538	93



Edgar V. Starnes
Chairman



Lanier M. Cansler



Stan Fox



Robert Grady



Jean R. Preston



Nurham Warwick



Cynthia B. Watson



Michael S. Wilkins



Thomas Wright

[illegible]

AGENDA

HOUSE SUB-COMMITTEE ON TRAVEL AND TOURISM

February 26, 1997

Room 415 LOB

10:00 a.m.

OPENING REMARKS

Representative Edgar V. Starnes, Chairman of Travel and Tourism
Sub-Committee of Standing Committee on Commerce

PRESENTATION: Mr. Gordon Clapp

Director of North Carolina Department of Travel and Tourism

ADJOURNMENT

MINUTES

HOUSE SUB-COMMITTEE ON TRAVEL AND TOURISM

February 26, 1997

The House Sub-Committee on Travel and Tourism met in Room 415 of the Legislative Office Building on Wednesday, February 26, 1997 at 10:00 a.m. Representative Edgar V. Starnes, Chairman, presided and the following committee members were present: Representatives Cansler, Fox, Grady, Preston, Warwick, Watson, and Wilkins. Also present were Walker Reagan, Staff Counsel, Chris Reavis, Page, and the Sergeant-at-Arms representative.

The Chairman called the meeting to order and explained that today's meeting was being held as an organizational meeting. He asked each member in attendance to present some of the natural areas of attraction in their district. The list was varied - from the coastlands to the ski slopes - all holding natural beauty and thus attractive to the tourist visiting our state.

Chairman Starnes introduced Gordon Clapp, Director of Travel and Tourism for the State of North Carolina, and his assistant, Lynn Minges. Mr. Clapp presented an overview of the goals of his department as we move toward the year 2000. He stated that tourism is the 2nd largest industry in our state, but to keep it at this level North Carolina must remain competitive. The surrounding states spend two to three times more money on marketing their tourist industry than North Carolina. "Tourism 2000" will meet Thursday and ask the General Assembly for funding to keep North Carolina competitive with our neighboring states. On March 12, 1997 a Gala Reception will be hosted at the History Museum by Travel and Tourism. They plan, not only to entertain the members of the General Assembly, but also to inform them of the workings of the Department of Travel and Tourism.

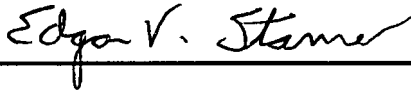
Thematic trails will be used to promote North Carolina worldwide. Handmade craft trails, Civil War trails, botanical trails, writers trails, etc. will encourage folks to vacation in North Carolina. The international market is also a lucrative field to tap as Europeans tend to come and stay longer and spend more money than our local people do. Marketing has been carried on in Germany and Great Britain with an increase in tourists from 40,000 to a projected 90,000 in 1998. Protection and preservation of our heritage in North Carolina is of utmost

importance. 85 of our 100 counties have something in their area that can provide a strong tourism base, but it must be protected and preserved or it can be destroyed.

Mr. Clapp distributed packets from his department for each member present and entertained questions from committee members. Representative Warwick voiced concern about the destruction at Topsail Island from the recent hurricanes and asked if funds might be made available for tourist housing for the upcoming tourist season upon which Topsail is greatly dependent. Mr. Clapp responded that the lingering perception left by CNN and the news media is that North Carolina is not ready for tourists following the recent hurricanes, so North Carolina needs to respond more quickly to give a positive image and encourage tourists to return to North Carolina.

Representative Watson asked about the impact of the hog industry on tourism. The perception is being given out that North Carolina is odiferous. Mr. Clapp said that he was very concerned about the hog factor in relation to tourism. We are living in a small world with instant communication and North Carolina could develop an undesirable image for tourist.

There being no further questions Chairman Starnes thanked Mr. Clapp for his informative presentation and adjourned the meeting.



Representative Edgar V. Starnes, Chairman



Pattie S. Fleming, Clerk

VISITOR REGISTRATION SHEET

Travel and Tourism
Name of Committee

Feb. 26, 1997
Date

VISITORS: Please sign below and return to Committee Clerk.

NAME

FIRM OR STATE AGENCY AND ADDRESS

Bruce W. ClappTravel & Tourism DivisionDynan MingoTravel & Tourism Div.Curt WilhamsOffice of GovernorJohn BowditchLebanon P.A.[Signature][Signature]L. Dale McNeilSCENIC NCL. WainerEGHS

AGENDA

HOUSE SUB-COMMITTEE ON TRAVEL AND TOURISM

April 9, 1997
Room 415 LOB
10:00 a.m.

OPENING REMARKS

Representative Edgar V. Starnes, Chairman of Travel and Tourism
Sub-Committee of Standing Committee on Commerce

PRESENTATION: Mr. Phil McKnelly

Director of Division of Parks and Recreation for the
State of North Carolina

Mr. McKnelly will give a presentation on North Carolina State Parks and Recreation
Areas

ADJOURNMENT

MINUTES

HOUSE SUB-COMMITTEE ON TRAVEL AND TOURISM

April 9, 1997

The House Sub-Committee on Travel and Tourism met in Room 415 of the Legislative Office Building on Wednesday, April 9, 1997 at 10:00 a.m. Representative Edgar V. Starnes, Chairman, presided and the following committee members were present: Representatives Cansler, Fox, Grady, Preston, Warwick, Wilkins, and Wright. Also present were Walker Reagan, Staff Counsel and Courtney Vinson, Page.

The Chairman called the meeting to order and introduced Mr. Phil McKnelly, Director of Division of Parks and Recreation for the State of North Carolina. Mr. McKnelly presented an overview of the N.C. State Parks and Recreation Areas for the committee.

The North Carolina parks system is 82 years old. The first purchase was of Mount Mitchell and since that time 33 units have been added to the park system that employ a full time park ranger. There are many others without staff.

In 1933 an Act was passed to provide for the management and preservation of North Carolina heritage. Historically, our park system has been neglected and underfunded. From 1916-1969 no general funds were used to acquire a park. Interested, private citizens donated land. Fort Macon was donated by the Federal Government.

In 1993 the first park referendum ever was held in the State of N.C. and 35 million dollars, which equals half the total investment that has been made into the park system up to that time, was allotted to the Park System from the Bond Referendum. It put the Park System in the best position ever financially. Much of the money had to go "underground" to fix water systems and things that were not visible to the average visitor. The Park System made a commitment to the General Assembly and the public to be "visitor friendly" with enough of the money that the public can observe it "at work" in the parks. The referendum passed with 57% of the votes and beat the university system by 3%.

The U.S. Forest Service did a study in 1990 and for each 12 hour stay in N.C. the average visitor spends \$26.00 in the community. People come from other states because of the natural beauty in North Carolina. N.C. has a wider range than any other state - extending from Mt. Mitchell to Jockey's Ridge. The Blue Ridge Parkway had over 19 million visitors from 1990 - 94.

The average park is 2,700 acres in size. For the first time in 10 years there has been a decline in attendance at the parks due to Hurricane Fran. Fourteen parks were closed and 4 are still partially closed. On an average they receive 337,000 visits a year. Kerr Lake edged out Fort Macon this year with 1.3 million visitors and Jordan Lake had over 1 million visitors.

The pressing needs at this time are operational needs. Trained personnel, rangers and superintendents, are needed to run the parks. At present there is 1 ranger per 88,000 visits each year or 1100 acres per ranger. Overwhelming odds for the staff. The first thing to suffer is educational. So many school groups visit and request programs in ecology and the role of environment. Rangers are trained as police officers, first responders, EMT workers, search and rescue, and in the field of education. Underpaid and overworked - parks rely on the dedication of their rangers and superintendents to offset the small salaries.

Mr. McKnelly summed up his presentation by telling the committee that some of N.C.'s parks are just "loved to death" and that the park system would like visitors to deflect to Merchant's Mill Pond, Jones Lake and South Mountain. He used the Travel and Tourism Committee as an opportunity to once again thank the General Assembly for their treatment of the park system.

Representative Starnes thanked Mr. McKnelly for coming and asked for questions from the committee.

Representative Fox asked how the parks captured their numbers for the visitor count. Mr. McKnelly responded with numeric counters across entrances and also they used interns at random times to do a head count in the cars. The zoo has the best figures because they have turnstiles.

Representative Wright asked what the ratio of staff to visitor is on a national scale. Mr. McKnelly answered with monetary figures. N.C. spends about \$2 per person on parks. 11/100s of a percent of state budget goes to parks. Vermont is the only state lower. \$5.50 is the average spent on parks and Kentucky has the highest expenditure of \$15 - \$16 per person on their park system.

Representative Cansler asked about acquiring the Duke Power property above Asheville and if N.C. could maintain it. A bill has been introduced to acquire the property. The area is so unique and significant that it warrants an exception to all rules. Governor Hunt and Hugh Morton flew over it the day before and Gov. Hunt promises to find money in the budget next year to acquire it. An attempt is being made to get matching money. 1 ¼ million has been put up already by a private partnership. Hopefully more will be coming.

Representative Starnes adjourned the meeting.

Edgar V. Starnes

Pattie Fleming, clerk

VISITOR REGISTRATION SHEET

4-9-97

Travel and Tourism 10:00 Room 415

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY

1. TRMignelly
2. Randall Porter
3. Natalie Haskins
4. Don Holman
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EHNR / DPR
NCADA
Charlotte Chamber
CCNC / Gura Club

April/May 1997

Vol. 5, No. 24

ECO-TOURISM

By Cheryl Runyon and Laura Loyacono

Eco-tourism is a growing segment in the tourism industry.

Each year, thousands of travelers leave home in search of nature. They head to parks to hike and camp or to nature preserves to watch birds and wildlife. These "eco-tourists" are one of the fastest growing segments in the tourism industry. In 1994, worldwide nature tourism sales totaled \$238 billion. Eco-tourism offers new opportunities for economic development in rural communities and challenges to state legislators. Private land owners and entrepreneurs have opportunities to develop environment-related activities (rafting, mountain biking, cross-country skiing, hiking and birding). Legislators must consider land use planning and liability issues, provide funding for development grants, and evaluate the ability of the state to develop itself as a tourist destination.

An ideal eco-tourism trip has been described as one that:

- Provides first-hand experience of the natural or cultural environment;
- Involves experiencing nature on nature's, not the visitor's, terms;
- Accepts that access to and use of natural and cultural resources must be limited;
- Includes local involvement from the planning through the delivery of eco-tours;
- Promotes environmental ethics and provides educational benefits to participants;
- Offers economic benefits to the tourism industry;
- Directs a portion of the revenues to the maintenance and enhancement of the natural- or cultural-resource base.

Roadblocks to eco-tourism development include potential conflicts with landowners over state regulation of private lands and natural resources; conflicts between state agencies' missions (economic development vs. resource protection); the local public's perception of eco-tourists and whether they think the benefits from economic development outweigh the increases in traffic, pollution and disruption of traditional life; and the possibility that the fragile ecology will be "over-appreciated" and damaged by too many tourists. Although there is a natural tension between using and protecting a natural resource, eco-tourism supporters believe the interest in and the financial support provided to use the resource will educate tourists about conservation and resource protection, if for no other reason than to ensure future visits.

Examples of programs in the states include:

- **OKLAHOMA's** "Native America Tourism" campaign in the Panhandle region involves local communities sharing management responsibilities for cultural and natural areas with nonprofit organizations that have acquired tall grass prairie eco-systems. The state program links the privately owned lands to state-owned lands.
- **OREGON's** Department of Tourism publishes a wildlife-viewing guide.
- The **NEBRASKA** Games and Parks Commission and the Department of Economic Development coordinate with public and private partners to promote the annual migration of sandhill cranes to tourists. The commission also promotes canoeing in general and canoe trips on the Niobrara River, a national scenic river.
- **WASHINGTON** publishes seasonal guides for outdoor experiences such as salmon fishing, wind-surfing and whale watching.

State programs provide grant funding, publications, partnerships and task forces to promote eco-tourism.

April/May 1997

Vol. 5, No. 24

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1998

**HOUSE
COMMERCE**

MINUTES

HOUSE COMMITTEE ON COMMERCE

1998 SHORT SESSION

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Representative Walter Church

Representative William Hiatt

Representative Tim Tallent

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Karen Cochran-Brown, Staff Attorney

Bill Gilkerson, Staff Attorney

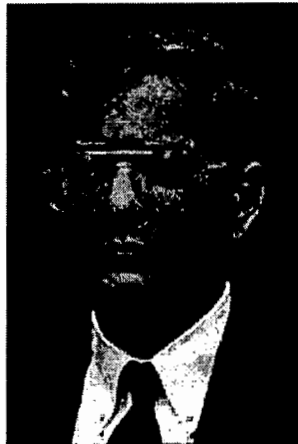
Walker Reagan, Staff Attorney

Steve Rose, Staff Attorney

COMMITTEE CLERK

Susan Phillips

HOUSE COMMITTEE ON COMMERCE
1997-98 SESSION
CHAIRS



REP. DAVID MINER
SENIOR CHAIR



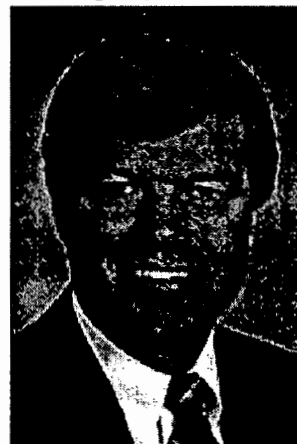
REP. CHERIE BERRY



REP. WALTER
CHURCH



REP. WILLIAM HIATT



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HOUSE COMMITTEE ON COMMERCE

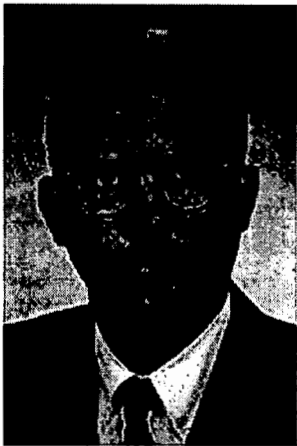
**1997-98 SESSION
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**REP. BOBBY HALL
CHAIR, FINANCIAL INSTITUTIONS**



**REP. DANNY MCCOMAS
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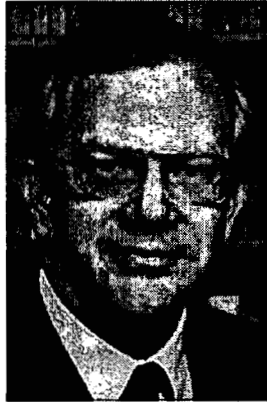


**REP. EDGAR STARNES
CHAIR, TRAVEL AND TOURISM**

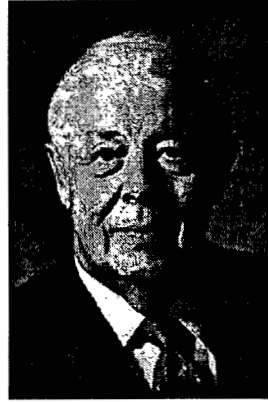
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1997-98 SESSION
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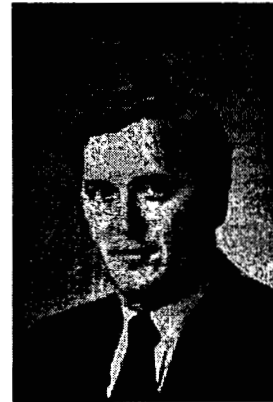
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REP. LANIER CANSLER



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1997-98 SESSION
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1997-98 SESSION
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HOUSE COMMITTEE ON COMMERCE
1997-98 SESSION

MEMBER (Clerk)	TEL.	OFFICE	SEAT
REP. DAVID MINER, CHAIR Stephanie Mansur, Committee Clerk	3-5749	2219	16
REP. CHERIE K. BERRY, CO-CHAIR Betty Smith	3-5861	1006	41
REP. TIMOTHY N. TALLENT, CO-CHAIR Joyce Bulluck	3-5934	1104	73
REP. WILLIAM S. HIATT, CO-CHAIR Edna Pearce	3-5862	531	14
REP. WALTER CHURCH, SR., CO-CHAIR Joyce Fuller	3-5805	1311	33
REP. DONALD DAVIS Audrey Johnson	5-3003	419C	89
REP. BOBBY HALL Billie Stevens	3-5906	637	87
REP. DANNY McCOMAS Rita Quinn	3-5758	2123	63
REP. EDGAR STARNES Pattie Fleming	5-3012	418A	88
REP. MARTHA ALEXANDER Margy Blackmon	3-5605	1209	34
REP. CARY ALLRED Jean Allred	3-5773	2223	11
REP. REX BAKER Jo Hinton	3-5758	632	50
REP. DANIEL BLUE, JR. Lin Threatt	5-2528	1227	80

REP. DONALD BONNER Lucy Johnson	5-9664	617	109
REP. JOANNE BOWIE Sharon Gaudette	3-5853	1206	26
REP. FLOSSIE BOYD-McINTYRE Angel Artis	3-5905	507	84
REP. JERRY BRASWELL Dianna Gilmore	3-5809	539	96
REP. ROBERT BRAWLEY Bonnie Trivette	3-5931	513	3
REP. LANIER CANSLER Barbara Cansler	5-3007	419A	53
REP. JAMES CRAWFORD, JR. Linda Winstead	3-5824	1301	24
REP. BILLY CREECH Betty Anne Lennon	3-5829	635	42
REP. BILL CULPEPPER Dot Crocker	3-5802	604	36
REP. ANDREW DEDMON Donna Abu Harb	3-5654	1211	114
REP. W.W. (DUB) DICKSON Joyce Langdon	3-5662	530	25
REP. JERRY DOCKHAM Nell Edwards	3-5822	1106	18
REP. RUTH EASTERLING Judy Willis	3-5786	606	79
REP. STAN FOX Sue Buehlmann	3-5757	1217	46
REP. WAYNE GOODWIN Ann Smith	3-4838	502	111

REP. ROBERT GRADY Peggy Murray	5-3024	402	37
REP. THOMAS HARDAWAY Jan Brooks	3-5775	1323	56
REP. SANDY HARDY Joel Raupe	5-3019	417A	100
REP. DEWEY HILL Ginny McCann	3-5830	1309	21
REP. GEORGE HOLMES Glenda Jacobs	3-5900	631	6
REP. ROBERT HUNTER Ferebee Stainback	3-5987	1201	107
REP. JOHN HURLEY Dot Anderson	3-5859	1004	71
REP. WILLIAM IVES Jayne Walton	3-5784	633	90
REP. LARRY JUSTUS Carolyn Justus	3-5956	2204	2
REP. MARY McALLISTER Annecia Norwood	3-5706	603	70
REP. EUGENE McCOMBS Suzanne Erskine	3-5881	514	10
REP. PAUL McCRARY Barbara Berry	3-5780	610	55
REP. W. EDWIN McMAHAN Sharon Cram	3-5732	2213	28
REP. FRANK MITCHELL Susan Thomason	3-5959	638	9
REP. RICHARD MORGAN Dixie Epps	5-3028	404	17

REP. MIA MORRIS Monty Floyd	3-5741	1315	99
REP. CHARLES NEELY, JR. Betty Harrison	5-3001	420	29
REP. JOHN NICHOLS Bonnie Jones	5-9644	616	66
REP. EDD NYE Jo Bobbitt	3-5477	639	23
REP. JEAN PRESTON Alice Falcone	5-3026	403	38
REP. LISTON RAMSEY Dot Barber	3-5606	2217	48
REP. JOHN RAYFIELD Karen George	5-3009	418C	97
REP. DAVID REDWINE Katie Shull	3-4948	1204	117
REP. DENNIS REYNOLDS Tina Covington	3-5820	533	76
REP. GENE ROGERS Judy Veorse	5-3023	416A	35
REP. DREW SAUNDERS Ruth Fish	3-5530	1017	110
REP. WILMA SHERRILL Rosa Kelley	3-5601	2215	51
REP. RONALD SMITH Edna Collar	3-5827	1221	104
REP. GREGG THOMPSON Edna Sykes	3-5828	1002	15
REP. NURHAM WARWICK Carolyn Honeycutt	3-5886	1015	113

REP. CYNTHIA WATSON Ebern Watson	5-3015	417C	19
REP. MICHAEL WILKINS Lillie Pearce	3-5746	1220	32
REP. CONSTANCE WILSON Joanna Mills	3-7663	529	40
REP. GENE WILSON Rebecca Jones	3-7727	1109	52
REP. LARRY WOMBLE Phyllis Cameron	3-5751	540	105
REP. THOMAS WRIGHT Clarestene Stewart	3-5754	528	93

North Carolina Department of Commerce

Division	Director	Phone No:	Room/Bldg.
Business/Industry	Gary Carlton	3-4151	4th Fl. Education
Community Assistance	Bill McNeil	3-2850	Methodist Bldg.
Employment/Training	Alan Alexander	3-6383	441N. Harrington
Energy	Doug Culbreth	3-1889	Dobbs 1115
Film	Bill Arnold	3-9990	Dobbs 6213
Finance	Stewart Dickinson	3-5297	4th. Fl. Education
International Trade	Bill King	3-7193	4th Fl Education
Sports Development	Bill Dooley	5-3781	4t Fl Education
Travel and Tourism	Gordon Clapp	3-4171	Dobbs 4223

Office of the Secretary of Commerce

Norris Tolson, Secretary of Commerce	733-3449
Leo Tilley, Assistant Secretary for Administration	733-4962
Sue Perry, Assistant Secretary for Community Development	733-4962
Rick Webb, Assistant Secretary for Regional Economic Development	733-7978
Angie Harris, Legislative Liaison/Special Assist. to Secretary	733-3431
Georgia Dees, Public Affairs Director	733-7651

(Name of Committee)

DATES	7/1	7/15	7/29	8/12
DAVID MINER (senior member)	✓	✓	✓	✓
REP. CHERIE BERRY	✓	a	a	✓
REP. WALTER CHURCH	✓	a	a	a
REP. WILLIAM HIATT	✓	✓	✓	✓
REP. TIMOTHY TALLENT	a	a	a	a
Rep. Martha Alexander	✓	✓	✓	✓
REP. Gordon Allen	✓	✓	✓	✓
REP. CARY ALLRED	a	a	✓	a
REP. REX BAKER	✓	✓	✓	✓
REP. DANIEL BLUE	a	a	a	a
REP. DONALD BONNER	✓	✓	✓	✓
REP. JOANNE BOWIE	✓	✓	✓	✓
REP. FLOSSIE BOYD-MCINTYRE	✓	✓	✓	✓
REP. JERRY BRASWELL	a	✓	✓	a
REP. ROBERT BRAWLEY	✓	a	a	✓
REP. LANIER CANSLER	✓	✓	a	✓
REP. JAMES CRAWFORD	✓	a	✓	a
REP. BILLY CREECH	a	a	a	a
REP. BILL CULPEPPER	✓	✓	✓	✓
REP. DONALD DAVIS	✓	✓	✓	✓
REP. ANDREW DEDMON	✓	✓	✓	a
REP. DUB DICKSON	✓	✓	✓	a
REP. JERRY DOCKHAM	a	a	✓	a
REP. RUTH EASTERLING	✓	✓	✓	a

COMMERCE

(Name of Committee)

DATES	7/1	7/15	7/29	8/2
REP. STAN FOX	✓	✓	✓	✓
REP. WAYNE GOODWIN	✓	a	✓	a
REP. ROBERT GRADY	a	a	a	a
REP. BOBBY HALL	✓	✓	✓	✓
REP. THOMAS HARDAWAY	✓	a	✓	a
REP. SANDY HARDY	a	✓	a	a
REP. DEWEY HILL	✓	✓	✓	✓
REP. GEORGE HOLMES	a	a	a	a
REP. Annette Bryant	a	✓	✓	✓
REP. JOHN HURLEY	✓	✓	✓	✓
REP. BILL IVES	✓	✓	✓	✓
REP. LARRY JUSTUS	✓	✓	✓	✓
REP. MARY McALLISTER	a	a	a	a
REP. DANNY McCOMAS	✓	✓	✓	✓
REP. EUGENE McCOMBS	✓	✓	✓	✓
REP. PAUL McCRARY	✓	✓	✓	✓
REP. EDWIN McMAHAN	✓	✓	✓	✓
REP. FRANK MITCHELL	✓	a	✓	✓
REP. RICHARD MORGAN	✓	a	a	a
REP. MIA MORRIS	✓	✓	✓	✓
REP. CHARLES NEELY	✓	✓	a	✓
REP. JOHN NICHOLS	✓	✓	✓	✓
REP. EDD NYE	✓	✓	✓	✓
REP. JEAN PRESTON	✓	a	✓	✓
REP. LISTON RAMSEY	✓	✓	✓	✓
REP. JOHN RAYFIELD	a	✓	✓	✓

ATTENDANCE

COMMERCE

(Name of Committee)

[illegible]

NORTH CAROLINA GENERAL ASSEMBLY
COMMITTEE SUMMARY REPORT

1997-98 Regular Session

HOUSE: COMMERCE

Valid Through 1-DEC-1998

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H 12=	DICKSON	STUDY FUTURE OF ELECTRIC SERVICE	H -REF TO COM ON COMM	02-03-97	
H 18=	HOWARD	JOB TRAINING STUDY	HF-POSTPONED INDEFINITELY	02-03-97	02-12-97
H 95	IVES	BUILDING CODE CHANGES	*R -CH. SL 97-0026	02-27-97	03-17-97
H 119=	SMITH	REMOVE SUNSET/PORTS TAX CREDIT	*H -RE-REF COM ON FINANCE	03-20-97	05-28-97
H 257	MCCOMAS	RR PORTS USE INCENTIVE STUDY	*HF-POSTPONED INDEFINITELY	02-17-97	07-14-97
H 282	STARNES	EXEMPT CONTRACTORS' INVENTORY	H -REF TO COM ON COMM	02-19-97	
H 325	GAMBLE	CONFORM BANK TAX TO FEDERAL	HF-POSTPONED INDEFINITELY	02-26-97	
H 343	ADAMS	RAISE MINIMUM WAGE	HF-POSTPONED INDEFINITELY	02-26-97	
H 368=	OWENS	AMEND BILL LEE ACT	*H -RE-REF COM ON FINANCE	03-03-97	03-19-97
H 400	TALLENT	BANK ASSESSMENTS	*R -CH. SL 97-0285	03-05-97	04-02-97
H 401=	DICKSON	RAISE HOUSING BOND LIMIT	H -RE-REF COM ON FINANCE	03-05-97	03-26-97
H 414=	BERRY	UNEMPL. BENEFITS/SEVERANCE PAY	*R -CH. SL 97-0120	03-06-97	04-24-97
H 424=	GOODWIN	OSHA WITNESS STATEMENTS	H -REF TO COM ON COMM	03-06-97	
H 447=	CARPENTER J	WORKERS COMP. TECH. ASSIST./FUNDS	H -REF TO COM ON COMM	03-10-97	
H 450	REDWINE	UNEMPLOYMENT INS. TAX CHANGE	H -REF TO COM ON COMM	03-10-97	
H 451	REDWINE	ESC BENEFITS CHANGES	*H -RE-REF COM ON FINANCE	03-10-97	04-28-97
H 453	REDWINE	REDEFINE UNEMPL. BASE PERIOD	H -REF TO COM ON COMM	03-10-97	
H 461	TALLENT	INTERSTATE TRUST COMPANY ACT	H -REF TO COM ON COMM	03-10-97	
H 467	GAMBLE	TAX ON BANK FEE RECEIPTS	HF-POSTPONED INDEFINITELY	03-10-97	
H 471=	TALLENT	CLARIFY FOOD ESTAB. DEFINITIONS	H -REF TO COM ON COMM	03-10-97	
H 487=	BARBEE	PHYSICIAN SERVICES FEE	H -REF TO COM ON COMM	03-10-97	
H 495	OWENS	NATURAL GAS	*R -CH. SL 97-0426	03-11-97	05-12-97
H 497	WILSON C	LRS STUDY EMPLOYMENT SECURITY	*H -CAL PURSUANT RULE 36 (A)	03-11-97	05-12-97
H 499	THOMPSON	GIS RECORD EXCEPTION	*R -CH. SL 97-0193	03-11-97	04-23-97
H 547=	CULP	RENEWABLE RESOURCE ENERGY	H -ASSIGNED TO COMM-UTL	03-19-97	
H 598=	ADAMS	REQUIRE WORK BREAKS	HF-POSTPONED INDEFINITELY	03-25-97	
H 617	SHERRILL	NO COMPETITION BY SCHOOL BUS	*R -CH. SL 97-0315	03-26-97	04-28-97
H 651	HUNTER H	INTERSTATE ECON. DEVELOP. ZONE	*R -CH. SL 97-0395	03-27-97	04-28-97
H 651	HUNTER H	INTERSTATE ECON. DEVELOP. ZONE	*R -CH. SL 97-0395	07-01-97	07-30-97
H 672	HALL	FORESTRY BLDG PRIVATIZATION PROJECT	*S -RE-REF COM ON APPROPR	03-31-97	04-28-97

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BOLDED LINE INDICATES BILL INDEXED AS AFFECTING APPROPRIATIONS.

NORTH CAROLINA GENERAL ASSEMBLY
COMMITTEE SUMMARY REPORT

1997-98 Regular Session

HOUSE: COMMERCE

Valid Through 1-DEC-1998

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H 719	HARDY	WASHINGTON/BELHAVEN ELECTRIC RATES	H -RE-REF COM ON COMM	04-28-97	
H 739=	DICKSON	MV DEALERS/MANUFACTURERS LIC. LAW	*R -CH. SL 97-0319	07-01-97	07-07-97
H 795=	BAKER	ROLLER SKATING RINK LIABILITY	H -RE-REF COM ON JUDICI	04-03-97	04-28-97
H 871	BERRY	WAGE & HOUR AMENDMENTS	R -CH. SL 97-0146	04-07-97	04-24-97
H 899	HOWARD	RESIDENTIAL PROP. DISCLOSURE ACT	*R -CH. SL 97-0472	04-08-97	04-24-97
H 903=	MOSLEY	NO LOW-LEVEL FACILITY/FLOOD PLAIN	H -REF TO COM ON COMM	04-09-97	
H 916=	HARDAWAY	PROHIBIT ATM SURCHARGE	HF-POSTPONED INDEFINITELY	04-10-97	
H 940	REDWINE	WORKER'S COMP/REALTOR STATUS	S -REF TO COM ON COMMERCE	04-14-97	04-24-97
H 990	CHURCH	EXEMPT CERTAIN NONPROFIT UTILITIES	*R -CH. SL 97-0437	04-17-97	04-24-97
H 994	WILSON G	COMPETITIVE PAY TELEPHONE	R -CH. SL 97-0207	04-17-97	04-28-97
H1005=	DAVIS D	WORKERS COMP/PHYSICIAN SELECTION	H -REF TO COM ON COMM	04-21-97	
H1027	OWENS	STATE TREASURER VENTURE CAPITAL	*S -REF TO COM ON FINANCE	04-21-97	05-15-97
H1057=	GRADY	EXEMPT AUDIOVISUAL MASTERS	*R -CH. SL 97-0521	04-21-97	05-20-97
H1059	WRIGHT	CAMA/URBAN WATERFRONT REDEVELOP	*R -CH. SL 97-0337	04-21-97	04-28-97
H1068	HARDY	MERCHANTS' SALES TAX DISCOUNT	H -REF TO COM ON COMM	04-21-97	
H1074	HALL	REPRESENTATIONS TO CONSOLIDATE DEBTS	S -REF TO COM ON COMMERCE	04-21-97	04-28-97
H1075	HALL	APPRECIATION OF REVERSE MORTGAGES	*R -CH. SL 98-0116	04-21-97	04-28-97
H1080	HACKNEY	NC WITHDRAWAL FROM S.E. COMPACT	H -REF TO COM ON COMM	04-21-97	
H1088	WARNER	NO ADS TO CELLULAR PHONES	H -REF TO COM ON COMM	04-21-97	
H1091	BRASWELL	CRIM. RECORD CHECK BY PRIVATE BUS.	*S -REF TO COM ON JUDIC	04-21-97	04-28-97
H1108	MCPAHAN	BREW ON PREMISES	*R -CH. SL 97-0467	04-21-97	05-22-97
H1109	MCPAHAN	WORTHLESS CHECKS/COMMERCIAL DEBTS	H -REF TO COM ON COMM	04-21-97	
H1125	MINER	STUDY MORTGAGE LENDERS	*HF-POSTPONED INDEFINITELY	04-21-97	07-09-97
H1126	MINER	NO SALES TAX ON PAY PHONES	*R -CH. SL 98-0197	04-21-97	07-07-97
H1129	MINER	REIMBURSEMENT FOR LOW-LEVEL FACILITY	H -REF TO COM ON COMM	04-21-97	
H1131	NESBITT	COLLECTION AGENCY DEFINITION	H -REF TO COM ON COMM	04-21-97	
H1141	THOMPSON	AMEND BUILDING/HOUSING CODES	H -REF TO COM ON COMM	04-21-97	
H1170	BUCHANAN	EXEMPT SEVERANCE PAY	H -REF TO COM ON COMM	04-29-97	
H1173=	DEDMON	CONSTRUCTION WORKER TRAINING CREDIT	H -ASSIGNED TO COMM-B&L	04-29-97	
H1189	DECKER	FOOD TAX DOWN/ALCOHOL TAX UP	H -REF TO COM ON COMM	05-01-97	

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BOLD LINE INDICATES BILL INDEXED AS AFFECTING APPROPRIATIONS.

