1997

HOUSE
RULES, CALENDAR & OPERATIONS

MINUTES

HOUSE COMMITTEE ON

RULES, CALENDAR, AND OPERATIONS OF THE HOUSE

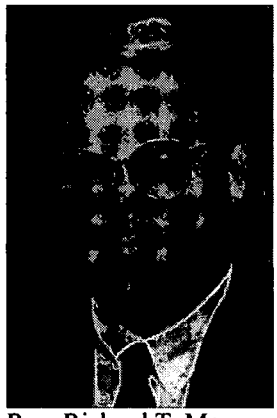
1997 SESSION

REPRESENTATIVE RICHARD T. MORGAN
COMMITTEE CHAIR

DIXIE EPPS
COMMITTEE CLERK

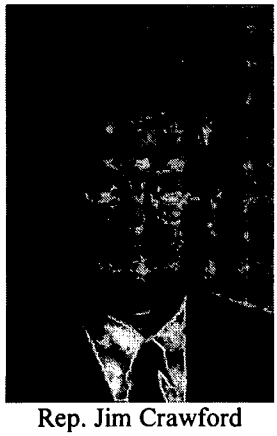
COMMITTEE ON RULES, CALENDAR, AND OPERATIONS OF THE HOUSE

	ROOM #	TELEPHONE #
REPRESENTATIVE RICHARD MORGAN CHAIRMAN	404	5-3028
REPRESENTATIVE JOANNE BOWIE VICE-CHAIR	1206	3-5853
REPRESENTATIVE JAMES CRAWFORD	1301	3-5824
REPRESENTATIVE ARLIE CULP	1010	3-5865
REPRESENTATIVE JERRY DOCKHAM	1106	3-5822
REPRESENTATIVE THERESA ESPOSITO	634	5-2530
REPRESENTATIVE JIM GULLEY	1307	3-5860
REPRESENTATIVE DEWEY HILL	1309	3-5830
REPRESENTATIVE W. ED MCMAHAN	2213	3-5732
REPRESENTATIVE DAVID MINER	2219	3-5749
REPRESENTATIVE FRANK MITCHELL	638	3-5959
REPRESENTATIVE CHARLES NEELY, JR.	420	5-3001
REPRESENTATIVE GREG THOMPSON	1002	3-5828
REPRESENTATIVE CONNIE WILSON	529	3-7663



Rep. Richard T. Morgan
Chairman

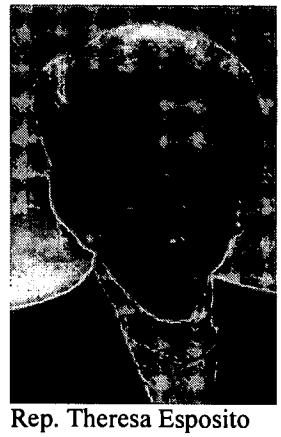
Rep. Joanne W. Bowie
Vice-Chair



Rep. Jim Crawford

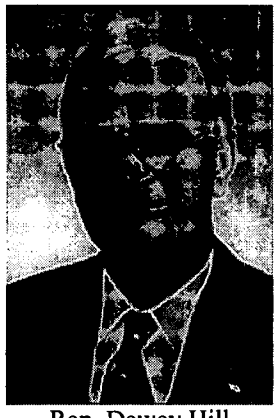
Rep. Arlie Culp

Rep. Jerry Dockham

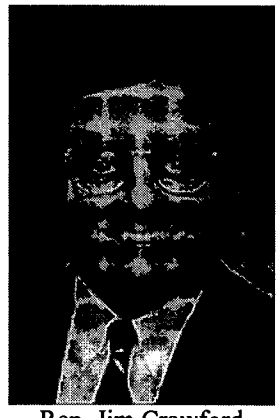


Rep. Theresa Esposito

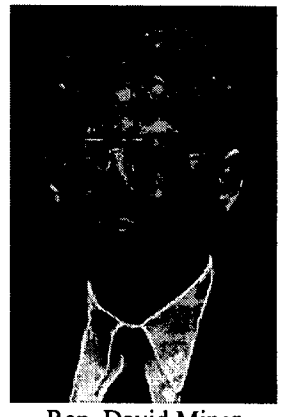
Rep. Jim Gulley



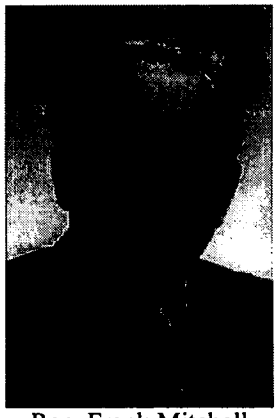
Rep. Dewey Hill



Rep. Jim Crawford

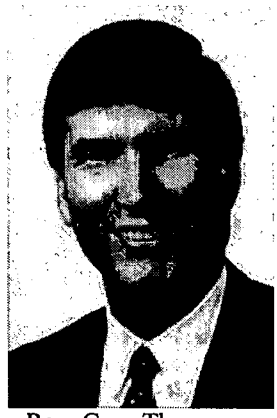


Rep. David Miner



Rep. Frank Mitchell

Rep. Chuck Neely



Rep. Greg Thompson

Rep. Connie Wilson

ATTENDANCE

COMMITTEE ON RULES, CALENDAR AND OPERATIONS OF THE HOUSE

DATES 1997	2/11	2/13	2/17	2/25	2/27	3/5	3/10	3/18	3/20	3/26	4/15	4/23	4/29	4/30	5/1
MORGAN, CHAIRMAN	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
BOWIE, VICE-CHAIR	—	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	—	✓	✓
CRAWFORD	✓	✓	✓	✓	✓	—	—	—	✓	—	—	—	✓	✓	—
CULP	✓	—	—	—	✓	—	✓	✓	✓	✓	✓	✓	✓	✓	✓
DOCKHAM	✓	✓	—	—	✓	✓	✓	✓	—	✓	—	✓	✓	✓	✓
ESPOSITO	✓	✓	✓	—	✓	✓	✓	✓	—	✓	✓	—	✓	✓	✓
GULLEY	✓	✓	✓	—	—	✓	✓	✓	✓	✓	—	✓	✓	✓	✓
HILL	✓	✓	—	✓	✓	✓	✓	✓	✓	✓	✓	—	✓	✓	✓
MCMAHAN	✓	✓	—	—	—	—	—	—	✓	—	—	✓	✓	✓	✓
MINER	✓	✓	✓	✓	✓	—	✓	✓	✓	✓	✓	✓	✓	✓	✓
MITCHELL	✓	✓	✓	✓	—	✓	✓	✓	—	✓	✓	✓	✓	✓	✓
NEELY	✓	✓	—	✓	—	✓	✓	—	—	—	—	✓	✓	✓	✓
THOMPSON	✓	—	✓	✓	✓	✓	✓	✓	—	✓	—	✓	✓	✓	✓
WILSON, C.	—	✓	—	—	✓	—	—	—	—	✓	—	✓	✓	✓	—
DAUGHTRY					✓							✓			
HOWARD															
WOOD										✓		✓			

ATTENDANCE

COMMITTEE ON RULES, CALENDAR AND OPERATIONS OF THE HOUSE

DATES 1997	5/7	5/12	5/19	5/21	5/27	5/28	6/3	6/16	6/25	6/26 9:00	6/26 1:00	7/2	7/9	7/16	7/23
MORGAN, CHAIRMAN	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
BOWIE, VICE-CHAIR	✓	✓	✓	✓	✓	✓	✓	—	✓	✓	✓	✓	✓	✓	✓
CRAWFORD	—	—	✓	—	—	✓	—	✓	✓	✓	—	✓	✓	✓	✓
CULP	✓	✓	✓	✓	✓	✓	✓	✓	✓	—	—	✓	✓	✓	✓
DOCKHAM	✓	—	✓	✓	✓	—	✓	—	✓	—	✓	✓	—	✓	✓
ESPOSITO	✓	—	—	✓	—	✓	✓	✓	✓	✓	✓	—	✓	✓	✓
GULLEY	✓	✓	—	✓	✓	—	✓	✓	✓	✓	—	✓	✓	✓	✓
HILL	✓	✓	✓	✓	✓	—	—	✓	—	—	✓	✓	—	✓	✓
MCMAHAN	✓	—	✓	✓	✓	✓	✓	—	✓	✓	—	✓	✓	✓	✓
MINER	✓	—	✓	✓	—	✓	—	✓	✓	✓	✓	✓	✓	✓	✓
MITCHELL	✓	—	—	✓	✓	✓	✓	✓	✓	✓	—	✓	✓	✓	—
NEELY	✓	✓	—	—	✓	—	—	✓	✓	✓	—	—	✓	✓	✓
THOMPSON	✓	✓	—	✓	—	✓	✓	✓	—	✓	✓	✓	✓	✓	✓
WILSON, C.	✓	✓	✓	—	✓	—	—	✓	✓	✓	✓	—	—	—	✓
DAUGHTRY					✓										
HOWARD															
WOOD													✓		

ATTENDANCE

COMMITTEE ON RULES, CALENDAR AND OPERATIONS OF THE HOUSE

DATES 1997	7/28	7/30	8/4	8/12	8/13	8/18	8/19	8/21	8/25	8/27	8/28 9:10	8/28 3:05	8/28 6:30		
MORGAN, CHAIRMAN	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		
BOWIE, VICE-CHAIR	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		
CRAWFORD	—	—	✓	—	—	✓	—	✓	✓	✓	✓	✓	—		
CULP	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		
DOCKHAM	—	—	✓	✓	✓	✓	—	✓	✓	✓	✓	✓	✓		
ESPOSITO	—	✓	✓	—	—	✓	—	✓	✓	✓	✓	✓	—		
GULLEY	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		
HILL	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		
MCMAHAN	—	✓	✓	✓	✓	—	—	✓	✓	—	—	—	—		
MINER	—	✓	✓	✓	✓	—	✓	✓	✓	—	✓	✓	✓		
MITCHELL	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		
NEELY	✓	✓	✓	—	—	✓	—	✓	✓	✓	✓	✓	✓		
THOMPSON	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		
WILSON, C.	—	—	✓	✓	✓	✓	✓	✓	—	✓	✓	✓	—		
DAUGHTRY															
HOWARD															
WOOD				✓	✓			✓							

MINUTES
RULES, CALENDAR, AND OPERATIONS OF THE HOUSE
February 11, 1997

The Committee on Rules, Calendar, and Operations of the House met February 11, 1997 at 1:30 p.m. in Room 421 in the Legislative Office Building. Representative Morgan, Chair, called the meeting to order and asked the clerk to call the roll. The following members were present: Representatives Crawford, Culp. Dockham, Esposito, Gulley, Hill, McMahan, Miner, Mitchell, Neely and Thompson.

Chairman Morgan announced that the purpose of the meeting was for the adoption of House Rule 28 (a) **Standing committees and permanent subcommittees of standing committees shall be furnished with suitable meeting places pursuant to a schedule adopted by the Standing Committee on Rules, Calendar, and Operations of the House. Select committees shall be furnished with suitable meeting places as their needs require by the Chair of the Standing Committee on Rules, Calendar, and Operations of the House.**

Chairman Morgan stated that one of the considerations in assigning the space was largely due to the size of the committees. Some committees are so large that they have been put in Room 643. Committee members should note that committee rooms 421, 544 and 643 are joint rooms so assignments had to be done with consideration of the adopted Senate schedule. Committees that meet on call of the chair will internally be assigned a room number but it will not be published on the committee schedule document.

Representative Mitchell moved for adoption of Rule 28(a) and the affirmative vote was unanimous.

The Committee adjourned at 1:45 p.m.

Representative Richard T. Morgan
Committee Chair

Dixie Epps, Committee Clerk

Attachment:
Visitor's Sheet

VISITOR REGISTRATION SHEET

House Rules Committee — 02-11-97
Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Jackie Strickland	DHR - Voc. Rehab
Curt Williams	Gov Hunt's Office
J. Craig Lewis	Pitt Co. Mem Hosp
Tommy Ward	Carolina Health Care System
Carmen Hooker Buell	Carolinas HealthCare System
Evelyn Hawthorne	NCHA

MINUTES
RULES, CALENDAR, AND OPERATIONS OF THE HOUSE
February 13, 1997

The Committee on Rules, Calendar, and Operations of the House met February 13, 1997 at 2:15 p.m. in Room 421 in the Legislative Office Building. Representative Morgan, Chair, called the meeting to order and asked the clerk to call the roll. The following members were present: Representative Bowie, Vice-Chair; and Representatives Crawford, Dockham, Esposito, Gulley, Hill, McMahan, Miner, Mitchell, Neely and C. Wilson.

Committee Substitute for S.B. 27 - TO MAKE PROCEDURAL CHANGES IN THE CONFORMING LEGISLATION CONCERNING GUBERNATORIAL VETO, introduced by Senator Rand was brought before the committee. Technical changes in the Committee Substitute were explained by Legal Counsel Gerry Cohen. Representative Dockham moved for a favorable report. Motion carried.

H.R. 172 - A RESOLUTION TO ESTABLISH THE PROCEDURE FOR NOMINATING AND ELECTING MEMBERS OF THE BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA was brought forward. Representative Gray, bill sponsor, explained the procedure for nominating and electing members. Without objection, the resolution was displaced until Monday evening, February 17, 1997, at 6:45 p.m. at which time a meeting was called to further consider the resolution.

Meeting adjourned at 2:30 p.m.

Representative Richard T. Morgan
Committee Chair

Dixie Epps
Committee Clerk

Attachments:
Committee Report
Bill
Resolution
Visitor's Sheet

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **RULES, CALENDAR, AND OPERATIONS OF THE HOUSE**.

☒ Committee Substitute for
S.B. 27 A BILL TO BE ENTITLED AN ACT TO MAKE PROCEDURAL CHANGES IN THE CONFORMING LEGISLATION CONCERNING GUBERNATORIAL VETO.