NORTH CAROLINA GENERAL ASSEMBLY
COMMITTEE SUMMARY REPORT

1997-98 Regular Session

HOUSE: COMMERCE

Valid Through 1-DEC-1998

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H1258=	DICKSON	TELEPHONE LINE ACCESS	H -REF TO COM ON COMM	05-13-98	
H1343=	DICKSON	WIRELESS TELEPHONE SERVICE ACT	H -REF TO COM ON COMM	05-20-98	
H1347	SHUBERT	PROHIBIT INTERNET TAXATION	*S -REF TO COM ON FINANCE	05-20-98	07-06-98
H1350=	SHUBERT	SMALL BUSINESS INFO. ASSISTANCE	*HF-POSTPONED INDEFINITELY	05-20-98	07-06-98
H1409=	CLARY	KEG REGIS./19-20 LOOPHOLE CLOSED	H -REF TO COM ON COMM	05-21-98	
H1564	DOCKHAM	VEHICLE RENTAL SECURITY DEPOSIT	H -REF TO COM ON COMM	05-28-98	
H1642	HARDAWAY	INTERSTATE ECON. DEVELOP. ZONES	H -RE-REF COM ON COMM	08-25-98	
H1644=	HACKNEY	CHATHAM LLRW SITING FUNDS	HF-POSTPONED INDEFINITELY	05-28-98	07-06-98
H1688=	GRAY	ECONOMIC OPPORTUNITY ACT OF 1998	H -RE-REF COM ON FINANCE	06-01-98	06-02-98
H1707=	MINER	STOP FUNDS FOR LLRW SITING	*H -CAL PURSUANT RULE 36 (A)	06-16-98	07-06-98
H1712	BERRY	WORKER TRAINING CHANGES	H -REF TO COM ON COMM	06-01-98	
S 23	REEVES	REQUIRE RENTAL PROPERTY HEAT	*H -CAL PURSUANT RULE 36 (A)	03-24-97	07-09-97
S 96	KERR	PAWNSHOP RECORDS ACCESS	H -REF TO COM ON COMM	04-03-97	
S 142=	RAND	PORT USER ON PORTS BOARD	*R -CH. SL 97-0235	03-03-97	05-29-97
S 208=	FOXX	LODGING ESTABLISHMENTS/SANITATION	*R -CH. SL 97-0367	04-07-97	07-09-97
S 253	WINNER	TELEPHONE CONSUMER PROTECTION	*R -CH. SL 97-0482	05-15-97	07-09-97
S 263	ODOM	WORKERS' COMP/NONRESIDENT ALIENS	*R -CH. SL 97-0301	05-01-97	06-12-97
S 312	JORDAN	REGULATE CHECK CASHING	*R -CH. SL 97-0391	04-15-97	06-26-97
S 329	DALTON	SAVINGS BANK NAME	*R -CH. SL 97-0241	03-24-97	06-05-97
S 330	DALTON	SAFE-DEPOSIT BOXES	*R -CH. SL 97-0311	04-02-97	06-26-97
S 333	DALTON	COMMODITIES ACT AMENDMENT	*R -CH. SL 98-0196	03-25-97	07-10-97
S 339	CONDER	CREDIT FOR TIER ONE COUNTIES	H -REF TO COM ON COMM	05-14-97	
S 382	WINNER	REDEFINE UNEMPL. BASE PERIOD-2	*R -CH. SL 97-0404	04-28-97	07-10-97
S 418	SHAW L	SMALL BUSINESS PROCUREMENT ACT	*H -REF TO COM ON COMM	04-07-97	
S 425	MILLER B	REFRIGERATION CONTRACTORS	*H -RE-REF COM ON RULES	04-15-97	07-10-97
S 447	WEINSTEIN	LUMBERTON ECONOMIC DEV. DIST.	*R -CH. SL 97-0182	04-08-97	05-15-97
S 447	WEINSTEIN	LUMBERTON ECONOMIC DEV. DIST.	*R -CH. SL 97-0182	05-20-97	05-22-97
S 483=	LUCAS	PHYSICIAN SERVICES FEE	*R -CH. SL 97-0508	07-02-97	08-18-97
S 486=	LUCAS	CLARIFY FOOD ESTAB. DEFINITION	*H -RE-REF COM ON RULES	04-30-97	08-26-97
S 531	ALBERTSON	STATE PHONE SYSTEMS	*R -CH. SL 97-0351	04-24-97	07-14-97

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BOLDLED LINE INDICATES BILL INDEXED AS AFFECTING APPROPRIATIONS.

NORTH CAROLINA GENERAL ASSEMBLY
COMMITTEE SUMMARY REPORT

1997-98 Regular Session

HOUSE: COMMERCE

Valid Through 1-DEC-1998

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
S 562	WARREN	INCREASE FEES FOR RETURNED CHECKS	*R -CH. SL 97-0334	04-22-97	07-09-97
S 564	REEVES	AMEND FINANCIAL PRIVACY ACT	*H -RE-REF COM ON RULES	07-10-97	08-07-97
S 565	REEVES	VARIABLE RATE LOANS	*R -CH. SL 98-0119	05-01-97	07-09-97
S 699	HORTON	MODIFY VEHICLE DEALER REQUIREMENTS	*R -CH. SL 97-0429	04-30-97	07-09-97
S 730	BALLANCE	INDUSTRIAL REVENUE BOND CHANGES	*R -CH. SL 97-0463	06-18-97	07-10-97
S 791=	BALLANCE	OSHA WITNESS STATEMENTS	*H -REF TO COM ON COMM	05-05-97	
S 801	WELLONS	N.C. PLANNED COMMUNITY ACT	*R -CH. SL 98-0199	04-28-97	08-17-98
S 811	SOLES	SOUTHEASTERN REGIONAL COMM'N STAFF	R -CH. SL 97-0155	04-30-97	05-22-97
S 814	ODOM	IN-STAND ABC SALES	*R -CH. SL 97-0167	04-28-97	05-22-97
S 819=	SHAW L	DOWNTOWN DATABASE	*H -REF TO COM ON COMM	05-05-97	
S 821=	SHAW L	HOUSING TRUST FUND/DOWNTOWNS	H -REF TO COM ON COMM	05-01-97	
S 824=	SHAW L	BUILDING CODE COUNCIL MEMBERSHIP	H -REF TO COM ON COMM	05-01-97	
S 837	BALLANCE	SPORTS CLUB ABC PERMITS	*H -RE-REF COM ON RULES	05-01-97	07-15-97
S 838	BALLANCE	TOURISM RESORT ABC PERMITS	*H -RE-REF COM ON RULES	05-01-97	07-16-97
S 844	HOYLE	STRENGTHEN OPEN GOVERNMENT	*R -CH. SL 97-0290	05-05-97	06-12-97
S 847	ODOM	NO SALES TAX/REUSEABLE CONTAINERS	*R -CH. SL 97-0397	05-26-97	06-26-97
S 848	DALTON	MUNICIPAL ELECTRIC AMENDMENTS	*R -CH. SL 97-0346	04-30-97	06-26-97
S 872	KERR	YOUTH WORKERS AT ABC PERMITTEES	*HF-REPTD UNFAV	05-01-97	08-12-98
S 959	HARTSELL	MODULAR HOME CERTIFYING AGENT	H -REF TO COM ON COMM	05-01-97	
S 974	FOXX	ESC LAW CHANGES	*R -CH. SL 97-0398	05-13-97	07-09-97
S 987	BALLANCE	INTERSTATE ECON. DEVELOP. PERMITS	*H -REF TO COM ON COMM	04-30-97	
S 994	RAND	NO DIRECT ABC SHIPMENTS-CONSUMERS	*R -CH. SL 97-0348	05-01-97	06-26-97
S1054	PAGE	ALLOW BURMA DIVESTITURE	H -RE-REF COM ON COMM	05-07-97	
S1093=	PLYLER	DOA CERTIFICATION	R -CH. SL 98-0045	06-01-98	06-15-98
S1135=	HOYLE	TELEPHONE LINE ACCESS	*R -CH. SL 98-0180	08-04-98	08-12-98
S1242=	HOYLE	WIRELESS TELEPHONE SERVICE ACT	*R -CH. SL 98-0158	07-20-98	08-05-98

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MINUTES

HOUSE COMMITTEE ON COMMERCE

July 1, 1998

10:00 AM

DAVID MINER, CHAIRMAN

MEMBERS PRESENT

Cherie Berry, Co-Chair, Walter Church, Co-Chair, William Hiatt, Co-Chair, Martha Alexander, Gordon Allen, Rex Baker, Donald Bonner, Joanne Bowie, Flossie Boyd-McIntyre, Robert Brawley, Lanier Cansler, James Crawford, Bill Culpepper, Donald Davis, Andrew Dedmon, Dub Dickson, Ruth Easterling, Stan Fox, Wayne Goodwin, Bobby Hall, Thomas Hardaway, Dewey Hill, John Hurley, Bill Ives, Larry Justus, Danny McComas, Eugene McCombs, Paul McCrary, Edwin McMahan, Frank Mitchell, Richard Morgan, Mia Morris, Charles Neely, John Nichols, Edd Nye, Jean Preston, Liston Ramsey, David Redwine, Dennis Reynolds, Gene Rogers, Drew Sanders, Wilma Sherrill, Ronald Smith, Edgar Starnes, Nurham Warwick, Cynthia Watson, Thomas Wright, Larry Womble.

The House Committee on Commerce meet at 10:00 am on Wednesday, July 1, 1998, in Room 643 of the Legislative Office Building with Chairman David Miner presiding.

Chairman Miner called the meeting to order and the following bills were discussed:

House Bill 1347, entitled AN ACT TO PROVIDE THAT THE STATE SHALL NOT TAX INTERNET ACCESS CHARGES, SHALL ENFORCE SALES TAXES ON INTERNET COMMERCE ONLY TO THE SAME EXTENT IT ENFORCES SALES TAX ON MAIL-ORDER COMMERCE, AND SHALL IMPOSE NO NEW TAXES ON THE INTERNET OR INTERNET COMMERCE. Rep. Fern Shubert, the bill sponsor, introduced the bill. Questions were taken by members of the committee. Chairman Miner recognized Karen Cochrane-Brown, Staff Counsel, to answer questions. Rep. Brawley moved for a favorable report. The Bill was given a favorable report and re-referred to the Committee of Finance.


House Bill 1350, entitled AN ACT TO REQUIRE THE BUSINESS LICENSE INFORMATION OFFICE OF THE SECRETARY OF STATE'S OFFICE TO PROVIDE INFORMATION AND ASSISTANCE TO SMALL BUSINESSES, AS RECOMMENDED BY THE BUSINESS DEVELOPMENT STUDY COMMITTEE OF THE LEGISLATIVE RESEARCH COMMISSION. Rep. Fern Shubert, the bill sponsor, explained the bill and introduced a Committee Substitute, which is attached. Chairman Miner recognized Karen Cochrane-Brown, Staff Counsel, to explain the bill. Chairman Miner recognized Ms. Annie Oakworth, with the Secretary of State's Office, to explain

the expense and technical impact of this bill on the Secretary of State's Office. The Committee Substitute was approved, given a favorable report and re-referred to the Committee on Appropriations.

House Bill 1707, entitled AN ACT TO ELIMINATE STATE FUNDING RELATED TO SITING A LOW-LEVEL RADIOACTIVE WASTE FACILITY IN NORTH CAROLINA. Rep. Joe Hackney, the bill sponsor, explained the bill. Rep. Miner offered a technical amendment, changing only the effective date of the bill. The amendment was adopted and a copy is attached. A committee substitute was ordered and HB 1707 was given a favorable report.

House Bill 1644, entitled AN ACT TO REIMBURSE CHATHAM COUNTY FOR ITS COSTS ASSOCIATED WITH SELECTING A SITE FOR A PROPOSED LOW-LEVEL RADIOACTIVE WASTE FACILITY. Rep. Joe Hackney, the bill sponsor, explained the bill. Questions were taken by members of the committee. Rep. Hall moved for a favorable report. HB 1644 received a favorable report and was re-referred to the Committee on Appropriations.

Committee was adjourned at 10:50.



David Miner, Chairman



Susan D. Phillips, Committee Clerk

VISITOR REGISTRATION SHEET

Commence July I, 1998

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

	NAME	FIRM OR AGENCY
1.	<u>Warth Bowman</u>	<u>BDT</u>
2.	<u>Douglas Beasley</u>	
3.	<u>Cam Cove</u>	<u>BPMHL</u>
4.	<u>George Robeson</u>	<u>LLRWMA</u>
5.	<u>Andrew James</u>	<u>NCLRMA</u>
6.	<u>Walt Sturgeon</u>	<u>"</u>
7.	<u>Carrie Altman</u>	<u>intern</u>
8.	<u>TERRY W. Fox</u>	<u>NCLRMA</u>
9.	<u>Andy Lark</u>	<u>wcsa</u>
10.	<u>David S. Lee</u>	<u>CP&L</u>
11.	<u>Meredith Norris</u>	<u>Lawrence Bewley & assoc.</u>
22.	<u>John Pollock</u>	<u>AT&T</u>
23.	<u>Andy Eller</u>	<u>NCRMA</u>
24.	<u>Melissa Lovell</u>	<u>DOJ</u>
25.	<u>Jane P. Gray</u>	<u>DOJ</u>
26.	<u>Crissy Parker</u>	<u>Bone & associates</u>
27.	<u>Katie Adams</u>	<u>CCNE</u>
28.	<u>Henry Campan</u>	<u>Parker Poe Adams & Bernstein</u>
29.	<u>Jack Cozart</u>	<u>"</u>
30.	<u>Wanda Montano</u>	<u>Teleport Comm. Group</u>
31.	<u>Raquel Whiting</u>	<u>Parker Poe Adams & Bernstein</u>

Commence - July 1, 1998

NAME _____

NAME

1. *Betty J. Jones*
2. *And. Romanet*
3. *Jim Blackburn*
4. *Martha Glass*
5. *Paul Stock*
6. *Hester Lail*
7. *John Cyrus*
8. _____
9. _____
10. _____
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19. _____
20. _____
21. _____

BRC
N.C. & M.
NC Assoc. County Commrs.
DOA
NCBA
OSHA
N.C. State Grange

VISITOR REGISTRATION SHEET

Commerce

July 1, 1998

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

G.R. Quinn

Article III Foundation

6419 N. Ranch
Rd. Sanford, NC

**1998 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Miner, Berry, Tallent, Hiatt, Church** for the Committee on
COMMERCE.

☐ Committee Substitute for

H.B. 1347 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT THE STATE SHALL NOT TAX INTERNET ACCESS CHARGES, SHALL ENFORCE SALES TAXES ON INTERNET COMMERCE ONLY TO THE SAME EXTENT IT ENFORCES SALES TAX ON MAIL-ORDER COMMERCE, AND SHALL IMPOSE NO NEW TAXES ON THE INTERNET OR INTERNET COMMERCE.

☐ With a favorable report.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☒ Finance ☐

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title, unfavorable as to original bill (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.
(PUBLIC BILLS ONLY)

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 1347

Short Title: Prohibit Internet Taxation.

(Public)

Sponsors: Representatives Shubert, Brawley; Brown, McComas, Reynolds, Eddins, Allen, Rayfield, Morris, Davis, Watson, Hardy, Goodwin, and Berry.

Referred to: Commerce, if favorable, Finance.

May 20, 1998

- 1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE THAT THE STATE SHALL NOT TAX INTERNET
3 ACCESS CHARGES, SHALL ENFORCE SALES TAXES ON INTERNET
4 COMMERCE ONLY TO THE SAME EXTENT IT ENFORCES SALES TAX
5 ON MAIL-ORDER COMMERCE, AND SHALL IMPOSE NO NEW TAXES ON
6 THE INTERNET OR INTERNET COMMERCE.
7 The General Assembly of North Carolina enacts:
8 Section 1. It is the intent of the General Assembly that no new taxes
9 shall be authorized on Internet access charges, the Internet, or Internet commerce.
10 Section 2. The Department of Revenue shall enforce the sales and use
11 tax laws with respect to Internet commerce only to the same extent it enforces the
12 sales and use tax laws with respect to mail-order commerce.
13 Section 3. This act is effective when it becomes law and applies to
14 transactions occurring on or after April 15, 1998.



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June 30, 1998

MEMORANDUM

TO: Representative David Miner, Chairman,
House Commerce Committee.

FROM: Karen Cochrane Brown, Committee Co-Counsel.

RE: House Bill 1347 - Prohibit Internet Taxation.

House Bill 1347 is a recommendation of the Legislative Research Commission Business Development Committee. The bill provides that it is the intent of the General Assembly not to tax Internet access charges, the Internet or Internet commerce. The bill further directs the Department of Revenue to enforce the sales and use tax laws with respect to Internet commerce only to the extent it enforces the sales and use tax laws with respect to mail-order commerce.

G.S. 105-164.3(8) defines "mail order sale" as "a sale of tangible personal property, ordered by mail, telephone, computer link, or other similar method, to a purchaser who is in this State at the time the order is remitted, from a retailer who receives the order in another state and transports the property or causes the property to be transported to a person in this State." This definition appears to be broad enough to include Internet commerce. In addition, under G.S. 105-164.8(b), a mail order retailer will be subject to the sales and use tax if the retailer is found to have a sufficient nexus with the state, such maintaining an office in the state, retaining representatives who solicit business in the state or being domiciled in the state. Therefore, the Department of Revenue may continue to tax Internet commerce if the retailer has a nexus with the state, to the same extent as other mail order retailers.

The act is effective when it becomes law and applies to transactions occurring on or after April 15, 1998.

**1998 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Miner, Berry, Tallent, Hiatt, Church** for the Committee on
COMMERCE.

☐ Committee Substitute for

H.B. 1350 A BILL TO BE ENTITLED AN ACT TO REQUIRE THE BUSINESS LICENSE INFORMATION OFFICE OF THE SECRETARY OF STATE'S OFFICE TO PROVIDE INFORMATION AND ASSISTANCE TO SMALL BUSINESSES, AS RECOMMENDED BY THE BUSINESS DEVELOPMENT STUDY COMMITTEE OF THE LEGISLATIVE RESEARCH COMMISSION.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐

☒ With a favorable report as to committee substitute bill (~~#~~), ☒ which changes the title, unfavorable as to original bill (~~Committee Substitute Bill #~~), (and recommendation that the committee substitute bill ~~#~~) be re-referred to the Committee on *APPROPRIATIONS*

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.
(PUBLIC BILLS ONLY)

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

3/25/98

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

replaced
by
committee
sub
1

H

HOUSE BILL 1350*

Short Title: Small Business Information Assistance.

(Public)

Sponsors: Representatives Shubert, Sexton; Allen, Berry, Brown, Davis, Eddins, Hurley, Morris, Mosley, Rayfield, and Warner.

Referred to: Commerce.

May 20, 1998

1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE THE BUSINESS LICENSE INFORMATION OFFICE OF
3 THE SECRETARY OF STATE'S OFFICE TO PROVIDE INFORMATION
4 AND ASSISTANCE TO SMALL BUSINESSES, AS RECOMMENDED BY THE
5 BUSINESS DEVELOPMENT STUDY COMMITTEE OF THE LEGISLATIVE
6 RESEARCH COMMISSION.
7 The General Assembly of North Carolina enacts:
8 Section 1. G.S. 147-54.11 reads as rewritten:
9 "§ 147-54.11. Purpose.
10 It is the purpose of this Article to provide a convenient, accessible, and timely one-
11 stop system for the business community to acquire and maintain the necessary
12 information and State licenses to conduct business. Use of this one-stop system by an
13 applicant is optional. An applicant may deal directly with the appropriate State
14 licensing agency if ~~he so~~ the applicant prefers. To accomplish this goal, a business
15 license information office is established to provide information to the business
16 community on all State ~~licensing and regulatory requirements~~ laws and regulations
17 and, to the extent feasible, to provide local and federal information on the same
18 regulated activities. In addition to providing information on State ~~licensing~~
19 requirements, the business license information office shall develop an operating plan
20 for an automated master application system, shall determine the software and
21 hardware needs of the system, shall determine the staffing levels required for the
22 system, and shall determine the space requirements for the office and automated
23 system.

1 It is the intent of the General Assembly that the authority for determining whether
2 a requested license shall be issued shall remain with the agency legally authorized to
3 issue the license."

4 Section 2. G.S. 147-54.13 reads as rewritten:

5 "**§ 147-54.13. Business License Information Office established; appointment of**
6 **director.**

7 (a) There is established within the Department of the Secretary of State the
8 Business License Information Office. The Office shall be under the direction and
9 supervision of a full-time salaried State employee who shall be designated as the
10 Director. The Director shall be appointed by the Secretary of State and shall receive
11 a salary commensurate with State government pay schedules for the duties of this
12 office, or such salary to be set by the State Personnel Board pursuant to G.S. 126-4.
13 Necessary travel allowance or reimbursement for expenses shall be authorized for the
14 Director in accordance with G.S. 138-6. Sufficient staff shall be provided under the
15 direction of the Secretary.

16 (b) The Office shall make recommendations to agencies and the General
17 Assembly ~~for eliminating, consolidating, simplifying, or expediting licenses, or~~
18 ~~otherwise improving licensing procedures affecting business undertakings.~~ regarding
19 proposed policies, rules, or laws to improve the dissemination of information to small
20 businesses regarding statutory and regulatory requirements and to improve licensing
21 procedures affecting business undertakings, including alternatives such as eliminating,
22 consolidating, simplifying, or expediting particular licenses.

23 (c) The Office shall promulgate and adopt rules and forms necessary to carry out
24 the purposes of this Article."

25 Section 3. Article 4B of Chapter 147 of the General Statutes is amended
26 by adding a new section to read:

27 "**§ 147-54.13.1. Reporting requirements of the Secretary of State.**

28 The Secretary may report to the Joint Legislative Commission on Governmental
29 Operations on any recommended legislative or administrative revision the Secretary
30 determines is necessary to make State government communications and relations with
31 the public more effective and efficient."

32 Section 4. G.S. 147-54.14 reads as rewritten:

33 "**§ 147-54.14. Clearinghouse functions.**

34 The Office shall be a clearinghouse for State business ~~license~~ information and
35 shall perform the following duties:

- 36 (1) Establish a license information service detailing requirements for
37 establishing and engaging in business in the State;
- 38 (2) Provide the most recent forms and information sheets for all State
39 business licenses; ~~and~~
- 40 (3) Prepare, publish, and distribute a complete directory of all State
41 licenses required to do business in North ~~Carolina.~~ Carolina;
- 42 (4) Provide the public with an information resource center that
43 disseminates information regarding State statutory and regulatory

1 requirements to conduct business, including, but not limited to,
2 authoritative sources and procedures; and

- 3 (5) Establish a program in which the Office works with the small
4 business community to identify problems in State government
5 related to unnecessary delays, inconsistencies between regulatory
6 agencies, and the inefficient and ineffective uses of State
7 resources."

8 Section 5. G.S. 147-54.15 reads as rewritten:

9 **"§ 147-54.15. License coordination and assistance to applicants.**

10 Upon request, the Office shall assist a person as provided below:

- 11 (1) Identify the type and source of licenses that may be required and
12 the potential difficulties in obtaining the licenses based on an
13 informal review of a potential applicant's business at an early stage
14 in its planning. Information provided by the Office is for guidance
15 purposes only and may not be asserted by an applicant as a waiver
16 or release from any license requirement. However, an applicant
17 who uses the services of the Office as provided in this subdivision,
18 and who receives a written statement identifying required State
19 business licenses relating to a specific business activity, may not be
20 assessed a penalty for failure to obtain any State business license
21 which was not identified, provided that the applicant submits an
22 application for each such license within sixty (60) days after
23 written notification by the Office or the agency responsible for
24 issuing the license;
- 25 (2) Arrange an informal conference between the person and the
26 appropriate agency to clarify licensing requirements or standards, if
27 necessary;
- 28 (3) Assist in preparing the appropriate application and supplemental
29 forms;
- 30 (4) Monitor the license review process to determine the status of a
31 particular license. If there is a delay in the review process, the
32 Office may demand to know the reasons for the delay, the action
33 required to end the delay, and shall provide this information to the
34 applicant. The Office may assist the applicant in resolving a
35 dispute with an agency during the application process. If a request
36 for a license is refused, the Office may explain the recourse
37 available to the person under the Administrative Procedure ~~Act~~.
38 Act; and
- 39 (5) Provide the person with any information the person needs to
40 comply with State laws, rules, and policies in conducting business
41 in the State or refer the person to the particular individual in the
42 appropriate agency to obtain the requested information."

43 Section 6. G.S. 147-54.16 reads as rewritten:

44 **"§ 147-54.16. Master ~~application~~ automated system.**

1 (a) The Office shall implement and administer an automated master application
2 system. The Office shall determine the licenses appropriate for inclusion in the
3 master application system. The Office may not include environmental licenses in the
4 master application system.

5 The appropriate agency shall continue to determine whether a requested license
6 shall be issued and to issue the license if the application is approved by the agency.
7 An applicant who receives written notification by the Office that a license requested
8 through the Office is being issued by the appropriate agency may proceed with the
9 licensed business activity without having physical possession of the issued license.

10 The Office shall collect from each applicant the total amount of the fees for the
11 licenses applied for through the Office. The Office is the repository for an original
12 signed application form submitted through the Office for a license that is included in
13 the master application system. If, based on the information supplied by the applicant
14 to the Office, the Office fails to make application for a required license, and the
15 applicant did not know such a license was required, the applicant shall not be liable
16 for any civil or criminal penalties or disciplinary action for failure to have the license.
17 If the failure to obtain the license is reported to the applicant by either the Office or
18 the agency issuing the license, the applicant must make application within 30 days or
19 be subject to the penalties or disciplinary action.

20 (b) The Office shall implement and administer an automated system to track the
21 number of contacts or inquiries received each year, the nature of each contact or
22 inquiry, and the final resolution offered in response to each contact or inquiry for the
23 purpose of recommending legislative and administrative revisions pursuant to G.S.
24 147-54.13."

25 Section 7. G.S. 147-54.17 reads as rewritten:

26 "~~§ 147-54.17. License coordinator~~ Coordinator designated in all State agencies.

27 (a) Each agency shall cooperate fully with the Office in providing information on
28 the ~~licenses~~ forms, licenses, and regulatory requirements of the agency, in
29 coordinating conferences with applicants to clarify license and regulatory
30 requirements, and in developing a plan for an automated master application system.

31 (b) Each agency shall designate a business license coordinator. The coordinator
32 shall have the following responsibilities:

33 (1) To provide to the Office the most recent application and
34 supplemental forms required for each license issued by the ~~agency~~,
35 agency and for conducting business under the regulatory authority
36 of the agency, the most recent information available on existing
37 and proposed agency rules, the most recent information on changes
38 or proposed changes in license requirements or agency rules and
39 how those changes will affect the business community, and agency
40 publications that would be of aid or interest to the business
41 community;

42 (2) To work with the Office in scheduling conferences for applicants
43 as provided under G.S. 147-54.15;

- 1 (3) To determine, upon request of an applicant or the Office, the
2 status of a license application or renewal, the reason for any delay
3 in the license review process, and the action needed to end the
4 delay; and to notify the applicant or Office, as appropriate, of
5 those findings;
- 6 (4) To work with the Office or applicant, upon request, to resolve any
7 dispute that may arise between the agency and the applicant
8 during the review process;
- 9 (4a) To determine, upon request of a business or the Office, the status
10 of a request for information or assistance regarding any
11 requirements or actions of the agency, the reason for any delay in
12 the agency's response, and the action needed to end the delay; and
13 to notify the applicant or Office, as appropriate, of those findings;
- 14 (4b) To work with the Office or business, upon request, to resolve any
15 dispute that may arise between the agency and business regarding
16 the compliance with laws, rules, or policies of the State or agency;
17 and
- 18 (5) To review agency regulatory and license requirements and to
19 provide a written report to the Office that identifies the regulatory
20 and licensing requirements that affect the business community;
21 indicates which, if any, requirements should be eliminated,
22 modified, or consolidated with other requirements; and explains
23 the need for continuing those requirements not recommended for
24 elimination."

25 Section 8. Article 4B of Chapter 147 of the General Statutes is amended
26 by adding a new section to read:

27 "**§ 147-54.20. Confidentiality of requests.**

28 At the request of the person or applicant, the identity of the person or other entity
29 requesting assistance or information pursuant to this Article shall remain confidential
30 and shall not be disseminated to any State agency or person outside the Office. The
31 Secretary shall adopt rules to implement this section."

32 Section 9. Effective October 1, 1999, G.S. 147-54.13.1, as enacted by this
33 act, reads as rewritten:

34 "**§ 147-54.13.1. Reporting requirements of the Secretary of State.**

35 (a) ~~The~~ At any time, the Secretary may report to the Joint Legislative Commission
36 on Governmental Operations on any recommended legislative or administrative
37 revision the Secretary determines is necessary to make State government
38 communications and relations with the public more effective and efficient.

39 (b) The Secretary shall report to the Joint Legislative Commission on
40 Governmental Operations on or before November 1 each year on the most common
41 and egregious problems the public has had in communicating with and obtaining
42 information from State agencies in the prior year. The report shall include a
43 summary of any complaints and the number, type or nature, and resolution of
44 inquiries received by the Office. The Secretary shall also report on any legislative or

1 administrative recommendations to address the problems reported that year,
2 including proposed budgetary amendments."

3 Section 10. Sections 1 through 8 and Section 10 of this act become
4 effective October 1, 1998. Section 9 of this act becomes effective October 1, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 1350*
Proposed Committee Substitute H1350-PCS4203-LT

Short Title: Small Business Information Assistance.

(Public)

Sponsors:

Referred to:

May 20, 1998

1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE THE BUSINESS LICENSE INFORMATION OFFICE OF
3 THE SECRETARY OF STATE'S OFFICE TO PROVIDE INFORMATION
4 AND ASSISTANCE TO SMALL BUSINESSES, AS RECOMMENDED BY THE
5 BUSINESS DEVELOPMENT STUDY COMMITTEE OF THE LEGISLATIVE
6 RESEARCH COMMISSION AND TO APPROPRIATE FUNDS TO
7 IMPLEMENT THIS ACT.
8 The General Assembly of North Carolina enacts:
9 Section 1. G.S. 147-54.11 reads as rewritten:
10 "§ 147-54.11. Purpose.
11 It is the purpose of this Article to provide a convenient, accessible, and timely one-
12 stop system for the business community to acquire and maintain the necessary
13 information and State licenses to conduct business. Use of this one-stop system by an
14 applicant is optional. An applicant may deal directly with the appropriate State
15 licensing agency if ~~he-se~~ the applicant prefers. To accomplish this goal, a business
16 license information office is established to provide information to the business
17 community on all State ~~licensing and regulatory requirements~~ laws and regulations
18 and, to the extent feasible, to provide local and federal information on the same
19 regulated activities. In addition to providing information on State ~~licensing~~
20 requirements, the business license information office shall develop an operating plan
21 for an automated master application system, shall determine the software and
22 hardware needs of the system, shall determine the staffing levels required for the

1 system, and shall determine the space requirements for the office and automated
2 system.

3 It is the intent of the General Assembly that the authority for determining whether
4 a requested license shall be issued shall remain with the agency legally authorized to
5 issue the license."

6 Section 2. G.S. 147-54.13 reads as rewritten:

7 "**§ 147-54.13. Business License Information Office established; appointment of**
8 **director.**

9 (a) There is established within the Department of the Secretary of State the
10 Business License Information Office. The Office shall be under the direction and
11 supervision of a full-time salaried State employee who shall be designated as the
12 Director. The Director shall be appointed by the Secretary of State and shall receive
13 a salary commensurate with State government pay schedules for the duties of this
14 office, or such salary to be set by the State Personnel Board pursuant to G.S. 126-4.
15 Necessary travel allowance or reimbursement for expenses shall be authorized for the
16 Director in accordance with G.S. 138-6. Sufficient staff shall be provided under the
17 direction of the Secretary.

18 (b) The Office shall make recommendations to agencies and the General
19 Assembly ~~for eliminating, consolidating, simplifying, or expediting licenses, or~~
20 ~~otherwise improving licensing procedures affecting business undertakings. regarding~~
21 proposed policies, rules, or laws to improve the dissemination of information to small
22 businesses regarding statutory and regulatory requirements and to improve licensing
23 procedures affecting business undertakings, including alternatives such as eliminating,
24 consolidating, simplifying, or expediting particular licenses.

25 (c) The Office shall promulgate and adopt rules and forms necessary to carry out
26 the purposes of this Article."

27 Section 3. Article 4B of Chapter 147 of the General Statutes is amended
28 by adding a new section to read:

29 "**§ 147-54.13.1. Reporting requirements of the Secretary of State.**

30 The Secretary may report to the Joint Legislative Commission on Governmental
31 Operations on any recommended legislative or administrative revision the Secretary
32 determines is necessary to make State government communications and relations with
33 the public more effective and efficient."

34 Section 4. G.S. 147-54.14 reads as rewritten:

35 "**§ 147-54.14. Clearinghouse functions.**

36 The Office shall be a clearinghouse for State business ~~license~~ information and
37 shall perform the following duties:

- 38 (1) Establish a license information service detailing requirements for
39 establishing and engaging in business in the State;
- 40 (2) Provide the most recent forms and information sheets for all State
41 business licenses; ~~and~~
- 42 (3) Prepare, publish, and distribute a complete directory of all State
43 licenses required to do business in North ~~Carolina.~~ Carolina;

- (4) Provide the public with an information resource center that disseminates information regarding State statutory and regulatory requirements to conduct business, including, but not limited to, authoritative sources and procedures; and
- (5) Establish a program in which the Office works with the small business community to identify problems in State government related to unnecessary delays, inconsistencies between regulatory agencies, and the inefficient and ineffective uses of State resources."

Section 5. G.S. 147-54.15 reads as rewritten:

"§ 147-54.15. License coordination and assistance to applicants.

Upon request, the Office shall assist a person as provided below:

- (1) Identify the type and source of licenses that may be required and the potential difficulties in obtaining the licenses based on an informal review of a potential applicant's business at an early stage in its planning. Information provided by the Office is for guidance purposes only and may not be asserted by an applicant as a waiver or release from any license requirement. However, an applicant who uses the services of the Office as provided in this subdivision, and who receives a written statement identifying required State business licenses relating to a specific business activity, may not be assessed a penalty for failure to obtain any State business license which was not identified, provided that the applicant submits an application for each such license within sixty (60) days after written notification by the Office or the agency responsible for issuing the license;
- (2) Arrange an informal conference between the person and the appropriate agency to clarify licensing requirements or standards, if necessary;
- (3) Assist in preparing the appropriate application and supplemental forms;
- (4) Monitor the license review process to determine the status of a particular license. If there is a delay in the review process, the Office may demand to know the reasons for the delay, the action required to end the delay, and shall provide this information to the applicant. The Office may assist the applicant in resolving a dispute with an agency during the application process. If a request for a license is refused, the Office may explain the recourse available to the person under the Administrative Procedure ~~Act~~ Act; and
- (5) Provide the person with any information the person needs to comply with State laws, rules, and policies in conducting business in the State or refer the person to the particular individual in the appropriate agency to obtain the requested information."

Section 6. G.S. 147-54.16 reads as rewritten:

"§ 147-54.16. ~~Master application~~ automated system.

(a) The Office shall implement and administer an automated master application system. The Office shall determine the licenses appropriate for inclusion in the master application system. The Office may not include environmental licenses in the master application system.

The appropriate agency shall continue to determine whether a requested license shall be issued and to issue the license if the application is approved by the agency.

An applicant who receives written notification by the Office that a license requested through the Office is being issued by the appropriate agency may proceed with the licensed business activity without having physical possession of the issued license.

The Office shall collect from each applicant the total amount of the fees for the licenses applied for through the Office. The Office is the repository for an original signed application form submitted through the Office for a license that is included in the master application system. If, based on the information supplied by the applicant to the Office, the Office fails to make application for a required license, and the applicant did not know such a license was required, the applicant shall not be liable for any civil or criminal penalties or disciplinary action for failure to have the license. If the failure to obtain the license is reported to the applicant by either the Office or the agency issuing the license, the applicant must make application within 30 days or be subject to the penalties or disciplinary action.

(b) The Office shall implement and administer an automated system to track the number of contacts or inquiries received each year, the nature of each contact or inquiry, and the final resolution offered in response to each contact or inquiry for the purpose of recommending legislative and administrative revisions pursuant to G.S. 147-54.13."

Section 7. G.S. 147-54.17 reads as rewritten:

"§ 147-54.17. ~~License coordinator~~ Coordinator designated in all State agencies.

(a) Each agency shall cooperate fully with the Office in providing information on the ~~licenses~~ forms, licenses, and regulatory requirements of the agency, in coordinating conferences with applicants to clarify license and regulatory requirements, and in developing a plan for an automated master application system.

(b) Each agency shall designate a business license coordinator. The coordinator shall have the following responsibilities:

- (1) To provide to the Office the most recent application and supplemental forms required for each license issued by the ~~agency~~, agency and for conducting business under the regulatory authority of the agency, the most recent information available on existing and proposed agency rules, the most recent information on changes or proposed changes in license requirements or agency rules and how those changes will affect the business community, and agency publications that would be of aid or interest to the business community;

- 1 (2) To work with the Office in scheduling conferences for applicants
2 as provided under G.S. 147-54.15;
- 3 (3) To determine, upon request of an applicant or the Office, the
4 status of a license application or renewal, the reason for any delay
5 in the license review process, and the action needed to end the
6 delay; and to notify the applicant or Office, as appropriate, of
7 those findings;
- 8 (4) To work with the Office or applicant, upon request, to resolve any
9 dispute that may arise between the agency and the applicant
10 during the review process;
- 11 (4a) To determine, upon request of a business or the Office, the status
12 of a request for information or assistance regarding any
13 requirements or actions of the agency, the reason for any delay in
14 the agency's response, and the action needed to end the delay; and
15 to notify the applicant or Office, as appropriate, of those findings;
- 16 (4b) To work with the Office or business, upon request, to resolve any
17 dispute that may arise between the agency and business regarding
18 the compliance with laws, rules, or policies of the State or agency;
19 and
- 20 (5) To review agency regulatory and license requirements and to
21 provide a written report to the Office that identifies the regulatory
22 and licensing requirements that affect the business community;
23 indicates which, if any, requirements should be eliminated,
24 modified, or consolidated with other requirements; and explains
25 the need for continuing those requirements not recommended for
26 elimination."

27 Section 8. Article 4B of Chapter 147 of the General Statutes is amended
28 by adding a new section to read:

29 "**§ 147-54.20. Confidentiality of requests.**

30 At the request of the person or applicant, the identity of the person or other entity
31 requesting assistance or information pursuant to this Article shall remain confidential
32 and shall not be disseminated to any State agency or person outside the Office, unless
33 State or federal law requires otherwise to protect the public interest."

34 Section 9. Effective October 1, 1999, G.S. 147-54.13.1, as enacted by this
35 act, reads as rewritten:

36 "**§ 147-54.13.1. Reporting requirements of the Secretary of State.**

37 (a) ~~The~~ At any time, the Secretary may report to the Joint Legislative Commission
38 on Governmental Operations on any recommended legislative or administrative
39 revision the Secretary determines is necessary to make State government
40 communications and relations with the public more effective and efficient.

41 (b) The Secretary shall report to the Joint Legislative Commission on
42 Governmental Operations on or before November 1 each year on the most common
43 complaints received from the business community and the number, type, or nature of
44 inquiries received by the Office. The Secretary may also report on any legislative or

1 administrative recommendations to address the problems reported that year,
2 including proposed budgetary amendments."

3 Section 10. There is appropriated from the General Fund to the Office
4 of the Secretary of State the sum of two hundred seventy-nine thousand eight
5 hundred thirty-nine dollars (\$279,839) for the 1998-99 fiscal year to implement this
6 act. The funds shall be used for two additional positions in the Office of the
7 Secretary of State and for equipment and supplies required to educate the public and
8 State and local entities about the program and to develop the automated system
9 mandated by Section 6 of this act.

10 Section 11. Sections 1 through 5, 7, and 8 of this act become effective
11 October 1, 1998. Sections 6 and 9 of this act become effective October 1, 1999.
12 Section 10 of this act becomes effective July 1, 1998. The remainder of this act is
13 effective when it becomes law.



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June 30, 1998

MEMORANDUM

TO: Representative David Miner, Chairman,
House Commerce Committee.

FROM: Karen Cochrane Brown, Committee Co-Counsel.

RE: House Bill 1350 - Small Business Information Assistance.

House Bill 1350 is a recommendation of the Legislative Research Commission Business Development Committee. The bill amends the law relating to the Business License Information Office of the Secretary of State's Office to provide information and assistance to small businesses.

The General Assembly created the Business License Information Office in 1987, as a one-stop system for the business community to acquire and maintain the necessary State licenses to conduct business. Sections 1, 2, 4, and 5 of this bill expand the scope of this office to include provision of information and assistance to small businesses regarding statutory and regulatory requirements. The Office will establish a program in which it can work with the small business community to identify problems in State government related to unnecessary delays, inconsistencies between regulatory agencies, and the inefficient and ineffective uses of State resources.

Section 3 of the bill provides that the Secretary of State may report to the Joint Legislative Commission on Governmental Operations on any legislative or administrative revisions necessary to make government communications and relation with the public more effective and efficient. Effective October 1, 1999, Section 9 of the bill requires the Secretary to report annually, by November 1, of each year on the most common complaints received by the Office.

Section 6 of the bill requires the Office to implement and administer an automated system to track the number, nature and resolution of contacts or inquiries received each year for the purpose of recommending legislative and administrative revisions.

Section 7 expands the responsibilities of the business license coordinator to include assistance related to the regulatory authority of the agency. The coordinator will provide

assistance to the Office in ascertaining the status of a request for information or assistance from the agency, the reason for any delay, and the action needed to end the delay. The coordinator will also work with the Office to resolve any disputes between the agency and the business regarding compliance with the laws, rules, or policies of the State or agency.

Section 8 of the bill ensures that the identity of the person or entity requesting assistance or information remains confidential.

Section 9 of the act becomes effective October 1, 1999. The remainder of the act becomes effective October 1, 1998.

**1998 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Miner, Berry, Tallent, Hiatt, Church** for the Committee on
COMMERCE.

☐ Committee Substitute for

H.B. 1707 A BILL TO BE ENTITLED AN ACT TO ELIMINATE STATE FUNDING
RELATED TO SITING A LOW-LEVEL RADIOACTIVE WASTE FACILITY IN NORTH
CAROLINA.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on ☐ Appropriations ☐ Finance ☐

☒ With a favorable report as to committee substitute bill (# _____), ☐ which changes the title,
unfavorable as to original bill (Committee Substitute Bill # _____), (and recommendation
~~that the committee substitute bill # _____ be re-referred to the Committee on _____~~)

☐ With a favorable report as to House committee substitute bill (# _____), ☐ which changes
the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.
(PUBLIC BILLS ONLY)

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

3/25/98

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 1707*

Short Title: Stop Funds for LLRW Siting.

(Public)

Sponsors: Representatives Miner, Hackney; Buchanan, Goodwin, Hall, Insko, Mosley, and Warner.

Referred to: Rules, Calendar and Operations of the House.

June 1, 1998

1 A BILL TO BE ENTITLED
2 AN ACT TO ELIMINATE STATE FUNDING RELATED TO SITING A LOW-
3 LEVEL RADIOACTIVE WASTE FACILITY IN NORTH CAROLINA.

4 Whereas, the future viability of the interstate compact system provided
5 for and encouraged by Congress and enacted by many states has been called into
6 question by national trends in the handling and disposal of low-level radioactive
7 waste; and

8 Whereas, it has become clear that fewer low-level radioactive waste
9 facilities will be required to handle safely the nation's low-level radioactive waste
10 than was initially envisioned under the compact system; and

11 Whereas, because of such considerations and trends, other host states
12 have stopped siting activities; and

13 Whereas, it would not be prudent for North Carolina to expend further
14 or additional monies on siting activities until further review of the future of the
15 compact system has occurred; Now, therefore,
16 The General Assembly of North Carolina enacts:

17 Section 1. All funds appropriated to or for the use of the North Carolina
18 Low-Level Radioactive Waste Management Authority, created in G.S. 104G-5, for the
19 1997-98 fiscal year, for the 1998-99 fiscal year, and for any preceding fiscal year that
20 are not spent, encumbered, or committed shall not be spent, encumbered, or
21 committed and shall revert to the General Fund.

22 Section 2. No department, institution, agency, authority, board, or
23 commission of the State shall use its funds for the operation, maintenance, or support

1 of the North Carolina Low-Level Radioactive Waste Management Authority or its
2 staff. No department, institution, agency, authority, board, or commission of the State
3 shall use its funds for any activities or staff positions related to siting a low-level
4 radioactive waste facility pursuant to Chapter 104G of the General Statutes or related
5 to reviewing the application of a license of such a facility.

6 Section 3. This act shall not preclude any department from properly
7 archiving data, physical property, or other information collected with respect to siting
8 a low-level radioactive waste facility pursuant to Chapter 104G of the General
9 Statutes.

10 Section 4. Sections 1 and 4 of this act are effective when they become
11 law. Sections 2 and 3 of this act become effective June 30, 1998.



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June 30, 1998

MEMORANDUM

TO: House Committee on Commerce
FROM:  Steven Rose, Committee Counsel
RE: House Bill 1707; Stop Funds for Low-Level Radioactive Waste Siting

House Bill 1707 provides for the elimination of State funding relating to siting a low-level radioactive waste facility in North Carolina.

Section 1 provides that any funds appropriated for the use of the North Carolina Low-Level Radioactive Waste Management Authority through the 1998-99 fiscal year shall revert to the General Fund. This does not include funds that are already encumbered or committed.

Section 2 provides that no other State agency shall use any of its funds to support the Low-Level Radioactive Waste Management Authority or for activities related to siting or licensing of a low-level radioactive waste facility.

Section 3 specifically permits archiving of data, property, or other information collected with respect to the siting of a low-level radioactive waste facility.

Sections 1 and 4 of the act are effective when they become law. Sections 2 and 3 of the act become effective June 30, 1998.

H1707-SMRL-001

**1998 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Miner, Berry, Tallent, Hiatt, Church** for the Committee on
COMMERCE.

☐ Committee Substitute for

H.B. 1644 A BILL TO BE ENTITLED AN ACT TO REIMBURSE CHATHAM COUNTY
FOR ITS COSTS ASSOCIATED WITH SELECTING A SITE FOR A PROPOSED LOW-
LEVEL RADIOACTIVE WASTE FACILITY.

☐ With a favorable report.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on
☒ Appropriations ☐ Finance ☐

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on ☐ Appropriations ☐ Finance ☐

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title,
unfavorable as to original bill (Committee Substitute Bill #), (and recommendation
that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes
the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.
(PUBLIC BILLS ONLY)

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

3/25/98

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 1644

Short Title: Chatham Funds for LLRW Siting.

(Public)

Sponsors: Representatives Hackney, Insko, Culp; and Mosley.

Referred to: Commerce, if favorable, Appropriations.

May 28, 1998

1 A BILL TO BE ENTITLED
2 AN ACT TO REIMBURSE CHATHAM COUNTY FOR ITS COSTS
3 ASSOCIATED WITH SELECTING A SITE FOR A PROPOSED LOW-LEVEL
4 RADIOACTIVE WASTE FACILITY.

5 Whereas, the General Assembly has appropriated at least \$800,000 to
6 Richmond County from 1992 to 1996 for technical assistance grants for its site
7 designation review committee for a low-level radioactive waste facility and for other
8 expenses incurred by Richmond County related to licensing and siting a low-level
9 radioactive waste facility; Now, therefore,

10 The General Assembly of North Carolina enacts:

11 Section 1. There is appropriated from the General Fund to Chatham
12 County the sum of seven hundred thousand dollars (\$700,000) for the 1998-99 fiscal
13 year to reimburse Chatham County for the unreimbursed costs to Chatham County of
14 its site designation review committee for providing technical assistance regarding the
15 site selection of a low-level radioactive waste facility pursuant to Chapter 104G of the
16 General Statutes and for other expenses incurred by Chatham County related to
17 licensing and siting a low-level radioactive waste facility.

18 Section 2. This act becomes effective July 1, 1998.



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June 30, 1998

MEMORANDUM

TO: House Committee on Commerce

FROM:  **Steven Rose, Committee Counsel**

RE: House Bill 1644; Appropriation to reimburse Chatham County for costs related to siting a low-level radioactive waste facility

House Bill 1644 appropriates \$700,000 from the General Fund for the 1998-99 FY to reimburse Chatham County for unreimbursed costs of its site designation review committee and for other expenses related to licensing and siting a low-level radioactive waste facility. The act becomes effective July 1, 1998.

H1644-SMRL-001

MINUTES

HOUSE COMMITTEE ON COMMERCE

July 15, 1998

10:00 AM

DAVID MINER, CHAIRMAN

MEMBERS PRESENT

William Hiatt, Co-Chair, Martha Alexander, Gordon Allen, Rex Baker, Donald Bonner, Joanne Bowie, Flossie Boyd-McIntyre, Jerry Braswell, Annette Bryant, Lanier Cansler, Bill Culpepper, Donald Davis, Andrew Dedmon, Dub Dickson, Ruth Easterling, Stan Fox, Bobby Hall, Sandy Hardy, Dewey Hill, John Hurley, Bill Ives, Larry Justus, Danny McComas, Eugene McCombs, Paul McCrary, Edwin McMahan, Mia Morris, Charles Neely, John Nichols, Edd Nye, Liston Ramsey, John Rayfield, David Redwine, Dennis Reynolds, Gene Rogers, Drew Sanders, Wilma Sherrill, Ronald Smith, Edgar Starnes, Gregg Thompson, Cynthia Watson, Gene Wilson.

The House Committee on Commerce meet at 10:00 am on Wednesday, July 15, 1998, in Room 643 of the Legislative Office Building with Chairman David Miner presiding.

Chairman Miner called the meeting to order and the following bill was discussed:

Senate Bill 872, A BILL TO BE ENTITLED AN ACT TO ALLOW TEENAGERS WHO ARE FOURTEEN OR FIFTEEN YEARS OLD TO WORK AT CERTAIN PLACES THAT SELL ALCOHOLIC BEVERAGES. Rep. McMahan moved that the House Committee Substitute be considered. This motion carried and Sen. Kerr explained the Bill. Sen. Kerr answered questions from the Committee. Rep. Neely moved to give a favorable report to the House Committee Substitute, unfavorable to the original bill. Chairman Miner recognized Mr. T. Jerry Williams, lobbyist for the North Carolina Restaurant Association, and he spoke to the Committee. Mr. Williams introduced Mr. David Huskins, a restaurant owner in the mountains. Mr. John Rustin, with the NC Family Policy Council, spoke to the Committee. The House Committee Substitute was not given a favorable report by a vote of 16 to 21.

The Committee was adjourned at 10:50.

David Miner, Chairman

Susan D. Phillips, Committee Clerk

VISITOR REGISTRATION SHEET

COMMERCE

July 15, 1998

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

<u>NAME</u>	<u>FIRM OR AGENCY AND ADDRESS</u>
<i>[Signature]</i>	NC Rural Assn
Paul Fyfe	ABC Commission
David Hughes	Spais BBQ & Grill
W.H. Potts Jr	NC ABC Bus Group
Steve Keene	NC Medical Society
<i>[Signature]</i>	NCFPC
Amey Jo Bann	Smith Anderson
Michael Skelton	Charlotte Chamber
Jane Upham	CPL
Andy Roman	NCLM
Alie Parlange	Electricities
Eatherine Davis	Electricities
Gander Lee	Mark Mawster
<i>[Signature]</i>	NCCCS
<i>[Signature]</i>	NCCS
Meredith Norri's	Bowley & Associates
David Ferrell	Hoffe, McNamee, Caldwell et al
Andy Ellen	NCRMA
Ann Case	NCRMA
Cam Cook	NCACS
Thomas V. Bennett	NCCFTF
Jeanine A. Atkinson	Duke University
Barbara Alvarez Martin	NC Initiative to Reduce Underage Drinking
Robert Kennedy	Capitol - Boone Police Dept.
CHARLIE GRADY	NC INITIATIVE TO REDUCE UNDERAGE DRINKING
<i>[Signature]</i>	East Carolina University
<i>[Signature]</i>	Ferguson-Vanier Chambers of Commerce

VISITOR REGISTRATION SHEET

COMMERCE

July 15, 1998

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Susan Valerius	Nationwide
Christina Medlin	The Covenant w/ NC's Children
Chris Valerius	N.C. Bar & Union
James S. S. S.	WCSR
John Valerius	AET
Stephanie Mansun	NC Assoc. of REALTORS
C. Parker	Ford & Assoc.
Mark Blum	Capital Group
Shannon Bullock	Guinness's Hwy Safety
John	Raleigh resident
John Hecker	ChC of NC
Lynn Holmes	Ben Smith
Dany Rogers	NC DOT
Kirstin Frescoln	ReEntry, Inc.
Margaret Livingston	ReEntry, Inc.
Heber Johnson	Philip Morris Co.
mi. Jay	NC DOL
D. C.	DOZ
Deborah Brown	DOZ
Tom Harris	DOL
Larry C. Case	SEAVC - 1
David Case	BSCWC
Steve Sumner	BSCWC
George Reed	NC Council of Churches
AL DETTCH	YOUTH ADVOCACY + 1-VOLUNTARY
Narr. St. Southern	YAI0 - (AID)
REGINALD RONALD HOLLEY	YAI0 - DOA

VISITOR REGISTRATION SHEET

COMMERCE

July 15, 1998

Name of Committee

Date _____

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

<p> <i>Mr. Osborne</i> <i>Andy S. S.</i> <i>Jay Mayo</i> <i>Paul H. Sullivan</i> <i>Paula A. Wolf</i> </p>	<p> AOC WCSR WCSR UNC-CH UNC-CH Covenant w/ NC's Children </p>
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GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

3

SENATE BILL 872

Finance Committee Substitute Adopted 4/29/97

Third Edition Engrossed 4/30/97

Short Title: Youth Workers At ABC Permittees.

(Public)

Sponsors:

Referred to:

April 15, 1997

- 1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW TEENAGERS WHO ARE FOURTEEN OR FIFTEEN
3 YEARS OLD TO WORK AT CERTAIN PLACES THAT SELL ALCOHOLIC
4 BEVERAGES.
5 The General Assembly of North Carolina enacts:
6 Section 1. G.S. 95-25.5(j) reads as rewritten:
7 "(j) No person who holds any ABC permit issued pursuant to the provisions of
8 Chapter 18B of the General Statutes for the on-premises sale or consumption of
9 alcoholic beverages, including any mixed beverages, shall employ a youth:
10 (1) Under 16 years of age on the premises for any ~~purpose;~~ purpose,
11 unless the premises for which the permit is issued is a restaurant, a
12 hotel, or a sports club. If the permit is issued for one of these
13 types of businesses, the person may employ a youth who is 14 or 15
14 years old to work on the premises only in a job that will not
15 require the youth to be present in a room where alcoholic
16 beverages are consumed. If the youth possesses or consumes an
17 alcoholic beverage on the premises, the employer is subject to the
18 penalty provided in G.S. 95-25.23. The definitions of 'restaurant,'
19 'hotel,' and 'sports club' in G.S. 18B-1000 apply in this
20 subdivision.
21 (2) Under 18 years of age to prepare, serve, dispense or sell any
22 alcoholic beverages, including mixed beverages."

1 Section 2. This act is effective when it becomes law.

1

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 872
Finance Committee Substitute Adopted 4/29/97
Third Edition Engrossed 4/30/97
PROPOSED HOUSE COMMITTEE SUBSTITUTE -- S872-PCSRR-004
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION.

Short Title: Youth Workers At ABC Permittees.

(Public)

Sponsors:

Referred to:

April 15, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW TEENAGERS WHO ARE FOURTEEN OR FIFTEEN YEARS OLD
3 TO WORK AT CERTAIN PLACES THAT SELL ALCOHOLIC BEVERAGES.
4 The General Assembly of North Carolina enacts: _____
5 Section 1. G.S. 95-25.5(j) reads as rewritten:
6 "(j) ~~No~~ Except as provided in subsection (j1), no person who
7 holds any ABC permit issued pursuant to the provisions of Chapter
8 18B of the General Statutes for the on-premises sale or
9 consumption of alcoholic beverages, including any mixed
10 beverages, shall employ a youth:
11 (1) Under 16 years of age on the premises for any
12 purpose;
13 (2) Under 18 years of age to prepare, serve, dispense
14 or sell any alcoholic beverages, including mixed
15 beverages."
16 Section 2. G.S. 95-25.5 is amended by adding a new
17 subsection to read:
18 "(j1) A person who holds an ABC permit issued pursuant to the
19 provisions of Chapter 18B of the General Statutes for the on-
20 premises sale or consumption of alcoholic beverages, including

1 any mixed beverages, may employ a youth 14 or 15 years of age on
2 the premises if all the following requirements are met:

3 (1) A parent or guardian has provided the employer with
4 a notarized statement of authorization to hire the
5 youth;

6 (2) There is no school the next day for the youth;

7 (3) The youth does not prepare, serve, dispense or sell
8 alcoholic beverages, including mixed beverages;
9 and

10 (4) The establishment is a restaurant, hotel, or sports
11 club, or is a private club that has an 18-hole golf
12 course. The terms 'restaurant,' 'hotel,' 'sports
13 club,' and 'private club' shall be as defined by
14 G.S. 18B-1000 and as designated in the
15 investigative report of record made concerning the
16 establishment by the Alcohol Law Enforcement
17 Division of the Department of Crime Control and
18 Public Safety.

19 If the youth possesses or consumes an alcoholic beverage on the
20 premises, the employer is subject to the penalty provided in G.S.
21 95-25.23. Busing tables and washing dishes shall not be
22 considered possession of an alcoholic beverage."

23 Section 3. This act is effective when it becomes law.



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July 15, 1998

TO: House Commerce Committee.

FROM: William R. Gilkeson, Staff Attorney.

RE: PCS for Senate Bill 872 – Youth Workers at ABC Permittees.

The Proposed House Committee Substitute for Senate Bill 872, introduced by Sen. Kerr, would change State law to allow 14- and 15-year-olds to work under certain limited conditions at restaurants, hotels, and sports clubs that have on-premises ABC permits.

CURRENT LAW does not allow youths under 16 to work in establishments that have on-premises ABC permits for any purpose. Sixteen- and 17-year-olds can work there, but they are prohibited from preparing, selling, or serving alcoholic beverages. *G.S. 95-25.5(f)*.

(Another statute prohibits youths 13 and under from working for any employer except, if at least 12, as newspaper carriers. *G.S. 95-25.5(d)*. Yet another statute gives the Commissioner of Labor the authority to waive prohibitions for youths 13 and older in cases of hardship and parental consent. *G.S. 95-25.5(f)*.)

SB 872 WOULD allow youths 14 and 15 to work for an on-premises ABC permittee as long as:

- The youth's parent or guardian gives authorization for the permittee to hire the youth in a notarized statement;
- There is no school the next day for the youth;
- The 14- or 15-year-old is not allowed to prepare, sell, or serve alcoholic beverages; and
- That permittee fits the definition in ABC law of "restaurant," "hotel," "sports club," or "private club" if the private club has an 18-hole golf course, and the club is so designated on the report of record by the Alcohol Law Enforcement Division (ALE).

If the 14- or 15-year-old possesses or consumes an alcoholic beverage on the employer's premises, the employer is subject to a civil penalty of up to \$250 for each violation. But the bill specifies that busing tables and washing dishes shall not be considered possession of an alcoholic beverage.

The following definitions from the ABC statute are referenced in the bill:

- Restaurant. "An establishment substantially engaged in the business of preparing and serving meals. To qualify as a restaurant, an establishment's gross receipts from food and nonalcoholic beverages shall be not less than forty percent (40%) of the total gross receipts from food, nonalcoholic beverages, and alcoholic beverages. A restaurant shall also have a kitchen and an inside dining area with seating for at least 36 people." *G.S. 18B-1000(6)*.
- Hotel. "An establishment substantially engaged in the business of furnishing lodging. A hotel shall have a restaurant either on or closely associated with the premises. The restaurant and hotel need not be owned or operated by the same person." *G.S. 18B-1000(4)*.
- Sports club. "An establishment substantially engaged in the business of providing an 18-hole golf course, two or more tennis courts, or both. The sports club can either be open to the general public or to members and their guests. To qualify as a sports club, an establishment's gross receipts for club activities shall be greater than its gross receipts for alcoholic beverages. This provision does not prohibit a sports club from operating a restaurant. Receipts for food shall be included in with the club activity fee." *G.S. 18B-1000(8)*.
- Private club. "An establishment that is organized and operated solely for a recreational, patriotic, or fraternal purpose and that is not open to the general public but is open only to the members of the organization and their bona fide guests. . . ." *G.S. 18B-1000(5)*. (In the early years of liquor by the drink in North Carolina, several country clubs received their licenses as "private clubs." Later the definition of "sports club" was introduced and country clubs were licensed under that category. Hence, the bill includes "private club that has an 18-hole golf course" to include those country clubs were licensed early and whose ALE report would refer to them as a private club.)

The bill would become effective when it becomes law.

MINUTES

HOUSE COMMITTEE ON COMMERCE

July 29, 1998

10:00 AM

DAVID MINER, CHAIRMAN

MEMBERS PRESENT

William Hiatt, Co-Chair, Martha Alexander, Gordon Allen, Cary Allred, Rex Baker, Donald Bonner, Joanne Bowie, Flossie Boyd-McIntyre, Jerry Braswell, Annette Bryant, Jim Crawford, Bill Culpepper, Donald Davis, Andrew Dedmon, Dub Dickson, Jerry Dockham, Ruth Easterling, Stan Fox, Bobby Hall, Thomas Hardaway, Dewey Hill, John Hurley, Bill Ives, Larry Justus, Danny McComas, Eugene McCombs, Paul McCrary, Edwin McMahan, Frank Mitchell, Mia Morris, John Nichols, Edd Nye, Jean Preston, Liston Ramsey, John Rayfield, David Redwine, Dennis Reynolds, Gene Rogers, Drew Sanders, Wilma Sherrill, Ronald Smith, Edgar Starnes, Gregg Thompson, Cynthia Watson, Connie Wilson, Gene Wilson, Larry Womble.

The House Committee on Commerce meet at 10:00 am on Wednesday, July 15, 1998, in Room 643 of the Legislative Office Building with Chairman David Miner presiding.

Chairman Miner called the meeting to order and the following bill was discussed:

Senate Bill 1242, AN ACT TO PROVIDE FOR A WIRELESS ENHANCED 911 SYSTEM FOR THE USE OF CELLULAR, PERSONAL COMMUNICATIONS SERVICE, AND OTHER WIRELESS TELEPHONE CUSTOMERS, AS RECOMMENDED BY THE JOINT LEGISLATIVE UTILITY REVIEW COMMITTEE, AND TO ALLOW STATE AGENCIES TO LEASE PUBLIC PROPERTY FOR THE CONSTRUCTION OF WIRELESS COMMUNICATIONS TOWERS AND TO ENCOURAGE CO-LOCATION OF SERVICES TO THOSE TOWERS, AND TO MAKE A TECHNICAL CORRECTION TO G.S. 62A-10. As Sen. Hoyle was not present, Chairman Miner recognized Mr. Rose, Committee Counsel, to explain the Bill. Sen. Hoyle arrived during the explanation and took questions on the Bills. Andy Romanette, general counsel to the North Carolina League of Municipalities, answered some questions posed by Committee members regarding city and county ordinances. Mr. Ron Burleson, representing BellSouth DCS, presented the wireless industry's views to the Committee. Due to time constraints, S 1242 was re-referred to the Subcommittee on Public Utilities. Chairman Miner then appointed a special subcommittee on S 872, Chaired by Rep. Neely, members being Reps. Sherrill, McMahan, Hardaway, and Redwine.

The Committee was adjourned at 10:50.

David Miner, Chairman

Susan D. Phillips, Committee Clerk

VISITOR REGISTRATION SHEET

COMMERCE

July 29, 1998

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

<u>NAME</u>	<u>FIRM OR AGENCY AND ADDRESS</u>
<i>[Signature]</i>	NC RA
Edna S. Fulton	ABCC
M. Lewinsky	W222 DC
<i>[Signature]</i>	AKAOC
J. Wills	NC DOL
George Reed	NC Council of Churches
Carrie Altman	NC Science Tech.
<i>[Signature]</i>	WCSR
John McMillan	Waring, Allen & Skene PA
Jim Blackburn	NC Assoc. of County Commrs
Andy Romancik	N.C.C.M.
Joyce Peters	SP Assoc/Elect.
Alvin Garland	Electricities
Estherine Davis	"
David Simmons	ZPA, PA
John Bowditch	ZPA, PA
David Anders	RFFPRO
Meredith Morris	Lawrence Bentley & Assoc.
Paul Stock	NC Bankers Assoc.
Michelle Cook	Weyerhaeuser
Amy Jo Bain	A big law firm
John McAlister	Duke Energy
Stacy Haskins	Charlotte Chamber
<i>[Signature]</i>	AT&T
Tracie Delite	Fayetteham
Kat Carpenter	Public Staff
Robert Zamb	Public Staff

VISITOR REGISTRATION SHEET

COMMERCE

July 29, 1998

Name of Committee

Date _____

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS[illegible]

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

3

SENATE BILL 1242*

Commerce Committee Substitute Adopted 6/16/98
Finance Committee Substitute #2 Adopted 7/9/98

Short Title: Wireless Telephone Service/Tower Act.

(Public)

Sponsors:

Referred to:

May 21, 1998

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR A WIRELESS ENHANCED 911 SYSTEM FOR THE
3 USE OF CELLULAR, PERSONAL COMMUNICATIONS SERVICE, AND
4 OTHER WIRELESS TELEPHONE CUSTOMERS, AS RECOMMENDED BY
5 THE JOINT LEGISLATIVE UTILITY REVIEW COMMITTEE, AND TO
6 ALLOW STATE AGENCIES TO LEASE PUBLIC PROPERTY FOR THE
7 CONSTRUCTION OF WIRELESS COMMUNICATIONS TOWERS AND TO
8 ENCOURAGE CO-LOCATION OF SERVICES TO THOSE TOWERS, AND
9 TO MAKE A TECHNICAL CORRECTION TO G.S. 62A-10.

10 The General Assembly of North Carolina enacts:

11 Section 1. The General Statutes are amended by adding a new Chapter
12 to read:

13 "Chapter 62B.
14 "Wireless Telephone Service.

15 "§ 62B-1. Definitions.

16 As used in this Chapter:

17 (1) 'Automatic location identification' or 'ALI' means a wireless
18 Enhanced 911 service capability that enables the automatic display
19 of information defining the approximate geographic location of the
20 wireless telephone used to place a 911 call in accordance with the
21 FCC Order and includes pseudoautomatic number identification.

- (2) 'Automatic number identification' or 'ANI' means a wireless Enhanced 911 service capability that enables the automatic display of a mobile handset telephone number used to place a 911 call.
- (3) 'CMRS' means 'commercial mobile radio service' under sections 3(27) and 332(d) of the Federal Telecommunications Act of 1996, 47 U.S.C. § 151, et seq., and the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103-66, August 10, 1993, 107 Stat. 312. It includes the term 'wireless' and service provided by any wireless two-way voice communication device, including radio-telephone communications used in cellular telephone service, personal communications service, or the functional competitive equivalent of a radio-telephone communications line used in cellular telephone service, a personal communications service, SMR mobile service, or a network radio access line which has access to E911 service.
- (4) 'CMRS connection' means each mobile handset telephone number assigned to a CMRS customer with a billing address in North Carolina.
- (5) 'CMRS provider' means a person or entity who is licensed by the FCC to provide CMRS service or is reselling CMRS service.
- (6) 'Eligible PSAPs' means those public safety answering points that have opted to provide wireless Enhanced 911 service and have submitted written notice to their CMRS providers and to the Wireless 911 Board.
- (7) 'FCC Order' means the Order of the Federal Communications Commission, FCC Docket No. 94-102, adopted on December 1, 1997.
- (8) 'Local exchange carrier' means any entity that is authorized to engage in the provision of telephone exchange service or exchange access in North Carolina.
- (9) 'Mobile set telephone number' means the number assigned to a CMRS connection.
- (10) 'Proprietary information' means customer lists and other related information, technology descriptions, technical information, or trade secrets, including the term 'trade secrets' as defined by the North Carolina Trade Secrets Protection Act, G.S. 66-152, and the actual or developmental costs of wireless Enhanced 911 systems that are developed, produced, or received internally by a CMRS provider or by a CMRS provider's employees, directors, officers, or agents.
- (11) 'PSAP' ('public safety answering point') means the public safety agency that receives incoming 911 calls and dispatches appropriate public safety agencies to respond to such calls.

- 1 (12) 'Pseudoautomatic number identification' or 'Pseudo-ANI' means a
2 wireless Enhanced 911 service capability that enables the automatic
3 display of the number of the cell site or cell face.
4 (13) 'Service supplier' means a person or entity who provides exchange
5 telephone service to a telephone subscriber.
6 (14) 'Wireless 911 system' means an emergency telephone system that
7 provides the user of a CMRS connection the ability to reach a
8 PSAP by dialing the digits 911.
9 (15) 'Wireless Enhanced 911 system' means an emergency telephone
10 system that provides the user of the CMRS connection with
11 wireless 911 service and, in addition, directs 911 calls to
12 appropriate PSAPs by selective routing based on the geographical
13 location from which the call originated and provides the capability
14 for ANI (or Pseudo-ANI) and ALI features, in accordance with the
15 requirements of the FCC Order.
16 (16) 'Wireless Fund' means the Wireless Emergency Telephone System
17 Fund required to be established and maintained pursuant to G.S.
18 62B-2(c).

19 "§ 62B-2. Wireless 911 Board.

20 (a) There is created a Wireless 911 Board ('Board'), consisting of thirteen
21 members as follows:

- 22 (1) Two members appointed by the Governor, one upon the
23 recommendation of the North Carolina League of Municipalities
24 and one upon the recommendation of the North Carolina
25 Association of County Commissioners;
26 (2) Five members appointed by the General Assembly upon the
27 recommendation of the Speaker of the House of Representatives,
28 one of whom shall be a sheriff, three representing CMRS providers
29 licensed to do business in North Carolina and one representing the
30 North Carolina Chapter of the Association of Public Safety
31 Communications Officials (APCO);
32 (3) Five members appointed by the General Assembly upon the
33 recommendation of the President Pro Tempore of the Senate, one
34 of whom shall be a chief of police, two representing CMRS
35 providers licensed to do business in North Carolina, one
36 representing local exchange carriers licensed to do business in
37 North Carolina, and one representing the North Carolina Chapter
38 of the National Emergency Number Association (NENA); and
39 (4) The Secretary of Commerce or the Secretary's designee, who shall
40 serve as the chair.

41 A quorum of the Board shall consist of seven members. The Board shall meet
42 upon the call of the chair.

(b) Each member shall serve a term of four years and may be appointed to no more than two successive terms. Vacancies may be filled in the same manner as the original appointment.