☒ 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.

☐ 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 27
Judiciary Committee Substitute Adopted 2/6/97

Short Title: Veto Procedural Changes. (Public)

Sponsors:

Referred to:

February 3, 1997

A BILL TO BE ENTITLED

AN ACT TO MAKE PROCEDURAL CHANGES IN THE CONFORMING LEGISLATION CONCERNING GUBERNATORIAL VETO.

The General Assembly of North Carolina enacts:

Section 1. G.S. 120-33(d2) reads as rewritten:

"(d2) No bill required to be presented to the Governor under Article II, Section 22 of the Constitution of North Carolina shall be so presented until ~~the time for moving a reconsideration shall have expired,~~ the next business day after the bill was ratified, unless expressly ordered by that house where such bill was ordered enrolled. For the purpose of this section, a business day is a weekday other than one on which there is both a State employee holiday and neither house is in session. No bill required to be presented to the Governor under Article II, Section 22 of the North Carolina Constitution shall be recalled from the Enrolling Clerk or Governor after it has been ratified but before it has been acted upon by the Governor except by joint resolution."

Section 2. G.S. 120-6.1(a) reads as rewritten:

"(a) As provided by Section 22(7) of Article II of the Constitution of North Carolina, if within 30 days after adjournment, a bill is returned by the Governor with objections and veto message to that house in which it shall have originated, the Governor shall reconvene that session as provided by Section 5(11) of Article III of the Constitution for reconsideration of the bill, unless the Governor prior to reconvening the session receives written requests dated no earlier than 30 days after such adjournment, signed by a majority of the members of each house that a reconvened session to reconsider vetoed legislation is unnecessary. If sufficient

requests are received such that the session will not be reconvened, the Governor shall immediately issue a proclamation to that effect and so notify the President Pro Tempore of the Senate and the principal clerks and presiding officers of both houses."

Section 3. G.S. 120-29.1 reads as rewritten:

"**§ 120-29.1. Approval of bills.**

(a) If the Governor approves a bill, the Governor shall write upon the same, ~~to the left of and~~ below the signatures of the presiding officers of the two houses, the fact, date, and time of approval, as follows: 'Approved _____.m. this _____ day of _____,_____' and shall sign the same as follows: '_____ Governor'. The Governor shall then return the approved bill to the enrolling clerk.

(b) If any bill becomes law because of the failure of the Governor to take any action, it shall be the duty of the Governor to return the measure to the enrolling clerk, who shall sign the following certificate on the measure and deposit it with the Secretary of State: 'This bill having been presented to the Governor for his signature on the _____day of _____, _____ and the Governor having failed to approve it within the time prescribed by law, the same is hereby declared to have become a law.

This _____ day of _____, _____, _____ Enrolling Clerk'.

(c) If the Governor returns any bill to the house of origin with his objections, the Governor shall write such objections on the measure or cause the objections to be attached to the measure. When any such bill becomes law after reconsideration of the two houses, the ~~presiding officers~~ principal clerk of the second house to act shall, below the objections of the Governor, sign the following certificate: 'Became law notwithstanding the objections of the Governor, ____.m. this _____ day of _____, _____'. The ~~second of them to sign~~ principal clerk of the second house to act shall fill in the time. The enrolling clerk shall deposit the measure with the Secretary of State.

(d) In calculating the period under Section 22(7) of Article II of the North Carolina Constitution, the day on which the bill is presented to the Governor shall be excluded and the entire last day of the period is included."

Section 4. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE RESOLUTION DRHR7040-RC011(2.11) 172

Sponsors: Representatives Gray, Alexander, Aldridge, Barbee, Bonner, Clary, Culp, Dockham, Goodwin, Grady, Howard, and Mercer.

Referred to:

A HOUSE RESOLUTION TO ESTABLISH THE PROCEDURE FOR NOMINATING AND ELECTING MEMBERS OF THE BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA.

Be it resolved by the House of Representatives:

Section 1. The following procedures for nominating and electing eight members of the Board of Governors of The University of North Carolina (hereinafter the "Board of Governors") are adopted:

I. COMMITTEE RESPONSIBILITIES.

1. It is the duty of the UNC Board of Governors Committee of the House of Representatives (hereinafter the "Committee") to conduct a process for nominating and electing persons for each opening in each category of seats on the Board of Governors to which the House of Representatives is to elect members.

2. The Committee shall receive nominations for election to the Board of Governors through March 6, 1997. Each Representative may nominate up to two persons. In order for a person to have standing as a nominee, that person must be formally nominated by a member of the House of Representatives. Only a written nomination on a form provided by the Chair of the Committee for that purpose and received in the office of the Chair of the Committee by 12:00 noon on March 6, 1997, shall constitute a nomination. An individual cannot be a nominee or be nominated in more than one category. An individual is not eligible for nomination if he or she is nominated to the Board of Governors by the Senate during the 1997 Session.

3. A Representative may nominate persons only for the categories available for election by the House of Representatives. In the 1997 Session, the House of Representatives will elect:

(a) Six at-large members for four-year terms; and

(b) Two members of the political party to which the largest minority of members of the General Assembly belong for four-year terms.

4. On or after March 7, 1997, the Committee shall list all nominees by category. The Committee shall screen the nominees as to their qualifications, experience, opinions, and statutory suitability. The Committee may screen nominees by interviewing, or by soliciting written information, or by both means. On completion of the screening process, the Committee shall conduct a vote to ensure that the slate of legally qualified candidates lists no more than twice the number of candidates for the total seats open in each category. After the slate is determined by this vote, the members of the Committee shall vote for their preferences in each category.

5. Each nominee shall confirm his or her willingness to serve if elected. Any nominee may withdraw without the approval of the sponsor.

II. ELECTIONS IN THE HOUSE OF REPRESENTATIVES.

1. A ballot shall be prepared under the supervision of the Chair of the Committee for the use of the House of Representatives. The ballot shall include no more than twice the number of legally qualified candidates for the total seats open in each category and shall indicate the results of the Committee's votes for the information of the members of the House of Representatives.

2. The names of the nominees shall be arranged on the ballot (a) by category and (b) within each category, ranked in decreasing order by the number of votes received from the members of the Committee, beginning with the nominee who received the highest number of votes.

3. The House of Representatives shall hold its election no later than the beginning of the daily session on March 18, 1997. Before the voting begins, the Speaker of the House shall explain the voting rules, which are:

(a) No nomination shall be received from the floor.

(b) In order to be elected, a nominee must receive the votes of a majority of all members present and voting in the nominee's category.

(c) Each member present and voting shall vote for as many nominees as there are positions to be filled in each category.

(d) When fewer than two nominees in the minority party category, or fewer than six nominees in the at-large category, receive the votes of a majority of all members present and voting for positions in those categories, a runoff to fill the open position or positions shall be conducted among the nominees who were not elected but who received the highest number of votes cast in each category; and the number of nominees eligible to be voted on in the runoff shall be twice the number of positions to be filled.

(e) If there is a tie for the last position between two nominees who are eligible for the next runoff, both nominees shall be included in the next runoff balloting, even though there would be more than two nominees per available position.

(f) When more than two nominees in the minority party category, or more than six nominees in the at-large category, receive the votes of a majority of all members present and voting for positions in those categories, then the two nominees in the minority party category, and the six nominees in the at-large category receiving the highest number of votes in the category shall be deemed to have been elected.

4. The members of the House of Representatives shall proceed to mark their ballots for the following:

(a) Two persons in the minority political party of the General Assembly category for four-year terms; and

(b) Six persons in the at-large category, for four-year terms.

Every ballot shall be signed by the member of the House of Representatives casting it, and no unsigned ballots shall be counted.

5. The Chair of the Committee is responsible for canvassing the vote and declaring the results and may designate members of the Committee to assist. All ballots shall be retained by the Principal Clerk as part of the permanent records of the House of Representatives and shall be open for immediate public inspection.

6. When the Chair of the Committee has determined that the House of Representatives has elected two members from the minority party category, and six members from the at-large category to the Board of Governors for terms of four years, the Speaker of the House of Representatives shall declare those eight persons to have been elected by the House of Representatives to the indicated positions and for the indicated terms.

7. The results of the election in the House of Representatives shall then be sent by Special Messenger to the Senate.

III. NOTIFICATION OF ELECTION RESULTS.

When the election process is complete, the Chair of the Committee shall notify the Secretary of the Board of Governors of the names of the persons elected by the House of Representatives and the category and term for which each person was elected.

Section 2. This resolution is effective upon adoption.

VISITOR REGISTRATION SHEET

Rules Committee — Name of Committee

2-13-97 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Amy Jo Bam	SMITH ANDERSON, et al
Nancy Bradley	NCCBI
Michelle Cook	Weyerhaeuser
Andy Al	NC Farm Bureau
P B	NCFB
DG Mast	UNC
James W. Ware	Moore Co
Frank Johnson	Moore Co.

MINUTES
COMMITTEE ON RULES, CALENDAR, AND OPERATIONS OF THE HOUSE
February 17, 1997

The Committee on Rules, Calendar, and Operations of the House met on Monday, February 17, 1997 at 6:45 p.m. in the House Conference Room in the Legislative Building. Representative Morgan, Committee Chair, called the meeting to order and asked the clerk to call the roll. The following members were present: Representative Bowie, Vice-Chair; and Representatives Crawford, Esposito, Gulley, Miner, Mitchell, and Thompson.

House Resolution 172 - A HOUSE RESOLUTION TO ESTABLISH THE PROCEDURE FOR NOMINATING AND ELECTING MEMBERS OF THE BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA - was before the Committee for consideration. A proposed committee substitute for House Resolution 172 was offered and Representative Bowie moved for its adoption for committee discussion. Motion carried.

Linwood Jones, Committee Staff Counsel explained that the only change in the committee substitute was a title change. He said the provisions reflected in the title change were already in the resolution.

Representative Gray, sponsor of House Resolution 172, urged the Committee to give favorable consideration to the proposed committee substitute. Representative Thompson moved for a favorable report as to committee substitute, unfavorable as to original resolution, which changes the title. Motion carried.

The meeting adjourned at 6:50 p.m.

Representative Richard T. Morgan
Committee Chair

Dixie Epps
Committee Clerk

Attachments:
Committee Report
Resolutions
Visitor's Sheet

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **RULES, CALENDAR, AND OPERATIONS OF THE HOUSE.**

☐ Committee Substitute for
H.R. 172 A HOUSE RESOLUTION TO ESTABLISH THE PROCEDURE FOR NOMINATING AND ELECTING MEMBERS OF THE BOARD OF GOVERNORS OF THE UNIVERSITY OF 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~~ RESOLUTION ( ), ☐ ~~which~~ changes the title, unfavorable as to original ~~bill~~ RESOLUTION (~~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.

☐ 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 D

HOUSE RESOLUTION 172
Proposed Committee Substitute H172-PCS7060

Sponsors:

Referred to:

February 13, 1997

A HOUSE RESOLUTION TO ESTABLISH THE PROCEDURE FOR NOMINATING AND ELECTING MEMBERS OF THE BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA, INCLUDING A PROHIBITION ON NOMINATIONS FROM THE FLOOR AND A REQUIREMENT THAT A NOMINEE RECEIVE THE VOTES OF A MAJORITY OF THE MEMBERS PRESENT AND VOTING IN THE NOMINEE'S CATEGORY IN ORDER TO BE ELECTED.

Be it resolved by the House of Representatives:

Section 1. The following procedures for nominating and electing eight members of the Board of Governors of The University of North Carolina (hereinafter the "Board of Governors") are adopted:

I. COMMITTEE RESPONSIBILITIES.

1. It is the duty of the UNC Board of Governors Committee of the House of Representatives (hereinafter the "Committee") to conduct a process for nominating and electing persons for each opening in each category of seats on the Board of Governors to which the House of Representatives is to elect members.

2. The Committee shall receive nominations for election to the Board of Governors through March 6, 1997. Each Representative may nominate up to two persons. In order for a person to have standing as a nominee, that person must be formally nominated by a member of the House of Representatives. Only a written nomination on a form provided by the Chair of the Committee for that purpose and received in the office of the Chair of the Committee by 12:00 noon on March 6, 1997, shall constitute a nomination. An individual cannot be a nominee or be nominated in more than one category. An individual is not eligible for nomination if he or she is nominated to the Board of Governors by the Senate during the 1997 Session.

3. A Representative may nominate persons only for the categories available for election by the House of Representatives. In the 1997 Session, the House of Representatives will elect:

(a) Six at-large members for four-year terms; and

(b) Two members of the political party to which the largest minority of members of the General Assembly belong for four-year terms.

4. On or after March 7, 1997, the Committee shall list all nominees by category. The Committee shall screen the nominees as to their qualifications, experience, opinions, and statutory suitability. The Committee may screen nominees by interviewing, or by soliciting written information, or by both means. On completion of the screening process, the Committee shall conduct a vote to ensure that the slate of legally qualified candidates lists no more than twice the number of candidates for the total seats open in each category. After the slate is determined by this vote, the members of the Committee shall vote for their preferences in each category.

5. Each nominee shall confirm his or her willingness to serve if elected. Any nominee may withdraw without the approval of the sponsor.

II. ELECTIONS IN THE HOUSE OF REPRESENTATIVES.

1. A ballot shall be prepared under the supervision of the Chair of the Committee for the use of the House of Representatives. The ballot shall include no more than twice the number of legally qualified candidates for the total seats open in each category and shall indicate the results of the Committee's votes for the information of the members of the House of Representatives.

2. The names of the nominees shall be arranged on the ballot (a) by category and (b) within each category, ranked in decreasing order by the number of votes received from the members of the Committee, beginning with the nominee who received the highest number of votes.

3. The House of Representatives shall hold its election no later than the beginning of the daily session on March 18, 1997. Before the voting begins, the Speaker of the House shall explain the voting rules, which are:

(a) No nomination shall be received from the floor.