(c) There is established with the Treasurer the Wireless Fund into which the Board shall deposit all revenues derived from the service charge levied on CMRS connections in the State and collected pursuant to G.S. 62B-3. The Wireless Fund shall be a separate fund restricted to the uses set forth in this Chapter. (d)

Consistent with the provisions of G.S. 143-3.2, the Board shall disburse the revenues remitted to the Wireless Fund in the manner set forth in G.S. 62B-5. The Board shall establish procedures for disbursement of these revenues and advise the CMRS providers and eligible counties of such procedures within 60 days after all members are appointed pursuant to G.S. 62B-2(a).

(e) The Board shall serve without compensation, but members of the Board shall receive per diem, subsistence, and travel allowances at the rate established in G.S. 138-5.

"§ 62B-3. Amount of service charge.

(a) The Board shall levy a monthly wireless Enhanced 911 service charge on each CMRS connection. The rate of such service charge shall initially be set at eighty cents (80¢) per month per each CMRS connection beginning October 1, 1998. The service charge shall have uniform application and shall be imposed throughout the State.

(b) The service charge may be adjusted by the Board beginning July 1, 2000 and every two years thereafter. The Board is to set the service charge at such a rate as to ensure full recovery for CMRS providers and for PSAPs, over a reasonable period of time, of the costs associated with developing and maintaining a wireless Enhanced 911 system. If necessary to ensure full recovery of costs for both CMRS providers and PSAPs over a reasonable period of time, the Board may, at the time it adjusts the service charge, also adjust the allocation percentages set forth in G.S. 62B-5(a) and G.S. 62B-5(b).

(c) The service charge shall not exceed one dollar and twenty-five cents (\$1.25).

(d) The Board may adopt other rules and procedures as may be necessary to effect the provisions of this act but may not regulate any other aspect of the provision of wireless Enhanced 911 service, such as technical standards.

(e) No other State agency or local government may levy any additional surcharge relating to the provision of wireless Enhanced 911 service.

"§ 62B-4. Management of funds.

(a) Each CMRS provider, as a part of its monthly billing process, shall collect the wireless Enhanced 911 service charge described in G.S. 62B-3. The CMRS provider may list the service charge as a separate entry on each bill. If a CMRS provider receives a partial payment for a monthly bill from a subscriber, the provider shall apply the payment first against the amount the subscriber owes the provider.

(b) A CMRS provider has no obligation to take any legal action to enforce the collection of the service charges for which any subscriber is billed. However, a

1 collection action may be initiated by the Board and reasonable costs and attorneys'
2 fees associated with that collection action may be awarded.

3 (c) Each CMRS provider shall be entitled to deduct a one percent (1%)
4 administrative fee from the total service charges collected.

5 (d) All service charges collected by the CMRS providers, less the administrative
6 fee described in subsection (c) of this section, are to be remitted to the Wireless
7 Fund, not later than 30 days after the end of the calendar month in which such
8 service charges are collected.

9 "§ 62B-5. Use of funds.

10 (a) Sixty percent (60%) of the funds in the Wireless Fund established in G.S. 62B-
11 2(c) shall be used to reimburse CMRS providers, in response to sworn invoices
12 submitted to the Board, for the actual costs incurred by the CMRS providers in
13 complying with the wireless 911 requirements established by the FCC Order and any
14 rules and regulations which are or may be adopted by the FCC pursuant to the FCC
15 Order, including costs and expenses incurred for designing, upgrading, purchasing,
16 leasing, programming, installing, testing, or maintaining all necessary data, hardware,
17 and software required in order to provide such service as well as the recurring and
18 nonrecurring costs of operating such service. All costs and expenses must be
19 commercially reasonable.

20 (b) Forty percent (40%) of the funds in the Wireless Fund established in G.S.
21 62B-2(c) shall be used to make monthly distributions to eligible PSAPs (the '40%
22 Fund'). Money from the 40% Fund shall be used only to pay for the lease, purchase,
23 or maintenance of emergency telephone equipment for the wireless Enhanced 911
24 system, including necessary computer hardware, software and database provisioning,
25 and nonrecurring costs of establishing a wireless Enhanced 911 system. Money from
26 the 40% Fund shall also be used to pay the rates associated with the local telephone
27 companies' charges related to the operation of the wireless Enhanced 911 system.
28 The 40% Fund shall be distributed as follows:

29 (1) Fifty percent (50%) of it shall be divided equally among the total
30 number of PSAPs in North Carolina. However, monthly
31 distribution shall be made only to those PSAPs that have complied
32 with the provisions of this Chapter. Distribution to each eligible
33 PSAP will begin the month following its compliance with the
34 provisions of this Chapter. All monies remaining in this portion of
35 the 40% Fund on January 31 of each year will then be evenly
36 distributed to each of the eligible PSAPs.

37 (2) The other fifty percent (50%) shall be divided pro rata among the
38 eligible PSAPs based on the population served by the PSAP.
39 However, monthly distribution shall be made only to those PSAPs
40 that have complied with the provisions of this Chapter.
41 Distribution to each eligible PSAP will begin the month following
42 its compliance with the provisions of this Chapter. The population
43 data to be used shall be the latest certified county and official
44 municipal estimates of population published by the Office of State

1 Planning. All monies remaining in this portion of the 40% Fund
2 on January 31 of each year will then be distributed to each of the
3 eligible PSAPs based on the population served by the PSAP.

4 (c) Sworn invoices shall be presented by CMRS providers in connection with any
5 request for reimbursement under this section. In no event shall any invoice for
6 reimbursement be approved for the payment of costs that are not related to
7 compliance with the wireless Enhanced 911 service requirements established by the
8 FCC Order and any rules and regulations which are or may be adopted by the FCC
9 pursuant to the FCC Order.

10 (d) In no event shall any invoice for reimbursement be approved for payment of
11 costs of any CMRS provider exceeding one hundred twenty-five percent (125%) of
12 the service charges remitted by such CMRS provider unless prior approval for such
13 expenditures is received from the Board. If the total amount of invoices submitted to
14 the Board and approved for payment exceeds the amount in the Wireless Fund in
15 any month, CMRS providers that have invoices approved for payment shall receive a
16 pro rata share of the Wireless Fund, based on the relative amount of their approved
17 invoices available that month, and the balance of the payments will be carried over to
18 the following month or months and shall include interest at the rate set out in G.S.
19 24-1 until all of the approved payments are made.

20 (e) In January of each year every participating PSAP will submit to the Board a
21 copy of its governing agency's approved budget detailing the PSAP's revenues and
22 expenditures associated with the operation of its wireless Enhanced 911 system.
23 PSAPs must comply with all requests by the Board for financial information related
24 to the operation of the wireless Enhanced 911 system.

25 (f) On February 15, 2000, and every two years thereafter the Board shall report to
26 the Joint Legislative Commission on Governmental Operations and the Revenue
27 Laws Study Committee. The report shall contain complete information regarding
28 receipts and expenditures of all funds received by the Board during the period
29 covered by the report as well as the status of wireless Enhanced 911 systems in North
30 Carolina at the time of the report. The first report shall cover the period from the
31 formation of the Board to December 31, 1999. Each succeeding report shall cover
32 the two year period of time from the ending date of the previous report.

33 **"§ 62B-6. Administrative fee.**

34 The Board shall be entitled to deduct a one percent (1%) administrative fee from
35 the total service charges remitted by the CMRS providers for its expenses.

36 **"§ 62B-7. Provision of services.**

37 In accordance with the FCC Order, no CMRS provider shall be required to
38 provide wireless Enhanced 911 service until such time as (i) the provider receives a
39 request for such service from the administrator of a PSAP that is capable of receiving
40 and utilizing the data elements associated with the service; (ii) funds are available
41 pursuant to G.S. 62B-4; and (iii) the local exchange carrier is able to support the
42 wireless Enhanced 911 system.

43 **"§ 62B-8. Audit.**

1 The State Auditor may perform audits pursuant to Article 5A of Chapter 147 of
2 the General Statutes to ensure that funds in the Wireless Fund are being managed in
3 accordance with the provisions of this Chapter and shall perform an audit at least
4 every two years. The State Auditor shall provide the audit to the Board when it
5 meets to consider adjusting the service charge pursuant to G.S. 62B-3. The cost of
6 audits shall be reimbursed to the State Auditor by the Board.

7 **"§ 62B-9. Customer records.**

8 Each CMRS provider shall provide its ten thousand number groups to the PSAPs
9 upon request. This information shall remain the property of the disclosing CMRS
10 provider and shall be used only in providing emergency response services to 911
11 calls. CMRS connection information obtained by PSAP personnel for public safety
12 purposes is not public information under Chapter 132 of the General Statutes. No
13 person shall disclose or use, for any purpose other than for the wireless 911 calling
14 system, information contained in the data base of the telephone network portion of a
15 wireless 911 calling system established pursuant to this Chapter.

16 **"§ 62B-10. Proprietary information.**

17 All proprietary information submitted to the Board or the State Auditor shall be
18 retained in confidence. Proprietary information submitted pursuant to this Chapter
19 shall not be subject to disclosure under Chapter 132 of the General Statutes, or
20 otherwise released to any person other than to the submitting CMRS provider, the
21 Board, and the independent, third-party auditor retained pursuant to G.S. 62B-6,
22 without the express permission of the submitting CMRS provider. Further,
23 proprietary information shall constitute trade secrets as defined by the North Carolina
24 Trade Secrets Protection Act, Article 24 of Chapter 66 of the General Statutes.
25 General information collected by the Board or the State Auditor shall be released or
26 published only in aggregate amounts that do not identify or allow identification of
27 numbers of subscribers or revenues attributable to an individual CMRS provider.

28 **"§ 62B-11. Limitation of liability.**

29 A CMRS provider, local exchange company, service supplier, or their employees,
30 directors, officers, or agents, except in cases of wanton or willful misconduct, shall
31 not be liable for any damages in a civil action resulting from death or injury to any
32 person or from damage to property incurred by any person in connection with
33 developing, adopting, implementing, maintaining, or operating any wireless 911
34 system or wireless Enhanced 911 system. This section shall not apply to actions
35 arising out of the operation or ownership of a motor vehicle.

36 **"§ 62B-12. Misuse of wireless 911 system; penalty.**

37 Wireless emergency telephone service shall be used solely for emergency
38 communications by the public. Any person who knowingly uses or attempts to use
39 wireless emergency telephone service or information for a purpose other than
40 obtaining public safety assistance, or who knowingly uses or attempts to use wireless
41 emergency telephone service in an effort to avoid any CMRS charges, is guilty of a
42 Class 3 misdemeanor. If the value of the CMRS charge or service obtained in a
43 manner prohibited by this section exceeds one hundred dollars (\$100.00), the person
44 is guilty of a Class 1 misdemeanor."

Section 2. G.S. 62A-10 reads as rewritten:

"§ 62A-10. Limitation of liability.

A service supplier, including any telephone company and its employees, directors, officers and agents, is not liable for any damages in a civil action for injuries, death, or loss to persons or property incurred by any person as a result of any act or omission of a service supplier or of any of its employees, directors, officers, or agents, except for willful or wanton misconduct, in connection with developing, adopting, implementing, maintaining, or operating any 911 system. This section shall not apply to actions arising out of the operation or ownership of a motor vehicle."

Section 3. Chapter 146 of the General Statutes is amended by adding a new section to read:

"§ 146-29.2. Lease provisions for communications towers.

The State may lease real property, or any interest in real property, for the purposes of construction and placement of communications towers on State land or for placement of antennas upon State-owned structures. The following additional requirements shall apply to such leases:

- (1) The lease shall require the lessee to permit other telecommunications carriers to co-locate on the communications tower on commercially reasonable terms between the lessee and the co-locating carrier until the communications tower reaches its capacity. Unless the State determines that co-location is not feasible at that location, the communications tower shall be designed and constructed to accommodate other carriers on the tower.
- (2) The State shall, in determining the location of lands to be leased for communications towers, encourage communications towers to be located near other communications towers to the extent technically desirable.
- (3) The State shall, when choosing a communications tower or antenna location, choose a location which minimizes the visual impact on surrounding landscape.

For purposes of this section, 'co-locate and co-location' mean the sharing of a communications tower by two or more services.

City and county ordinances apply to leases and rentals created under this section."

Section 4. G.S. 105-120 is amended by adding a new subsection to read:

"(c1) Enhanced 911 service charge. -- Gross receipts of an entity that provides local telecommunications service do not include wireless Enhanced 911 service charges imposed under G.S. 62B-3 and remitted to the Wireless Fund under G.S. 62B-4."

Section 5. G.S. 105-130.5(b) is amended by adding a new subdivision to read:

- "(17) The amount of wireless Enhanced 911 service charges collected under G.S. 62B-3 and remitted to the Wireless Fund under G.S. 62B-4."

1 Section 6. If any provision of this act or the application of this act to any
2 person or circumstance is held invalid, that invalidity shall not affect other provisions
3 or applications of this act that can be given effect without the invalid provision or
4 application, and to this end the provisions of this act are severable.

5 Section 7. Section 5 of this act is effective for taxable years beginning on
6 or after October 1, 1998. The remainder of this act is effective when it becomes law.



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July 29, 1998

MEMORANDUM

TO: House Committee on Commerce

FROM:  Steven Rose, Committee Counsel for Public Utilities

RE: Senate Bill 1242; Wireless 911 Telephone Service and Tower Act

Senate Bill 1242 establishes a system for charging cellular telephone users for enhanced 911 service and establishes a method of administering and distributing the funds collected. It also provides authority to the State to lease space on State land and buildings for the purpose of locating wireless telecommunications facilities.

Section 1 of the bill adds Chapter 62B to the General Statutes. G.S. 62B-2 creates a thirteen member Wireless 911 Board which will determine the service charge to be levied on cellular telephone users for wireless enhanced 911 service, aggregate the charges collected, and distribute them for purposes of paying for these systems. The Board consists of two members appointed by the Governor, one upon the recommendation of the League of Municipalities, and one upon the recommendation of the Association of County Commissioners; five members appointed by the Speaker, a sheriff, three representing CMRS (Commercial Mobile Radio Service) providers and one representing the North Carolina Chapter of the Association of Public Safety Communications Officials; five appointed by the President Pro Tempore, a chief of police, two representing CMRS providers, one representing local exchange carriers, and one representing the North Carolina Chapter of the National Emergency Number Association. The Chair of the Board is the Secretary of Commerce, or the Secretary's designee. Terms are four years and limited to two successive terms.

Under G.S. 62B-3, the initial rate authorized is 80 cents per month. This may be adjusted every two years but may not exceed \$1.25 per month.

Under G.S. 62B-4, the CMRS providers collect the monthly fee from their customers and may deduct one percent for administrative expenses. Funds are deposited with the State Treasurer.

Use of the funds is restricted under G.S. 62B-5. Sixty percent may be used to reimburse cellular service providers for complying with wireless 911 requirements established by FCC

order, including design, upgrade, purchasing, leasing, programming, installing, testing and maintaining of hardware and software components and data necessary to operate the system. Forty percent is distributed to the public safety answering points (PSAPs; the agencies that receive incoming 911 calls and make the dispatches). Half of that fund is distributed evenly among the PSAPs. Half is distributed pro rata, based on population served. The use of these funds is restricted to direct costs of establishing and maintaining a wireless enhanced 911 system. The Board may retain one percent of funds collected for administrative expenses.

G.S. 62B-5(e) requires each PSAP to report wireless 911 related income and expenses annually to the Board. G.S. 62B-5(f) requires the Board to make biennial reports to the Joint Legislative Commission on Governmental Operations and the Revenue Laws Study Committee.

G.S. 62B-8 gives the State Auditor authority to perform audits to ensure that funds are being managed in accordance with the provisions of the act. An audit must be performed at least every two years.

G.S. 62B-9 and 62B-10 protect customer records and proprietary information from public disclosure.

G.S. B-11 limits liability for personal injury and property damages. It does not apply to motor vehicle accidents.

Under G.S. 62B-12, misuse of a wireless 911 system or information will be a Class 3 misdemeanor, unless the value of the charge or service obtained exceeds \$100, in which case it is a Class 1 misdemeanor.

Section 2 amends G.S. 62A-10, which limits liability in connection with the supplying of services for a hard-wired 911 system. It adds a provision clarifying that G.S. 62A-10 does not apply to motor vehicle liability.

Section 3 of the bill amends Chapter 146 by adding a new section authorizing the State to enter into leases for location of telecommunications towers on State real property and for placement of antennas upon state structures. Lessees must permit other carriers to co-locate on communications towers under contracts between the leasee and the co-locating carrier and, unless the State determines co-location to be infeasible, towers must be constructed to accommodate other carriers. The State is to encourage towers to be located near each other and must choose locations which minimize the visual impact on surrounding landscape. City and county ordinances will apply to such leases.

Sections 4 and 5 provide that the wireless 911 service charge is not subject to gross receipts taxes or state income taxes.

The act is effective when it becomes law, except the tax portions which are effective for taxable years beginning on or after October 1, 1998.

House Committee on Commerce

Tuesday
October 27, 1998
House Floor Seat 16
Following Session

Representative David Miner, Chairman

Chairman Miner called the Committee to order around his desk on the House floor at 5:00pm. It was ruled that a quorum was present. A motion was made to postpone indefinitely the following bills:

H	343	Raise Minimum Wage
H	467	Tax on Bank Fee Receipts
H	598	Require Work Breaks
H	916	Prohibit ATM Surcharge

The motion passed. The Committee adjourned at 5:05pm.

David Miner, Chairman

Susan D. Phillips, Committee Clerk

**1998 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Miner, Berry, Tallent, Hiatt, Church** for the Committee on
COMMERCE.

- ☐ Committee Substitute for
H.B. 343 A BILL TO BE ENTITLED AN ACT TO RAISE THE STATE MINIMUM
WAGE IN ORDER TO INDEX IT TO INFLATION SINCE IT WAS LAST RAISED.
- ☐ With a favorable report.
- ☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐
- ☐ With a favorable report, as amended.
- ☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on ☐ Appropriations ☐ Finance ☐
- ☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title,
unfavorable as to original bill (Committee Substitute Bill #), (and recommendation
that the committee substitute bill #) be re-referred to the Committee on .)
- ☐ With a favorable report as to House committee substitute bill (#), ☐ which changes
the title, unfavorable as to Senate committee substitute bill.
- ☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.
(PUBLIC BILLS ONLY)
- ☐ With an unfavorable report.
- ☐ With recommendation that the House concur.
- ☐ With recommendation that the House do not concur.
- ☐ With recommendation that the House do not concur; request conferees.
- ☐ With recommendation that the House concur; committee believes bill to be material.
- ☐ With an unfavorable report, with a Minority Report attached.
- ☐ Without prejudice.
- ☒ With an indefinite postponement report.
- ☐ With an indefinite postponement report, with a Minority Report attached.
- ☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

3/25/98

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 343

Short Title: Raise Minimum Wage.

(Public)

Sponsors: Representatives Adams; Alexander, Cunningham, Earle, Easterling, Fitch, Goodwin, Hardaway, Hensley, R. Hunter, Jarrell, Jeffus, Luebke, McAllister, McCrary, Michaux, Mosley, Redwine, and Wainwright.

Referred to: Commerce.

February 26, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO RAISE THE STATE MINIMUM WAGE IN ORDER TO INDEX IT
3 TO INFLATION SINCE IT WAS LAST RAISED.
4 The General Assembly of North Carolina enacts:
5 Section 1. G.S. 95-25.3(a) reads as rewritten:
6 "(a) Every employer shall pay to each employee who in any workweek performs
7 any work, wages of at least three dollars and eighty cents (\$3.80) per hour effective
8 January 1, 1992, and ~~four dollars and twenty-five cents (\$4.25)~~ five dollars and fifteen
9 cents (\$5.15) per hour effective ~~January 1, 1993,~~ October 1, 1997, except as otherwise
10 provided in this section."
11 Section 2. This act is effective when it becomes law.

**1998 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Miner, Berry, Tallent, Hiatt, Church** for the Committee on
COMMERCE.

☐ Committee Substitute for
H.B. H 467 A BILL TO BE ENTITLED AN ACT TO LEVY A PRIVILEGE LICENSE
TAX ON THE GROSS RECEIPTS OF FINANCIAL INSTITUTIONS FROM FEES THEY
CHARGE THEIR CUSTOMERS

- ☐ With a favorable report.
- ☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐
- ☐ With a favorable report, as amended.
- ☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on ☐ Appropriations ☐ Finance ☐
- ☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title,
unfavorable as to original bill (Committee Substitute Bill #), (and recommendation
that the committee substitute bill #) be re-referred to the Committee on .)
- ☐ With a favorable report as to House committee substitute bill (#), ☐ which changes
the title, unfavorable as to Senate committee substitute bill.
- ☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.
(PUBLIC BILLS ONLY)
- ☐ With an unfavorable report.
- ☐ With recommendation that the House concur.
- ☐ With recommendation that the House do not concur.
- ☐ With recommendation that the House do not concur; request conferees.
- ☐ With recommendation that the House concur; committee believes bill to be material.
- ☒ With an unfavorable report, with a Minority Report attached.
- ☐ Without prejudice.
- ☐ With an indefinite postponement report.
- ☐ With an indefinite postponement report, with a Minority Report attached.
- ☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 467

Short Title: Tax on Bank Fee Receipts.

(Public)

Sponsors: Representative Gamble.

Referred to: Commerce, if favorable, Finance.

March 10, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO LEVY A PRIVILEGE LICENSE TAX ON THE GROSS RECEIPTS
3 OF FINANCIAL INSTITUTIONS FROM FEES THEY CHARGE THEIR
4 CUSTOMERS.

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 105-102.3 reads as rewritten:

7 "**§ 105-102.3. ~~Banks.~~ Banks and financial institutions.**

8 (a) Definitions. -- The following definitions apply in this section:

9 (1) Bank. -- A ~~There is hereby imposed upon every~~ bank or banking
10 association, including ~~each~~ a national banking association, that is
11 operating in this State as a commercial bank, an industrial bank, a
12 savings bank created other than under Chapter 54B of the General
13 Statutes or the Home Owners' Loan Act of 1933 (12 U.S.C. §§
14 1461-68), a trust company, or any combination of such facilities or
15 services, ~~and whether such bank or banking association, hereinafter~~
16 ~~to be referred to as a bank or banks, be~~ whether the bank is
17 organized, under the laws of the United States or the laws of North
18 Carolina, in the corporate form or in some other form of business
19 ~~organization, organization.~~

20 (2) Financial institution. -- An organization that receives, solicits, or
21 accepts money or its equivalent on deposit as a business.

22 (3) Other fees and charges. -- Charges imposed by a financial
23 institution on its customers as a fee or penalty for account
24 maintenance, services, transactions, an overdrawn account or

1 insufficient funds, depositing a bad check, failure to maintain a
2 minimum balance, late loan payments, use of an automated teller
3 machine, use of a teller, copying, providing duplicate records, or
4 another similar service.

5 **(b) Tax on Assets.** -- There is levied on every bank an annual privilege tax in the
6 amount of thirty dollars (\$30.00) for each one million dollars (\$1,000,000) or
7 fractional part thereof of total assets ~~held as hereinafter provided.~~ held. The assets
8 upon which the tax is levied shall be determined by averaging the total assets shown
9 in the four quarterly call reports of condition (consolidating domestic subsidiaries) for
10 the preceding calendar year as required by bank regulatory ~~authorities; provided,~~
11 ~~however, where~~ authorities. If a new bank commences operations within the State
12 there shall be levied and paid an annual privilege tax of one hundred dollars
13 (\$100.00) until ~~such bank shall have~~ the bank has made four quarterly call reports of
14 condition (consolidating domestic subsidiaries) for a single calendar year; ~~provided~~
15 ~~further, however, where~~ year. If a bank operates an international banking facility, as
16 defined in G.S. 105-130.5(b)(13), the assets upon which the tax is levied shall be
17 reduced by the average amount for the taxable year of all assets of the international
18 banking facility which are employed outside the United States, as computed pursuant
19 to G.S. 105-130.5(b)(13)c. For an out-of-state bank with one or more branches in this
20 State, or for an in-state bank with one or more branches outside this State, the assets
21 of the out-of-state bank or of the in-state bank upon which the tax is levied shall be
22 reduced by the average amount for the taxable year of all assets of the out-of-state
23 bank or of the in-state bank which are employed outside this State.

24 **(c) Tax on Receipts from Other Fees and Charges.** -- There is levied on every
25 financial institution engaged in business in this State a privilege license tax of one
26 percent (1%) of the institution's gross receipts from other fees and charges. The tax
27 is payable quarterly no later than the twentieth day of January, April, July, and
28 October of each year on the institution's receipts for the preceding calendar quarter.

29 **(d) No Local Tax.** -- The ~~tax~~ taxes imposed ~~hereunder shall be in this section~~ are
30 for the privilege of carrying on the businesses herein defined defined in this section
31 on a statewide basis regardless of the number of places or locations of business within
32 the State. ~~Counties, cities and towns~~ Counties and municipalities shall not levy a
33 license or privilege tax on the businesses taxed under this section, nor on the business
34 of an international banking facility as defined in subsection (b)(13) of G.S. 105-
35 130.5."

36 Section 2. This act becomes effective July 1, 1997, and applies to gross
37 receipts earned on or after that date.

1998 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Miner, Berry, Tallent, Hiatt, Church** for the Committee on
COMMERCE.

☐ Committee Substitute for

H.B. H598 A BILL TO BE ENTITLED AN ACT REQUIRING CERTAIN EMPLOYERS
TO PROVIDE MEAL AND REST PERIODS DURING WORKING HOURS UNDER
CERTAIN CIRCUMSTANCES.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on ☐ Appropriations ☐ Finance ☐

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title,
unfavorable as to original bill (Committee Substitute Bill #), (and recommendation
that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes
the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.
(PUBLIC BILLS ONLY)

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☒ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

3/25/98

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 598

Short Title: Require Work Breaks.

(Public)

Sponsors: Representatives Adams, Jeffus; Alexander, Boyd-McIntyre, Cunningham, Earle, Fitch, Jarrell, Kinney, McAllister, Oldham, Sutton, Wainwright, Womble, and Yongue.

Referred to: Commerce.

March 25, 1997

1 A BILL TO BE ENTITLED
2 AN ACT REQUIRING CERTAIN EMPLOYERS TO PROVIDE MEAL AND
3 REST PERIODS DURING WORKING HOURS UNDER CERTAIN
4 CIRCUMSTANCES.

5 The General Assembly of North Carolina enacts:

6 Section 1. Article 2A of Chapter 95 of the General Statutes is amended
7 by adding the following new section to read:

8 "**§ 95-25.4A. Meal and rest periods required; scope; exemptions.**

9 (a) Except as otherwise provided in this section, every employer shall permit
10 employees who work for a period of five consecutive hours or more to have a meal
11 period of at least one-half hour.

12 (b) Every employer shall permit employees to take rest periods which, insofar as
13 practicable, shall be in the middle of each work period. The duration of the rest
14 period shall be based on the total hours worked daily at the rate of 10 minutes for
15 each five hours or major fraction thereof. Rest periods need not be permitted for
16 employees whose total daily work time is less than three and one-half hours.
17 Authorized rest periods shall be counted as hours worked, for which there shall be
18 no deduction from wages.

19 (c) This section does not apply to the following:

20 (1) Situations where only one person is employed at a particular place
21 of business; and

1 (2) Employees included within the provisions of a collective
2 bargaining agreement.

3 (d) The Commissioner shall adopt rules to implement this section. The rules shall
4 include exemptions from the requirements of this section, as follows:

5 (1) When an employer makes a written request for an exemption and
6 the Commissioner finds from evidence submitted by the employer
7 that business necessity precludes providing the meal and rest
8 period requirements of this section, then the exemption shall be
9 granted.

10 (2) Upon the Commissioner's own initiative or upon written request
11 and hearing of an association of employers, exemptions shall be
12 granted for a defined category of employers from providing to all
13 or to one or more defined categories of employees one or more of
14 the benefits conferred by this section if the Commissioner finds
15 that business necessity precludes providing the particular benefits
16 to the employees affected.

17 Exemptions granted under this subsection must be applied equally to male and
18 female employees. In order to demonstrate business necessity for obtaining an
19 exemption under this subsection, the employer must show that providing the meal or
20 rest period required under this section would substantially impair, disrupt, or
21 otherwise interfere with normal business operations."

22 Section 2. This act becomes effective January 1, 1998.

**1998 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Miner, Berry, Tallent, Hiatt, Church** for the Committee on
COMMERCE.

☐ Committee Substitute for

H.B. H 916 A BILL TO BE ENTITLED AN ACT TO PROHIBIT FINANCIAL
INSTITUTIONS FROM CHARGING CERTAIN FEES FOR THE USE OF AUTOMATED
TELLER MACHINES.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on ☐ Appropriations ☐ Finance ☐

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title,
unfavorable as to original bill (Committee Substitute Bill #), (and recommendation
that the committee substitute bill #) be re-referred to the Committee on)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes
the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.
(PUBLIC BILLS ONLY)

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☒ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

3/25/98

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 916*

Short Title: Prohibit ATM Surcharge.

(Public)

Sponsors: Representatives Hardaway; Bonner, Boyd-McIntyre, Braswell, Fitch, Gamble, Hensley, Hightower, Howard, H. Hunter, Kinney, Luebke, and Wainwright.

Referred to: Commerce, if favorable, Finance.

April 10, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO PROHIBIT FINANCIAL INSTITUTIONS FROM CHARGING
3 CERTAIN FEES FOR THE USE OF AUTOMATED TELLER MACHINES.
4 The General Assembly of North Carolina enacts:
5 Section 1. G.S. 53-62 is amended by adding a new subsection to read:
6 "(d2) A bank, savings and loan association, savings bank, credit union, or other
7 financial institution that owns, operates, or leases an off-premises terminal, device, or
8 machine authorized by subsection (d1) of this section shall not charge fees to
9 consumers for transactions conducted at the terminal, device, or machine when the
10 transactions are not related to or do not affect accounts held by the financial
11 institution. A violation of this subsection is an unfair and deceptive trade practice in
12 violation of G.S. 75-1.1."
13 Section 2. G.S. 54B-77(a)(1) reads as rewritten:
14 "(1) Establish off the premises of any principal office or branch a
15 customer communications terminal, point-of-sale terminal,
16 automated teller machine, automated or other direct or remote
17 information-processing device or ~~machine, whether manned or~~
18 ~~unmanned~~; machine through or by means of which funds or
19 information relating to any financial service or transaction
20 rendered to the public is stored and transmitted, instantaneously or
21 otherwise to or from an association terminal or terminals
22 controlled or used by or with other ~~parties~~; parties. The device or

1 machine may be manned or unmanned and the establishment and
2 use of such a device or machine shall not be deemed to constitute
3 a branch office and the capital requirements and standards for
4 approval of a branch office as set forth in the statutes and
5 regulations, rules and shall not be applicable to the establishment
6 of any ~~such~~ off-premises terminal, device or ~~machine, and~~
7 ~~associations~~ machine. Associations may through mutual consent
8 share on-premises unmanned automated teller machines and cash
9 dispensers. The Administrator may ~~prescribe~~ adopt rules and
10 ~~regulations~~ with regard to the application for permission for use,
11 maintenance and supervision of ~~said~~ terminals, devices and
12 ~~machines; machines, except that no association that owns, operates,~~
13 or leases an off-premises terminal, device, or machine may charge
14 a fee to consumers for transactions conducted at off-premises
15 terminals, devices, or machines when the transactions are not
16 related to or do not affect accounts held by the association and any
17 association that charges such a fee is in violation of the Unfair and
18 Deceptive Trade Practice Act, G.S. 75-1.1."

19 Section 3. G.S. 54C-146(a)(1) reads as rewritten:

20 "(1) Establish off the premises of any principal office or branch a
21 customer communications terminal, point of sale terminal,
22 automated teller machine, automated or other direct or remote
23 information processing device or machine, whether manned or
24 unmanned, through or by means of which funds or information
25 relating to any financial service or transaction rendered to the
26 public is stored and transmitted, instantaneously or otherwise to or
27 from a savings bank terminal or terminals controlled or used by or
28 with other parties. The establishment and use of a device or
29 machine is not deemed to constitute a branch office, and the
30 capital requirements and standards for approval of a branch office
31 as set forth in the statutes and regulations are not applicable to the
32 establishment of any off-premises terminal, device or machine.
33 Savings banks may, through mutual consent, share on-premises,
34 unmanned, automated teller machines and cash dispensers. No
35 savings bank that owns, operates, or leases an off-premises
36 terminal, device, or machine may charge a fee to consumers for
37 transactions conducted at off-premises terminals, devices, or
38 machines when the transactions are not related to or do not affect
39 accounts held by the bank and any bank that charges such a fee is
40 in violation of the Unfair and Deceptive Trade Practice Act, G.S.
41 75-1.1."

42 Section 4. G.S. 53-180 is amended by adding a new subsection to read:

43 "(k) A bank, savings and loan association, savings bank, credit union, or other
44 financial institution that owns, operates, or leases an off-premises terminal, device, or

1 machine authorized by G.S. 53-62, 54B-77, or 54C-146 shall not charge fees to
2 consumers for transactions conducted at the terminal, device, or machine when the
3 transactions are not related to or do not affect accounts held by the financial
4 institution. A violation of this subsection is an unfair and deceptive trade practice in
5 violation of G.S. 75-1.1."

6 Section 5. This act becomes effective October 1, 1997.

MINUTES

HOUSE COMMITTEE ON COMMERCE

August 12, 1998

10:00 AM

DAVID MINER, CHAIRMAN

MEMBERS PRESENT

Cherie Berry, Co-Chair, William Hiatt, Co-Chair, Martha Alexander, Gordon Allen, Rex Baker, Donald Bonner, Joanne Bowie, Flossie Boyd-McIntyre, Robert Brawley, Annette Bryant, Lanier Cansler, Bill Culpepper, Donald Davis, Stan Fox, Bobby Hall, Dewey Hill, John Hurley, Bill Ives, Larry Justus, Danny McComas, Eugene McCombs, Paul McCrary, Edwin McMahan, Mia Morris, Charles Neely, John Nichols, Edd Nye, Jean Preston, Liston Ramsey, John Rayfield, David Redwine, Dennis Reynolds, Gene Rogers, Drew Sanders, Wilma Sherrill, Ronald Smith, Edgar Starnes, Gregg Thompson, Cynthia Watson, Gene Wilson, Larry Womble, Thomas Wright.

The House Committee on Commerce meet at 10:00 am on Wednesday, July 15, 1998, in Room 643 of the Legislative Office Building with Chairman David Miner presiding.

Chairman Miner called the meeting to order and the following bills were discussed:

Senate Bill 1135 A BILL TO IMPLEMENT A RECOMMENDATION OF THE JOINT LEGISLATIVE UTILITY REVIEW COMMITTEE TO ALLOW SHARED TENANT PROVIDERS TO OBTAIN LINE ACCESS FROM ANY CERTIFIED LOCAL PROVIDER OF TELEPHONE SERVICE. Sen. Hoyle explained the bill. As there was no opposition to the bill, Rep. McMahan moved that the bill be given a favorable report. The bill received a favorable report.

Senate Bill 801 A BILL TO BE ENTITLED AN ACT TO ESTABLISH THE NORTH CAROLINA PLANNED COMMUNITY ACT. Sen. Wellons explained a proposed House Committee Substitute. Mr. Bill Scoggins, North Carolina Bar Association, addressed the Committee and answered some legal questions. Rep. Smith moved for a favorable report on the Committee Substitute. Mr. Mike Carpenter, with the NC Homebuilders Association, voiced their support of the Committee Substitute. Ms. Stephanie Mansur, with the NC Realtors, voiced their support of the Committee Substitute. The House Committee Substitute was given a favorable report, the original bill an unfavorable report.

Senate Bill 872, A BILL TO BE ENTITLED AN ACT TO ALLOW TEENAGERS WHO ARE FOURTEEN OR FIFTEEN YEARS OLD TO WORK AT CERTAIN PLACES THAT SELL ALCOHOLIC BEVERAGES. Rep. Neely reported the work of the subcommittee formed to work on this bill. Rep. Neely moved for acceptance of a proposed Committee Substitute for consideration. Mr. Bill Gilkeson, Committee Counsel, answered legal questions. Ms. Anne Fulton, general counsel to the ABC Commission, answered legal questions. Rep. McMahan moved for a favorable report on the Committee Substitute. The House Committee Substitute received an unfavorable report by the vote of 18 to 22. Rep. Nichols moved that HB 872 be given an unfavorable report. HB 872 was also given an unfavorable report.

The Committee was adjourned at 10:50.

David Miner, Chairman

Susan D. Phillips, Committee Clerk

VISITOR REGISTRATION SHEET

COMMERCE

August 12, 1998

Name of Committee

Date _____

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME _____

FIRM OR AGENCY AND ADDRESS[illegible]

**1998 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Miner, Berry, Tallent, Hiatt, Church** for the Committee on
COMMERCE.

☐ Committee Substitute for

S.B. 1135 A BILL TO BE ENTITLED AN ACT TO IMPLEMENT A
RECOMMENDATION OF THE JOINT LEGISLATIVE UTILITY REVIEW COMMITTEE
TO ALLOW SHARED TENANT PROVIDERS TO OBTAIN LINE ACCESS FROM ANY
CERTIFICATED LOCAL PROVIDER OF TELEPHONE SERVICE AND TO ALLOW
FLAT RATE ACCESS LINES TO PREMISES PROVIDING ACCOMMODATIONS TO
TRANSIENT PATRONS.

☒ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on ☐ Appropriations ☐ Finance ☐

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title,
unfavorable as to original bill (Committee Substitute Bill #), (and recommendation
that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes
the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.
(PUBLIC BILLS ONLY)

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

2

SENATE BILL 1135*
Commerce Committee Substitute Adopted 7/29/98

Short Title: Telephone Line Access.

(Public)

Sponsors:

Referred to:

May 13, 1998

1 A BILL TO BE ENTITLED

2 AN ACT TO IMPLEMENT A RECOMMENDATION OF THE JOINT
3 LEGISLATIVE UTILITY REVIEW COMMITTEE TO ALLOW SHARED
4 TENANT PROVIDERS TO OBTAIN LINE ACCESS FROM ANY
5 CERTIFICATED LOCAL PROVIDER OF TELEPHONE SERVICE AND TO
6 ALLOW FLAT RATE ACCESS LINES TO PREMISES PROVIDING
7 ACCOMMODATIONS TO TRANSIENT PATRONS.

8 The General Assembly of North Carolina enacts:

9 Section 1. G.S. 62-110(d) reads as rewritten:

10 "(d) The Commission shall be authorized, consistent with the public interest and
11 notwithstanding any other provision of law, to adopt procedures for the purpose of
12 allowing shared use and/or resale of any telephone service provided to persons who
13 occupy the same contiguous premises (as such term shall be defined by the
14 Commission); provided, however, that there shall be no 'networking' of any services
15 authorized under this subsection whereby two or more premises where such services
16 are provided are connected, and provided further that ~~the certificated local exchange~~
17 ~~telephone company shall be the only provider of~~ any certificated local provider or
18 any other provider authorized by the Commission may provide access lines or trunks
19 connecting such authorized service to the telephone network, and that the local
20 service rates permitted or approved by the Commission for local exchange lines or
21 trunks being shared or resold shall be ~~fully compensatory and~~ on a measured usage
22 basis where facilities are available or on a message rate basis otherwise. Provided
23 however, the Commission may permit or approve ~~rates on bases other than measured~~

1 ~~or message for shared service flat rates, measured rates, message rates, or some~~
2 ~~combination of those rates for shared or resold services~~ whenever the service is
3 offered to patrons of hotels or motels, occupants of timeshare or condominium
4 complexes serving primarily transient occupants, to patrons of hospitals, nursing
5 homes, rest homes, or licensed retirement centers, or to members of clubs or students
6 living in quarters furnished by educational institutions, or to persons temporarily
7 subleasing a residential ~~premise~~ premises. The Commission shall issue rules to
8 implement the service authorized by this subsection, considering the competitive
9 nature of the offerings and, notwithstanding any other provision of law, the
10 Commission shall determine the extent to which such services shall be regulated and,
11 to the extent necessary to protect the public interest, regulate the terms, conditions,
12 and rates charged for such services and the terms and conditions for interconnection
13 to the local exchange network. The Commission shall require any person offering
14 telephone service under this subsection by means of a Private Branch Exchange
15 ('PBX') or key system to secure adequate local exchange trunks from ~~the local~~
16 ~~exchange telephone company~~ any certificated local provider or any other provider
17 authorized by the Commission so as to assure a quality of service equal to the quality
18 of service generally found acceptable by the Commission. Unless otherwise ordered
19 by the Commission for good cause shown by the company, the right and obligation of
20 the local exchange carrier certificated local provider or any other provider authorized
21 by the Commission to provide local service directly to any person located within its
22 certificated service area shall continue to apply to premises where shared or resold
23 telephone service is available, provided however, the Commission shall be authorized
24 to establish the terms and conditions under which such services should be provided."

25 Section 2. G.S. 62-110(e) reads as rewritten:

26 "(e) Notwithstanding subsection (d) of this section, the Commission may authorize
27 any telephone services provided to a nonprofit college or university, and its affiliated
28 medical centers, which is qualified under Sections 501 and 170 of the United States
29 Internal Revenue Code of 1986 or which is a State-owned institution, to be shared or
30 resold by that institution on both contiguous campus premises owned or leased by the
31 institution and noncontiguous premises owned or leased exclusively by the institution,
32 provided these services are offered to students or guests housed in quarters furnished
33 by the institution, patrons of hospitals or medical centers of the institution, or persons
34 or businesses providing educational, research, professional, consulting, food, or other
35 support services directly to or for the institution, its students, or guests. The services
36 ~~of the certified local exchange telephone company, a certificated local provider or~~
37 any other provider authorized by the Commission, when provided to said colleges,
38 universities, and affiliated medical centers shall be rated in the same way as those
39 provided for shared service offered to patrons of hospitals, nursing homes, rest
40 homes, licensed retirement centers, members of clubs or students living in quarters
41 furnished by educational institutions as provided for in subsection (d) of this section.
42 The institutions regulated pursuant to this subsection shall not be prohibited from
43 electing optional services from the ~~certificated local exchange telephone company~~
44 certificated local provider or any other provider authorized by the Commission which

1 include measured or message rate services. There shall be no 'networking' of any
2 services authorized under this subsection whereby two or more different institutions
3 where such services are provided are interconnected. ~~The certified local exchange~~
4 ~~telephone company shall be the only provider of~~ Any certificated local provider or
5 any other provider authorized by the Commission may provide access lines or trunks
6 connecting such authorized services to the telephone network. The Commission shall
7 require such institutions to secure adequate local exchange trunks from the ~~certified~~
8 ~~local exchange telephone company~~ certificated local provider or any other provider
9 authorized by the Commission to assure a quality of service equal to the quality of
10 service generally found acceptable by the Commission. Unless otherwise ordered by
11 the Commission for good cause shown by the ~~certified local exchange telephone~~
12 ~~company~~, certificated local provider or any other provider authorized by the
13 Commission, the right and obligation of ~~the local exchange company~~ that provider to
14 provide local service directly to any person located within its certificated service area
15 shall continue to apply to premises where shared or resold telephone service is
16 available under this subsection, provided however, the Commission shall be
17 authorized to establish the terms and conditions under which such service should be
18 provided. The Commission shall ~~issued~~ issue rules to implement the services
19 authorized by this subsection."

20 Section 3. This act is effective when it becomes law.



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August 12, 1998

MEMORANDUM

TO: House Committee on Commerce

FROM: Steven Rose, Committee Counsel for Public Utilities

RE: Senate Bill 1135; Telephone Line Access

Senate Bill 1135 was recommended by the Joint Legislative Utility Review Committee at the request of the Utilities Commission and the Public Staff. The bill amends G.S. 62-110(d) and (e), which provide for shared tenant telephone service. The current statutes require that the access lines for shared tenant services may only be provided by the certified local exchange telephone company. However, under the provisions of the Telecommunication Act of 1996 and Chapter 27 of the 1995 Session Laws, there may be more than a single provider authorized to provide the access lines. The changes allow for this occurrence. The changes also remove the requirement that the access lines be sold on a fully compensatory basis. That terminology would be useful only in a ratemaking environment restricted to rate base ratemaking.

Senate Bill 1135 also adds a provision permitting establishments catering to transient patrons (hotels, etc.) to obtain access lines on a flat rate basis.

The act is effective when it becomes law.

H1258-SMRL-001

**1998 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Miner, Berry, Tallent, Hiatt, Church** for the Committee on
COMMERCE.

☐ Committee Substitute for

S.B. 801 A BILL TO BE ENTITLED AN ACT TO ESTABLISH THE NORTH
CAROLINA PLANNED COMMUNITY ACT.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on ☐ Appropriations ☐ Finance ☐

x With a favorable report as to committee substitute bill (#), ~~☐ which changes the title,~~
unfavorable as to original bill (~~Committee Substitute Bill #~~), ~~(and recommendation~~
~~that the committee substitute bill #~~) ~~be re-referred to the Committee on~~.)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes
the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.
(PUBLIC BILLS ONLY)

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

3/25/98

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 801

Short Title: N.C. Planned Community Act.

(Public)

Sponsors: Senators Wellons; Hartsell and Miller.

Referred to: Commerce.

April 10, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH THE NORTH CAROLINA PLANNED COMMUNITY
3 ACT.

4 The General Assembly of North Carolina enacts:

5 Section 1. The General Statutes are amended by adding a new Chapter
6 to read:

7 "Chapter 47E.
8 "North Carolina Planned Community Act.
9 "ARTICLE 1.
10 "General Provisions.

11 "§ 47E-1-101. Short title.

12 This act shall be known and may be cited as the North Carolina Planned
13 Community Act.

14 "§ 47E-1-102. Applicability.

15 (a) This act applies to all planned communities created within this State on or
16 after October 1, 1997.

17 (b) This act does not apply to a planned community created within this State on
18 or after October 1, 1997:

19 (1) Which contains no more than 12 lots (including all lots which may
20 be added or created by the exercise of development rights) unless
21 the declaration provides or is amended as permitted in subsection
22 (e) of this section to provide that this act does apply to that
23 planned community; or

(2) In which all lots are restricted exclusively to nonresidential purposes and the declaration provides that this act does not apply to that planned community.

(c) Except as provided in subsection (d) of this section, G.S. 47E-1-106 (Applicability of local ordinances, regulations, and building codes), G.S. 47E-1-107 (Eminent domain), G.S. 47E-2-103 (Construction and validity of declaration and bylaws), G.S. 47E-2-104 (Description of lots), G.S. 47E-3-102(a)(1) through (6) and (11) through (17) (Powers of owners' association), G.S. 47E-3-107 (Upkeep of planned community; responsibility and assessments for damages), G.S. 47E-3-107A (Procedures for fines and suspension of planned community privileges or services), G.S. 47E-3-111 (Tort and contract liability), G.S. 47E-3-112 (Conveyance or encumbrance of common elements), G.S. 47E-3-115 (Assessments for common expenses), G.S. 47E-3-116 (Lien for assessments), G.S. 47E-3-118 (Association records), and G.S. 47E-4-117 (Effect of violation on rights of action; attorneys' fees) apply to all planned communities created in this State before October 1, 1997. These sections apply only with respect to events and circumstances occurring on or after October 1, 1997, and do not invalidate existing provisions of the declaration, bylaws, or plats and plans of those planned communities. G.S. 47E-1-103 (Definitions) applies to all planned communities created in this State before October 1, 1997, to the extent necessary in construing any of the preceding sections.

(d) A planned community created within this State before October 1, 1997, which contains no more than 12 lots (including all lots which may be added or created by the exercise of development rights) shall not be subject to this act.

(e) Notwithstanding the provisions of subsections (c) and (d) of this section, the declaration of any planned community created before October 1, 1997, may be amended to provide that this entire act does apply to that planned community. Such an amendment may be made under the provision of this act specifying procedures and requirements for amendment of declarations. To the extent the procedures and requirements for amendment in the declaration conflict with the provisions of this act, this act shall control.

(f) This act does not apply to planned communities or lots located outside this State.

"§ 47E-1-103. Definitions.

In the declaration and bylaws, unless specifically provided otherwise or the context otherwise requires, and in this act:

(1) 'Affiliate of a declarant' means any person who controls, is controlled by, or is under common control with a declarant. A person 'controls' a declarant if the person (i) is a general partner, officer, director, or employer of the declarant; (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent (20%) of the voting interest in the declarant; (iii) controls in any manner the election of a majority of the directors of the declarant;

1 or (iv) has contributed more than twenty percent (20%) of the
2 capital of the declarant. A person 'is controlled by' a declarant if
3 the declarant (i) is a general partner, officer, director, or employer
4 of the person; (ii) directly or indirectly or acting in concert with
5 one or more other persons, or through one or more subsidiaries,
6 owns, controls, holds with power to vote, or holds proxies
7 representing, more than twenty percent (20%) of the voting
8 interest in the person; (iii) controls in any manner the election of a
9 majority of the directors of the person; or (iv) has contributed
10 more than twenty percent (20%) of the capital of the person.
11 Control does not exist if the powers described in this subdivision
12 are held solely as security for an obligation and are not exercised.

13 (2) 'Allocated interests' means the common expense liability and votes
14 in the association allocated to each lot.

15 (3) 'Association' or 'owners' association' means the association
16 organized under G.S. 47E-3-101.

17 (4) 'Common elements' means any real estate within a planned
18 community owned or leased by the association, other than a lot.

19 (5) 'Common expenses' means expenditures made by or financial
20 liabilities of the association, together with any allocations to
21 reserves.

22 (6) 'Common expense liability' means the liability for common
23 expenses allocated to each lot pursuant to G.S. 47E-2-107.

24 (7) 'Condominium' means real estate, portions of which are
25 designated for separate ownership and the remainder of which is
26 designated for common ownership solely by the owners of those
27 portions. Real estate is not a condominium unless the undivided
28 interests in the common elements are vested in the unit owners.

29 (8) 'Cooperative' means real estate owned by a corporation, trust,
30 trustee, partnership, or unincorporated association, where the
31 governing instruments of that organization provide that each of the
32 organization's members, partners, stockholders, or beneficiaries is
33 entitled to exclusive occupancy of a designated portion of that real
34 estate.

35 (9) 'Declarant' means any person or group of persons acting in concert
36 who (i) as part of a common promotional plan, offers to dispose of
37 his or its interest in a lot not previously disposed of, or (ii) reserves
38 or succeeds to any special declarant right.

39 (10) 'Declaration' means any instruments, however denominated, that
40 create a planned community and any amendments to those
41 instruments.

42 (11) 'Development rights' means any right or combination of rights
43 reserved by a declarant in the declaration (i) to add real estate to a
44 planned community; (ii) to create lots, common elements, or

- 1 limited common elements within a planned community; (iii) to
2 subdivide lots or convert lots into common elements; or (iv) to
3 withdraw real estate from a planned community.
- 4 (12) 'Dispose' or 'disposition' means a voluntary transfer to a purchaser
5 of any legal or equitable interest in a lot, but does not include the
6 transfer or release of a security interest.
- 7 (13) 'Executive board' means the body, regardless of name, designated
8 in the declaration to act on behalf of the association.
- 9 (14) 'Identifying number' means a symbol that identifies only one lot in
10 a planned community.
- 11 (15) 'Initial seller' means the declarant, an affiliate of the declarant or
12 any person or entity that acquires a lot for any purpose other than
13 to use the lot for residential purposes.
- 14 (16) 'Leasehold planned community' means a planned community in
15 which all or a portion of the real estate is subject to a lease, the
16 expiration or termination of which will terminate the planned
17 community or reduce its size.
- 18 (17) 'Lessee' means the party entitled to present possession of a leased
19 lot whether lessee, sublessee, or assignee.
- 20 (18) 'Limited common element' means a portion of the common
21 elements allocated by the declaration or by operation of G.S. 47E-
22 2-104(b)(2) for the exclusive use of one or more but fewer than all
23 of the lots.
- 24 (19) 'Lot' means a physical portion of the planned community
25 designated for separate ownership or occupancy, the boundaries of
26 which are described pursuant to G.S. 47E-2-105(a)(3).
- 27 (20) 'Lot owner' means a declarant or other person who owns a lot, or
28 a lessee of a lot in a leasehold planned community whose lease
29 expires simultaneously with any lease the expiration or termination
30 of which will remove the lot from the planned community, but
31 does not include a person having an interest in a lot solely as
32 security for an obligation.
- 33 (21) 'Master association' means an organization described in G.S. 47E-
34 2-120, whether or not it is also an association described in G.S.
35 47E-3-101.
- 36 (22) 'Person' means a natural person, corporation, business trust, estate,
37 trust, partnership, association, joint venture, government,
38 governmental subdivision or agency, or other legal or commercial
39 entity.
- 40 (23) 'Planned community' means real estate with respect to which any
41 person, by virtue of his ownership of a lot, is expressly obligated by
42 a declaration to pay real property taxes, insurance premiums, or
43 other expenses to maintain, improve, or benefit other lots or other
44 real estate described in the declaration. For purposes of this act,

1 neither a cooperative nor a condominium is a planned community,
2 but real estate comprising a condominium or cooperative may be
3 part of a planned community. 'Ownership of a lot' does not
4 include holding a leasehold interest of less than 20 years in a lot,
5 including renewal options.

6 (24) 'Purchaser' means any person, other than a declarant or a person
7 in the business of selling real estate for his own account, who by
8 means of a voluntary transfer acquires a legal or equitable interest
9 in a lot, other than (i) a leasehold interest (including renewal
10 options) of less than 20 years, or (ii) as security for an obligation.

11 (25) 'Reasonable attorneys' fees' means attorneys' fees actually incurred
12 without regard to any limitations on attorneys' fees which may be
13 included in other statutes.

14 (26) 'Real estate' means any leasehold or other estate or interest in,
15 over, or under land, including structures, fixtures, and other
16 improvements and interests which by custom, usage, or law pass
17 with a conveyance of land though not described in the contract of
18 sale or instrument of conveyance. 'Real estate' includes parcels
19 with or without upper or lower boundaries, and spaces that may be
20 filled with air or water.

21 (27) 'Residential purposes' means use for dwelling or recreational
22 purposes, or both.

23 (28) 'Special declarant rights' means rights reserved for the benefit of a
24 declarant (i) to complete improvements indicated on plats and
25 plans filed with the declaration (G.S. 47E-2-109); (ii) to exercise
26 any development right (G.S. 47E-2-110); (iii) to maintain sales
27 offices, management offices, signs advertising the planned
28 community, and models (G.S. 47E-2-115); (iv) to use easements
29 through the common elements for the purpose of making
30 improvements within the planned community or within real estate
31 which may be added to the planned community (G.S. 47E-2-116);
32 (v) to make the planned community part of a larger planned
33 community or group of planned communities (G.S. 47E-2-121); (vi)
34 to make the planned community subject to a master association
35 (G.S. 47E-2-120); or (vii) to appoint or remove any officer or
36 executive board member of the association or any master
37 association during any period of declarant control (G.S. 47E-3-
38 103(d)).

39 (29) 'Time share' means a time share as defined in Chapter 93A of the
40 General Statutes.

41 "§ 47E-1-104. Variation.

42 (a) Except as specifically provided in specific sections of this Chapter, the
43 provisions of this Chapter may not be varied by the declaration or bylaws.

1 **(b) The provisions of this Chapter may not be varied by agreement; however, after**
2 **breach of a provision of this Chapter, rights created hereunder may be knowingly**
3 **waived in writing.**

4 **(c) Notwithstanding any of the provisions of this Chapter, a declarant may not act**
5 **under a power of attorney or proxy or use any other device to evade the limitations**
6 **or prohibitions of this Chapter, the declaration, or the bylaws.**

7 **"§ 47E-1-105: Reserved.**

8 **"§ 47E-1-106. Applicability of local ordinances, regulations, and building codes.**

9 **A zoning, subdivision, or building code or other real estate use law, ordinance, or**
10 **regulation may not prohibit a planned community or impose any requirement upon a**
11 **planned community which it would not impose upon a substantially similar**
12 **development under a different form of ownership or administration. Otherwise, no**
13 **provision of this Chapter invalidates or modifies any provision of any zoning,**
14 **subdivision, or building code or any other real estate use law, ordinance, or**
15 **regulation. No local ordinance or regulation may require the recordation of a**
16 **declaration prior to the date required by this Chapter.**

17 **"§ 47E-1-107. Eminent domain.**

18 **(a) If a lot is acquired by eminent domain, or if part of a lot is acquired by**
19 **eminent domain leaving the lot owner with a remnant which may not practically or**
20 **lawfully be used for any purpose permitted by the declaration, the award shall**
21 **compensate the lot owner for his lot and its interest in the common element. Upon**
22 **acquisition, unless the decree otherwise provides, the lot's allocated interests are**
23 **automatically reallocated to the remaining lots in proportion to the respective**
24 **allocated interests of those lots before the taking, exclusive of the lot taken.**

25 **(b) Except as provided in subsection (a) of this section, if part of a lot is acquired**
26 **by eminent domain, the award shall compensate the lot owner for the reduction in**
27 **value of the lot. Upon acquisition, unless the decree otherwise provides, (i) that lot's**
28 **allocated interests are reduced in proportion to the reduction in the size of the lot, or**
29 **on any other basis specified in the declaration, and (ii) the portion of the allocated**
30 **interests divested from the partially acquired lot are automatically reallocated to that**
31 **lot and the remaining lots in proportion to the respective allocated interests of those**
32 **lots before the taking, with the partially acquired lot participating in the reallocation**
33 **on the basis of its reduced allocated interests.**

34 **(c) If there is any reallocation under subsection (a) or (b) of this section, the**
35 **association shall promptly prepare, execute, and record an amendment to the**
36 **declaration reflecting the reallocations. Any remnant of a lot remaining after part of**
37 **a lot is taken under this subsection is thereafter a common element.**

38 **(d) If part of the common elements is acquired by eminent domain, the portion of**
39 **the award attributable to the common elements taken shall be paid to the association.**
40 **Unless the declaration provides otherwise, any portion of the award attributable to**
41 **the acquisition of a limited common element shall be apportioned among the owners**
42 **of the lots to which that limited common element was allocated at the time of**
43 **acquisition based on their allocated interest in the common elements before the**
44 **taking.**

(e) The court decree shall be recorded in every county in which any portion of the planned community is located.

"§ 47E-1-108. Supplemental general principles of law applicable.

The principles of law and equity supplement the provisions of this act, except to the extent inconsistent with this act.

"§§ 47E-1-109 through 47E-1-115: Reserved.

"ARTICLE 2.

"Creation, Alteration, and Termination of Planned Communities.

"§ 47E-2-101. Creation of the planned community.

A declaration creating a planned community shall be executed in the same manner as a deed, shall be recorded in every county in which any portion of the planned community is located, and shall be indexed in the Grantee index in the name of the planned community and the association and in the Grantor index in the name of each person executing the declaration.

"§ 47E-2-102: Reserved.

"§ 47E-2-103. Construction and validity of declaration and bylaws.

(a) All provisions of the declaration and bylaws are severable.

(b) The rule against perpetuities may not be applied to defeat any provision of the declaration, bylaws, rules, or regulations adopted pursuant to G.S. 47E-3-102(a)(1).

(c) In the event of a conflict between the provisions of the declaration and the bylaws, the declaration prevails except to the extent the declaration is inconsistent with this act.

(d) Title to a lot and common elements is not rendered unmarketable or otherwise affected by reason of an insubstantial failure of the declaration to comply with this act. Whether a substantial failure to comply with this act impairs marketability shall be determined by the law of this State relating to marketability.

"§ 47E-2-104. Description of lots.

(a) A description of a lot which sets forth the name of the planned community, the recording data for the declaration or a plat on which the lot is identified, and the identifying number of the lot, or which otherwise complies with the general requirements of the laws of this State concerning description of real property, is a sufficient legal description of that lot and all rights, obligations, and interests appurtenant to that lot which are created by the declaration, the bylaws, or this act.

(b) Except as provided by the declaration:

(1) If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture lies partially within and partially outside the designated boundaries of a lot, any portion thereof serving only that lot is a limited common element allocated solely to that lot, and any portion thereof serving more than one lot or any portion of the common elements is a part of the common elements.

(2) All fixtures, improvements, attachments, and systems designed to serve a single lot, but located outside the lot's boundaries, are limited common elements allocated exclusively to that lot.

1 "§ 47E-2-105. Contents of declaration.

2 (a) The declaration for a planned community shall contain:

- 3 (1) The name of the planned community and the name of the
4 association;
- 5 (2) The name of every county in which any part of the planned
6 community is situated;
- 7 (3) A description by reference to the plat(s) described in G.S. 47E-2-
8 109 of the boundaries of each lot, including the lot's identifying
9 number, and the common elements created by the declaration;
- 10 (4) A description of any real estate which is or must become common
11 elements or limited common elements, other than those specified
12 in G.S. 47E-2-104(b), as provided in G.S. 47E-2-109(b)(9);
- 13 (5) A description of any real estate (except real estate subject to
14 development rights) which may be allocated subsequently as
15 limited common elements, other than limited common elements
16 specified in G.S. 47E-2-104(b), together with a statement that they
17 may be so allocated;
- 18 (6) A description of any development rights and other special
19 declarant rights reserved by the declarant, together with a legally
20 sufficient description of the real estate to which each of those
21 rights applies, a statement of the maximum number of lots which
22 the declarant reserves the right to create, and a time limit within
23 which each of those rights must be exercised;
- 24 (7) If any development right may be exercised with respect to different
25 parcels of the real estate at different times, a statement to that
26 effect together with (i) either a statement fixing the boundaries of
27 those portions and regulating the order in which those portions
28 may be subjected to the exercise of each development right, or a
29 statement that no assurances are made in those regards; and (ii) a
30 statement as to whether, if any development right is exercised in
31 any portion of the real estate subject to that development right,
32 that development right must be exercised in all or in any other
33 portion of the remainder of that real estate;
- 34 (8) Any other conditions or limitations under which the rights
35 described in subdivision (6) of this subsection may be exercised or
36 will lapse;
- 37 (9) An allocation to each lot of the allocated interests in the manner
38 described in G.S. 47E-2-107;
- 39 (10) Any restrictions on use, occupancy, and alienation of the lots;
- 40 (11) The recording data for recorded easements and licenses
41 appurtenant to or included in the planned community or to which
42 any portion of the planned community is or may become subject
43 by virtue of a reservation in the declaration; and

1 (12) All matters required by G.S. 47E-2-106, 47E-2-107, 47E-2-108, 47E-
2 2-109, 47E-2-115, 47E-2-116, and 47E-3-103(d).

3 (b) The declaration may contain any other matters the declarant deems
4 appropriate.

5 "§ 47E-2-106. Leasehold planned communities.

6 (a) Any lease the expiration or termination of which may terminate the planned
7 community or reduce its size, or a memorandum thereof, shall be recorded. Every
8 lessor of those leases shall sign the declaration, and the declaration shall state:

9 (1) Where the complete lease may be inspected;

10 (2) The date on which the lease is scheduled to expire;

11 (3) A legally sufficient description of the real estate subject to the
12 lease;

13 (4) Any right of the lot owners to redeem the reversion and the
14 manner whereby those rights may be exercised, or a statement that
15 they do not have those rights;

16 (5) Any right of the lot owners to remove any improvements after the
17 expiration or termination of the lease, or a statement that they do
18 not have those rights; and

19 (6) Any rights of the lot owners to renew the lease and the conditions
20 of any renewal, or a statement that they do not have those rights.

21 (b) After the declaration for a leasehold planned community is recorded, neither
22 the lessor nor his successor in interest may terminate the leasehold interest of a lot
23 owner who, after demand, makes timely payment of his share of the rent determined
24 in proportion to his common expense liability and otherwise complies with all
25 covenants which, if violated, would entitle the lessor to terminate the lease. A lot
26 owner's leasehold interest is not affected by failure of any other person to pay rent or
27 fulfill any other covenant.

28 (c) Acquisition of the leasehold interest of any lot owner by the owner of the
29 reversion or remainder does not merge the leasehold and fee simple interests unless
30 the leasehold interests of all lot owners subject to that reversion or remainder are
31 acquired.

32 (d) If the expiration or termination of a lease decreases the number of lots in a
33 planned community, the allocated interests shall be reallocated in accordance with
34 G.S. 47E-1-107(a) as though those lots had been taken by eminent domain.
35 Reallocations shall be confirmed by an amendment to the declaration prepared,
36 executed, and recorded by the association.

37 "§ 47E-2-107. Allocation of votes and common expense liabilities.

38 (a) The declaration shall allocate a fraction or percentage of the common
39 expenses of the association and a portion of the votes in the association to each lot in
40 the planned community and state the formulas used to establish those allocations.
41 Unless otherwise stated in the declaration, votes and common expenses shall be
42 allocated equally among all lots. No allocation may discriminate in favor of lots
43 owned by the declarant or an affiliate of the declarant.

1 (b) If lots may be added to or withdrawn from the planned community, the
2 declaration shall state the formulas to be used to reallocate the allocated interests
3 among all lots included in the planned community after the addition or withdrawal.

4 (c) The declaration may provide: (i) that different allocations of votes shall be
5 made to the lots on particular matters specified in the declaration; (ii) for cumulative
6 voting only for the purpose of electing members of the executive board; and (iii) for
7 class voting on specified issues affecting the class if necessary to protect valid interests
8 of the class. No declarant or affiliate of the declarant may utilize cumulative or class
9 voting for the purpose of evading any limitation imposed on declarants or affiliates of
10 declarants by this act, nor may lots constitute a class because they are owned by a
11 declarant or an affiliate of the declarant.

12 (d) Except for minor variations due to rounding, the sum of the common expense
13 liabilities allocated at any time to all the lots shall equal one if stated as a fraction or
14 one hundred percent (100%) if stated as a percentage. In the event of a discrepancy
15 between an allocated interest and the result derived from application of the pertinent
16 formula, the allocated interest prevails.

17 **"§ 47E-2-108. Limited common elements.**

18 (a) Except for the limited common elements described in G.S. 47E-2-104(b), the
19 declaration shall specify to which lot or lots each limited common element is
20 allocated. That allocation may not be altered without the unanimous consent of the
21 lot owners whose lots are affected.

22 (b) Except as the declaration otherwise provides, a limited common element may
23 be reallocated by an amendment to the declaration executed by all the lot owners
24 between or among whose lots the reallocation is made. The lot owners executing the
25 amendment shall provide an original in recordable form with sufficient recording fees
26 to the association, which shall record it. The amendment shall be recorded in the
27 names of the parties and the planned community.

28 (c) A common element not previously allocated as a limited common element
29 may not be so allocated except by unanimous consent or pursuant to provisions in the
30 declaration made in accordance with G.S. 47E-2-105(a)(5). All such allocations shall
31 be made by amendments to the declaration and shall become effective in accordance
32 with G.S. 47E-2-117(c).

33 **"§ 47E-2-109. Plats.**

34 (a) Plats are a part of the declaration and shall be recorded by the declarant.
35 Each plat shall be clear and legible and contain a certification by a land surveyor or
36 engineer registered under the provisions of Chapter 89C of the General Statutes that
37 the plat contains all information required by this section.

38 (b) Each plat shall show:

39 (1) The name and a survey or general schematic map of the entire
40 planned community;

41 (2) The location and dimensions of all real estate not subject to
42 development rights, or subject only to the development right to
43 withdraw, and the location and dimensions of all existing
44 improvements within that real estate;

- 1 (3) The location and dimensions of any real estate subject to
2 development rights, labeled to identify the rights applicable to each
3 parcel;
4 (4) The extent of any encroachments by or upon any portion of the
5 planned community;
6 (5) The location and dimensions of all easements having specific
7 location and dimensions and serving and burdening any portion of
8 the planned community;
9 (6) The location and dimensions of any lot boundaries and that lot's
10 identifying number;
11 (7) A legally sufficient description of any real estate in which the lot
12 owners will own only an estate for years, labeled as 'leasehold real
13 estate';
14 (8) The distance between noncontiguous parcels of real estate
15 comprising the planned community; and
16 (9) The location and dimensions of limited common elements
17 provided for in the declaration pursuant to G.S. 47E-2-105(a)(4)
18 and (5) but not including parking spaces or the other limited
19 common elements described in G.S. 47E-2-104(b).
20 (c) A plat may also show the intended location and dimensions of any
21 contemplated improvement to be constructed anywhere within the planned
22 community. Any contemplated improvement shown shall be labeled either 'MUST
23 BE BUILT' or 'NEED NOT BE BUILT'.
24 (d) Upon exercising any development right, the declarant shall record new plats
25 necessary to conform to the requirements of subsections (a), (b), and (c) of this
26 section.
27 "§ 47E-2-110. Development rights.
28 (a) To exercise any development right reserved under G.S. 47E-2-105(a)(6), the
29 declarant shall record an amendment to the declaration (G.S. 47E-2-117) and comply
30 with G.S. 47E-2-109. The declarant is the owner of any lots thereby created. The
31 amendment to the declaration shall assign an identifying number to each new lot
32 created, and except in the case of subdivision or conversion of lots described in
33 subsection (c) of this section, reallocate the allocated interests among all lots. The
34 amendment shall describe any common elements and any limited common elements
35 thereby created and, in the case of limited common elements, designate the lots to
36 which each is allocated to the extent required by G.S. 47E-2-108 (Limited common
37 elements).
38 (b) Development rights may be reserved within any real estate added to the
39 planned community if the amendment adding that real estate includes all matters
40 required by, and is in compliance with, G.S. 47E-2-105 and also if the plats include
41 all matters required by G.S. 47E-2-109. This provision does not extend the time limit
42 on the exercise of development rights imposed by the declaration pursuant to G.S.
43 47E-2-105(a)(6).