(b) In order to be elected, a nominee must receive the votes of a majority of all members present and voting in the nominee's category.

(c) Each member present and voting shall vote for as many nominees as there are positions to be filled in each category.

(d) When fewer than two nominees in the minority party category, or fewer than six nominees in the at-large category, receive the votes of a majority of all members present and voting for positions in those categories, a runoff to fill the open position or positions shall be conducted among the nominees who were not elected but who received the highest number of votes cast in each category; and the number of nominees eligible to be voted on in the runoff shall be twice the number of positions to be filled.

(e) If there is a tie for the last position between two nominees who are eligible for the next runoff, both nominees shall be included in the next runoff balloting, even though there would be more than two nominees per available position.

(f) When more than two nominees in the minority party category, or more than six nominees in the at-large category, receive the votes of a majority of all members present and voting for positions in those categories, then the two nominees in the minority party category, and the six nominees in the at-large category receiving the highest number of votes in the category shall be deemed to have been elected.

4. The members of the House of Representatives shall proceed to mark their ballots for the following:

(a) Two persons in the minority political party of the General Assembly category for four-year terms; and

(b) Six persons in the at-large category, for four-year terms.

Every ballot shall be signed by the member of the House of Representatives casting it, and no unsigned ballots shall be counted.

5. The Chair of the Committee is responsible for canvassing the vote and declaring the results and may designate members of the Committee to assist. All ballots shall be retained by the Principal Clerk as part of the permanent records of the House of Representatives and shall be open for immediate public inspection.

6. When the Chair of the Committee has determined that the House of Representatives has elected two members from the minority party category, and six members from the at-large category to the Board of Governors for terms of four years, the Speaker of the House of Representatives shall declare those eight persons to have been elected by the House of Representatives to the indicated positions and for the indicated terms.

7. The results of the election in the House of Representatives shall then be sent by Special Messenger to the Senate.

III. NOTIFICATION OF ELECTION RESULTS.

When the election process is complete, the Chair of the Committee shall notify the Secretary of the Board of Governors of the names of the persons elected by the House of Representatives and the category and term for which each person was elected.

Section 2. This resolution is effective upon adoption.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE RESOLUTION 172

Sponsors: Representatives Gray, Alexander, Aldridge, Barbee, Bonner, Clary, Culp, Dockham, Goodwin, Grady, Howard, Mercer; Davis, and Shubert.

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

February 13, 1997

A HOUSE RESOLUTION TO ESTABLISH THE PROCEDURE FOR NOMINATING AND ELECTING MEMBERS OF THE BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA.

Be it resolved by the House of Representatives:

Section 1. The following procedures for nominating and electing eight members of the Board of Governors of The University of North Carolina (hereinafter the "Board of Governors") are adopted:

I. COMMITTEE RESPONSIBILITIES.

1. It is the duty of the UNC Board of Governors Committee of the House of Representatives (hereinafter the "Committee") to conduct a process for nominating and electing persons for each opening in each category of seats on the Board of Governors to which the House of Representatives is to elect members.

2. The Committee shall receive nominations for election to the Board of Governors through March 6, 1997. Each Representative may nominate up to two persons. In order for a person to have standing as a nominee, that person must be formally nominated by a member of the House of Representatives. Only a written nomination on a form provided by the Chair of the Committee for that purpose and received in the office of the Chair of the Committee by 12:00 noon on March 6, 1997, shall constitute a nomination. An individual cannot be a nominee or be nominated in more than one category. An individual is not eligible for nomination if he or she is nominated to the Board of Governors by the Senate during the 1997 Session.

3. A Representative may nominate persons only for the categories available for election by the House of Representatives. In the 1997 Session, the House of Representatives will elect:

(a) Six at-large members for four-year terms; and
(b) Two members of the political party to which the largest minority of members of the General Assembly belong for four-year terms.

4. On or after March 7, 1997, the Committee shall list all nominees by category. The Committee shall screen the nominees as to their qualifications, experience, opinions, and statutory suitability. The Committee may screen nominees by interviewing, or by soliciting written information, or by both means. On completion of the screening process, the Committee shall conduct a vote to ensure that the slate of legally qualified candidates lists no more than twice the number of candidates for the total seats open in each category. After the slate is determined by this vote, the members of the Committee shall vote for their preferences in each category.

5. Each nominee shall confirm his or her willingness to serve if elected. Any nominee may withdraw without the approval of the sponsor.

II. ELECTIONS IN THE HOUSE OF REPRESENTATIVES.

1. A ballot shall be prepared under the supervision of the Chair of the Committee for the use of the House of Representatives. The ballot shall include no more than twice the number of legally qualified candidates for the total seats open in each category and shall indicate the results of the Committee's votes for the information of the members of the House of Representatives.

2. The names of the nominees shall be arranged on the ballot (a) by category and (b) within each category, ranked in decreasing order by the number of votes received from the members of the Committee, beginning with the nominee who received the highest number of votes.

3. The House of Representatives shall hold its election no later than the beginning of the daily session on March 18, 1997. Before the voting begins, the Speaker of the House shall explain the voting rules, which are:

(a) No nomination shall be received from the floor.
(b) In order to be elected, a nominee must receive the votes of a majority of all members present and voting in the nominee's category.
(c) Each member present and voting shall vote for as many nominees as there are positions to be filled in each category.
(d) When fewer than two nominees in the minority party category, or fewer than six nominees in the at-large category, receive the votes of a majority of all members present and voting for positions in those categories, a runoff to fill the open position or positions shall be conducted among the nominees who were not elected but who received the highest number of votes cast in each category; and the number of nominees eligible to be voted on in the runoff shall be twice the number of positions to be filled.
(e) If there is a tie for the last position between two nominees who are eligible for the next runoff, both nominees shall be included in the

next runoff balloting, even though there would be more than two nominees per available position.

(f) When more than two nominees in the minority party category, or more than six nominees in the at-large category, receive the votes of a majority of all members present and voting for positions in those categories, then the two nominees in the minority party category, and the six nominees in the at-large category receiving the highest number of votes in the category shall be deemed to have been elected.

4. The members of the House of Representatives shall proceed to mark their ballots for the following:

(a) Two persons in the minority political party of the General Assembly category for four-year terms; and

(b) Six persons in the at-large category, for four-year terms.

Every ballot shall be signed by the member of the House of Representatives casting it, and no unsigned ballots shall be counted.

5. The Chair of the Committee is responsible for canvassing the vote and declaring the results and may designate members of the Committee to assist. All ballots shall be retained by the Principal Clerk as part of the permanent records of the House of Representatives and shall be open for immediate public inspection.

6. When the Chair of the Committee has determined that the House of Representatives has elected two members from the minority party category, and six members from the at-large category to the Board of Governors for terms of four years, the Speaker of the House of Representatives shall declare those eight persons to have been elected by the House of Representatives to the indicated positions and for the indicated terms.

7. The results of the election in the House of Representatives shall then be sent by Special Messenger to the Senate.

III. NOTIFICATION OF ELECTION RESULTS.

When the election process is complete, the Chair of the Committee shall notify the Secretary of the Board of Governors of the names of the persons elected by the House of Representatives and the category and term for which each person was elected.

Section 2. This resolution is effective upon adoption.

MINUTES
RULES, CALENDAR AND OPERATIONS OF THE HOUSE
February 25, 1997

The House Committee on Rules, Calendar and Operations of the House met Tuesday, February 25, 1997 at 3:00 p.m. in Room 421 of the Legislative Office Building with the following members present: Representative Morgan, Chairman; Representatives Bowie, Crawford, Hill, Miner, Mitchell, Neely and Thompson.

The Chairman called the meeting to order to reconsider Com. Sub. for H.R. 172 which was adopted at the previous meeting and to consider H.R. 323 - TO ESTABLISH THE PROCEDURE FOR NOMINATING AND ELECTING MEMBERS OF THE BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA, INCLUDING A PROHIBITION ON NOMINATIONS FROM THE FLOOR, A REQUIREMENT THAT A NOMINEE RECEIVE THE VOTES OF A MAJORITY OF THE MEMBERS PRESENT AND VOTING IN THE NOMINEE'S CATEGORY IN ORDER TO BE ELECTED, AND TO PROVIDE THAT AT LEAST TWO PERSONS ON THE AT-LARGE BALLOT SHALL BE MEMBERS OF THE MAJORITY POLITICAL PARTY.

Representative Morgan informed the members that since Com. Sub. for H.R. 172 was adopted at the last meeting, the Committee on UNC Board of Governors had met and, in the interest of time, had originated House Resolution 323. Therefore, Representative Mitchell moved that the vote by which Com. Sub. For H.R. 172 was adopted be reconsidered. Motion carried.

Representative Gray, Chairman of the UNC Board of Governors Committee, was recognized to explain changes in H.R. 323 and the procedure for nominating and electing members.

Representative Mitchell moved to adopt H.R. 323. Motion carried.

Meeting adjourned at 3:30 p.m.

Representative Richard T. Morgan
Chairman

Barbara B. Poole, Acting Clerk

Attachments

Committee Report
Resolution
Visitor's Sheet

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar, and Operations of the House.**

☐ Committee Substitute for
H.R. 323 A HOUSE RESOLUTION TO ESTABLISH THE PROCEDURE FOR NOMINATING AND ELECTING MEMBERS OF THE BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA, INCLUDING A PROHIBITION ON NOMINATIONS FROM THE FLOOR, A REQUIREMENT THAT A NOMINEE RECEIVE THE VOTES OF A MAJORITY OF THE MEMBERS PRESENT AND VOTING IN THE NOMINEE'S CATEGORY IN ORDER TO BE ELECTED, AND TO PROVIDE THAT AT LEAST TWO PERSONS ON THE AT-LARGE BALLOT SHALL BE MEMBERS OF THE MAJORITY POLITICAL PARTY.

☐ 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.

☐ 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 RESOLUTION 323

Sponsors: Committee on UNC Board of Governors; and Rayfield.

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

February 25, 1997

A HOUSE RESOLUTION TO ESTABLISH THE PROCEDURE FOR NOMINATING AND ELECTING MEMBERS OF THE BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA, INCLUDING A PROHIBITION ON NOMINATIONS FROM THE FLOOR, A REQUIREMENT THAT A NOMINEE RECEIVE THE VOTES OF A MAJORITY OF THE MEMBERS PRESENT AND VOTING IN THE NOMINEE'S CATEGORY IN ORDER TO BE ELECTED, AND TO PROVIDE THAT AT LEAST TWO PERSONS ON THE AT-LARGE BALLOT SHALL BE MEMBERS OF THE MAJORITY POLITICAL PARTY.

Be it resolved by the House of Representatives:

Section 1. The following procedures for nominating and electing eight members of the Board of Governors of The University of North Carolina (hereinafter the "Board of Governors") are adopted:

I. COMMITTEE RESPONSIBILITIES.

1. It is the duty of the UNC Board of Governors Committee of the House of Representatives (hereinafter the "Committee") to conduct a process for nominating and electing persons for each opening in each category of seats on the Board of Governors to which the House of Representatives is to elect members.

2. The Committee shall receive nominations for election to the Board of Governors through March 6, 1997. Each Representative may nominate up to two persons. In order for a person to have standing as a nominee, that person must be formally nominated by a member of the House of Representatives. Only a written nomination on a form provided by the Chair of the Committee for that purpose and received in the office of the Chair of the Committee by 12:00 noon on March 6, 1997, shall constitute a nomination. An individual cannot be a nominee or be nominated

in more than one category. An individual is not eligible for nomination if he or she is nominated to the Board of Governors by the Senate during the 1997 Session.

3. A Representative may nominate persons only for the categories available for election by the House of Representatives. In the 1997 Session, the House of Representatives will elect:

(a) Six at-large members for four-year terms; and

(b) Two members of the political party to which the largest minority of members of the General Assembly belong for four-year terms.

4. On or after March 7, 1997, the Committee shall list all nominees by category. The Committee shall screen the nominees as to their qualifications, experience, opinions, and statutory suitability. The Committee may screen nominees by interviewing, or by soliciting written information, or by both means. On completion of the screening process, the Committee shall conduct a vote to ensure that the slate of legally qualified candidates lists no more than twice the number of candidates for the total seats open in each category. No less than two candidates on the ballot shall be members of the political party to which the majority of members of the General Assembly belong.

5. Each nominee shall confirm his or her willingness to serve if elected. Any nominee may withdraw without the approval of the sponsor.

II. ELECTIONS IN THE HOUSE OF REPRESENTATIVES.

1. A ballot shall be prepared under the supervision of the Chair of the Committee for the use of the House of Representatives. The ballot shall include no more than twice the number of legally qualified candidates for the total seats open in each category. No less than two candidates on the ballot shall be members of the political party to which the majority of members of the General Assembly belong.

2. The names of the nominees shall be arranged on the ballot (a) by category and (b) within each category by alphabetical order.

3. The House of Representatives shall hold its election no later than the beginning of the daily session on March 18, 1997. Before the voting begins, the Speaker of the House shall explain the voting rules, which are:

(a) No nomination shall be received from the floor.

(b) In order to be elected, a nominee must receive the votes of a majority of all members present and voting in the nominee's category.

(c) Each member present and voting shall vote for as many nominees as there are positions to be filled in each category.

(d) When fewer than two nominees in the minority party category, or fewer than six nominees in the at-large category, receive the votes of a majority of all members present and voting for positions in those categories, a runoff to fill the open position or positions shall be conducted among the nominees who were not elected but who received the highest number of votes cast in each category; and the number of nominees eligible to be voted on in the runoff shall be twice the number of positions to be filled.

(e) If there is a tie for the last position between two nominees who are eligible for the next runoff, both nominees shall be included in the next runoff balloting, even though there would be more than two nominees per available position.