1 (c) Whenever a declarant exercises a development right to subdivide or convert a
2 lot previously created into additional lots, common elements, or both:

3 (1) If the declarant converts the lot entirely to common elements, the
4 amendment to the declaration shall reallocate all the allocated
5 interests of that lot among the other lots as if that lot had been
6 taken by eminent domain; or

7 (2) If the declarant subdivides the lot into two or more lots, whether
8 or not any part of the lot is converted into common elements, the
9 amendments to the declaration shall reallocate all the allocated
10 interests of the lot among the lots created by the subdivision in any
11 reasonable manner prescribed by the declarant.

12 (d) If the declaration provides, pursuant to G.S. 47E-2-105(a)(6), that all or a
13 portion of the real estate is subject to the development right of withdrawal:

14 (1) If all the real estate is subject to withdrawal, and the declaration
15 does not describe separate portions of real estate subject to that
16 right, none of the real estate may be withdrawn after a lot has been
17 conveyed to a purchaser; and

18 (2) If a portion or portions are subject to withdrawal, no portion may
19 be withdrawn after a lot in that portion has been conveyed to a
20 purchaser.

21 (e) Any portion of the common elements for which the declarant has reserved any
22 development rights shall be separately taxed and assessed against the declarant, and
23 the declarant alone is liable for payment of those taxes.

24 "§ 47E-2-111. Alterations of lots.

25 Subject to the provisions of the declaration and other provisions of law, a lot
26 owner:

27 (1) May make any improvements or alterations to his lot that do not
28 impair the structural integrity or mechanical systems or lessen the
29 support of any other portion of the planned community;

30 (2) May not change the appearance of the common elements, without
31 permission of the association; and

32 (3) After acquiring an adjoining lot or an adjoining part of an
33 adjoining lot, may remove or alter any intervening partition or
34 create apertures therein if those acts do not impair the structural
35 integrity or mechanical systems or lessen the support of any other
36 portion of the planned community. Removal of partitions or
37 creation of apertures under this subdivision is not an alteration of
38 boundaries.

39 "§ 47E-2-112: Reserved.

40 "§ 47E-2-113. Subdivision of lots.

41 (a) If the declaration expressly so permits, a lot may be subdivided. Subject to the
42 provisions of the declaration and other provisions of law, upon application of a lot
43 owner to subdivide a lot, the association shall prepare, execute, and record an
44 amendment to the declaration, including the plats, subdividing that lot. All expenses

1 incurred in connection with the subdivision of a lot shall be paid in advance to the
2 association by the lot owner requesting that the lot be subdivided.

3 (b) The amendment to the declaration shall be executed by the owner of the lot
4 to be subdivided, shall assign an identifying number to each lot created, and shall
5 reallocate the allocated interests formerly allocated to the subdivided lot to the new
6 lots in any reasonable manner prescribed by the owner of the subdivided lot.

7 "§ 47E-2-114: Reserved.

8 "§ 47E-2-115. Use for sale purposes.

9 A declarant may maintain sales offices, management offices, and models on lots or
10 on common elements in the planned community only if the declaration so provides
11 and specifies the rights of a declarant with regard to the number, size, location, and
12 relation thereof. Subject to any limitations in the declaration, a declarant may
13 maintain signs on the common elements advertising the planned community. The
14 provisions of this section are subject to the provisions of other State law, and to local
15 ordinances.

16 "§ 47E-2-116. Easement rights.

17 (a) Subject to the provisions of G.S. 47E-3-112, (Alienation of common elements)
18 the unit owners have an easement (i) in the common elements for purposes of access
19 to their lots and (ii) to use the common elements and all real estate which must
20 become common elements (G.S. 47E-2-105(a)(4)) for all other purposes, except as
21 otherwise provided in this act.

22 (b) Subject to the provisions of the declaration, a declarant has an easement
23 through the common elements as may be reasonably necessary for the purpose of
24 discharging a declarant's obligations or exercising special declarant rights, whether
25 arising under this act or reserved in the declaration.

26 "§ 47E-2-117. Amendment of declaration.

27 (a) Except in cases of amendments that may be executed by a declarant under
28 G.S. 47E-2-109(d) or G.S. 47E-2-110; by the association under G.S. 47E-1-107, 47E-2-
29 106(d), 47E-2-108(c), or 47E-2-113(a); or by certain lot owners under G.S. 47E-2-
30 108(b), 47E-2-113(b), or 47E-2-118(b), and except as limited by subsection (d) of this
31 section, the declaration may be amended only by affirmative vote or written
32 agreement signed by lot owners of lots to which at least sixty-seven percent (67%) of
33 the votes in the association are allocated, or any larger majority the declaration
34 specifies. The declaration may specify a smaller number only if all of the lots are
35 restricted exclusively to nonresidential use.

36 (b) No action to challenge the validity of an amendment adopted pursuant to this
37 section may be brought more than one year after the amendment is recorded.

38 (c) Every amendment to the declaration shall be recorded in every county in
39 which any portion of the planned community is located and is effective only upon
40 recordation. An amendment shall be indexed in the Grantee index in the name of
41 the planned community and the association and in the Grantor index in the name of
42 each person executing the amendment.

43 (d) Except to the extent expressly permitted or required by other provisions of
44 this act, no amendment may create or increase the special declarant rights, increase

1 the number of lots, change the boundaries of any lot, the allocated interests of a lot,
2 or the uses to which any lot is restricted, in the absence of unanimous consent of the
3 lot owners.

4 (e) Amendments to the declaration required by this act to be recorded by the
5 association shall be prepared, executed, recorded, and certified on behalf of the
6 association by any officer of the association designated for that purpose or, in the
7 absence of designation, by the president of the association.

8 "§ 47E-2-118. Termination of planned community.

9 (a) Except in the case of taking of all the lots by eminent domain (G.S. 47E-1-
10 107), a planned community may be terminated only by agreement of lot owners of
11 lots to which at least eighty percent (80%) of the votes in the association are
12 allocated, or any larger percentage the declaration specifies. The declaration may
13 specify a smaller percentage only if all of the lots in the planned community are
14 restricted exclusively to nonresidential uses.

15 (b) An agreement to terminate shall be evidenced by the execution of a
16 termination agreement, or ratifications thereof, in the same manner as a deed, by the
17 requisite number of lot owners. The termination agreement shall specify a date after
18 which the agreement will be void unless it is recorded before that date. A
19 termination agreement and all ratifications thereof shall be recorded in every county
20 in which a portion of the planned community is situated and is effective only upon
21 recording.

22 (c) A termination agreement may provide for sale of the common elements, but
23 may not require that the lots be sold following termination, unless the declaration as
24 originally recorded provided otherwise or unless all the lot owners consent to the
25 sale. If, pursuant to the agreement, any real estate in the planned community is to be
26 sold following termination, the termination agreement shall set forth the minimum
27 terms of the sale.

28 (d) The association, on behalf of the lot owners, may contract for the sale of real
29 estate in the planned community, but the contract is not binding until approved
30 pursuant to subsections (a) and (b) of this section. Until the sale has been concluded
31 and the proceeds thereof distributed, the association continues in existence with all
32 powers it had before termination. Proceeds of the sale shall be distributed to lot
33 owners and lien holders as their interests may appear, as provided in the termination
34 agreement.

35 (e) If the real estate constituting the planned community is not to be sold
36 following termination, title to the common elements vests in the lot owners upon
37 termination as tenants in common in proportion to their respective interests as
38 provided in the termination agreement.

39 (f) Following termination of the planned community, the proceeds of any sale of
40 real estate, together with the assets of the association, are held by the association as
41 trustee for lot owners and holders of liens on the lots as their interests may appear.
42 All other creditors of the association are to be treated as if they had perfected liens
43 on the common elements immediately before termination.

- 1 (g) If the termination agreement does not provide for the distribution of sales
2 proceeds pursuant to subsection (d) of this section or the vesting of title pursuant to
3 subsection (e) of this section, sales proceeds shall be distributed and title shall vest in
4 accordance with each lot owner's allocated share of common expense liability.
- 5 (h) Except as provided in subsection (i) of this section, foreclosure or enforcement
6 of a lien or encumbrance against the common elements does not of itself terminate
7 the planned community, and foreclosure or enforcement of a lien or encumbrance
8 against a portion of the common elements other than withdrawable real estate does
9 not withdraw that portion from the planned community. Foreclosure or enforcement
10 of a lien or encumbrance against withdrawable real estate does not of itself withdraw
11 that real estate from the planned community, but the person taking title thereto has
12 the right to require from the association, upon request, an amendment excluding the
13 real estate from the planned community.
- 14 (i) If a lien or encumbrance against a portion of the real estate comprising the
15 planned community has priority over the declaration and the lien or encumbrance
16 has not been partially released, the parties foreclosing the lien or encumbrance may,
17 upon foreclosure, record an instrument excluding the real estate subject to that lien
18 or encumbrance from the planned community.
- 19 "§ 47E-2-119: Reserved.
- 20 "§ 47E-2-120. Master associations.
- 21 (a) If the declaration for a planned community provides that any of the powers
22 described in G.S. 47E-3-102 are to be exercised by or may be delegated to a profit or
23 nonprofit corporation which exercises those or other powers on behalf of one or
24 more other planned communities or for the benefit of the lot owners of one or more
25 other planned communities, all provisions of this act applicable to lot owners'
26 associations apply to any such corporation, except as modified by this section.
- 27 (b) Unless a master association is acting in the capacity of an association described
28 in G.S. 47E-3-101, it may exercise the powers set forth in G.S. 47E-3-102(a)(2) only
29 to the extent expressly permitted in the declarations of the planned communities
30 which are part of the master association or expressly described in the delegations of
31 power from those planned communities to the master association.
- 32 (c) If the declaration of any planned community provides that the executive board
33 may delegate certain powers to a master association, the members of the executive
34 board have no liability for the acts or omissions of the master association with respect
35 to those powers following delegation.
- 36 (d) The rights and responsibilities of lot owners with respect to the lot owners'
37 association set forth in G.S. 47E-3-103, 47E-3-108, 47E-3-109, 47E-3-110, and 47E-3-
38 112, apply in the conduct of the affairs of a master association only to those persons
39 who elect the board of a master association, whether or not those persons are
40 otherwise lot owners within the meaning of this act.
- 41 (e) Notwithstanding the provisions of G.S. 47E-3-103(f) with respect to the
42 election of the executive board of an association by all lot owners after the period of
43 declarant control ends, and even if a master association is also an association
44 described in G.S. 47E-3-101, the articles of incorporation of the master association

1 and the declaration of each planned community, the powers of which are assigned by
2 the declaration or delegated to the master association, may provide that the executive
3 board of the master association shall be elected after the period of declarant control
4 in any of the following ways:

5 (1) All lot owners of all planned communities subject to the master
6 association may elect all members of that executive board.

7 (2) All members of the executive boards of all planned communities
8 subject to the master association may elect all members of that
9 executive board.

10 (3) All lot owners of each planned community subject to the master
11 association may elect specified members of that executive board.

12 (4) All members of the executive board of each planned community
13 subject to the master association may elect specified members of
14 that executive board.

15 **"§ 47E-2-121. Merger of consolidation of planned communities.**

16 (a) Any two or more planned communities, by agreement of the lot owners as
17 provided in subsection (b) of this section, may be merged or consolidated into a
18 single planned community. In the event of a merger or consolidation, unless the
19 agreement otherwise provides, the resultant planned community is, for all purposes,
20 the legal successor of all of the preexisting planned communities, and the operations
21 and activities of all associations of the preexisting planned communities shall be
22 merged or consolidated into a single association which shall hold all powers, rights,
23 obligations, assets, and liabilities of all preexisting associations.

24 (b) An agreement of two or more planned communities to merge or consolidate
25 pursuant to subsection (a) of this section shall be evidenced by the president of the
26 association of each of the preexisting planned communities following approval by
27 owners of lots to which are allocated the percentage of votes in each planned
28 community required to terminate that planned community. Any such agreement
29 shall be recorded in every county in which a portion of the planned community is
30 located and is not effective until recorded.

31 (c) Every merger or consolidation agreement shall provide for the reallocation of
32 the allocated interests in the new association among the lots of the resultant planned
33 community either (i) by stating the reallocations or the formulas upon which they are
34 based or (ii) by stating the percentage of overall common expense liabilities and votes
35 in the new association which are allocated to all of the lots comprising each of the
36 preexisting planned communities, and providing that the portion of the percentages
37 allocated to each lot formerly comprising a part of the preexisting planned
38 community shall be equal to the percentages of common expense liabilities and votes
39 in the association allocated to that lot by the declaration of the preexisting planned
40 community.

41 **"§ 47E-2-122. Addition of unspecified real estate.**

42 If the right is originally reserved in the declaration, the declarant may, in addition
43 to any other development right, amend the declaration at any time during as many
44 years as are specified in the declaration to add additional real estate to the planned

1 community without describing the location of that real estate in the original
2 declaration; provided, that the amount of real estate added to the planned community
3 pursuant to this section may not exceed ten percent (10%) of the real estate described
4 in G.S. 47E-2-105(a)(3), and provided further, that the declarant may not in any
5 event increase the number of lots in the planned community beyond the number
6 stated in the original declaration pursuant to G.S. 47E-2-105(a)(5).

7 "ARTICLE 3.

8 "Management of Planned Community.

9 "§ 47E-3-101. Organization of owners' association.

10 A lot owners' association shall be incorporated no later than the date the first lot
11 in the planned community is conveyed. The membership of the association at all
12 times shall consist exclusively of all the lot owners or, following termination of the
13 planned community, of all persons entitled to distributions of proceeds under G.S.
14 47E-2-118. The association shall be organized as a profit or nonprofit corporation.

15 "§ 47E-3-102. Powers of owners' association.

16 (a) Subject to the provisions of the declaration, the association may:

- 17 (1) Adopt and amend bylaws and rules and regulations;
- 18 (2) Adopt and amend budgets for revenues, expenditures, and reserves
19 and collect assessments for common expenses from lot owners;
- 20 (3) Hire and discharge managing agents and other employees, agents,
21 and independent contractors;
- 22 (4) Institute, defend, or intervene in litigation or administrative
23 proceedings on matters affecting the planned community;
- 24 (5) Make contracts and incur liabilities;
- 25 (6) Regulate the use, maintenance, repair, replacement, and
26 modification of common elements;
- 27 (7) Cause additional improvements to be made as a part of the
28 common elements;
- 29 (8) Acquire, hold, encumber, and convey in its own name any right,
30 title, or interest to real or personal property, provided that
31 common elements may be conveyed or subjected to a security
32 interest only pursuant to G.S. 47E-3-112;
- 33 (9) Grant easements, leases, licenses, and concessions through or over
34 the common elements;
- 35 (10) Impose and receive any payments, fees, or charges for the use,
36 rental, or operation of the common elements other than the limited
37 common elements described in G.S. 47E-2-104(b) and for services
38 provided to lot owners;
- 39 (11) Impose reasonable charges for late payment of assessments and,
40 after notice and an opportunity to be heard, suspend privileges or
41 services provided by the association (except rights of access to lots
42 including those provided for in G.S. 47E-2-116(a)(i)) during any
43 period that assessments or other amounts due and owing to the
44 association remain unpaid for a period of 30 days or longer;

- (12) After notice and an opportunity to be heard, impose reasonable fines or suspend privileges or services provided by the association (except rights of access to lots including those provided for in G.S. 47E-2-116(a)(i)) for reasonable periods for violations of the declaration, bylaws, and rules and regulations of the association;
- (13) Impose reasonable charges in connection with the preparation and recordation of amendments to the declaration, initial sale certificates required by G.S. 47E-4-102, resale statements required by G.S. 47E-4-109, or statements of unpaid assessments;
- (14) Provide for the indemnification of and maintain liability insurance for its officers, executive board, directors, employees, and agents;
- (15) Assign its right to future income, including the right to receive common expense assessments;
- (16) Exercise all other powers that may be exercised in this State by legal entities of the same type as the association; and
- (17) Exercise any other powers necessary and proper for the governance and operation of the association.

(b) Notwithstanding subsection (a) of this section, the declaration may not impose limitations on the power of the association to deal with a declarant which are more restrictive than the limitations imposed on the power of the association to deal with other persons.

"§ 47E-3-103. Executive board members and officers.

(a) Except as provided in the declaration, in the bylaws, in subsection (b) of this section, or in other provisions of this act, the executive board may act in all instances on behalf of the association. In the performance of their duties, officers and members of the executive board shall be deemed to stand in a fiduciary relationship to the association and the lot owners and shall discharge their duties in good faith, and with that diligence and care which ordinarily prudent men would exercise under similar circumstances in like positions.

(b) The executive board may not act on behalf of the association to amend the declaration (G.S. 47E-2-117), to terminate the planned community (G.S. 47E-2-118), or to elect members of the executive board or determine the qualifications, powers and duties, or terms of office of executive board members (G.S. 47E-3-103(f)), but the executive board may fill vacancies in its membership for the unexpired portion of any term. Notwithstanding any provision of the declaration or bylaws to the contrary, the lot owners, by a sixty-seven percent (67%) vote of all persons present and entitled to vote at any meeting of the lot owners at which a quorum is present, may remove any member of the executive board with or without cause, other than a member appointed by the declarant.

(c) Within 30 days after adoption of any proposed budget for the planned community, the executive board shall provide a summary of the budget to all the lot owners and shall set a date for a meeting of the lot owners to consider ratification of the budget not less than 14 nor more than 30 days after mailing of the summary. There shall be no requirement that a quorum be present at the meeting. The budget

1 is ratified unless at that meeting a majority of all the lot owners in the association or
2 any larger vote specified in the declaration rejects the budget. In the event the
3 proposed budget is rejected, the periodic budget last ratified by the lot owners shall
4 be continued until such time as the lot owners ratify a subsequent budget proposed
5 by the executive board.

6 (d) Subject to subsection (e) of this section, the declaration may provide for a
7 period of declarant control of the association, during which period a declarant, or
8 persons designated by him, may appoint and remove the officers and members of the
9 executive board. Regardless of the period provided in the declaration, a period of
10 declarant control terminates no later than the earlier of: (i) 120 days after
11 conveyance of seventy-five percent (75%) of the lots (including lots which may be
12 created pursuant to special declarant rights) to lot owners other than a declarant; (ii)
13 two years after all declarants have ceased to offer lots for sale in the ordinary course
14 of business; or (iii) two years after any development right to add new lots was last
15 exercised. A declarant may voluntarily surrender the right to appoint and remove
16 officers and members of the executive board before termination of that period, but in
17 that event he may require, for the duration of the period of declarant control, that
18 specified actions of the association or executive board, as described in a recorded
19 instrument executed by the declarant, be approved by the declarant before they
20 become effective.

21 (e) Not later than 60 days after conveyance of twenty-five percent (25%) of the
22 lots (including lots which may be created pursuant to special declarant rights) to lot
23 owners other than a declarant, at least one member and not less than twenty-five
24 percent (25%) of the members of the executive board shall be elected by lot owners
25 other than the declarant. Not later than 60 days after conveyance of fifty percent
26 (50%) of the lots (including lots which may be created pursuant to special declarant
27 rights) to lot owners other than a declarant, not less than thirty-three percent (33%)
28 of the members of the executive board shall be elected by lot owners other than the
29 declarant.

30 (f) Not later than the termination of any period of declarant control, the lot
31 owners shall elect an executive board of at least three members, at least a majority of
32 whom shall be lot owners. The executive board shall elect the officers. The
33 executive board members and officers shall take office upon election.

34 **"§ 47E-3-104. Transfer of special declarant rights.**

35 (a) No special declarant right (G.S. 47E-1-103(28)) created or reserved under this
36 act may be transferred except by an instrument evidencing the transfer recorded in
37 every county in which any portion of the planned community is located. The
38 instrument is not effective unless executed by the transferee.

39 (b) Upon transfer of any special declarant right, the liability of a transferor
40 declarant is as follows:

41 (1) A transferor is not relieved of any obligation or liability arising
42 before the transfer, including, but not limited to, liability as to
43 obligations related to warranties. Lack of privity does not deprive

any lot owner of standing to maintain an action to enforce any obligation of the transferor.

(2) If a successor to any special declarant right is an affiliate of a declarant (G.S. 47E-1-103(1)), the transferor is jointly and severally liable with the successor for any obligation or liability of the successor which relates to the planned community.

(3) If a transferor retains any special declarant right, but transfers other special declarant rights to a successor who is not an affiliate of the declarant, the transferor is liable for any obligations or liabilities imposed on a declarant by this act or by the declaration relating to the retained special declarant rights and arising after the transfer.

(4) A transferor has no liability for any act or omission or any breach of a contractual or warranty obligation arising from the exercise of a special declarant right by a successor declarant who is not an affiliate of the transferor.

(c) Unless otherwise provided in a mortgage instrument or deed of trust, in case of foreclosure of a mortgage, tax sale, judicial sale, sale by a trustee under a deed of trust, or sale under Bankruptcy Code or receivership proceedings, of any lots owned by a declarant or real estate in a planned community subject to development rights, a person acquiring title to all the real estate being foreclosed or sold, but only upon his request, succeeds to all special declarant, or only to any rights reserved in the declaration and held by that declarant to maintain models, sales offices, and signs. The judgment or instrument conveying title shall provide for transfer of only the special declarant rights requested.

(d) Upon foreclosure, tax sale, judicial sale, sale by a trustee under a deed of trust, or sale under Bankruptcy Code or receivership proceedings, of all lots and other real estate in a planned community owned by a declarant, the declarant ceases to have any special declarant rights.

(e) The liabilities and obligations of a person who succeeds to special declarant rights are as follows:

(1) A successor to any special declarant right who is an affiliate of a declarant is subject to all obligations and liabilities imposed on the transferor related to the planned community.

(2) A successor to any special declarant right, other than a successor described in subdivision (3) or (4) of this subsection, who is not an affiliate of a declarant, is subject to all obligations and liabilities imposed:

a. On a declarant which relate to his exercise or nonexercise of special declarant rights; or

b. On his transferor, other than:

1. Misrepresentations by any prior declarant;

- Page 21

the association under this section. This section does not apply to any lease, the termination of which would terminate the planned community or reduce its size, unless the real estate subject to that lease was included in the planned community for the purpose of avoiding the right of the association to terminate a lease under this section.

"§ 47E-3-106. Bylaws.

(a) The bylaws of the association shall provide for:

- (1) The number of members of the executive board and the titles of the officers of the association;
- (2) Election by the executive board of officers of the association;
- (3) The qualifications, powers and duties, terms of office, and manner of electing and removing executive board members and officers and filling vacancies;
- (4) Which, if any, of its powers the executive board or officers may delegate to other persons or to a managing agent;
- (5) Which of its officers may prepare, execute, certify, and record amendments to the declaration on behalf of the association; and
- (6) The method of amending the bylaws.

(b) The bylaws may provide for any other matters the association deems necessary and appropriate.

"§ 47E-3-107. Upkeep of planned community; responsibility and assessments for damages.

(a) Except as otherwise provided in the declaration, G.S. 47E-3-113(h) or subsection (b) of this section, the association is responsible for causing the common elements to be maintained, repaired, and replaced when necessary and to assess the lot owners as necessary to recover the costs of such maintenance, repair, or replacement except that the costs of maintenance, repair or replacement of a limited common element shall be assessed as provided in G.S. 47E-3-115(c)(1). Except as otherwise provided in the declaration, each lot owner is responsible for the maintenance and repair of his lot and any improvements thereon. Each lot owner shall afford to the association and when necessary to another lot owner access through his lot reasonably necessary for any such maintenance, repair or replacement activity.

(b) If a lot owner is legally responsible for damage inflicted on any common element, the association may direct such lot owner to repair such damage or the association may itself cause the repairs to be made and recover damages from the responsible lot owner.

(c) If damage is inflicted on any lot by an agent of the association in the scope of his activities as such agent, the association is liable to repair such damage or to reimburse the lot owner for the cost of repairing such damages. The association shall also be liable for any losses to the lot owner.

(d) When the claim under subsection (b) or (c) of this section is less than or equal to the jurisdictional amount established for small claims by G.S. 7A-210, any aggrieved party may request that a hearing be held before an adjudicatory panel

1 appointed by the executive board to determine if a lot owner is responsible for
2 damages to any common element or the association is responsible for damages to any
3 lot. If the executive board fails to appoint an adjudicatory panel to hear such
4 matters, hearings under this section shall be held before the executive board. Such
5 panel shall accord to the party charged with causing damages notice of the charge,
6 opportunity to be heard and to present evidence, and notice of the decision. This
7 panel may assess liability for each damage incident against each lot owner charged or
8 against the association not in excess of the jurisdictional amount established for small
9 claims by G.S. 7A-210. When the claim under subsection (b) or (c) of this section
10 exceeds the jurisdictional amount established for small claims by G.S. 7A-210,
11 liability of any lot owner charged or the association shall be determined as otherwise
12 provided by law. Liabilities of lot owners determined by adjudicatory hearing or as
13 otherwise provided by law shall be assessments secured by lien under G.S. 47E-3-166.
14 Liabilities of the association determined by adjudicatory hearing or as otherwise
15 provided by law may be offset by the lot owner against sums owing to the association
16 and if so offset, shall reduce the amount of any lien of the association against the lot
17 at issue.

18 (e) The declarant alone is liable for maintenance, repair, and all other expenses in
19 connection with real estate subject to development rights.

20 **"§ 47E-3-107A. Procedures for fines and suspension of planned community privileges**
21 **or services.**

22 Unless a specific procedure for the imposition of fines or suspension of planned
23 community privileges or services is provided for in the declaration, a hearing shall be
24 held before an adjudicatory panel appointed by the executive board to determine if
25 any lot owner should be fined or if planned community privileges or services should
26 be suspended pursuant to the powers granted to the association in G.S. 47E-3-102(11)
27 and (12). If the executive board fails to appoint an adjudicatory panel to hear such
28 matters, hearings under this section shall be held before the executive board. The lot
29 owner charged shall be given notice of the charge, opportunity to be heard and to
30 present evidence, and notice of the decision. If it is decided that a fine should be
31 imposed, a fine not to exceed one hundred fifty dollars (\$150.00) may be imposed for
32 the violation and without further hearing, for each day after the decision that the
33 violation occurs. Such fines shall be assessments secured by liens under G.S. 47E-3-
34 116. If it is decided that a suspension of planned community privileges or services
35 should be imposed, the suspension may be continued without further hearing until
36 the violation or delinquency is cured.

37 **"§ 47E-3-108. Meetings.**

38 A meeting of the association shall be held at least once each year. Special
39 meetings of the association may be called by the president, a majority of the executive
40 board, or by lot owners having twenty percent (20%), or any lower percentage
41 specified in the bylaws, of the votes in the association. Not less than 10 nor more
42 than 50 days in advance of any meeting, the secretary or other officer specified in the
43 bylaws shall cause notice to be hand-delivered or sent prepaid by United States mail
44 to the mailing address of each lot or to any other mailing address designated in

1 writing by the lot owner. The notice of any meeting shall state the time and place of
2 the meeting and the items on the agenda, including the general nature of any
3 proposed amendment to the declaration or bylaws, any budget changes, and any
4 proposal to remove a director or officer.

5 "§ 47E-3-109. Quorums.

6 (a) Unless the bylaws provide otherwise, a quorum is present throughout any
7 meeting of the association if persons entitled to cast twenty percent (20%) of the
8 votes which may be cast for election of the executive board are present in person or
9 by proxy at the beginning of the meeting.

10 (b) Unless the bylaws specify a larger percentage, a quorum is deemed present
11 throughout any meeting of the executive board if persons entitled to cast fifty percent
12 (50%) of the votes on that board are present at the beginning of the meeting.

13 "§ 47E-3-110. Voting; proxies.

14 (a) If only one of the multiple owners of a lot is present at a meeting of the
15 association, he is entitled to cast all the votes allocated to that lot. If more than one
16 of the multiple owners are present, the votes allocated to that lot may be cast only in
17 accordance with the agreement of a majority in interest of the multiple owners, unless
18 the declaration or bylaws expressly provides otherwise. Majority agreement is
19 conclusively presumed if any one of the multiple owners casts the votes allocated to
20 that lot without protest being made promptly to the person presiding over the
21 meeting by any of the other owners of the lot.

22 (b) Votes allocated to a lot may be cast pursuant to a proxy duly executed by a lot
23 owner. If a lot is owned by more than one person, each owner of the lot may vote or
24 register protest to the casting of votes by the other owners of the lot through a duly
25 executed proxy. A lot owner may not revoke a proxy given pursuant to this section
26 except by actual notice of revocation to the person presiding over a meeting of the
27 association. A proxy is void if it is not dated. A proxy terminates one year after its
28 date, unless it specifies a shorter term.

29 (c) If the declaration requires that votes on specified matters affecting the planned
30 community be cast by lessees rather than lot owners of leased lots, (i) the provisions
31 of subsections (a) and (b) of this section apply to lessees as if they were lot owners;
32 (ii) lot owners who have leased their lots to other persons may not cast votes on those
33 specified matters; and (iii) lessees are entitled to notice of meetings, access to records,
34 and other rights respecting those matters as if they were lot owners. Lot owners shall
35 also be given notice, in the manner provided in G.S. 47E-3-108, of all meetings at
36 which lessees may be entitled to vote.

37 (d) No votes allocated to a lot owned by the association may be cast.

38 (e) The declaration may provide that on specified issues only a defined subgroup
39 of lot owners may vote provided:

40 (1) The issue being voted is of special interest solely to the members of
41 the subgroup; and

42 (2) All except de minimis cost that will be incurred based on the vote
43 taken will be assessed solely against those lot owners entitled to
44 vote.

1 (f) For purposes of subdivision(e)(1) above, an issue to be voted on is not a
2 special interest solely to a subgroup if it substantially affects the overall appearance of
3 the planned community or substantially affects living conditions of lot owners not
4 included in the voting subgroup.

5 "§ 47E-3-111. Tort and contract liability.

6 (a) Neither the association nor any lot owner except the declarant is liable for that
7 declarant's torts in connection with any part of the planned community which that
8 declarant has the responsibility to maintain.

9 (b) An action alleging a wrong done by the association shall be brought against
10 the association and not against a lot owner.

11 (c) If an action is brought against the association for a wrong which occurred
12 during any period of declarant control, and if the association gives the declarant who
13 then controlled the association reasonable notice of and an opportunity to defend
14 against the action, such declarant is liable to the association:

15 (1) For all tort losses suffered by the association or that lot owner, and

16 (2) For all losses which the association would not have incurred but
17 for breach of contract.

18 Nothing in this subsection shall be construed to impose strict or absolute liability
19 upon the declarant for wrongs or actions which occurred during the period of
20 declarant control.

21 (d) In any case where the declarant is liable to the association under this section,
22 the declarant is also liable for all litigation expenses, including reasonable attorneys'
23 fees, incurred by the association. Any statute of limitation affecting the association's
24 right of action under this section is tolled until the period of declarant control
25 terminates. A lot owner is not precluded from bringing an action contemplated by
26 this section because he is a lot owner or a member or officer of the association.

27 "§ 47E-3-112. Conveyance or encumbrance of common elements.

28 (a) Portions of the common elements may be conveyed or subjected to a security
29 interest by the association if persons entitled to cast at least eighty percent (80%) of
30 the votes in the association, including eighty percent (80%) of the votes allocated to
31 lots not owned by a declarant, or any larger percentage the declaration specifies,
32 agree in writing to that action; provided that all the owners of lots to which any
33 limited common element is allocated shall agree in order to convey that limited
34 common element or subject it to a security interest. The declaration may specify a
35 smaller percentage only if all the lots are restricted exclusively to nonresidential uses.
36 Distribution of proceeds of the sale of a limited common element shall be as
37 provided by agreement between the lot owners to which it is allocated and the
38 association. Proceeds of the sale or financing of a common element (other than a
39 limited common element) shall be an asset of the association.

40 (b) The association, on behalf of the lot owners, may contract to convey common
41 elements or subject them to a security interest, but the contract is not enforceable
42 against the association until approved pursuant to subsection (a) of this section.
43 Thereafter, the association has all powers necessary and appropriate to effect the
44 conveyance or encumbrance, free and clear of any interest of any lot owner or the

1 association in or to the common element conveyed or encumbered, including the
2 power to execute deeds or other instruments.

3 (c) Any purported conveyance, encumbrance, or other voluntary transfer of
4 common elements, unless made pursuant to this section is void.

5 (d) No conveyance or encumbrance of common elements pursuant to this section
6 may deprive any lot of its rights of access and support.

7 "§ 47E-3-113. Insurance.

8 (a) Commencing not later than the time of the first conveyance of a lot to a
9 person other than a declarant, the association shall maintain, to the extent reasonably
10 available:

11 (1) Property insurance on the common elements insuring against all
12 risks of direct physical loss commonly insured against including fire
13 and extended coverage perils. The total amount of insurance after
14 application of any deductibles shall be not less than eighty percent
15 (80%) of the replacement cost of the insured property at the time
16 the insurance is purchased and at each renewal date, exclusive of
17 land, excavations, foundations, and other items normally excluded
18 from property policies; and

19 (2) Liability insurance in reasonable amounts, covering all occurrences
20 commonly insured against for death, bodily injury, and property
21 damage arising out of or in connection with the use, ownership, or
22 maintenance of the common elements.

23 (b) If the insurance described in subsection (a) of this section is not reasonably
24 available, the association promptly shall cause notice of that fact to be hand-delivered
25 or sent prepaid by United States mail to all lot owners. The declaration may require
26 the association to carry any other insurance, and the association in any event may
27 carry any other insurance it deems appropriate to protect the association or the lot
28 owners.

29 (c) Insurance policies carried pursuant to subsection (a) of this section shall
30 provide that:

31 (1) Each lot owner is an insured person under the policy to the extent
32 of his insurable interest;

33 (2) The insurer waives its right to subrogation under the policy against
34 any lot owner or member of his household;

35 (3) No act or omission by any lot owner, unless acting within the
36 scope of his authority on behalf of the association, will preclude
37 recovery under the policy; and

38 (4) If, at the time of a loss under the policy, there is other insurance in
39 the name of a lot owner covering the same risk covered by the
40 policy, the association's policy provides primary insurance.

41 (d) Any loss covered by the property policy under subdivision (a)(1) of this
42 section shall be adjusted with the association, but the insurance proceeds for that loss
43 are payable to any insurance trustee designated for that purpose, or otherwise to the
44 association, and not to any mortgagee or beneficiary under a deed of trust. The

1 insurance trustee or the association shall hold any insurance proceeds in trust for lot
2 owners and lien holders as their interests may appear. Subject to the provisions of
3 subsection (h) of this section, the proceeds shall be disbursed first for the repair or
4 restoration of the damaged property, and lot owners and lien holders are not entitled
5 to receive payment of any portion of the proceeds unless there is a surplus of
6 proceeds after the property has been completely repaired or restored, or the planned
7 community is terminated.

8 (e) An insurance policy issued to the association does not prevent a lot owner
9 from obtaining insurance for his own benefit.

10 (f) An insurer that has issued an insurance policy under this section shall issue
11 certificates or memoranda of insurance to the association and, upon written request,
12 to any lot owner, mortgagee, or beneficiary under a deed of trust. The insurer issuing
13 the policy may not cancel or refuse to renew it until 30 days after notice of the
14 proposed cancellation or nonrenewal has been mailed to the association, each lot
15 owner and each mortgagee or beneficiary under a deed of trust to whom certificates
16 or memoranda of insurance have been issued at their respective last known addresses.

17 (g) Any portion of the planned community for which insurance is required under
18 subdivision (a)(1) of this section which is damaged or destroyed shall be repaired or
19 replaced promptly by the association unless (i) the planned community is terminated,
20 (ii) repair or replacement would be illegal under any State or local health or safety
21 statute or ordinance, or (iii) the lot owners decide not to rebuild by an eighty percent
22 (80%) vote, including one hundred percent (100%) approval of owners assigned to
23 the limited common elements not to be rebuilt. The cost of repair or replacement in
24 excess of insurance proceeds and reserves is a common expense. If the entire
25 planned community is not repaired or replaced, (i) the insurance proceeds
26 attributable to the damaged common elements shall be used to restore the damaged
27 area to a condition compatible with the remainder of the planned community, (ii) the
28 insurance proceeds attributable to limited common elements which are not rebuilt
29 shall be distributed to the owners of the lots to which those limited common elements
30 were allocated, or to lienholders, as their interests may appear, and (iii) the
31 remainder of the proceeds shall be distributed to all the lot owners or lienholders, as
32 their interests may appear, in proportion to the common expense liabilities of all the
33 lots. Notwithstanding the provisions of this subsection, G.S. 47E-2-118 (termination
34 of the planned community) governs the distribution of insurance proceeds if the
35 planned community is terminated.

36 (h) The provisions of this section may be varied or waived in the case of a
37 planned community all of whose lots are restricted to nonresidential use.

38 "§ 47E-3-114. Surplus funds.

39 Unless otherwise provided in the declaration, any surplus funds of the association
40 remaining after payment of or provision for common expenses and any prepayment
41 of reserves shall be paid to the lot owners in proportion to their common expense
42 liabilities or credited to them to reduce their future common expense assessments.

43 "§ 47E-3-115. Assessments for common expenses.

1 (a) Until the association makes a common expense assessment, the declarant shall
2 pay all common expenses. After any assessment has been made by the association,
3 assessments thereafter shall be made at least annually.

4 (b) Except for assessments under subsections (c), (d), and (e) of this section, all
5 common expenses shall be assessed against all the lots in accordance with the
6 allocations set forth in the declaration pursuant to G.S. 47E-2-107(a). Any past due
7 common expense assessment or installment thereof bears interest at the rate
8 established by the association not exceeding eighteen percent (18%) per year.

9 (c) To the extent required by the declaration:

10 (1) Any common expense associated with the maintenance, repair, or
11 replacement of a limited common element shall be assessed against
12 the lots to which that limited common element is assigned, equally,
13 or in any other proportion that the declaration provides;

14 (2) Any common expense or portion thereof benefiting fewer than all
15 of the lots shall be assessed exclusively against the lots benefited;
16 and

17 (3) The costs of insurance shall be assessed in proportion to risk and
18 the costs of utilities shall be assessed in proportion to usage.

19 (d) Assessments to pay a judgment against the association may be made only
20 against the lots in the planned community at the time the judgment was entered, in
21 proportion to their common expense liabilities.

22 (e) If any common expense is caused by the negligence or misconduct of any lot
23 owner or occupant, the association may assess that expense exclusively against his lot.

24 (f) If common expense liabilities are reallocated, common expense assessments
25 and any installment thereof not yet due shall be recalculated in accordance with the
26 reallocated common expense liabilities.

27 **"§ 47E-3-116. Lien for assessments.**

28 (a) Any assessment levied against a lot remaining unpaid for a period of 30 days
29 or longer shall constitute a lien on that lot when a claim of lien is filed of record in
30 the office of the clerk of superior court of the county in which the lot is located in
31 the manner provided herein. The association may foreclose the claim of lien in like
32 manner as a mortgage on real estate under power of sale under Article 2A of
33 Chapter 45 of the General Statutes. Unless the declaration otherwise provides, fees,
34 charges, late charges, fines, interest, and other charges imposed pursuant to G.S. 47E-
35 3-102, 47E-3-107, 47E-3-107A, and 47E-3-115 are enforceable as assessments under
36 this section.

37 (b) The lien under this section is prior to all liens and encumbrances on a lot
38 except (i) liens and encumbrances (specifically including but not limited to, a
39 mortgage or deed of trust on the lot) recorded before the docketing of the claim of
40 lien in the office of the clerk of superior court, and (ii) liens for real estate taxes and
41 other governmental assessments and charges against the lot. This subsection does not
42 affect the priority of mechanics' or materialmen's liens.

1 (c) A lien for unpaid assessments is extinguished unless proceedings to enforce the
2 lien are instituted within three years after the docketing of the claim of lien in the
3 office of the clerk of superior court.

4 (d) This section does not prohibit other actions to recover the sums for which
5 subsection (a) of this section creates a lien or prohibit an association taking a deed in
6 lieu of foreclosure.

7 (e) A judgment, decree, or order in any action brought under this section shall
8 include costs and reasonable attorneys' fees for the prevailing party.

9 (f) Where the holder of a first mortgage or first deed of trust of record, or other
10 purchaser of a lot obtains title to the lot as a result of foreclosure of a first mortgage
11 or first deed of trust, such purchaser and its heirs, successors and assigns, shall not be
12 liable for the assessments against such lot which became due prior to the acquisition
13 of title to such lot by such purchaser. Such unpaid assessments shall be deemed to be
14 common expenses collectible from all the lot owners including such purchaser, its
15 heirs, successors and assigns.

16 (g) A claim of lien shall set forth the name and address of the association, the
17 name of the record owner of the lot at the time the claim of lien is filed, a
18 description of the lot and the amount of the lien claimed.

19 "§ 47E-3-117: Reserved.

20 "§ 47E-3-118. Association records.

21 (a) The association shall keep financial records sufficiently detailed to enable the
22 association to comply with this act. All financial and other records shall be made
23 reasonably available for examination by any lot owner and his authorized agents.

24 (b) The association, upon written request, shall furnish to a lot owner or his
25 authorized agents a statement setting forth the amount of unpaid assessments and
26 other charges against a lot. The statement shall be furnished within 10 business days
27 after receipt of the request and is binding on the association, the executive board, and
28 every lot owner.

29 "§ 47E-3-119. Association as trustee.

30 With respect to a third person dealing with the association in the association's
31 capacity as a trustee under G.S. 47E-2-118 following termination or G.S. 47E-3-113
32 for insurance proceeds, the existence of trust powers and their proper exercise by the
33 association may be assumed without inquiry. A third person is not bound to inquire
34 whether the association has power to act as trustee or is properly exercising trust
35 powers, and a third person, without actual knowledge that the association is
36 exceeding or improperly exercising its powers, is fully protected in dealing with the
37 association as if it possessed and properly exercised the powers it purports to exercise.
38 A third person is not bound to assure the proper application of trust assets paid or
39 delivered to the association in its capacity as trustee.

40 "ARTICLE 4.

41 "Protection of Purchasers.

42 "§ 47E-4-101. Applicability and waiver.

1 (a) This Article applies to all lots subject to this act, except as provided in
2 subsection (b) of this section or as modified or waived by agreement of purchasers of
3 lots in a planned community in which all lots are restricted to nonresidential use.

4 (b) Neither an initial sale certificate nor a resale statement need be prepared or
5 delivered in the case of a disposition which is:

6 (1) Gratuitous;

7 (2) Pursuant to court order;

8 (3) By government or governmental agency;

9 (4) By foreclosure or deed in lieu of foreclosure;

10 (5) To a person in the business of selling real estate who intends to
11 offer the lot or lots to purchasers; or

12 (6) Subject to cancellation at any time for any reason by the
13 purchasers without penalty.

14 **"§ 47E-4-102. Initial seller disclosure requirements.**

15 Any initial seller shall furnish to a purchaser before execution of any contract for
16 sale of a lot, or otherwise before conveyance, a copy of the declaration (other than
17 the plats), the bylaws, the rules or regulations of the association, and an initial sale
18 certificate containing and fully and accurately disclosing:

19 (1) A statement setting forth the amount and frequency of common
20 expense assessments, other fees or charges payable by lot owners;

21 (2) A statement setting forth any unpaid common expense assessments,
22 other fees or charges currently due and payable from the initial
23 seller;

24 (3) A statement of any capital expenditures anticipated by the
25 association for the current and two next succeeding fiscal years;

26 (4) A statement of the amount of any reserves for capital expenditures
27 and of any portions of those reserves designated by the association
28 for any specified projects;

29 (5) The most recent regularly prepared balance sheet and income and
30 expense statement, if any, of the association;

31 (6) The current operating budget of the association; and

32 (7) Any services not reflected in the budget that the declarant
33 provides, or expenses that he pays and that he expects may become
34 at any subsequent time a common expense of the association and
35 the projected common expense assessment attributable to each of
36 those services or expenses for the association and for each type of
37 lot.

38 The failure of an initial seller to comply with the requirements of this section shall
39 not affect title to any lot transferred.

40 **"§§ 47E-4-103 to 47E-4-108: Reserved.**

41 **"§ 47E-4-109. Resales of lots.**

42 Except in the case of a sale subject to G.S. 47E-4-102 or unless exempt under G.S.
43 47E-4-101(b), a lot owner shall furnish to a prospective purchaser before conveyance

1 a statement setting forth the common expense assessment and any other fees payable
2 by lot owners.

3 "§ 47E-4-110: Reserved.

4 "§ 47E-4-111. Conveyances to the association.

5 Before conveying real estate to the association, the declarant shall have that real
6 estate released from all liens. Further, improvements on the real estate shall be
7 substantially complete before the real estate is conveyed to the association or the
8 declarant shall provide reasonable assurances and security for the completion of the
9 improvements, independent of the declarant.

10 "§§ 47E-4-112 to 47E-4-116: Reserved.

11 "§ 47E-4-117. Effect of violations on rights of action; attorneys' fees.

12 If a declarant or any other person subject to this act fails to comply with any
13 provision hereof or any provision of the declaration or bylaws, any person or class of
14 persons adversely affected by the failure to comply has a claim for appropriate relief.
15 The court may award reasonable attorneys' fees to the prevailing party.

16 "§ 47E-4-118. Labeling of promotional material.

17 If any improvement contemplated in a planned community is labeled 'NEED NOT
18 BE BUILT' on a plat, or is to be located within a portion of the planned community
19 with respect to which the declarant has reserved a development right, no promotional
20 material may be displayed or delivered to prospective purchasers which describes or
21 portrays that improvement unless the description or portrayal of the improvement in
22 the promotional material is conspicuously labeled or identified as 'NEED NOT BE
23 BUILT'.

24 "§ 47E-4-119. Declarant's obligation to complete and restore.

25 (a) The declarant shall complete all improvements labeled 'MUST BE BUILT' on
26 plats prepared pursuant to G.S. 47E-2-109.

27 (b) The declarant is subject to liability for the prompt repair and restoration, to a
28 condition compatible with the remainder of the planned community, of any portion
29 of the planned community affected by the exercise of rights reserved pursuant to or
30 created by G.S. 47E-2-110, 47E-2-111, 47E-2-113, 47E-2-115, or 47E-2-116.

31 "§ 47E-4-120: Reserved."

32 Section 2. This act becomes effective October 1, 1997.

DRAFT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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D

SENATE BILL 801
Proposed House Committee Substitute
S801-CSRO-002
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION.

Short Title: N.C. Planned Community Act.

(Public)

Sponsors:

Referred to:

April 10, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH THE NORTH CAROLINA PLANNED COMMUNITY ACT.
3 The General Assembly of North Carolina enacts:
4 Section 1. The General Statutes are amended by adding a
5 new Chapter to read:
6 "Chapter 47E.
7 "North Carolina Planned Community Act.
8 "ARTICLE 1.
9 "General Provisions.
10 "§ 47E-1-101. Short title.
11 This Chapter shall be known and may be cited as the North
12 Carolina Planned Community Act.
13 "§ 47E-1-102. Applicability.
14 (a) This Chapter applies to all planned communities within
15 this State except as provided in paragraph (b).
16 (b) This Chapter does not apply to a planned community created
17 within this State:
18 (1) Which contains no more than 20 lots (including all
19 lots which may be added or created by the exercise
20 of development rights) unless the declaration

1 provides or is amended to provide that this Chapter
2 does apply to that planned community; or
3 (2) In which all lots are restricted exclusively to
4 nonresidential purposes, unless the declaration
5 provides or is amended to provide that this Chapter
6 does apply to that planned community.

7 (c) This Chapter does not apply to planned communities or lots
8 located outside this State.

9 (d) Any planned community created prior to the effective date
10 of this Chapter may elect to make the provisions of this Chapter
11 applicable to it by amending its declaration to provide that this
12 Chapter shall apply to that planned community.

13 "§ 47E-1-103. Definitions.

14 In the declaration and bylaws, unless specifically provided
15 otherwise or the context otherwise requires, and in this Chapter:

16 (1) Reserved.

17 (2) 'Allocated interests' means the common expense
18 liability and votes in the association allocated to
19 each lot.

20 (3) 'Association' or 'owners' association' means the
21 association organized as allowed under North
22 Carolina law, including G.S. 47E-3-101.

23 (4) 'Common elements' means any real estate within a
24 planned community owned or leased by the
25 association, other than a lot.

26 (5) 'Common expenses' means expenditures made by or
27 financial liabilities of the association, together
28 with any allocations to reserves.

29 (6) 'Common expense liability' means the liability for
30 common expenses allocated to each lot as permitted
31 by this Chapter, the declaration or otherwise by
32 law.

33 (7) 'Condominium' means real estate, as defined and
34 created under Chapter 47C.

35 (8) 'Cooperative' means real estate owned by a
36 corporation, trust, trustee, partnership, or
37 unincorporated association, where the governing
38 instruments of that organization provide that each
39 of the organization's members, partners,
40 stockholders, or beneficiaries is entitled to
41 exclusive occupancy of a designated portion of that
42 real estate.

43 (9) 'Declarant' means any person or group of persons
44 acting in concert who (i) as part of a common

- 1 promotional plan, offers to dispose of the person's
2 or group's interest in a lot not previously
3 disposed of, or (ii) reserves or succeeds to any
4 special declarant right.
- 5 (10) 'Declaration' means any instruments, however
6 denominated, that create a planned community and
7 any amendments to those instruments.
- 8 (11) Reserved.
- 9 (12) Reserved.
- 10 (13) 'Executive board' means the body, regardless of
11 name, designated in the declaration to act on
12 behalf of the association.
- 13 (14) Reserved.
- 14 (15) Reserved.
- 15 (16) 'Leasehold planned community' means a planned
16 community in which all or a portion of the real
17 estate is subject to a lease, the expiration or
18 termination of which will terminate the planned
19 community or reduce its size.
- 20 (17) 'Lessee' means the party entitled to present
21 possession of a leased lot whether lessee,
22 sublessee, or assignee.
- 23 (18) 'Limited common element' means a portion of the
24 common elements allocated by the declaration or by
25 operation of law for the exclusive use of one or
26 more but fewer than all of the lots.
- 27 (19) 'Lot' means a physical portion of the planned
28 community designated for separate ownership or
29 occupancy by a lot owner.
- 30 (20) 'Lot owner' means a declarant or other person who
31 owns a lot, or a lessee of a lot in a leasehold
32 planned community whose lease expires
33 simultaneously with any lease the expiration or
34 termination of which will remove the lot from the
35 planned community, but does not include a person
36 having an interest in a lot solely as security for
37 an obligation.
- 38 (21) 'Master association' means an organization
39 described in G.S. 47E-2-120, whether or not it is
40 also an association described in G.S. 47E-3-101.
- 41 (22) 'Person' means a natural person, corporation,
42 business trust, estate, trust, partnership,
43 association, joint venture, government,

- 1 governmental subdivision or agency, or other legal
2 or commercial entity.
- 3 (23) 'Planned community' means real estate with respect
4 to which any person, by virtue of that person's
5 ownership of a lot, is expressly obligated by a
6 declaration to pay real property taxes, insurance
7 premiums, or other expenses to maintain, improve,
8 or benefit other lots or other real estate
9 described in the declaration. For purposes of this
10 act, neither a cooperative nor a condominium is a
11 planned community, but real estate comprising a
12 condominium or cooperative may be part of a planned
13 community. 'Ownership of a lot' does not include
14 holding a leasehold interest of less than 20 years
15 in a lot, including renewal options.
- 16 (24) 'Purchaser' means any person, other than a
17 declarant or a person in the business of selling
18 real estate for the purchaser's own account, who by
19 means of a voluntary transfer acquires a legal or
20 equitable interest in a lot, other than (i) a
21 leasehold interest (including renewal options) of
22 less than 20 years, or (ii) as security for an
23 obligation.
- 24 (25) 'Reasonable attorneys' fees' means attorneys' fees
25 reasonably incurred without regard to any
26 limitations on attorneys' fees which otherwise may
27 be allowed by law.
- 28 (26) 'Real estate' means any leasehold or other estate
29 or interest in, over, or under land, including
30 structures, fixtures, and other improvements and
31 interests which by custom, usage, or law pass with
32 a conveyance of land though not described in the
33 contract of sale or instrument of conveyance.
34 'Real estate' includes parcels with or without
35 upper or lower boundaries, and spaces that may be
36 filled with air or water.
- 37 (27) Reserved.
- 38 (28) 'Special declarant rights' means rights reserved
39 for the benefit of a declarant including, without
40 limitation, any right (i) to complete improvements
41 indicated on plats and plans filed with the
42 declaration; (ii) to exercise any development
43 right; (iii) to maintain sales offices, management
44 offices, signs advertising the planned community,

1 and models; (iv) to use easements through the
2 common elements for the purpose of making
3 improvements within the planned community or within
4 real estate which may be added to the planned
5 community; (v) to make the planned community part
6 of a larger planned community or group of planned
7 communities; (vi) to make the planned community
8 subject to a master association; or (vii) to
9 appoint or remove any officer or executive board
10 member of the association or any master association
11 during any period of declarant control.

12 (29) Reserved.

13 "§ 47E-1-104. Variation.

14 (a) Except as specifically provided in specific sections of
15 this Chapter, the provisions of this Chapter may not be varied by
16 the declaration or bylaws.

17 (b) The provisions of this Chapter may not be varied by
18 agreement; however, after breach of a provision of this Chapter,
19 rights created hereunder may be knowingly waived in writing.

20 (c) Notwithstanding any of the provisions of this Chapter, a
21 declarant may not act under a power of attorney or proxy or use
22 any other device to evade the limitations or prohibitions of this
23 Chapter, the declaration, or the bylaws.

24 "§ 47E-1-105: Reserved.

25 "§ 47E-1-106. Applicability of local ordinances, regulations,
26 and building codes.

27 A zoning, subdivision, or building code or other real estate
28 use law, ordinance, or regulation may not prohibit a planned
29 community or impose any requirement upon a planned community
30 which it would not impose upon a substantially similar
31 development under a different form of ownership or
32 administration. Otherwise, no provision of this Chapter
33 invalidates or modifies any provision of any zoning, subdivision,
34 or building code or any other real estate use law, ordinance, or
35 regulation. No local ordinance or regulation may require the
36 recordation of a declaration prior to the date required by this
37 Chapter.

38 "§ 47E-1-107. Eminent domain.

39 (a) If a lot is acquired by eminent domain, or if part of a
40 lot is acquired by eminent domain leaving the lot owner with a
41 remnant which may not practically or lawfully be used for any
42 purpose permitted by the declaration, the award shall compensate
43 the lot owner for his lot and its interest in the common element.
44 Upon acquisition, unless the decree otherwise provides, the lot's

1 allocated interests are automatically reallocated to the
2 remaining lots in proportion to the respective allocated
3 interests of those lots before the taking, exclusive of the lot
4 taken.

5 (b) Except as provided in subsection (a) of this section, if
6 part of a lot is acquired by eminent domain, the award shall
7 compensate the lot owner for the reduction in value of the lot.
8 Upon acquisition, unless the decree otherwise provides, (i) that
9 lot's allocated interests are reduced in proportion to the
10 reduction in the size of the lot, or on any other basis specified
11 in the declaration, and (ii) the portion of the allocated
12 interests divested from the partially acquired lot are
13 automatically reallocated to that lot and the remaining lots in
14 proportion to the respective allocated interests of those lots
15 before the taking, with the partially acquired lot participating
16 in the reallocation on the basis of its reduced allocated
17 interests.

18 (c) If there is any reallocation under subsection (a) or (b)
19 of this section, the association shall promptly prepare, execute,
20 and record an amendment to the declaration reflecting the
21 reallocations. Any remnant of a lot remaining after part of a
22 lot is taken under this subsection is thereafter a common
23 element.

24 (d) If part of the common elements is acquired by eminent
25 domain, the portion of the award attributable to the common
26 elements taken shall be paid to the association. Unless the
27 declaration provides otherwise, any portion of the award
28 attributable to the acquisition of a limited common element shall
29 be apportioned among the owners of the lots to which that limited
30 common element was allocated at the time of acquisition based on
31 their allocated interest in the common elements before the
32 taking.

33 (e) The court decree shall be recorded in every county in
34 which any portion of the planned community is located.

35 "§ 47E-1-108. Supplemental general principles of law applicable.

36 The principles of law and equity as well as other North
37 Carolina statutes (including the provisions of the North Carolina
38 Nonprofit Corporation Act) supplement the provisions of this
39 Chapter, except to the extent inconsistent with this Chapter.
40 When these principles or statutes are inconsistent or conflict
41 with this Chapter, the provisions of this Chapter will control.

42 "§§ 47E-1-109 through 47E-1-115: Reserved.

43 "ARTICLE 2.

44 "Creation, Alteration, and Termination of Planned Communities.

1 "§ 47E-2-101. Creation of the planned community.

2 A declaration creating a planned community shall be executed in
3 the same manner as a deed, shall be recorded in every county in
4 which any portion of the planned community is located, and shall
5 be indexed in the Grantee index in the name of the planned
6 community and the association and in the Grantor index in the
7 name of each person executing the declaration.

8 "§ 47E-2-102: Reserved.

9 "§ 47E-2-103. Construction and validity of declaration and
10 bylaws.

11 (a) All provisions of the declaration and bylaws are
12 severable.

13 (b) The rule against perpetuities may not be applied to defeat
14 any provision of the declaration, bylaws, rules, or regulations
15 adopted pursuant to G.S. 47E-3-102(a)(1).

16 (c) In the event of a conflict between the provisions of the
17 declaration and the bylaws, the declaration prevails except to
18 the extent the declaration is inconsistent with this Chapter.

19 (d) Title to a lot and common elements is not rendered
20 unmarketable or otherwise affected by reason of an insubstantial
21 failure of the declaration to comply with this Chapter. Whether
22 a substantial failure to comply with this Chapter impairs
23 marketability shall be determined by the law of this State
24 relating to marketability.

25 "§ 47E-2-104 to 47E-2-116: Reserved.

26 "§ 47E-2-117. Amendment of declaration.

27 (a) Except in cases of amendments that may be executed by a
28 declarant under the terms of the declaration or by certain lot
29 owners under G.S. 47E-2-118(b), the declaration may be amended
30 only by affirmative vote or written agreement signed by lot
31 owners of lots to which at least sixty-seven percent (67%) of the
32 votes in the association are allocated, or any larger majority
33 the declaration specifies or by the declarant if necessary for
34 the exercise of any development right. The declaration may
35 specify a smaller number only if all of the lots are restricted
36 exclusively to nonresidential use.

37 (b) No action to challenge the validity of an amendment
38 adopted pursuant to this section may be brought more than one
39 year after the amendment is recorded.

40 (c) Every amendment to the declaration shall be recorded in
41 every county in which any portion of the planned community is
42 located and is effective only upon recordation. An amendment
43 shall be indexed in the Grantee index in the name of the planned

1 community and the association and in the Grantor index in the
2 name of each person executing the amendment.

3 (d) Reserved.

4 (e) Amendments to the declaration required by this Chapter to
5 be recorded by the association shall be prepared, executed,
6 recorded, and certified in accordance with G.S. 47-41.

7 §47E-2-118. Termination of planned community.

8 (a) Except in the case of taking of all the lots by eminent
9 domain (G.S. 47E-1-107), a planned community may be terminated
10 only by agreement of lot owners of lots to which at least eighty
11 percent (80%) of the votes in the association are allocated, or
12 any larger percentage the declaration specifies. The declaration
13 may specify a smaller percentage only if all of the lots in the
14 planned community are restricted exclusively to nonresidential
15 uses.

16 (b) An agreement to terminate shall be evidenced by the
17 execution of a termination agreement, or ratifications thereof,
18 in the same manner as a deed, by the requisite number of lot
19 owners. The termination agreement shall specify a date after
20 which the agreement will be void unless it is recorded before
21 that date. A termination agreement and all ratifications thereof
22 shall be recorded in every county in which a portion of the
23 planned community is situated and is effective only upon
24 recordation.

25 (c) A termination agreement may provide for sale of the common
26 elements, but may not require that the lots be sold following
27 termination, unless the declaration as originally recorded
28 provided otherwise or unless all the lot owners consent to the
29 sale. If, pursuant to the agreement, any real estate in the
30 planned community is to be sold following termination, the
31 termination agreement shall set forth the minimum terms of the
32 sale.

33 (d) The association, on behalf of the lot owners, may contract
34 for the sale of real estate in the planned community, but the
35 contract is not binding until approved pursuant to subsections
36 (a) and (b) of this section. Until the sale has been concluded
37 and the proceeds thereof distributed, the association continues
38 in existence with all powers it had before termination. Proceeds
39 of the sale shall be distributed to lot owners and lien holders
40 as their interests may appear, as provided in the termination
41 agreement.

42 (e) If the real estate constituting the planned community is
43 not to be sold following termination, title to the common
44 elements vests in the lot owners upon termination as tenants in

1 common in proportion to their respective interests as provided in
2 the termination agreement.

3 (f) Following termination of the planned community, the
4 proceeds of any sale of real estate, together with the assets of
5 the association, are held by the association as trustee for lot
6 owners and holders of liens on the lots as their interests may
7 appear. All other creditors of the association are to be treated
8 as if they had perfected liens on the common elements immediately
9 before termination.

10 (g) If the termination agreement does not provide for the
11 distribution of sales proceeds pursuant to subsection (d) of this
12 section or the vesting of title pursuant to subsection (e) of
13 this section, sales proceeds shall be distributed and title shall
14 vest in accordance with each lot owner's allocated share of
15 common expense liability.

16 (h) Except as provided in subsection (i) of this section,
17 foreclosure or enforcement of a lien or encumbrance against the
18 common elements does not of itself terminate the planned
19 community, and foreclosure or enforcement of a lien or
20 encumbrance against a portion of the common elements other than
21 withdrawable real estate does not withdraw that portion from the
22 planned community. Foreclosure or enforcement of a lien or
23 encumbrance against withdrawable real estate does not of itself
24 withdraw that real estate from the planned community, but the
25 person taking title thereto has the right to require from the
26 association, upon request, an amendment excluding the real estate
27 from the planned community.

28 (i) If a lien or encumbrance against a portion of the real
29 estate comprising the planned community has priority over the
30 declaration and the lien or encumbrance has not been partially
31 released, the parties foreclosing the lien or encumbrance may,
32 upon foreclosure, record an instrument excluding the real estate
33 subject to that lien or encumbrance from the planned community.

34 "§ 47E-2-119: Reserved.

35 "§ 47E-2-120. Master associations.

36 If the declaration for a planned community provides that any
37 of the powers described in G.S. 47E-3-102 are to be exercised by
38 or may be delegated to a profit or nonprofit corporation which
39 exercises those or other powers on behalf of one or more other
40 planned communities or for the benefit of the lot owners of one
41 or more other planned communities, all provisions of this act
42 applicable to lot owners' associations apply to any such
43 corporation.

44 "§ 47E-2-121. Merger of consolidation of planned communities.

1 (a) Any two or more planned communities, by agreement of the
2 lot owners as provided in subsection (b) of this section, may be
3 merged or consolidated into a single planned community. In the
4 event of a merger or consolidation, unless the agreement
5 otherwise provides, the resultant planned community is, for all
6 purposes, the legal successor of all of the preexisting planned
7 communities, and the operations and activities of all
8 associations of the preexisting planned communities shall be
9 merged or consolidated into a single association which shall hold
10 all powers, rights, obligations, assets, and liabilities of all
11 preexisting associations.

12 (b) An agreement of two or more planned communities to merge
13 or consolidate pursuant to subsection (a) of this section shall
14 be evidenced by an agreement prepared, executed, recorded and
15 certified by the president of the association of each of the
16 preexisting planned communities following approval by owners of
17 lots to which are allocated the percentage of votes in each
18 planned community required to terminate that planned community.
19 Any such agreement shall be recorded in every county in which a
20 portion of the planned community is located and is not effective
21 until recorded.

22 (c) Every merger or consolidation agreement shall provide for
23 the reallocation of the allocated interests in the new
24 association among the lots of the resultant planned community
25 either (i) by stating the reallocations or the formulas upon
26 which they are based or (ii) by stating the percentage of overall
27 common expense liabilities and votes in the new association which
28 are allocated to all of the lots comprising each of the
29 preexisting planned communities, and providing that the portion
30 of the percentages allocated to each lot formerly comprising a
31 part of the preexisting planned community shall be equal to the
32 percentages of common expense liabilities and votes in the
33 association allocated to that lot by the declaration of the
34 preexisting planned community.

35 "§ 47E-2-122: Reserved.

36 "ARTICLE 3.

37 "Management of Planned Community.

38 "§ 47E-3-101. Organization of owners' association.

39 A lot owners' association shall be incorporated no later than
40 the date the first lot in the planned community is conveyed. The
41 membership of the association at all times shall consist
42 exclusively of all the lot owners or, following termination of
43 the planned community, of all persons entitled to distributions
44 of proceeds under G.S. 47E-2-118. Every association created

1 after the effective date of the act shall be organized as a
2 nonprofit corporation.

3 "§ 47E-3-102. Powers of owners' association.

4 Subject to the provisions of the articles of incorporation or
5 the declaration and the declarant's rights therein, the
6 association may:

- 7 (1) Adopt and amend bylaws and rules and regulations;
- 8 (2) Adopt and amend budgets for revenues, expenditures,
9 and reserves and collect assessments for common
10 expenses from lot owners;
- 11 (3) Hire and discharge managing agents and other
12 employees, agents, and independent contractors;
- 13 (4) Institute, defend, or intervene in litigation or
14 administrative proceedings on matters affecting the
15 planned community;
- 16 (5) Make contracts and incur liabilities;
- 17 (6) Regulate the use, maintenance, repair, replacement,
18 and modification of common elements;
- 19 (7) Cause additional improvements to be made as a part
20 of the common elements;
- 21 (8) Acquire, hold, encumber, and convey in its own name
22 any right, title, or interest to real or personal
23 property, provided that common elements may be
24 conveyed or subjected to a security interest only
25 pursuant to G.S. 47E-3-112;
- 26 (9) Grant easements, leases, licenses, and concessions
27 through or over the common elements;
- 28 (10) Impose and receive any payments, fees, or charges
29 for the use, rental, or operation of the common
30 elements other than the limited common elements and
31 for services provided to lot owners;
- 32 (11) Impose reasonable charges for late payment of
33 assessments and, after notice and an opportunity to
34 be heard, suspend privileges or services provided
35 by the association (except rights of access to
36 lots) during any period that assessments or other
37 amounts due and owing to the association remain
38 unpaid for a period of 30 days or longer;
- 39 (12) After notice and an opportunity to be heard, impose
40 reasonable fines or suspend privileges or services
41 provided by the association (except rights of
42 access to lots) for reasonable periods for
43 violations of the declaration, bylaws, and rules
44 and regulations of the association;

- 1 (13) Impose reasonable charges in connection with the
2 preparation and recordation of documents,
3 including, without limitation, amendments to the
4 declaration or statements of unpaid assessments;
5 (14) Provide for the indemnification of and maintain
6 liability insurance for its officers, executive
7 board, directors, employees, and agents;
8 (15) Assign its right to future income, including the
9 right to receive common expense assessments;
10 (16) Exercise all other powers that may be exercised in
11 this State by legal entities of the same type as
12 the association; and
13 (17) Exercise any other powers necessary and proper for
14 the governance and operation of the association.
15 "§ 47E-3-103. Executive board members and officers.
16 (a) Except as provided in the declaration, in the bylaws, in
17 subsection (b) of this section, or in other provisions of this
18 Chapter, the executive board may act in all instances on behalf
19 of the association. In the performance of their duties, officers
20 and members of the executive board shall discharge their duties
21 in good faith. Officers shall act according to the standards for
22 officers of a nonprofit corporation set forth in G.S. 55A-8-42,
23 and members shall act according to the standards for directors of
24 a nonprofit corporation set forth in G.S. 55A-8-30.
25 (b) The executive board may not act unilaterally on behalf of
26 the association to amend the declaration (G.S. 47E-2-117), to
27 terminate the planned community (G.S. 47E-2-118), or to elect
28 members of the executive board or determine the qualifications,
29 powers and duties, or terms of office of executive board members
30 (G.S. 47E-3-103(f)), but the executive board may unilaterally
31 fill vacancies in its membership for the unexpired portion of any
32 term. Notwithstanding any provision of the declaration or bylaws
33 to the contrary, the lot owners, by a majority vote of all
34 persons present and entitled to vote at any meeting of the lot
35 owners at which a quorum is present, may remove any member of the
36 executive board with or without cause, other than a member
37 appointed by the declarant.
38 (c) Within 30 days after adoption of any proposed budget for
39 the planned community, the executive board shall provide to all
40 the lot owners a summary of the budget and a notice of the
41 meeting to consider ratification of the budget, including a
42 statement that the budget may be ratified without a quorum. The
43 executive board shall set a date for a meeting of the lot owners
44 to consider ratification of the budget, such meeting to be held

1 not less than 10 nor more than 60 days after mailing of the
2 summary and notice. There shall be no requirement that a quorum
3 be present at the meeting. The budget is ratified unless at that
4 meeting a majority of all the lot owners in the association or
5 any larger vote specified in the declaration rejects the budget.
6 In the event the proposed budget is rejected, the periodic budget
7 last ratified by the lot owners shall be continued until such
8 time as the lot owners ratify a subsequent budget proposed by the
9 executive board.

10 (d) The declaration may provide for a period of declarant
11 control of the association, during which period a declarant, or
12 persons designated by the declarant, may appoint and remove the
13 officers and members of the executive board.