(f) When more than two nominees in the minority party category, or more than six nominees in the at-large category, receive the votes of a majority of all members present and voting for positions in those categories, then the two nominees in the minority party category, and the six nominees in the at-large category receiving the highest number of votes in the category shall be deemed to have been elected.

4. The members of the House of Representatives shall proceed to mark their ballots for the following:

(a) Two persons in the minority political party of the General Assembly category for four-year terms; and

(b) Six persons in the at-large category, for four-year terms.

Every ballot shall be signed by the member of the House of Representatives casting it, and no unsigned ballots shall be counted.

5. The Chair of the Committee is responsible for canvassing the vote and declaring the results and may designate members of the Committee to assist. All ballots shall be retained by the Principal Clerk as part of the permanent records of the House of Representatives and shall be open for immediate public inspection.

6. When the Chair of the Committee has determined that the House of Representatives has elected two members from the minority party category, and six members from the at-large category to the Board of Governors for terms of four years, the Speaker of the House of Representatives shall declare those eight persons to have been elected by the House of Representatives to the indicated positions and for the indicated terms.

7. The results of the election in the House of Representatives shall then be sent by Special Messenger to the Senate.

III. NOTIFICATION OF ELECTION RESULTS.

When the election process is complete, the Chair of the Committee shall notify the Secretary of the Board of Governors of the names of the persons elected by the House of Representatives and the category and term for which each person was elected.

Section 2. This resolution is effective upon adoption.

VISITOR REGISTRATION SHEET

Rules — 2-25-97

Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Joyce Pitts	
CRAIG SOUZA	
Peter Keber	NationsBank
Martha Alexander	Appropriations
Clifton Metcalf	UDO

MINUTES
RULES, CALENDAR, AND OPERATIONS OF THE HOUSE
February 27, 1997

The Committee on Rules, Calendar, and Operations of the House met February 27, 1997 at 2:55 p.m. in the House Conference Room in the Legislative Building. Representative Morgan, Chair, called the meeting to order and asked the clerk to call the roll. The following members were present: Representative Bowie, Vice Chair; and Representatives Crawford, Culp. Daughtry, Dockham, Esposito, Hill, Miner, Thompson, and C. Wilson

Chairman Morgan recognized Representative Daughtry to explain House Resolution 320 -A JOINT RESOLUTION INVITING THE HONORABLE BURLEY B. MITCHELL, JR., CHIEF JUSTICE OF THE COURT TO ADDRESS A JOINT SESSION OF THE HOUSE OF REPRESENTATIVES AND THE SENATE. Representative Daughtry explained that several years ago the Chief Justice asked if he could speak to a joint session of the General Assembly on the state of the third branch of government and this is following that tradition. Both Speaker Brubaker and President Pro Tem Basnight have suggested March 5, 1997 at 2:00 p.m. as the date and time for Chief Justice Mitchell to address a joint session.

Representative Dockham moved to give H.J.R. 320 a favorable report and the vote was unanimous for a favorable report..

The meeting adjourned at 3:00.

Representative Richard T. Morgan
Committee Chair

Dixie Epps, Committee Clerk

Attachments:
Committee Report
Joint Resolution

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE.**

☐ Committee Substitute for
H.J.R. 320 A JOINT RESOLUTION INVITING THE HONORABLE BURLEY B. MITCHELL, JR., CHIEF JUSTICE OF THE SUPREME COURT, TO ADDRESS A JOINT SESSION OF THE HOUSE OF REPRESENTATIVES AND THE SENATE.

☑ 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.

☐ 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

HOUSE JOINT RESOLUTION 320

Sponsors: Representatives Daughtry; Warwick and Goodwin.

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

February 25, 1997

A JOINT RESOLUTION INVITING THE HONORABLE BURLEY B. MITCHELL, JR., CHIEF JUSTICE OF THE SUPREME COURT, TO ADDRESS A JOINT SESSION OF THE HOUSE OF REPRESENTATIVES AND THE SENATE.

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

Section 1. The Honorable Burley B. Mitchell, Jr., Chief Justice of the Supreme Court is invited to address a joint session of the House of Representatives and the Senate in the Hall of the House of Representatives at 2:00 p.m., Wednesday, March 5, 1997.

Section 2. The Secretary of State shall transmit a certified copy of this resolution to Burley B. Mitchell, Jr.

Section 3. This resolution is effective upon ratification.

MINUTES
COMMITTEE ON RULES, CALENDAR, AND OPERATIONS OF THE HOUSE
March 5, 1997

The Committee on Rules, Calendar, and Operations of the House met March 5, 1997, at 3:45 p.m. in Room 421 in the Legislative Office Building. Representative Morgan, Committee Chair, called the meeting to order and asked the clerk to call the roll. The following members were present: Representative Bowie, Vice Chair; and Representatives Dockham, Esposito, Gulley, Hill, Mitchell, Neely and Thompson.

The first order of business was the consideration of House Bill 52, INDEPENDENT REDISTRICTING COMMISSION. Representative Weatherly, bill sponsor, explained that House Bill 52 was a study commission bill. Representative Esposito made a motion to amend the bill to reflect a title change, motion adopted, and amendment would be rolled into a committee substitute. Representative Thompson moved for a favorable report to the committee substitute, unfavorable as to original bill, which changes the title, and recommended that it be re-referred to the Committee on Congressional Redistricting.

The next bill before the Committee was House Bill 169, CONTINUE SENTENCING COMMISSION. Representative Justus, bill sponsor, explained that the bill simply extended the North Carolina Sentencing and Policy Advisory Commission for another two-year term. Representative Neely moved for a favorable report and recommended that the bill be re-referred to the Committee on Appropriations. Motion carried.

House Bill 131, EXTEND HEART DISEASE AND STROKE PREVENTION TASK FORCE, was explained by Representative Justus, bill sponsor. Representative Dockham moved for a favorable report and recommended that the bill be re-referred to the Committee on Appropriations. Motion carried.

House Bill 140, EXTEND THE DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY STUDY COMMISSION, was explained by Representative Justus, bill sponsor. Representative Thompson moved for a favorable report and recommended that it be re-referred to the Committee on Appropriations. Motion carried.

Meeting adjourned at 4:00 p.m.

Representative Richard T. Morgan, Committee Chair

Anne M. Cole, Acting Committee Clerk

Attachments:
Committee Reports
Bills
Visitor's Sheet

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **MORGAN** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE.**

☐ Committee Substitute for
H.B. 52 A BILL TO BE ENTITLED AN ACT TO ESTABLISH AN INDEPENDENT REDISTRICTING COMMISSION TO HANDLE REDISTRICTING MATTERS AND TO DIRECT THE LEGISLATIVE RESEARCH COMMISSION TO STUDY PREPARATION FOR THE 2001 REDISTRICTING.

☐ 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 Congressional Redistricting.

☐ 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.

☐ 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

HOUSE BILL 52

Short Title: Independent Redistricting Commission. (Public)

Sponsors: Representatives Weatherly; Cansler, Culp, Dickson, Mercer, Rayfield, C. Wilson, and Cole.

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

February 5, 1997

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH AN INDEPENDENT REDISTRICTING COMMISSION TO HANDLE REDISTRICTING MATTERS AND TO DIRECT THE LEGISLATIVE RESEARCH COMMISSION TO STUDY PREPARATION FOR THE 2001 REDISTRICTING.

The General Assembly of North Carolina enacts:

Section 1. Section 3 of Article II of the Constitution of North Carolina reads as rewritten:

"**Sec. 3. Senate districts; apportionment of Senators.**

The Senators shall be elected from districts. ~~The General Assembly, at the first regular session convening~~ The Independent Redistricting Commission, beginning as soon as practical after the return of every decennial census of population taken by order of Congress, shall revise the senate districts and the apportionment of Senators among those districts, subject to the following requirements:

(1) Each Senator shall represent, as nearly as may be, an equal number of inhabitants, ~~the number of inhabitants that each Senator represents being determined for this purpose by dividing the population of the District that he represents by the number of Senators apportioned to that district~~ and each district shall elect one Senator;

(2) Each senate district shall at all times consist of compact and contiguous territory;

~~(3) No county shall be divided in the formation of a senate district;~~

(4) When established, the senate districts and the apportionment of Senators shall remain unaltered until the return of another decennial census of population taken by order of Congress."

Section 2. Section 5 of Article II of the Constitution of North Carolina reads as rewritten:

"**Sec. 5. Representative districts; apportionment of Representatives.**

The Representatives shall be elected from districts. ~~The General Assembly, at the first regular session convening~~ The Independent Redistricting Commission, as soon as practical after the return of every decennial census of population taken by order of Congress, shall revise the representative districts and the apportionment of Representatives among those districts, subject to the following requirements:

(1) Each Representative shall represent, as nearly as may be, an equal number of inhabitants, ~~the number of inhabitants that each Representative represents being determined for this purpose by dividing the population of the district that he represents by the number of Representatives apportioned to that district~~ and each District shall elect one Representative;

(2) Each representative district shall at all times consist of compact and contiguous territory;

~~(3) No county shall be divided in the formation of a representative district;~~

(4) When established, the representative districts and the apportionment of Representatives shall remain unaltered until the return of another decennial census of population taken by order of Congress."

Section 3. Article II of the Constitution of North Carolina is amended by adding a new section to read:

"**Sec. 25. Independent Redistricting Commission.**

(1) Establishment and Membership. There is established the Independent Redistricting Commission to consist of nine persons appointed as follows:

(a) Two by the Chief Justice of the Supreme Court, with no more than one affiliated with the same political party;

(b) Three by the Governor, with no more than two affiliated with the same political party;

(c) Two by the Speaker of the House of Representatives, with no more than one affiliated with the same political party; and

(d) Two by the President Pro Tempore of the Senate, with no more than one affiliated with the same political party.

The appointing officers shall make their initial appointments no earlier than February 1 of the year prior to the year in which the appointed members are to take office under subsection (2) of this section and no later than June 1 of the year in which the members are to take office under subsection (2) of this section.

(2) Term of Office; Vacancies, Chair. The members of the Independent Redistricting Commission shall take office on the first day of July of each year ending

in the number 0, and shall continue in office until their successors are appointed and qualified. Any vacancy occurring in the membership of the Commission shall be filled for the remainder of the unexpired term by the officer who appointed the vacating member. The Independent Redistricting Commission shall elect from its members a Chair, who will serve throughout the term of the Commission unless replaced by vote of the Commission.

(3) Eligibility. To be eligible for appointment to the Independent Redistricting Commission, a person must be a resident of North Carolina. No person may serve on the Commission who has held elective public office or been a candidate for elective public office in the four years prior to commencement of service on the Independent Redistricting Commission. No person who has served as a member of the Independent Redistricting Commission shall be eligible to hold any elective public office for four years after termination of service on the Independent Redistricting Commission.

(4) Legislative Plans. The Independent Redistricting Commission shall adopt, in accordance with Sections 3 and 5 of this Article, plans for revising the senate districts and representative districts, which shall have the force and effect of acts of the General Assembly. The General Assembly shall not adopt any legislative district plan.

(5) Congressional Plans. The Independent Redistricting Commission is responsible for adopting a district plan for election of members of the House of Representatives of the Congress of the United States. The General Assembly shall not adopt any district plan for election of members of the United States House of Representatives.

(6) Preparation and Adoption of Plans. The Independent Redistricting Commission shall adopt district plans as required by subsections (4) and (5) of this section no later than October 1 of the year following each decennial census of population taken by order of Congress. In preparing or adopting its plans, the Independent Redistricting Commission shall not consider the following information:

(a) The political affiliation of voters;
(b) Voting data from previous elections;
(c) The location of incumbents' residences; or
(d) Demographic data from sources other than the United States Bureau of the Census.

There shall be a minimum period of 45 days of public comment on a plan before it is finally adopted.

(7) In Case Plan Held Invalid. The Independent Redistricting Commission shall adopt a new district plan in the event that a plan it has adopted is held invalid.

(8) Federal Law. In adopting any plan under this section, the Independent Redistricting Commission shall take into consideration all relevant requirements of the United States Constitution and Acts of Congress.

(9) Local Redistricting. The General Assembly may by law assign to the Independent Redistricting Commission the duty to adopt districting and redistricting plans for any county, city, town, special district, and other governmental subdivision if the governing board of the unit or a court of competent jurisdiction so requests."

Section 4. Subdivision (5) of Section 22 of Article II of the Constitution of North Carolina reads as rewritten:

"(5) ~~Other exceptions.~~ Appointments to office. Every ~~bill:~~

~~(a)~~ ~~In~~ bill in which the General Assembly makes an appointment or appointments to public office and which contains no other ~~matter;~~

~~(b) Revising the senate districts and the apportionment of Senators among those districts and containing no other matter;~~

~~(c) Revising the representative districts and the apportionment of Representatives among those districts and containing no other matter; or~~

~~(d) Revising the districts for the election of members of the House of Representatives of the Congress of the United States and the apportionment of Representatives among those districts and containing no other matter;~~

matter shall be read three times in each house before it becomes law and shall be signed by the presiding officers of both houses."

Section 5. The amendments set out in Sections 1 through 4 of this act shall be submitted to the qualified voters of the State at the general election in November 1998, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[ ] FOR [ ] AGAINST

A constitutional amendment providing for an Independent Redistricting Commission to redistrict the State for the purpose of electing members of the General Assembly and members of the United States House of Representatives."

Section 6. If a majority of votes cast on the question are in favor of the amendments set out in Sections 1 through 4 of this act, the State Board of Elections shall certify the amendments to the Secretary of State. The amendments become effective upon this certification. The Secretary of State shall enroll the amendments so certified among the permanent records of that office.