14 (e) Not later than the termination of any period of declarant
15 control, the lot owners shall elect an executive board of at
16 least three members, at least a majority of whom shall be lot
17 owners. The executive board shall elect the officers. The
18 executive board members and officers shall take office upon
19 election.

20 "§ 47E-3-104. Transfer of special declarant rights.

21 Except for transfer of declarant rights pursuant to
22 foreclosure, no special declarant right (G.S. 47E-1-103(28)) may
23 be transferred except by an instrument evidencing the transfer
24 recorded in every county in which any portion of the planned
25 community is located. The instrument is not effective unless
26 executed by the transferee.

27 "§ 47E-3-105. Termination of contracts and leases of declarant.

28 If entered into before the executive board elected by the lot
29 owners pursuant to G.S. 47E-3-103(e) takes office, any contract
30 or lease affecting or related to the planned community that is
31 not bona fide or was unconscionable to the lot owners at the time
32 entered into under the circumstances then prevailing, may be
33 terminated without penalty by the association at any time after
34 the executive board elected by the lot owners pursuant to G.S.
35 47E-3-103(e) takes office upon not less than 90 days notice to
36 the other party.

37 "§ 47E-3-106. Bylaws.

38 (a) The bylaws of the association shall provide for:

- 39 (1) The number of members of the executive board and
40 the titles of the officers of the association;
- 41 (2) Election by the executive board of officers of the
42 association;
- 43 (3) The qualifications, powers and duties, terms of
44 office, and manner of electing and removing

1 executive board members and officers and filling
2 vacancies;
3 (4) Which, if any, of its powers the executive board or
4 officers may delegate to other persons or to a
5 managing agent;
6 (5) Which of its officers may prepare, execute,
7 certify, and record amendments to the declaration
8 on behalf of the association; and
9 (6) The method of amending the bylaws.
10 (b) The bylaws may provide for any other matters the
11 association deems necessary and appropriate.
12 "§ 47E-3-107. Upkeep of planned community; responsibility and
13 assessments for damages.
14 (a) Except as otherwise provided in the declaration, G.S. 47E-
15 3-113(h) or subsection (b) of this section, the association is
16 responsible for causing the common elements to be maintained,
17 repaired, and replaced when necessary and to assess the lot
18 owners as necessary to recover the costs of such maintenance,
19 repair, or replacement except that the costs of maintenance,
20 repair or replacement of a limited common element shall be
21 assessed as provided in G.S. 47E-3-115(c)(1). Except as
22 otherwise provided in the declaration, each lot owner is
23 responsible for the maintenance and repair of his lot and any
24 improvements thereon. Each lot owner shall afford to the
25 association and when necessary to another lot owner access
26 through the lot owner's lot reasonably necessary for any such
27 maintenance, repair or replacement activity.
28 (b) If a lot owner is legally responsible for damage inflicted
29 on any common element, the association may direct such lot owner
30 to repair such damage or the association may itself cause the
31 repairs to be made and recover damages from the responsible lot
32 owner.
33 (c) If damage is inflicted on any lot by an agent of the
34 association in the scope of the agent's activities as such agent,
35 the association is liable to repair such damage or to reimburse
36 the lot owner for the cost of repairing such damages. The
37 association shall also be liable for any losses to the lot owner.
38 (d) When the claim under subsection (b) or (c) of this section
39 is less than or equal to the jurisdictional amount established
40 for small claims by G.S. 7A-210, any aggrieved party may request
41 that a hearing be held before an adjudicatory panel appointed by
42 the executive board to determine if a lot owner is responsible
43 for damages to any common element or the association is
44 responsible for damages to any lot. If the executive board fails

1 to appoint an adjudicatory panel to hear such matters, hearings
2 under this section shall be held before the executive board.
3 Such panel shall accord to the party charged with causing damages
4 notice of the charge, opportunity to be heard and to present
5 evidence, and notice of the decision. This panel may assess
6 liability for each damage incident against each lot owner charged
7 or against the association not in excess of the jurisdictional
8 amount established for small claims by G.S. 7A-210. When the
9 claim under subsection (b) or (c) of this section exceeds the
10 jurisdictional amount established for small claims by G.S. 7A-
11 210, liability of any lot owner charged or the association shall
12 be determined as otherwise provided by law. Liabilities of lot
13 owners determined by adjudicatory hearing or as otherwise
14 provided by law shall be assessments secured by lien under G.S.
15 47E-3-116. Liabilities of the association determined by
16 adjudicatory hearing or as otherwise provided by law may be
17 offset by the lot owner against sums owing to the association and
18 if so offset, shall reduce the amount of any lien of the
19 association against the lot at issue.

20 (e) The declarant alone is liable for maintenance, repair, and
21 all other expenses in connection with any real estate which has
22 not been incorporated into the planned community.

23 "§ 47E-3-107A. Procedures for fines and suspension of planned
24 community privileges or services.

25 Unless a specific procedure for the imposition of fines or
26 suspension of planned community privileges or services is
27 provided for in the declaration, a hearing shall be held before
28 an adjudicatory panel appointed by the executive board to
29 determine if any lot owner should be fined or if planned
30 community privileges or services should be suspended pursuant to
31 the powers granted to the association in G.S. 47E-3-102(11) and
32 (12). If the executive board fails to appoint an adjudicatory
33 panel to hear such matters, hearings under this section shall be
34 held before the executive board. The lot owner charged shall be
35 given notice of the charge, opportunity to be heard and to
36 present evidence, and notice of the decision. If it is decided
37 that a fine should be imposed, a fine not to exceed one hundred
38 fifty dollars (\$150.00) may be imposed for the violation and
39 without further hearing, for each day after the decision that the
40 violation occurs. Such fines shall be assessments secured by
41 liens under G.S. 47E-3-116. If it is decided that a suspension
42 of planned community privileges or services should be imposed,
43 the suspension may be continued without further hearing until the
44 violation or delinquency is cured.

1 "§ 47E-3-108. Meetings.

2 A meeting of the association shall be held at least once each
3 year. Special meetings of the association may be called by the
4 president, a majority of the executive board, or by lot owners
5 having ten percent (10%), or any lower percentage specified in
6 the bylaws, of the votes in the association. Not less than 10
7 nor more than 60 days in advance of any meeting, the secretary or
8 other officer specified in the bylaws shall cause notice to be
9 hand-delivered or sent prepaid by United States mail to the
10 mailing address of each lot or to any other mailing address
11 designated in writing by the lot owner. The notice of any
12 meeting shall state the time and place of the meeting and the
13 items on the agenda, including the general nature of any
14 proposed amendment to the declaration or bylaws, any budget
15 changes, and any proposal to remove a director or officer.

16 "§ 47E-3-109. Quorums.

17 (a) Unless the bylaws provide otherwise, a quorum is present
18 throughout any meeting of the association if persons entitled to
19 cast ten percent (10%) of the votes which may be cast for
20 election of the executive board are present in person or by proxy
21 at the beginning of the meeting.

22 (b) Unless the bylaws specify a larger percentage, a quorum is
23 deemed present throughout any meeting of the executive board if
24 persons entitled to cast fifty percent (50%) of the votes on that
25 board are present at the beginning of the meeting.

26 (c) In the event business cannot be conducted at any meeting
27 because a quorum is not present, that meeting may be adjourned to
28 a later date by the affirmative vote of a majority of those
29 present in person or by proxy. Notwithstanding any provision to
30 the contrary in the declaration or the bylaws, the quorum
31 requirement at the next meeting shall be one-half of the quorum
32 requirement applicable to the meeting adjourned for lack of a
33 quorum. This provision shall continue to reduce the quorum by
34 fifty percent (50%) from that required at the previous meeting,
35 as previously reduced, until such time as a quorum is present and
36 business can be conducted.

37 "§ 47E-3-110. Voting; proxies.

38 (a) If only one of the multiple owners of a lot is present at
39 a meeting of the association, the owner who is present is
40 entitled to cast all the votes allocated to that lot. If more
41 than one of the multiple owners are present, the votes allocated
42 to that lot may be cast only in accordance with the agreement of
43 a majority in interest of the multiple owners, unless the
44 declaration or bylaws expressly provides otherwise. Majority

1 agreement is conclusively presumed if any one of the multiple
2 owners casts the votes allocated to that lot without protest
3 being made promptly to the person presiding over the meeting by
4 any of the other owners of the lot.

5 (b) Votes allocated to a lot may be cast pursuant to a proxy
6 duly executed by a lot owner. If a lot is owned by more than one
7 person, each owner of the lot may vote or register protest to the
8 casting of votes by the other owners of the lot through a duly
9 executed proxy. A lot owner may not revoke a proxy given
10 pursuant to this section except by actual notice of revocation to
11 the person presiding over a meeting of the association. A proxy
12 is void if it is not dated. A proxy terminates eleven months
13 after its date, unless it specifies a shorter term.

14 (c) If the declaration requires that votes on specified
15 matters affecting the planned community be cast by lessees rather
16 than lot owners of leased lots, (i) the provisions of subsections
17 (a) and (b) of this section apply to lessees as if they were lot
18 owners; (ii) lot owners who have leased their lots to other
19 persons may not cast votes on those specified matters; and (iii)
20 lessees are entitled to notice of meetings, access to records,
21 and other rights respecting those matters as if they were lot
22 owners. Lot owners shall also be given notice, in the manner
23 provided in G.S. 47E-3-108, of all meetings at which lessees may
24 be entitled to vote.

25 (d) No votes allocated to a lot owned by the association may
26 be cast.

27 (e) The declaration may provide that on specified issues only
28 a defined subgroup of lot owners may vote provided:

29 (1) The issue being voted is of special interest solely
30 to the members of the subgroup; and

31 (2) All except de minimis cost that will be incurred
32 based on the vote taken will be assessed solely
33 against those lot owners entitled to vote.

34 (f) For purposes of subdivision(e)(1) above, an issue to be
35 voted on is not a special interest solely to a subgroup if it
36 substantially affects the overall appearance of the planned
37 community or substantially affects living conditions of lot
38 owners not included in the voting subgroup.

39 "§ 47E-3-111. Tort and contract liability.

40 (a) Neither the association nor any lot owner except the
41 declarant is liable for that declarant's torts in connection with
42 any part of the planned community which that declarant has the
43 responsibility to maintain.

1 (b) An action alleging a wrong done by the association shall
2 be brought against the association and not against a lot owner.

3 (c) Any statute of limitation affecting the association's
4 right of action under this section is tolled until the period of
5 declarant control terminates. A lot owner is not precluded from
6 bringing an action contemplated by this section because the
7 person is a lot owner or a member or officer of the association.

8 "§ 47E-3-112. Conveyance or encumbrance of common elements.

9 (a) Portions of the common elements may be conveyed or
10 subjected to a security interest by the association if persons
11 entitled to cast at least eighty percent (80%) of the votes in
12 the association, or any larger percentage the declaration
13 specifies, agree in writing to that action; provided that all the
14 owners of lots to which any limited common element is allocated
15 shall agree in order to convey that limited common element or
16 subject it to a security interest. The declaration may specify a
17 smaller percentage only if all the lots are restricted
18 exclusively to nonresidential uses. Distribution of proceeds of
19 the sale of a limited common element shall be as provided by
20 agreement between the lot owners to which it is allocated and the
21 association. Proceeds of the sale or financing of a common
22 element (other than a limited common element) shall be an asset
23 of the association.

24 (b) The association, on behalf of the lot owners, may contract
25 to convey common elements or subject them to a security interest,
26 but the contract is not enforceable against the association until
27 approved pursuant to subsection (a) of this section. Thereafter,
28 the association has all powers necessary and appropriate to
29 effect the conveyance or encumbrance, free and clear of any
30 interest of any lot owner or the association in or to the common
31 element conveyed or encumbered, including the power to execute
32 deeds or other instruments.

33 (c) Any purported conveyance, encumbrance, or other voluntary
34 transfer of common elements, unless made pursuant to this section
35 is void.

36 (d) No conveyance or encumbrance of common elements pursuant
37 to this section may deprive any lot of its rights of access and
38 support.

39 "§ 47E-3-113. Insurance.

40 (a) Commencing not later than the time of the first conveyance
41 of a lot to a person other than a declarant, the association
42 shall maintain, to the extent reasonably available:

43 (1) Property insurance on the common elements insuring
44 against all risks of direct physical loss commonly

- 1 insured against including fire and extended
2 coverage perils. The total amount of insurance
3 after application of any deductibles shall be not
4 less than eighty percent (80%) of the replacement
5 cost of the insured property at the time the
6 insurance is purchased and at each renewal date,
7 exclusive of land, excavations, foundations, and
8 other items normally excluded from property
9 policies; and
- 10 (2) Liability insurance in reasonable amounts, covering
11 all occurrences commonly insured against for death,
12 bodily injury, and property damage arising out of
13 or in connection with the use, ownership, or
14 maintenance of the common elements.
- 15 (b) If the insurance described in subsection (a) of this
16 section is not reasonably available, the association promptly
17 shall cause notice of that fact to be hand-delivered or sent
18 prepaid by United States mail to all lot owners. The declaration
19 may require the association to carry any other insurance, and the
20 association in any event may carry any other insurance it deems
21 appropriate to protect the association or the lot owners.
- 22 (c) Insurance policies carried pursuant to subsection (a) of
23 this section shall provide that:
- 24 (1) Each lot owner is an insured person under the
25 policy to the extent of the lot owner's insurable
26 interest;
- 27 (2) The insurer waives its right to subrogation under
28 the policy against any lot owner or member of the
29 lot owner's household;
- 30 (3) No act or omission by any lot owner, unless acting
31 within the scope of the owner's authority on behalf
32 of the association, will preclude recovery under
33 the policy; and
- 34 (4) If, at the time of a loss under the policy, there
35 is other insurance in the name of a lot owner
36 covering the same risk covered by the policy, the
37 association's policy provides primary insurance.
- 38 (d) Any loss covered by the property policy under subdivision
39 (a)(1) of this section shall be adjusted with the association,
40 but the insurance proceeds for that loss are payable to any
41 insurance trustee designated for that purpose, or otherwise to
42 the association, and not to any mortgagee or beneficiary under a
43 deed of trust. The insurance trustee or the association shall
44 hold any insurance proceeds in trust for lot owners and lien

1 holders as their interests may appear. Subject to the provisions
2 of subsection (h) of this section, the proceeds shall be
3 disbursed first for the repair or restoration of the damaged
4 property, and lot owners and lien holders are not entitled to
5 receive payment of any portion of the proceeds unless there is a
6 surplus of proceeds after the property has been completely
7 repaired or restored, or the planned community is terminated.

8 (e) An insurance policy issued to the association does not
9 prevent a lot owner from obtaining insurance for the lot owner's
10 own benefit.

11 (f) An insurer that has issued an insurance policy under this
12 section shall issue certificates or memoranda of insurance to the
13 association and, upon written request, to any lot owner,
14 mortgagee, or beneficiary under a deed of trust. The insurer
15 issuing the policy may not cancel or refuse to renew it until 30
16 days after notice of the proposed cancellation or nonrenewal has
17 been mailed to the association, each lot owner and each mortgagee
18 or beneficiary under a deed of trust to whom certificates or
19 memoranda of insurance have been issued at their respective last
20 known addresses.

21 (g) Any portion of the planned community for which insurance
22 is required under subdivision (a)(1) of this section which is
23 damaged or destroyed shall be repaired or replaced promptly by
24 the association unless (i) the planned community is terminated,
25 (ii) repair or replacement would be illegal under any State or
26 local health or safety statute or ordinance, or (iii) the lot
27 owners decide not to rebuild by an eighty percent (80%) vote,
28 including one hundred percent (100%) approval of owners assigned
29 to the limited common elements not to be rebuilt. The cost of
30 repair or replacement in excess of insurance proceeds and
31 reserves is a common expense. If any portion of the planned
32 community is not repaired or replaced, (i) the insurance proceeds
33 attributable to the damaged common elements shall be used to
34 restore the damaged area to a condition compatible with the
35 remainder of the planned community, (ii) the insurance proceeds
36 attributable to limited common elements which are not rebuilt
37 shall be distributed to the owners of the lots to which those
38 limited common elements were allocated, or to lienholders, as
39 their interests may appear, and (iii) the remainder of the
40 proceeds shall be distributed to all the lot owners or
41 lienholders, as their interests may appear, in proportion to the
42 common expense liabilities of all the lots. Notwithstanding the
43 provisions of this subsection, G.S. 47E-2-118 (termination of the

1 planned community) governs the distribution of insurance proceeds
2 if the planned community is terminated.

3 (h) The provisions of this section may be varied or waived in
4 the case of a planned community all of whose lots are restricted
5 to nonresidential use.

6 "§ 47E-3-114. Surplus funds.

7 Unless otherwise provided in the declaration, any surplus funds
8 of the association remaining after payment of or provision for
9 common expenses, the funding of a reasonable operating expense
10 surplus, and any prepayment of reserves shall be paid to the lot
11 owners in proportion to their common expense liabilities or
12 credited to them to reduce their future common expense
13 assessments.

14 "§ 47E-3-115. Assessments for common expenses.

15 (a) Except as otherwise provided in the declaration, until the
16 association makes a common expense assessment, the declarant
17 shall pay all common expenses. After any assessment has been
18 made by the association, assessments thereafter shall be made at
19 least annually.

20 (b) Except for assessments under subsections (c), (d), and (e)
21 of this section, all common expenses shall be assessed against
22 all the lots in accordance with the allocations set forth in the
23 declaration. Any past due common expense assessment or
24 installment thereof bears interest at the rate established by the
25 association not exceeding eighteen percent (18%) per year. For
26 planned communities created prior to January 1, 1999, interest
27 may be charged on any past due common expense assessment or
28 installment only if the declaration provides for interest
29 charges, and where the declaration does not otherwise specify the
30 interest rate, the rate may not exceed eighteen percent (18%) per
31 year.

32 (c) To the extent required by the declaration:

- 33 (1) Any common expense associated with the maintenance,
34 repair, or replacement of a limited common element
35 shall be assessed against the lots to which that
36 limited common element is assigned, equally, or in
37 any other proportion that the declaration provides;
38 (2) Any common expense or portion thereof benefiting
39 fewer than all of the lots shall be assessed
40 exclusively against the lots benefitted; and
41 (3) The costs of insurance shall be assessed in
42 proportion to risk and the costs of utilities shall
43 be assessed in proportion to usage.

1 (d) Assessments to pay a judgment against the association may
2 be made only against the lots in the planned community at the
3 time the judgment was entered, in proportion to their common
4 expense liabilities.

5 (e) If any common expense is caused by the negligence or
6 misconduct of any lot owner or occupant, the association may
7 assess that expense exclusively against that lot owner or
8 occupant's lot.

9 (f) If common expense liabilities are reallocated, common
10 expense assessments and any installment thereof not yet due shall
11 be recalculated in accordance with the reallocated common expense
12 liabilities.

13 "§ 47E-3-116. Lien for assessments.

14 (a) Any assessment levied against a lot remaining unpaid for a
15 period of 30 days or longer shall constitute a lien on that lot
16 when a claim of lien is filed of record in the office of the
17 clerk of superior court of the county in which the lot is located
18 in the manner provided herein. The association may foreclose the
19 claim of lien in like manner as a mortgage on real estate under
20 power of sale under Article 2A of Chapter 45 of the General
21 Statutes. Unless the declaration otherwise provides, fees,
22 charges, late charges, fines, interest, and other charges imposed
23 pursuant to G.S. 47E-3-102, 47E-3-107, 47E-3-107A, and 47E-3-115
24 are enforceable as assessments under this section.

25 (b) The lien under this section is prior to all liens and
26 encumbrances on a lot except (i) liens and encumbrances
27 (specifically including but not limited to, a mortgage or deed of
28 trust on the lot) recorded before the docketing of the claim of
29 lien in the office of the clerk of superior court, and (ii) liens
30 for real estate taxes and other governmental assessments and
31 charges against the lot. This subsection does not affect the
32 priority of mechanics' or materialmen's liens.

33 (c) A lien for unpaid assessments is extinguished unless
34 proceedings to enforce the lien are instituted within three years
35 after the docketing of the claim of lien in the office of the
36 clerk of superior court.

37 (d) This section does not prohibit other actions to recover
38 the sums for which subsection (a) of this section creates a lien
39 or prohibit an association taking a deed in lieu of foreclosure.

40 (e) A judgment, decree, or order in any action brought under
41 this section shall include costs and reasonable attorneys' fees
42 for the prevailing party.

43 (f) Where the holder of a first mortgage or first deed of
44 trust of record, or other purchaser of a lot obtains title to the

1 lot as a result of foreclosure of a first mortgage or first deed
2 of trust, such purchaser and its heirs, successors and assigns,
3 shall not be liable for the assessments against such lot which
4 became due prior to the acquisition of title to such lot by such
5 purchaser. Such unpaid assessments shall be deemed to be common
6 expenses collectible from all the lot owners including such
7 purchaser, its heirs, successors and assigns.

8 (g) A claim of lien shall set forth the name and address of
9 the association, the name of the record owner of the lot at the
10 time the claim of lien is filed, a description of the lot and the
11 amount of the lien claimed.

12 "§ 47E-3-117: Reserved.

13 "§ 47E-3-118. Association records.

14 (a) The association shall keep financial records sufficiently
15 detailed to enable the association to comply with this Chapter.
16 All financial and other records shall be made reasonably
17 available for examination by any lot owner and the lot owner's
18 authorized agents.

19 (b) The association, upon written request, shall furnish to a
20 lot owner or the lot owner's authorized agents a statement
21 setting forth the amount of unpaid assessments and other charges
22 against a lot. The statement shall be furnished within 10
23 business days after receipt of the request and is binding on the
24 association, the executive board, and every lot owner.

25 "§ 47E-3-119. Association as trustee.

26 With respect to a third person dealing with the association in
27 the association's capacity as a trustee under G.S. 47E-2-118
28 following termination or G.S. 47E-3-113 for insurance proceeds,
29 the existence of trust powers and their proper exercise by the
30 association may be assumed without inquiry. A third person is
31 not bound to inquire whether the association has power to act as
32 trustee or is properly exercising trust powers, and a third
33 person, without actual knowledge that the association is
34 exceeding or improperly exercising its powers, is fully protected
35 in dealing with the association as if it possessed and properly
36 exercised the powers it purports to exercise. A third person is
37 not bound to assure the proper application of trust assets paid
38 or delivered to the association in its capacity as trustee.

39 "§47E-3-120. Declaration limits on attorney's fees.

40 Except as provided in G.S. 47E-3-116, in an action to enforce
41 provisions of the articles of incorporation, the declaration,
42 bylaws or duly adopted rules or regulations, the court may award
43 reasonable attorney's fees to the prevailing party if recovery of
44 attorney's fees is allowed in the declaration.

1 Section 2. The Revisor of Statutes shall cause to be
2 printed with this act all relevant portions of the official
3 comments to the North Carolina Planned Community Act and all
4 explanatory comments of the drafters of this act, as the Revisor
5 deems appropriate.

6 Section 3. This act becomes effective January 1, 1999,
7 and applies to planned communities created on or after that date.
8 G.S. 47E-3-107(a), (b), and (c), G.S. 47E-3-115, and G.S. 47E-3-
9 116 as enacted by Section 1 of this act apply to planned
10 communities created prior to the effective date, except that the
11 provisions of G.S. 47E-3-116(e) as enacted by Section 1 of this
12 act, apply to actions arising on or after the effective date.



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August 12, 1998

MEMORANDUM

TO: Representative David Miner, Chair, House Commerce Committee

FROM: Karen Cochrane-Brown and O. Walker Reagan, Committee Co-Counsels

RE: **Proposed House Committee Substitute for Senate Bill 801 - N.C. Planned Community Act - Senator Wellons**

The Proposed House Committee Substitute for Senate Bill 801 would create a new Chapter 47E as the North Carolina Planned Community Act. This act, modeled after the North Carolina Condominium Act and the Uniform Planned Community Act, (from the National Conference of Commissioners on Uniform State Laws), would establish a process and procedure for the establishment of planned communities, including the rights in common areas, the owners association, the powers of the association and the right to collect assessments for common expenses. The bill is a recommendation of the N.C. Bar Association.

The act governs the operation of non-condominium planned communities, commonly called planned unit developments, or PUD's. Typical examples of non-condominium planned communities are single family subdivisions, patio and cluster home communities, and town home developments. The act does not apply to groups of 20 or fewer lots or to subdivisions where there are no common areas. The act applies to residential development, and may apply to non-residential development when elected by the developer. Current law has developed over the years from case law using fundamental real property principles to govern these developments. The law in this area is not extensive, leading to wide variations and different interpretations which leads to legal uncertainty and litigation. This bill is intended to clarify a confusing area of the law (thereby reducing litigation), add stability to the real estate market and ensure consistent treatment across the state of planned communities among all parties involved.

All references are to the new **Chapter 47E** and are designated as **47E-X-XXX**. For simplicity purposes, sections referred to will be assumed to apply to 47E.

Section 1-103 sets out the definitions for terms used in the act, including common elements, common expenses, limited common elements, lot owner, planned community, reasonable attorneys fees, and special declarant rights. **Sections 1-104 through 1-108** set out the applicability of the act.

Sections 2-101 through 2-121 govern the creation, alteration and termination of planned communities. These sections cover what needs to be in the declaration of covenants (the main recorded document for a planned community), the plat and the lot descriptions, as well as defines how further development within the community will be governed. These sections also address how planned communities can be merged and terminated.

Sections 3-101 through 3-120 set out the framework for management of the lot owners' association, including its general structure, voting, meetings and powers. These sections also include provisions which protect both lot owners and the owners' association by clarifying the duties of maintenance, upkeep, assessments and liens.

Section 2 of the bill authorizes the Revisor of Statutes to print the official comments in the statutes to explain the intent of the law.

The bill becomes effective January 1, 1999. The new G.S. 47E-3-107 (a),(b), and (c), 47E-3-115, and 47E-3-116 also apply to planned communities established prior to January 1, 1999, except that the attorneys fees provisions of G.S. 47E-3-116 only apply to causes of actions which arise on or after January 1, 1999.

**1998 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Miner, Berry, Tallent, Hiatt, Church** for the Committee on
COMMERCE.

☐ Committee Substitute for

S.B. 872 A BILL TO BE ENTITLED AN ACT TO ALLOW TEENAGERS WHO ARE
FOURTEEN OR FIFTEEN YEARS OLD TO WORK AT CERTAIN PLACES THAT SELL
ALCOHOLIC BEVERAGES.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on ☐ Appropriations ☐ Finance ☐

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title,
unfavorable as to original bill (Committee Substitute Bill #), (and recommendation
that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes
the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.
(PUBLIC BILLS ONLY)

☒ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

3

SENATE BILL 872

Finance Committee Substitute Adopted 4/29/97

Third Edition Engrossed 4/30/97

Short Title: Youth Workers At ABC Permittees.

(Public)

Sponsors:

Referred to:

April 15, 1997

A BILL TO BE ENTITLED

1 AN ACT TO ALLOW TEENAGERS WHO ARE FOURTEEN OR FIFTEEN
2 YEARS OLD TO WORK AT CERTAIN PLACES THAT SELL ALCOHOLIC
3 BEVERAGES.
4

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 95-25.5(j) reads as rewritten:

7 "(j) No person who holds any ABC permit issued pursuant to the provisions of
8 Chapter 18B of the General Statutes for the on-premises sale or consumption of
9 alcoholic beverages, including any mixed beverages, shall employ a youth:

10 (1) Under 16 years of age on the premises for any ~~purpose; purpose,~~
11 unless the premises for which the permit is issued is a restaurant, a
12 hotel, or a sports club. If the permit is issued for one of these
13 types of businesses, the person may employ a youth who is 14 or 15
14 years old to work on the premises only in a job that will not
15 require the youth to be present in a room where alcoholic
16 beverages are consumed. If the youth possesses or consumes an
17 alcoholic beverage on the premises, the employer is subject to the
18 penalty provided in G.S. 95-25.23. The definitions of 'restaurant,'
19 'hotel,' and 'sports club' in G.S. 18B-1000 apply in this
20 subdivision;

21 (2) Under 18 years of age to prepare, serve, dispense or sell any
22 alcoholic beverages, including mixed beverages."

1

Section 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 872

Finance Committee Substitute Adopted 4/29/97

Third Edition Engrossed 4/30/97

PROPOSED HOUSE COMMITTEE SUBSTITUTE -- S872-PCSRR-008

ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION.

Short Title: Youth Workers At ABC Permittees.

(Public)

Sponsors:

Referred to:

April 15, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW TEENAGERS WHO ARE FIFTEEN YEARS OLD TO WORK AT
3 CERTAIN PLACES THAT SELL ALCOHOLIC BEVERAGES.
4 The General Assembly of North Carolina enacts:
5 Section 1. G.S. 95-25.5(j) reads as rewritten:
6 "(j) ~~No~~ Except as provided in subsection (j1), no person who
7 holds any ABC permit issued pursuant to the provisions of Chapter
8 18B of the General Statutes for the on-premises sale or
9 consumption of alcoholic beverages, including any mixed
10 beverages, shall employ a youth:
11 (1) Under 16 years of age on the premises for any
12 purpose;
13 (2) Under 18 years of age to prepare, serve, dispense
14 or sell any alcoholic beverages, including mixed
15 beverages."
16 Section 2. G.S. 95-25.5 is amended by adding a new
17 subsection to read:
18 "(j1) A person who holds an ABC permit issued pursuant to the
19 provisions of Chapter 18B of the General Statutes for the on-
20 premises sale or consumption of alcoholic beverages, including

1 any mixed beverages, may employ a youth 15 years of age on the
2 premises if all the following requirements are met:

- 3 (1) A parent or guardian has provided the employer with
4 a notarized statement of authorization to hire the
5 youth;
6 (2) There is no school the next day for the youth;
7 (3) The youth does not prepare, serve, dispense or sell
8 alcoholic beverages, including mixed beverages;
9 and
10 (4) The establishment is a restaurant, hotel, or sports
11 club, or is a private club that has an 18-hole golf
12 course. The terms 'restaurant,' 'hotel,' 'sports
13 club,' and 'private club' shall be as defined by
14 G.S. 18B-1000 and as designated in the
15 investigative report of record made concerning the
16 establishment by the Alcohol Law Enforcement
17 Division of the Department of Crime Control and
18 Public Safety.

19 If the youth possesses or consumes an alcoholic beverage on the
20 premises, the employer is subject to the penalty provided in G.S.
21 95-25.23. Busing tables and washing dishes shall not be
22 considered possession of an alcoholic beverage.

23 If a parent or guardian of a youth employed under this
24 subsection requests that the youth no longer be employed on the
25 premises, then the employer shall terminate the youth's
26 employment."

27 Section 3. This act is effective when it becomes law.



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August 12, 1998

TO: House Commerce Committee.

FROM: William R. Gilkeson, Staff Attorney.

RE: New PCS for Senate Bill 872 – Youth Workers at ABC Permittees.

The new Proposed House Committee Substitute for Senate Bill 872 would change State law to allow 15-year-olds to work under certain limited conditions on the permitted premises of restaurants, hotels, and sports clubs that have on-premises ABC permits.

The bill was originally introduced by Sen. Kerr. After the vote on a previous PCS in this Committee last month, the bill was sent to a subcommittee chaired by Rep. Neely. The subcommittee met August 6, heard proponents and opponents of the bill, and voted to recommend the new PCS to the full Committee. The new PCS removes 14-year-olds from the bill's coverage and adds a provision at the end to require the employer to terminate the youth's employment if a parent or guardian so requests.

CURRENT LAW does not allow youths under 16 to work on the permitted premises of establishments that have on-premises ABC permits. That law prohibits youths under 16 from working on those premises for any purpose. Sixteen- and 17-year-olds may work on a permitted premises, but they are prohibited from preparing, selling, or serving alcoholic beverages. *G.S. 95-25.5(j).*

(Another statute prohibits youths 13 and under from working for any employer except, if at least 12, as newspaper carriers. *G.S. 95-25.5(d)*. Yet another statute gives the Commissioner of Labor the authority to waive prohibitions for youths 13 and older in cases of hardship and parental consent. *G.S. 95-25.5(f).*)

The ABC Commission decides what the "premises" of a permittee are. The law says alcohol may not be sold off premises, or possessed or consumed there unless it is in the manufacturer's original container. Generally, restaurants, hotels, and sports clubs seek to have the Commission define the "premises" covered by their on-premises ABC permits to include the entire public portions of their buildings and often their grounds as well, for example, swimming pools, tennis courts, and golf courses.

SB 872 WOULD allow 15-year-olds to work on the licensed premises of an on-premises ABC permittee as long as:

- The youth's parent or guardian gives authorization for the permittee to hire the youth in a notarized statement;
- There is no school the next day for the youth;
- The 15-year-old is not allowed to prepare, sell, or serve alcoholic beverages; and
- That permittee fits the definition in ABC law of "restaurant," "hotel," "sports club," or "private club" if the private club has an 18-hole golf course, and the club is so designated on the report of record by the Alcohol Law Enforcement Division (ALE).

If the 15-year-old possesses or consumes an alcoholic beverage on the employer's premises, the employer is subject to a civil penalty of up to \$250 for each violation. But the bill specifies that busing tables and washing dishes shall not be considered possession of an alcoholic beverage.

If a parent or guardian of the 15-year-old so requests, the employer would be required to terminate the employment.

The following definitions from the ABC statute are referenced in the bill:

- Restaurant. "An establishment substantially engaged in the business of preparing and serving meals. To qualify as a restaurant, an establishment's gross receipts from food and nonalcoholic beverages shall be not less than forty percent (40%) of the total gross receipts from food, nonalcoholic beverages, and alcoholic beverages. A restaurant shall also have a kitchen and an inside dining area with seating for at least 36 people." *G.S. 18B-1000(6)*.
- Hotel. "An establishment substantially engaged in the business of furnishing lodging. A hotel shall have a restaurant either on or closely associated with the premises. The restaurant and hotel need not be owned or operated by the same person." *G.S. 18B-1000(4)*.
- Sports club. "An establishment substantially engaged in the business of providing an 18-hole golf course, two or more tennis courts, or both. The sports club can either be open to the general public or to members and their guests. To qualify as a sports club, an establishment's gross receipts for club activities shall be greater than its gross receipts for alcoholic beverages. This provision does not prohibit a sports club from operating a restaurant. Receipts for food shall be included in with the club activity fee." *G.S. 18B-1000(8)*.
- Private club. "An establishment that is organized and operated solely for a recreational, patriotic, or fraternal purpose and that is not open to the general public but is open only to the members of the organization and their bona fide guests. . . ." *G.S. 18B-1000(5)*. (In the early years of liquor by the drink in North Carolina, several country clubs received their licenses as "private clubs." Later the definition of "sports club" was introduced and country clubs were licensed under that category. Hence, the bill includes "private club that has an 18-hole golf course" to include those country clubs were licensed early and whose ALE report would refer to them as a private club.)

The bill would become effective when it becomes law.