Section 7. The Legislative Research Commission shall study the preparation for the 2001 redistricting, including the transition from redistricting done by the General Assembly to redistricting done by the Independent Redistricting Commission. The Legislative Research Commission shall report its findings and recommendations to the 1998 Regular Session of the 1997 General Assembly or to the 1999 General Assembly or to both. There is appropriated from the General Fund to the Legislative Research Commission the sum of twenty thousand dollars ($20,000) for the 1997-98 fiscal year and the sum of twenty thousand dollars ($20,000) for the 1998-99 fiscal year for the purpose of conducting the study required by this section.

Section 8. This act is effective when it becomes law.

CS

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 52
Proposed Committee Substitute H52-PCS1133

Short Title: Independent Redistricting Commission. (Public)

Sponsors:

Referred to:

February 5, 1997

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH AN INDEPENDENT REDISTRICTING COMMISSION TO HANDLE REDISTRICTING MATTERS.

The General Assembly of North Carolina enacts:

Section 1. Section 3 of Article II of the Constitution of North Carolina reads as rewritten:

"**Sec. 3. Senate districts; apportionment of Senators.**

The Senators shall be elected from districts. ~~The General Assembly, at the first regular session convening~~ The Independent Redistricting Commission, beginning as soon as practical after the return of every decennial census of population taken by order of Congress, shall revise the senate districts and the apportionment of Senators among those districts, subject to the following requirements:

(1) Each Senator shall represent, as nearly as may be, an equal number of inhabitants, ~~the number of inhabitants that each Senator represents being determined for this purpose by dividing the population of the District that he represents by the number of Senators apportioned to that district~~ and each district shall elect one Senator;

(2) Each senate district shall at all times consist of compact and contiguous territory;

~~(3) No county shall be divided in the formation of a senate district;~~

(4) When established, the senate districts and the apportionment of Senators shall remain unaltered until the return of another decennial census of population taken by order of Congress."

Section 2. Section 5 of Article II of the Constitution of North Carolina reads as rewritten:

"**Sec. 5. Representative districts; apportionment of Representatives.**

The Representatives shall be elected from districts. ~~The General Assembly, at the first regular session convening~~ The Independent Redistricting Commission, as soon as practical after the return of every decennial census of population taken by order of Congress, shall revise the representative districts and the apportionment of Representatives among those districts, subject to the following requirements:

(1) Each Representative shall represent, as nearly as may be, an equal number of inhabitants, ~~the number of inhabitants that each Representative represents being determined for this purpose by dividing the population of the district that he represents by the number of Representatives apportioned to that district~~ and each District shall elect one Representative;

(2) Each representative district shall at all times consist of compact and contiguous territory;

~~(3) No county shall be divided in the formation of a representative district;~~

(4) When established, the representative districts and the apportionment of Representatives shall remain unaltered until the return of another decennial census of population taken by order of Congress."

Section 3. Article II of the Constitution of North Carolina is amended by adding a new section to read:

"**Sec. 25. Independent Redistricting Commission.**

(1) Establishment and Membership. There is established the Independent Redistricting Commission to consist of nine persons appointed as follows:

(a) Two by the Chief Justice of the Supreme Court, with no more than one affiliated with the same political party;

(b) Three by the Governor, with no more than two affiliated with the same political party;

(c) Two by the Speaker of the House of Representatives, with no more than one affiliated with the same political party; and

(d) Two by the President Pro Tempore of the Senate, with no more than one affiliated with the same political party.

The appointing officers shall make their initial appointments no earlier than February 1 of the year prior to the year in which the appointed members are to take office under subsection (2) of this section and no later than June 1 of the year in which the members are to take office under subsection (2) of this section.

(2) Term of Office; Vacancies, Chair. The members of the Independent Redistricting Commission shall take office on the first day of July of each year ending in the number 0, and shall continue in office until their successors are appointed and qualified. Any vacancy occurring in the membership of the Commission shall be filled for the remainder of the unexpired term by the officer who appointed the

vacating member. The Independent Redistricting Commission shall elect from its members a Chair, who will serve throughout the term of the Commission unless replaced by vote of the Commission.

(3) Eligibility. To be eligible for appointment to the Independent Redistricting Commission, a person must be a resident of North Carolina. No person may serve on the Commission who has held elective public office or been a candidate for elective public office in the four years prior to commencement of service on the Independent Redistricting Commission. No person who has served as a member of the Independent Redistricting Commission shall be eligible to hold any elective public office for four years after termination of service on the Independent Redistricting Commission.

(4) Legislative Plans. The Independent Redistricting Commission shall adopt, in accordance with Sections 3 and 5 of this Article, plans for revising the senate districts and representative districts, which shall have the force and effect of acts of the General Assembly. The General Assembly shall not adopt any legislative district plan.

(5) Congressional Plans. The Independent Redistricting Commission is responsible for adopting a district plan for election of members of the House of Representatives of the Congress of the United States. The General Assembly shall not adopt any district plan for election of members of the United States House of Representatives.

(6) Preparation and Adoption of Plans. The Independent Redistricting Commission shall adopt district plans as required by subsections (4) and (5) of this section no later than October 1 of the year following each decennial census of population taken by order of Congress. In preparing or adopting its plans, the Independent Redistricting Commission shall not consider the following information:

(a) The political affiliation of voters;
(b) Voting data from previous elections;
(c) The location of incumbents' residences; or
(d) Demographic data from sources other than the United States Bureau of the Census.

There shall be a minimum period of 45 days of public comment on a plan before it is finally adopted.

(7) In Case Plan Held Invalid. The Independent Redistricting Commission shall adopt a new district plan in the event that a plan it has adopted is held invalid.

(8) Federal Law. In adopting any plan under this section, the Independent Redistricting Commission shall take into consideration all relevant requirements of the United States Constitution and Acts of Congress.

(9) Local Redistricting. The General Assembly may by law assign to the Independent Redistricting Commission the duty to adopt districting and redistricting plans for any county, city, town, special district, and other governmental subdivision if the governing board of the unit or a court of competent jurisdiction so requests."

Section 4. Subdivision (5) of Section 22 of Article II of the Constitution of North Carolina reads as rewritten:

"(5) ~~Other exceptions.~~ Appointments to office. Every ~~bill~~

~~(a)~~ ~~In~~ bill in which the General Assembly makes an appointment or appointments to public office and which contains no other ~~matter;~~

~~(b) Revising the senate districts and the apportionment of Senators among those districts and containing no other matter;~~

~~(c) Revising the representative districts and the apportionment of Representatives among those districts and containing no other matter; or~~

~~(d) Revising the districts for the election of members of the House of Representatives of the Congress of the United States and the apportionment of Representatives among those districts and containing no other matter,~~

matter shall be read three times in each house before it becomes law and shall be signed by the presiding officers of both houses."

Section 5. The amendments set out in Sections 1 through 4 of this act shall be submitted to the qualified voters of the State at the general election in November 1998, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[ ] FOR [ ] AGAINST

A constitutional amendment providing for an Independent Redistricting Commission to redistrict the State for the purpose of electing members of the General Assembly and members of the United States House of Representatives."

Section 6. If a majority of votes cast on the question are in favor of the amendments set out in Sections 1 through 4 of this act, the State Board of Elections shall certify the amendments to the Secretary of State. The amendments become effective upon this certification. The Secretary of State shall enroll the amendments so certified among the permanent records of that office.

Section 7. This act is effective when it becomes law.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **MORGAN** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE.**

☐ Committee Substitute for
H.B. 169 A BILL TO BE ENTITLED AN ACT TO IMPLEMENT THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION'S RECOMMENDATION TO CONTINUE THE 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 .)

☐ 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.

☐ 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 169

Short Title: Continue Sentencing Commission. (Public)

Sponsors: Representatives Justus, Bowie; Aldridge, Baker, Kiser, Baddour, Redwine, and Thompson.

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

February 13, 1997

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION'S RECOMMENDATION TO CONTINUE THE COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Section 8 of Chapter 1076 of the 1989 Session Laws, as amended by Chapters 812 and 816 of the 1991 Session Laws, Chapters 253, 321, and 591 of the 1993 Session Laws, and Chapter 236 of the 1995 Session Laws, reads as rewritten:

"Sec. 8. This act is effective ~~upon ratification, and shall expire~~ July 1, 1997."

Section 2. G.S. 164-38 reads as rewritten:

"**§ 164-38. (Effective until July 1, 1997) Terms of members; compensation; expenses.**

The terms of existing members shall expire on June 30, ~~1995,~~ 1997, unless they resign or are removed. New members shall be appointed or the existing members reappointed by the appointing authorities to serve ~~until July 1, 1997,~~ terms of two years, unless they resign or are removed. Members serving by virtue of elective or appointive office or as designees of such officeholders may serve only so long as the officeholders hold those respective offices. Members appointed by the Speaker of the House and the President Pro Tempore of the Senate may be removed by the appointing authority without cause. Vacancies occurring before the expiration of a term shall be filled in the manner provided for the members first appointed. A member of the Commission may be removed only for disability, neglect of duty, incompetence, or malfeasance in office. Before removal, the member is entitled to a

hearing. Effective with respect to members designated on or after July 1, 1992, a person making a designation pursuant to G.S. 164-37 may not make another designation, except that the person's successor in elective or appointive office may make a new designation.

The Commission members shall receive no salary for serving. All Commission members shall receive necessary subsistence and travel expenses in accordance with the provisions of G.S. 120-3.1, 138-5, and 138-6 as applicable."

Section 3. G.S. 164-36 reads as rewritten:

"**§ 164-36. (Effective until July 1, 1997) Powers and duties.**

Sentences established for violations of the State's criminal laws should be based on the established purposes of our criminal justice and corrections systems. The Commission shall evaluate sentencing laws and policies in relationship to both the stated purposes of the criminal justice and corrections systems and the availability of sentencing options. The Commission shall make recommendations to the General Assembly for the modification of sentencing laws and policies, and for the addition, deletion, or expansion of sentencing options as necessary to achieve policy goals. The Commission shall make a report of its recommendations, including any recommended legislation, to the General Assembly annually."

Section 4. This act becomes effective July 1, 1997.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **MORGAN** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE.**

☐ Committee Substitute for
H.B. 131 A BILL TO BE ENTITLED AN ACT TO EXTEND THE ACTIVITIES OF THE HEART DISEASE AND STROKE PREVENTION TASK FORCE.

☐ 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.

☐ 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 131

Short Title: Extend Heart Dis. Prev. Task Force. (Public)

Sponsors: Representatives Justus; Arnold, Bonner, Bowie, Cansler, Carpenter, Clary, Crawford, Creech, Dockham, Esposito, Fox, Gardner, Holmes, Ives, Kiser, McCombs, McMahan, Morris, Nichols, Russell, Sexton, Sherrill, Shubert, Sutton, Thompson, Wainwright, Watson, and G. Wilson.

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

February 13, 1997

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE ACTIVITIES OF THE HEART DISEASE AND STROKE PREVENTION TASK FORCE.

The General Assembly of North Carolina enacts:

Section 1. Subsections (l) and (m) of Section 26.9 of Chapter 507 of the 1995 Session Laws read as rewritten:

"(l) The Task Force shall submit to the Governor and to the General Assembly a preliminary report by January 1, 1996; an interim report within the first week of the convening of the 1997 General Assembly; a second interim report within the first week of the convening of the 1997 General Assembly, Regular Session 1998; a third interim report within the first week of the convening of the 1999 General Assembly, and a final report by ~~October 1, 1997.~~ June 30, 1999. The reports shall address the Plan, actions and resources needed to fully implement the Plan, and progress in achieving implementation of the Plan to reduce the occurrence of and burden from heart disease and stroke in North Carolina. The reports shall include an accounting of funds expended and anticipated funding needs for full implementation of recommended plans and programs.

(m) Upon submission of its final report to the Governor and the ~~1997~~ 1999 General Assembly, the Task Force shall expire."

Section 2. This act becomes effective July 1, 1997.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **MORGAN** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE.**

☐ Committee Substitute for
H.B. 140 A BILL TO BE ENTITLED AN ACT TO EXTEND THE DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY STUDY 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 .)

☐ 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.

☐ 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 140

Short Title: Extend Crime Control Study. (Public)

Sponsors: Representatives Justus; Allred, Bowie, Brown, Buchanan, Culp, Esposito, Fox, Gardner, Hall, Hiatt, Hill, Holmes, Howard, Ives, Kiser, McComas, McCombs, McMahan, Miner, Mitchell, Russell, Thompson, Watson, and Wilkins.

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

February 13, 1997

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY STUDY COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. The Study Commission on the Department of Crime Control and Public Safety, established pursuant to Section 20.4 of Chapter 324 of the 1995 Sessions Laws, as amended by Section 21.1 of Chapter 18 of the Session Laws of the 1996 Second Extra Session, is continued.

Section 2. Subsection 20.4(a) of Chapter 324 of the 1995 Session Laws reads as rewritten:

"(a) There is established a Study Commission on the Department of Crime Control and Public Safety to be composed of 12 members: the Chairs of the Senate and House Appropriations Committees, the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety, one member to be appointed by the Speaker of the House of Representatives, and two members to be appointed by the President Pro Tempore of the Senate. ~~The members shall serve until the termination of the Commission.~~ Terms of the initial members shall terminate upon the convening of the 1997 General Assembly. Successors shall be appointed as provided in this subsection to serve until the termination of the Commission. The Speaker of the House and the President Pro Tempore of the Senate shall each designate a cochair from the members from their respective houses. Either cochair

may call the first meeting of the Commission. Vacancies shall be filled in the same manner as the original appointments were made."

Section 3. Subsection 20.4(d) of Chapter 324 of the 1995 Session Laws, as amended by Section 21.1 of Chapter 18 of the Session Laws of the 1996 Second Extra Session, reads as rewritten:

"(d) The Study Commission shall make ~~an interim report~~ interim reports to the 1996 Regular Session of the 1995 General Assembly by May 1, 1996, and ~~shall submit a final written report of its findings and recommendations~~ to the 1997 General ~~Assembly.~~ Assembly, and to the 1998 Regular Session of the 1997 General Assembly by May 1, 1998. The Study Commission shall submit a final written report of its findings and recommendations to the 1999 General Assembly. All reports shall be filed with the Speaker of the House of Representatives and the President Pro Tempore of the Senate. Upon filing its final report, the Commission shall terminate."

Section 4. This act becomes effective July 1, 1997.

VISITOR REGISTRATION SHEET

Afternoon session

Rules & Operations of the House March 5, 1997

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

	NAME	FIRM OR AGENCY
1.	Bill Scoggin	NCBA
2.	Natalie Hawkins	Charlotte Chambers
3.	Nancy Bradley	NCCBI
4.	Rob Lubitz	Sentencing Comm'n
5.	Claire Gilbert	Governor's Office
6.		
7.		
8.		
9.		
10.		
11.		
22.		
23.		
24.		
25.		
26.		
27.		
28.		
29.		
30.		
31.		

MINUTES
COMMITTEE ON RULES, CALENDAR, AND OPERATIONS OF THE HOUSE
March 10, 1997

The Committee on Rules, Calendar, and Operations of the House met March 10, 1997, immediately following the adjournment of the House Session in the House Conference Room in the Legislative Building. Representative Morgan, Chair, called the meeting to order and asked the clerk to call the roll. The following members were present: Representative Bowie, Vice Chair; and Representatives Culp, Dockham, Esposito, Gulley, Hill, Miner, Mitchell, Neely and Thompson.

Senate Joint Resolution 334, A JOINT RESOLUTION INVITING PRESIDENT CLINTON TO ADDRESS A JOINT SESSION OF THE HOUSE OF REPRESENTATIVES AND THE SENATE, was the only agenda item. A proposed House committee substitute for Senate Joint Resolution 334 was offered and Representative Culp moved for the adoption of the committee substitute for committee consideration. Motion carried.

Linwood Jones, Committee Staff Counsel, explained that the only change to the bill was an invitation to Governor James B. Hunt, Jr. to attend the joint session. Representative Neely moved to amend the bill to include that a certified copy of the resolution be transmitted to the Governor. Motion carried and the Chairman stated that the amendment would be rolled into the House committee substitute. Representative Neely then moved for a favorable report to the House committee substitute for Senate Joint Resolution 334, which changed the title, and unfavorable as to Senate Joint Resolution. 334. Motion carried.

Meeting adjourned at 8:00 p.m.

Representative Richard T. Morgan
Committee Chair

Anne M. Cole
Acting Committee Clerk

Attachments:
Committee Report
Joint Resolutions

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE.**

☐ Committee Substitute for
S.J.R. 334 A JOINT RESOLUTION INVITING THE HONORABLE WILLIAM J. CLINTON, PRESIDENT OF THE UNITED STATES, TO ADDRESS A JOINT SESSION OF THE HOUSE OF REPRESENTATIVES AND THE SENATE.

☐ 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 .)

X With a favorable report as to House Committee Substitute Joint Resolution, which changes the title, unfavorable as to Senate Joint Resolution.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ 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 D

SENATE JOINT RESOLUTION 334
Proposed House Committee Substitute S334-PCS7588

Sponsors:

Referred to:

March 6, 1997

A JOINT RESOLUTION INVITING THE HONORABLE WILLIAM J. CLINTON, PRESIDENT OF THE UNITED STATES, TO ADDRESS A JOINT SESSION OF THE HOUSE OF REPRESENTATIVES AND THE SENATE AND INVITING GOVERNOR JAMES B. HUNT, JR.

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

Section 1. The Honorable William J. Clinton, President of the United States, is invited to address a joint session of the House of Representatives and the Senate in the Hall of the House of Representatives at 11:00 a.m., Thursday, March 13, 1997.

Section 2. The Honorable James B. Hunt, Jr., Governor, is invited to the joint session.

Section 3. The Secretary of State shall transmit a certified copy of this resolution to the President of the United States and the Governor of the State of North Carolina.

Section 4. This resolution is effective upon ratification.

MINUTES
COMMITTEE ON RULES, CALENDAR, AND OPERATIONS OF THE HOUSE
March 18, 1997

The Committee on Rules, Calendar, and Operations of the House met March 18, 1997, at 4:00 p.m. in Room 421 in the Legislative Office Building. Representative Morgan, Committee Chair, called the meeting to order and asked the clerk to call the roll. The following members were present: Representative Bowie, Vice Chair; and Representatives Culp, Dockham, Esposito, Gulley, Hill, Miner, Mitchell and Thompson.

The first order of business was the consideration of House Resolution 21, HONORING THE LIFE AND MEMORY OF JOHN SHORTRIDGE. Representative Goodwin, bill sponsor, was recognized for a brief explanation. Representative Dockham moved to amend the bill on page l, line 5 by deleting "will be celebrating" and inserting "celebrated". The amendment was adopted and will be rolled into a committee substitute. Representative Dockham, moved to give a favorable report to the committee substitute, unfavorable to original bill. Motion carried and House Resolution 21 was adopted.

House Joint Resolution 371, HONORING THE LIFE AND MEMORY OF JAMES ERWIN LAMBETH, JR., was explained by Representative Dockham, co-sponsor of the resolution. Representative Dockham moved for a favorable report and motion carried.

Senate Bill 229, AN ACT TO ALLOW THE VOTERS OF THE CITY OF FAYETTEVILLE TO RECALL THE MAYOR AND CITY COUNCIL, was explained by Representatives Morris and Hurley for Senator Rand, bill sponsor. It was stated that sixteen other cities have recall provisions in its charter. Representative Hill moved to give the bill a favorable report, motion carried.

House Joint Resolution 376, HONORING THE LIFE AND MEMORY OF THE EARLY SUPPORTERS OF THE DURHAM PUBLIC LIBRARY ON THE LIBRARY'S ONE HUNDREDTH ANNIVERSARY, was explained by Representative Luebke, bill sponsor. Representative Bowie moved for a favorable report and the motion carried.

House Resolution 520, COMMEMORATING THE FIFTIETH ANNIVERSARY OF THE NORTH CAROLINA MUSEUM OF ART, was explained by Committee Staff Attorney, Linwood Jones. Representative Dockham moved for a favorable report. The motion carried and House Resolution 520 was adopted.

House Joint Resolution 398, HONORING THE LIFE AND MEMORY OF BASIL DUKE BARR, FORMER MEMBER OF THE GENERAL ASSEMBLY, was explained by Committee Staff Attorney, Linwood Jones. Representative Gulley moved for a favorable report and the motion carried.

Senate Bill 38, AN ACT TO ESTABLISH THE STUDY COMMISSION ON THE FUTURE OF ELECTRIC SERVICE IN NORTH CAROLINA, was the next bill before the Committee for consideration. A proposed House committee substitute was offered and Representative Dockham moved for its adoption for committee consideration. Motion carried. Linwood Jones, Committee Staff Attorney, explained the change in the committee substitute was on page 2 by adding "(12) One person representing a nationwide electric power marketer to be appointed by the Speaker of the House of Representatives." Representative Dockham moved to further amend the proposed committee substitute on page 3, lines 40 and 41, by adding a comma (,) after "recommendations" and deleting "Commission deems it advisable at that time,". Motion carried and the amendments would be rolled into the committee substitute. Representative Miner moved for a favorable report to the House committee substitute for Senate Bill 38 and unfavorable as to original bill. Motion carried.

Upon motion of Representative Mitchell, the meeting adjourned at 4:20 p.m.

Representative Richard T. Morgan
Committee Chair

Anne M. Cole
Acting Committee Clerk

Attachments:
Committee Reports
Bills
Visitor's Sheet

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **MORGAN** for the Committee on **Rules, Calendar, and Operations of the House.**

☐ Committee Substitute for
H.R. 21 A HOUSE RESOLUTION HONORING THE LIFE AND MEMORY OF JOHN SHORTRIDGE, FOUNDER OF THE CITY OF HAMLET, ON THE CITY'S ONE HUNDREDTH ANNIVERSARY.

☐ 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.

☐ 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 committee sub. be adopted. (HOUSE RESOLUTION ONLY)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE RESOLUTION 21
Proposed Committee Substitute H21-PCS7124

Sponsors:

Referred to:

February 3, 1997

A HOUSE RESOLUTION HONORING THE LIFE AND MEMORY OF JOHN SHORTRIDGE, FOUNDER OF THE CITY OF HAMLET, ON THE CITY'S ONE HUNDREDTH ANNIVERSARY.

Whereas, on February 9, 1997, the City of Hamlet in Richmond County celebrated 100 years of incorporation; and

Whereas, the founding of the City of Hamlet can be traced to John Shortridge, one of the city's earliest settlers; and

Whereas, John Shortridge was born in Carlisle, England, in 1818, and at the age of 20, he and his mother immigrated to the United States, settling in Rhode Island; and

Whereas, John Shortridge married Mary Jane McQuiston in 1838; and

Whereas, John Shortridge moved his family to Rockingham, North Carolina, in 1847, and at that time, John Shortridge became associated with the Richmond Manufacturing Company; and

Whereas, John Shortridge found success in milling and real estate, built a sawmill and a woolen mill; and for the next 25 years, he and his wife raised their children in the Ledbetter Mill area; and

Whereas, following the destruction of his mills in 1865, and the death of his wife in 1868, John Shortridge moved to an area known as the Sandhills, a few miles southeast of the Ledbetter Mill area in 1872; and

Whereas, John Shortridge built a new woolen mill and sawmill and began to regain his losses; and

Whereas, the area where John Shortridge lived came to be known as Shortridge Mills, but in 1873 the area was named Hamlet, a word used to describe a small village; and

Whereas, John Shortridge's notable contributions to the City of Hamlet include enticing the railroad to come directly to the city, donating land for the railroad, allowing his home to be used for the city's first post office, and donating land for a church and helping to erect the church; and

Whereas, John Shortridge died in 1882; and

Whereas, many of John Shortridge's descendants continue to live in the City of Hamlet; and

Whereas, Hamlet's 100th anniversary and John Shortridge's contributions to the development of Hamlet are worthy of celebration and should be enjoyed and supported by all of North Carolina's citizens;

Now, therefore, be it resolved by the House of Representatives:

Section 1. The House of Representatives honors the life and memory of John Shortridge and urges the citizens of this State to participate in all activities commemorating the 100th anniversary of the City of Hamlet.

Section 2. The Principal Clerk shall transmit a copy of this resolution to the Mayor of the City of Hamlet.

Section 3. This resolution is effective upon adoption.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE RESOLUTION 21

Sponsors: Representatives Goodwin; Hall, Morris, Moore, Dedmon, Barnes, and Young.

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

February 3, 1997

A HOUSE RESOLUTION HONORING THE LIFE AND MEMORY OF JOHN SHORTRIDGE, FOUNDER OF THE CITY OF HAMLET, ON THE CITY'S ONE HUNDREDTH ANNIVERSARY.

Whereas, on February 9, 1997, the City of Hamlet in Richmond County will be celebrating 100 years of incorporation; and

Whereas, the founding of the City of Hamlet can be traced to John Shortridge, one of the city's earliest settlers; and

Whereas, John Shortridge was born in Carlisle, England, in 1818, and at the age of 20, he and his mother immigrated to the United States, settling in Rhode Island; and

Whereas, John Shortridge married Mary Jane McQuiston in 1838; and

Whereas, John Shortridge moved his family to Rockingham, North Carolina, in 1847, and at that time, John Shortridge became associated with the Richmond Manufacturing Company; and

Whereas, John Shortridge found success in milling and real estate, built a sawmill and a woolen mill; and for the next 25 years, he and his wife raised their children in the Ledbetter Mill area; and

Whereas, following the destruction of his mills in 1865, and the death of his wife in 1868, John Shortridge moved to an area known as the Sandhills, a few miles southeast of the Ledbetter Mill area in 1872; and

Whereas, John Shortridge built a new woolen mill and sawmill and began to regain his losses; and

Whereas, the area where John Shortridge lived came to be known as Shortridge Mills, but in 1873 the area was named Hamlet, a word used to describe a small village; and

Whereas, John Shortridge's notable contributions to the City of Hamlet include enticing the railroad to come directly to the city, donating land for the railroad, allowing his home to be used for the city's first post office, and donating land for a church and helping to erect the church; and

Whereas, John Shortridge died in 1882; and

Whereas, many of John Shortridge's descendants continue to live in the City of Hamlet; and

Whereas, Hamlet's 100th anniversary and John Shortridge's contributions to the development of Hamlet are worthy of celebration and should be enjoyed and supported by all of North Carolina's citizens;

Now, therefore, be it resolved by the House of Representatives:

Section 1. The House of Representatives honors the life and memory of John Shortridge and urges the citizens of this State to participate in all activities commemorating the 100th anniversary of the City of Hamlet.

Section 2. The Principal Clerk shall transmit a copy of this resolution to the Mayor of the City of Hamlet.

Section 3. This resolution is effective upon adoption.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **MORGAN** for the Committee on **RULES, CALENDAR, AND OPERATIONS OF THE HOUSE.**

☐ Committee Substitute for
H.J.R. 371 A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF JAMES ERWIN LAMBETH, JR., FORMER MEMBER OF THE GENERAL ASSEMBLY.

☒ 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.

☐ 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 JOINT RESOLUTION 371

Sponsors: Representatives Jarrell, Dockham (Cosponsors); and Adams.

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

March 3, 1997

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF JAMES ERWIN LAMBETH, JR., FORMER MEMBER OF THE GENERAL ASSEMBLY.

Whereas, James Erwin Lambeth, Jr. was born in Thomasville, North Carolina, on February 2, 1916, to James E. Lambeth and Helen McAulay Lambeth; and

Whereas, James Erwin Lambeth, Jr. graduated from Thomasville High School in 1933, Duke University in 1937, and the Harvard Business School in 1938; and

Whereas, James Erwin Lambeth, Jr. became a corporate executive, serving as President and Chairman of the Board of Lambeth Limited, and as Chairman of the Board and Secretary/Treasurer of Erwin-Lambeth, Inc.; and

Whereas, James Erwin Lambeth, Jr. achieved success and recognition in business through his achievements as a member on numerous boards including the North Carolina National Bank (1953-1980), Piedmont Associated Industries (1963-1964), Thomasville Community Foundation (1963-1964), College Foundation, (1971-1976), the Furniture Library Association (1973), and the Thomasville Home Savings and Loan, upon which he served for 50 years; and

Whereas, James Erwin Lambeth, Jr. also served as a member of the Governor's Commission on the Status of Women from 1964 to 1966 and as a member of the North Carolina Wildlife Commission from 1979 to 1981; and

Whereas, James Erwin Lambeth, Jr. worked unselfishly for the betterment of his community as a member and leader of numerous civic and fraternal organizations including the Thomasville Chamber of Commerce, the High Point Executives Club, the Thomasville Chapter of Masonic Lodge, the Thomasville Rotary Club, the Davidson County Historical Society, the Thomasville Historical Society, and the Thomasville United Fund; and

Whereas, James Erwin Lambeth, Jr. was awarded the Rotary Foundation Citation for Meritorious Service in 1974, and the Silver Beaver Award by the Boy Scouts of America in 1961; and

Whereas, James Erwin Lambeth, Jr. showed outstanding devotion to public service, serving as a member of the Thomasville City Council from 1963 to 1967, during which time he served as Mayor Pro Tempore, and serving with honor and distinction in the North Carolina House of Representatives during the 1977, 1979, and 1983 Sessions of the General Assembly; and

Whereas, James Erwin Lambeth, Jr. was an active member of the Thomasville United Methodist Church, serving as a member of the Board of Stewards, as President of the R.L. Pope Bible Class from 1963 to 1964, and as Chair of the Stewardship and Finance Committee from 1964 to 1965; and

Whereas, James Erwin Lambeth, Jr. died on August 30, 1995, and leaves to mourn his wife, Katharine Lambeth; his sons, James E. Lambeth, III, Richard C. Lambeth, and William R. Lambeth; his daughter, Mary Katharine Lambeth Cullens; his sister, Molly Lambeth Johnson; and his brother, Frank Simmons Lambeth;

Now, therefore, be it resolved by the House of Representatives, the Senate concurring:

Section 1. The General Assembly honors the memory of James Erwin Lambeth, Jr. and extends the gratitude and appreciation of this State and its citizens for his life and devoted service to this State and his community.

Section 2. The General Assembly expresses its deepest sympathy to the family of James Erwin Lambeth, Jr. for the loss of this distinguished citizen.

Section 3. The Secretary of State shall transmit a certified copy of this resolution to the family of James Erwin Lambeth, Jr.

Section 4. This resolution is effective upon ratification.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **MORGAN** for the Committee on **RULES, CALENDAR, AND OPERATIONS OF THE HOUE.**

☐ Committee Substitute for
H.J.R. 376 A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF THE EARLY SUPPORTERS OF THE DURHAM PUBLIC LIBRARY ON THE LIBRARY'S ONE HUNDREDTH ANNIVERSARY.

☒ 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.

☐ 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 JOINT RESOLUTION 376

Sponsors: Representatives Luebke, Michaux, Miller, Capps, and Mosley (Cosponsors).

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

March 3, 1997

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF THE EARLY SUPPORTERS OF THE DURHAM PUBLIC LIBRARY ON THE LIBRARY'S ONE HUNDREDTH ANNIVERSARY.

Whereas, in June, 1895, Professor Edwin Mims of Trinity College initiated with a local literary group, the Canterbury Club, a movement to gain support for the idea of creating a public library in Durham; and

Whereas, in 1896, Lalla Ruth Carr and her father, industrialist and philanthropist Julian Shakespeare Carr, solicited donations for the establishment of the library, and Mr. Carr, along with Mrs. Thomas H. Martin, donated land for the library; and

Whereas, on March 5, 1897, the General Assembly of North Carolina ratified "an act to incorporate the Durham Public Library"; and

Whereas, the Board of Aldermen of the Town of Durham resolved in April 1896, and voted in January 1898, to provide financial support for the operation of the library; and

Whereas, the first free, tax-supported public library in North Carolina thereby opened its doors in Durham in February 1898; and

Whereas, in 1916, a public library was opened to serve the African-American citizens of Durham as a result of the efforts and contributions of Dr. Aaron McDuffie Moore and Mr. John Merrick; and

Whereas, these events marked the beginnings of public library service in Durham which served as an early model in the State for public and private support, professional leadership, services to children, bookmobile services, and services for African-American citizens; and

Whereas, the Durham County Library having been created from these two historic institutions continues to provide progressive library services to the people of Durham; and

Whereas, public libraries are operating today in all one hundred counties of North Carolina serving to enhance education, economic development, and quality of life of North Carolina residents;

Now, therefore, be it resolved by the House of Representatives, the Senate concurring:

Section 1. The General Assembly honors the life and memory of the early supporters of the Durham Library and proclaims March 1997, through February 1998, as a year of celebration of one hundred years of public library service in the City of Durham and in the State of North Carolina.

Section 2. The Secretary of State shall transmit a certified copy of this resolution to the Director of the Durham Public Library.

Section 3. This resolution is effective upon ratification.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **MORGAN** for the Committee on **RULES, CALENDAR, AND OPERATIONS OF THE HOUSE.**

☐ Committee Substitute for
H.J.R. 398 A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF BASIL DUKE BARR, FORMER MEMBER OF THE GENERAL ASSEMBLY.

☒ 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.

☐ 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 JOINT RESOLUTION 398

Sponsors: Representatives Hiatt, Gamble; Ramsey, G. Wilson, and Baker.

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

March 5, 1997

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF BASIL DUKE BARR, FORMER MEMBER OF THE GENERAL ASSEMBLY.

Whereas, Basil Duke Barr was born on November 4, 1894, in Jefferson, North Carolina, to Felix Barr and Blanche Duke Barr; and

Whereas, Basil Duke Barr graduated from Jefferson High School in 1917, and North Carolina State University in 1921, where he received a degree in engineering; and

Whereas, Basil Duke Barr married Mabel Phillips in 1922, and from their union, three children were born; and

Whereas, Basil Duke Barr proudly served his county as a member of the United States Army, serving in both World Wars; and

Whereas, Basil Duke Barr was a skilled and well-known engineer, spending most of his professional career in Alaska; and

Whereas, while in Alaska, Basil Duke Barr was an avid sportsman and big game hunter and wrote several books on big game hunting; and

Whereas, Basil Duke Barr retired as a Lt. Colonel from the Corps of Engineers in 1954; and

Whereas, upon his return to North Carolina, Basil Duke Barr opened a custom furniture shop in Jefferson, which became one of the most well-known furniture shops in North Carolina; and

Whereas, Basil Duke Barr was a skilled cabinetmaker much in demand and his furniture was used in many fine homes throughout the South; and

Whereas, Basil Duke Barr served with honor and distinction in the House of Representatives during the 1965, 1967, and 1969 Sessions of the General Assembly; and

Whereas, Basil Duke Barr worked unselfishly for the betterment of his community as a member of many civic and fraternal organizations including the Masonic Order and the American Legion; and

Whereas, Basil Duke Barr constructed the first hydroelectric dam on the New River in Ashe County and designed and built the first stone school in Ashe County; and

Whereas, Basil Duke Barr was active in the Baptist Church; and

Whereas, Basil Duke Barr died on February 3, 1997, and leaves children, other relatives, and friends to mourn; and

Whereas, Basil Duke Barr will be remembered for his keen mind and gentle personality that reflected mountain qualities and mountain intellect;

Now, therefore, be it resolved by the House of Representatives, the Senate concurring:

Section 1. The General Assembly expresses its deep appreciation for the life of Basil Duke Barr and for the great service he rendered to the Nation, the State of North Carolina, and his community.

Section 2. The General Assembly extends its deepest sympathy to the family of Basil Duke Barr for the loss of its distinguished member.

Section 3. The Secretary of State shall transmit a certified copy of this resolution to the family of Basil Duke Barr.

Section 4. This resolution is effective upon ratification.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **MORGAN** for the Committee on **RULES, CALENDAR, AND OPERATIONS OF THE HOUSE.**

☐ Committee Substitute for
H.R. 520 A HOUSE RESOLUTION COMMEMORATING THE FIFTIETH ANNIVERSARY OF THE NORTH CAROLINA MUSEUM OF ART.

☐ 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.

☐ 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 RESOLUTION 520

Sponsors: Representative Daughtry.

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

March 17, 1997

A HOUSE RESOLUTION COMMEMORATING THE FIFTIETH ANNIVERSARY OF THE NORTH CAROLINA MUSEUM OF ART.

Whereas, during the final hours of the 1947 General Assembly, a bill was passed on April 5, 1947, providing for the acquisition, preservation, and exhibition of art for the people of the State of North Carolina; and

Whereas, the 1947 act appropriated $1 million for the purchase of old master paintings, provided that the appropriation would be matched with $1 million; and

Whereas, North Carolina was the first state in the nation to set aside funds for a public art collection; and

Whereas, the Samuel H. Kress Foundation agreed to match the State appropriation with 71 paintings and sculptures, far exceeding the State's required match of $1 million; and

Whereas, the North Carolina Museum of Art is considered to have the most important old master painting collection in the Southeastern United States; and

Whereas, since its opening in 1956, more than 5.2 million State residents and tourists have enjoyed the Museum and its art collection; and

Whereas, the Museum's collection, educational programs, and special projects, publications, and endeavors continue to receive the highest national and international praise; and

Whereas, new landscaping, sculpture, and lighting and the recent addition of the Museum Park Theater have greatly enhanced the Museum as an important landmark for the City of Raleigh, Wake County, the Triangle area, and the entire State;

Now, therefore, be it resolved by the House of Representatives:

Section 1. The House wishes to observe the fiftieth anniversary of the North Carolina Museum of Art and to recognize and thank the trustees, volunteers, and staff who have contributed to the development of this distinguished institution. The House further invites the citizens of this State to join them in supporting and participating in activities commemorating the Museum's fiftieth anniversary.

Section 2. The Principal Clerk shall transmit a certified copy of this resolution to the Director of the North Carolina Museum of Art and to the Secretary of the Department of Cultural Resources.

Section 3. This resolution is effective upon adoption.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) MORGAN for the Committee on **RULES, CALENDAR, AND OPERATIONS OF THE HOUSE.**

☐ Committee Substitute for
S.B. 229 A BILL TO BE ENTITLED AN ACT TO ALLOW THE VOTERS OF THE CITY OF FAYETTEVILLE TO RECALL THE MAYOR AND CITY COUNCIL.

☒ 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.

☐ 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 1

SENATE BILL 229*

Short Title: Fayetteville Recall. (Local)

Sponsors: Senator Rand.

Referred to: State Government, Local Government, and Personnel.

February 24, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE VOTERS OF THE CITY OF FAYETTEVILLE TO RECALL THE MAYOR AND CITY COUNCIL.

The General Assembly of North Carolina enacts:

Section 1. Chapter IV of the Charter of the City of Fayetteville, being Chapter 557, Session Laws of 1979, is amended by adding a new section to read:

"**§ 4.4. Recall.** The Mayor and members of the City Council are subject to removal pursuant to this section. An officer is removed upon the filing of a sufficient recall petition and the affirmative vote of a majority of those voting on the question of removal at a recall election.

A recall petition shall be filed with the City Clerk, who shall immediately forward the petition to the board of elections that conducts elections for the City of Fayetteville. A petition to recall the Mayor or a member of the City Council elected at large shall bear the signatures equal in number to at least fifteen percent (15%) of the registered voters of the City of Fayetteville. A petition to recall a member of the City Council elected from a district shall bear the signatures equal in number to at least fifteen percent (15%) of the registered voters of such district.

The board of elections shall verify the petition signatures. If a sufficient recall petition is submitted, the board of elections shall certify its sufficiency to the governing body, and the governing body shall adopt a resolution calling for a recall election to be held not more than 60 days after the petition has been certified to the governing body. The election may be held by itself or at the same time as any other general or special election within the period established in this section, and shall be held as otherwise provided in G.S. 163-287. The board of elections shall conduct the

recall election. The proposition submitted to the voters shall be substantially in the following form:

'[ ] FOR [ ] AGAINST

The recall of [name of officer]'.

The registered voters of the City of Fayetteville are eligible to vote in an election to recall the Mayor or a member of the City Council. Any recall election for a council member from an electoral district shall be held within that district only.

If less than a majority of the votes cast on the question are for the officer's recall, the officer continues in office. If a majority of the votes cast on the question are for the officer's recall, the officer is removed on the date the board of elections certifies the results of the election. A vacancy created by removal of a member of the City Council or the Mayor shall be filled in accordance with the provisions of G.S. 160A-63, and the Mayor may vote on the filling of a vacancy on the City Council."

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

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **MORGAN** for the Committee on **RULES, CALENDAR, AND OPERATIONS OF THE HOUSE**.

☐ Committee Substitute for
S.B. 38 A BILL TO BE ENTITLED AN ACT TO ESTABLISH THE STUDY COMMISSION ON THE FUTURE OF ELECTRIC SERVICE 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 House 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.

☐ 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)

FOR JOURNAL USE ONLY

____ Pursuant to Rule 36(a), the bill is placed on the Calendar of _____.

____ The (committee substitute) bill/resolution (, as amended,) is (ordered engrossed and) re-referred to the Committee on _____.

____ The (committee substitute) bill/resolution (, as amended,) is placed on the Consent Calendar of _____. The original bill/resolution is placed on the Unfavorable Calendar.

____ The bill/resolution is re-referred to the Committee on _____.

____ On motion of (Rep. _____,) (the Chair,) the (committee substitute) bill/resolution is (ordered engrossed and) re-referred to the Committee on _____.

____ Pursuant to Rule 36(a), the (House)committee substitute bill (No. ____)/resolution is placed on the Calendar of _____. (The original bill) (House Committee Substitute Bill No. ____)/resolution is placed on the Unfavorable Calendar.

____ On motion of Rep. _____, (the rules are suspended) (Rule ____ is suspended) and the bill/resolution is placed on today's calendar. (for immediate consideration.)

____ On motion of Rep. _____, Committee Amendment No.(s) _____ is/are adopted (by EV____ ____).

____ On motion of Rep. _____, Committee Amendment No.(s) _____ is/are adopted (by EV____ ____).

____ Rep. _____ offers Amendment No. _____ which (is adopted.) (fails of adoption.) (by EV ____ ____.) ( ) This amendment changes the title.

____ The bill/resolution (, as amended,) passes its second reading (by following vote, ____ ____ RC) (, by EV ____ ____,) and (remains on the Calendar,) (and there being no objection is read a third time).

____ The bill/resolution (, as amended,) passes its third reading (by the following vote, ____ ____ RC) (, by EV ____ ____,) and is ordered
____ sent to the Senate.
____ without engrossment. ____ by Special message.
____ sent to the Senate for concurrence in
_____ House amendment (s).
_____ House committee substitute.
____ enrolled.

____ On motion of Rep. _____, the House concurs in the (material) Senate _____ (by the following vote, ____ ____ RC) (, by EV ____ ____,) and the bill is ordered enrolled.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 38*
Corrected Copy 2/4/97
Rules and Operations of the Senate Committee Substitute Adopted 2/12/97
Proposed House Committee Substitute S38-PCS7614

Short Title: Study Comm./Future of Electric Service. (Public)

Sponsors:

Referred to:

February 3, 1997

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE STUDY COMMISSION ON THE FUTURE OF ELECTRIC SERVICE IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. The Study Commission on the Future of Electric Service in North Carolina is created. The Commission shall consist of 20 voting members as follows:

(1) Four members of the Senate to be appointed by the President Pro Tempore of the Senate;

(2) Four members of the House of Representatives to be appointed by the Speaker of the House of Representatives;

(3) The Chief Executive Officer of the North Carolina Electric Membership Corporation or the Chief Executive Officer's designee;

(4) The Chief Executive Officer of ElectriCities of North Carolina or the Chief Executive Officer's designee;

(5) The Chief Executive Officer of Duke Power Company or the Chief Executive Officer's designee;

(6) The Chief Executive Officer of North Carolina Power Company or the Chief Executive Officer's designee;

(7) The Chief Executive Officer of Carolina Power and Light Company or the Chief Executive Officer's designee;
(8) Two residential consumers of electricity to be appointed by the Governor;
(9) One commercial consumer of electricity to be appointed by the President Pro Tempore of the Senate;
(10) Two industrial consumers of electricity, one to be appointed by the Speaker of the House of Representatives and one to be appointed by the President Pro Tempore of the Senate;
(11) One member of the environmental community to be appointed by the Governor; and
(12) One person representing a nationwide electric power marketer to be appointed by the Speaker of the House of Representatives.

The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair from the General Assembly membership serving on the Commission. The Commission shall meet upon the call of the cochairs. A majority of the Commission shall constitute a quorum for the transaction of business.

Section 2. The Commission shall examine the cost, adequacy, availability, and pricing of electric rates and service in North Carolina to determine whether legislation is necessary to assure an adequate and reliable source of electricity and economical, fair, and equitable rates for all consumers of electricity in North Carolina. The Commission shall gather data and other information as may be necessary to accomplish the purposes of the Commission, including testimony at public hearings, and shall work cooperatively with other boards, commissions, and entities, taking advantage of their resources and activities for the provision of useful information and insight. In the course of its study, the Commission shall seek input and advice from the Attorney General, the North Carolina Utilities Commission, and the Public Staff of the Utilities Commission. The Commission shall also obtain guidance by reviewing electric utility restructuring experiments conducted in other states.

In the course of its study and in making its recommendations, the Commission shall fully address the following issues:

(1) Assurance of fairness and equity among all customer classes;
(2) Reliability of power supply;
(3) Fair treatment of competing power providers;
(4) Universal access to electric energy and assignment of responsibility to provide it;
(5) Reciprocity between states;
(6) Stranded investment costs and benefits;
(7) Clarification of State and federal jurisdiction;
(8) Environmental impact of restructuring;
(9) Impact of competition on tax revenues;
(10) Alternative forms of regulation;

(11) Obligation to serve and the obligation to receive service;
(12) Ways to eliminate or equalize subsidies and tax preferences;
(13) Customer choice of electric providers;
(14) Functional unbundling of electric power generation, transmission, and distribution services;
(15) Impact of competition on service to low-income consumers;
(16) Impact of competition on renewable energy, conservation, and efficiency programs;
(17) Impact of competition on the energy expenditures by State and local government;
(18) Impact of competition on economic development;
(19) Impact of competition on municipal electric utilities and rural electric cooperatives;
(20) Prevention of anticompetitive or discriminatory conduct or the unlawful exercise of market power; and
(21) Other relevant and appropriate subjects.

Section 3. The Commission may contract for consultant services as provided by G.S. 120-32.02. Upon approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional and clerical staff to assist in the work of the Commission. Clerical staff shall be furnished to the Commission through the offices of the House of Representatives and Senate Supervisors of Clerks. The Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission. The Commission, while in the discharge of official duties, may exercise all the powers provided under the provisions of G.S. 120-19 through G.S. 120-19.4, including the power to request all officers, agents, agencies, and departments of the State to provide any information, data, or documents within their possession, ascertainable from their records, or otherwise available to them, and the power to subpoena witnesses.

Members of the Commission shall receive per diem, subsistence, and travel allowances as follows:

(1) Commission members who are members of the General Assembly at the rate established in G.S. 120-3.1;
(2) Commission members who are officials or employees of the State or of local government agencies at the rate established in G.S. 138-6; and
(3) All other Commission members at the rate established in G.S. 138-5.

Section 4. The Commission shall make a report to the 1998 Regular Session of the 1997 General Assembly, which may contain recommendations, and shall report the results of its study and its recommendations to the 1999 General Assembly. The Commission shall terminate upon filing its final report.

Section 5. This act is effective when it becomes law.

CS

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 38*
Corrected Copy 2/4/97
Rules and Operations of the Senate Committee Substitute Adopted 2/12/97
Proposed House Committee Substitute S38-PCS7612

Short Title: Study Comm./Future of Electric Service. (Public)

Sponsors:

Referred to:

February 3, 1997

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE STUDY COMMISSION ON THE FUTURE OF ELECTRIC SERVICE IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. The Study Commission on the Future of Electric Service in North Carolina is created. The Commission shall consist of 20 voting members as follows:

(1) Four members of the Senate to be appointed by the President Pro Tempore of the Senate;

(2) Four members of the House of Representatives to be appointed by the Speaker of the House of Representatives;

(3) The Chief Executive Officer of the North Carolina Electric Membership Corporation or the Chief Executive Officer's designee;

(4) The Chief Executive Officer of ElectriCities of North Carolina or the Chief Executive Officer's designee;

(5) The Chief Executive Officer of Duke Power Company or the Chief Executive Officer's designee;

(6) The Chief Executive Officer of North Carolina Power Company or the Chief Executive Officer's designee;

(7) The Chief Executive Officer of Carolina Power and Light Company or the Chief Executive Officer's designee;
(8) Two residential consumers of electricity to be appointed by the Governor;
(9) One commercial consumer of electricity to be appointed by the President Pro Tempore of the Senate;
(10) Two industrial consumers of electricity, one to be appointed by the Speaker of the House of Representatives and one to be appointed by the President Pro Tempore of the Senate; and
(11) One member of the environmental community to be appointed by the Governor; and
(12) One person representing a nationwide electric power marketer to be appointed by the Speaker of the House of Representatives.

The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair from the General Assembly membership serving on the Commission. The Commission shall meet upon the call of the cochairs. A majority of the Commission shall constitute a quorum for the transaction of business.

Section 2. The Commission shall examine the cost, adequacy, availability, and pricing of electric rates and service in North Carolina to determine whether legislation is necessary to assure an adequate and reliable source of electricity and economical, fair, and equitable rates for all consumers of electricity in North Carolina. The Commission shall gather data and other information as may be necessary to accomplish the purposes of the Commission, including testimony at public hearings, and shall work cooperatively with other boards, commissions, and entities, taking advantage of their resources and activities for the provision of useful information and insight. In the course of its study, the Commission shall seek input and advice from the Attorney General, the North Carolina Utilities Commission, and the Public Staff of the Utilities Commission. The Commission shall also obtain guidance by reviewing electric utility restructuring experiments conducted in other states.

In the course of its study and in making its recommendations, the Commission shall fully address the following issues:
(1) Assurance of fairness and equity among all customer classes;
(2) Reliability of power supply;
(3) Fair treatment of competing power providers;
(4) Universal access to electric energy and assignment of responsibility to provide it;
(5) Reciprocity between states;
(6) Stranded investment costs and benefits;
(7) Clarification of State and federal jurisdiction;
(8) Environmental impact of restructuring;
(9) Impact of competition on tax revenues;
(10) Alternative forms of regulation;

(11) Obligation to serve and the obligation to receive service;
(12) Ways to eliminate or equalize subsidies and tax preferences;
(13) Customer choice of electric providers;
(14) Functional unbundling of electric power generation, transmission, and distribution services;
(15) Impact of competition on service to low-income consumers;
(16) Impact of competition on renewable energy, conservation, and efficiency programs;
(17) Impact of competition on the energy expenditures by State and local government;
(18) Impact of competition on economic development;
(19) Impact of competition on municipal electric utilities and rural electric cooperatives;
(20) Prevention of anticompetitive or discriminatory conduct or the unlawful exercise of market power; and
(21) Other relevant and appropriate subjects.

Section 3. The Commission may contract for consultant services as provided by G.S. 120-32.02. Upon approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional and clerical staff to assist in the work of the Commission. Clerical staff shall be furnished to the Commission through the offices of the House of Representatives and Senate Supervisors of Clerks. The Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission. The Commission, while in the discharge of official duties, may exercise all the powers provided under the provisions of G.S. 120-19 through G.S. 120-19.4, including the power to request all officers, agents, agencies, and departments of the State to provide any information, data, or documents within their possession, ascertainable from their records, or otherwise available to them, and the power to subpoena witnesses.

Members of the Commission shall receive per diem, subsistence, and travel allowances as follows:

(1) Commission members who are members of the General Assembly at the rate established in G.S. 120-3.1;
(2) Commission members who are officials or employees of the State or of local government agencies at the rate established in G.S. 138-6; and
(3) All other Commission members at the rate established in G.S. 138-5.

Section 4. The Commission shall make a report to the 1998 Regular Session of the 1997 General Assembly, which may contain recommendations if the Commission deems it advisable at that time, and shall report the results of its study and its recommendations to the 1999 General Assembly. The Commission shall terminate upon filing its final report.

Section 5. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 3

SENATE BILL 38*
Corrected Copy 2/4/97
Rules and Operations of the Senate Committee Substitute Adopted 2/12/97

Short Title: Study Comm./Future of Electric Service. (Public)

Sponsors:

Referred to:

February 3, 1997

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE STUDY COMMISSION ON THE FUTURE OF ELECTRIC SERVICE IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. The Study Commission on the Future of Electric Service in North Carolina is created. The Commission shall consist of 20 voting members as follows:

(1) Four members of the Senate to be appointed by the President Pro Tempore of the Senate;

(2) Four members of the House of Representatives to be appointed by the Speaker of the House of Representatives;

(3) The Chief Executive Officer of the North Carolina Electric Membership Corporation or the Chief Executive Officer's designee;

(4) The Chief Executive Officer of ElectriCities of North Carolina or the Chief Executive Officer's designee;

(5) The Chief Executive Officer of Duke Power Company or the Chief Executive Officer's designee;

(6) The Chief Executive Officer of North Carolina Power Company or the Chief Executive Officer's designee;

(7) The Chief Executive Officer of Carolina Power and Light Company or the Chief Executive Officer's designee;

(8) Two residential consumers of electricity to be appointed by the Governor;
(9) Two commercial consumers of electricity, one to be appointed by the President Pro Tempore of the Senate and one to be appointed by the Speaker of the House of Representatives;
(10) Two industrial consumers of electricity, one to be appointed by the Speaker of the House of Representatives and one to be appointed by the President Pro Tempore of the Senate; and
(11) One member of the environmental community to be appointed by the Governor.

The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair from the General Assembly membership serving on the Commission. The Commission shall meet upon the call of the cochairs. A majority of the Commission shall constitute a quorum for the transaction of business.

Section 2. The Commission shall examine the cost, adequacy, availability, and pricing of electric rates and service in North Carolina to determine whether legislation is necessary to assure an adequate and reliable source of electricity and economical, fair, and equitable rates for all consumers of electricity in North Carolina. The Commission shall gather data and other information as may be necessary to accomplish the purposes of the Commission, including testimony at public hearings, and shall work cooperatively with other boards, commissions, and entities, taking advantage of their resources and activities for the provision of useful information and insight. In the course of its study, the Commission shall seek input and advice from the Attorney General, the North Carolina Utilities Commission, and the Public Staff of the Utilities Commission. The Commission shall also obtain guidance by reviewing electric utility restructuring experiments conducted in other states.

In the course of its study and in making its recommendations, the Commission shall fully address the following issues:
(1) Assurance of fairness and equity among all customer classes;
(2) Reliability of power supply;
(3) Fair treatment of competing power providers;
(4) Universal access to electric energy and assignment of responsibility to provide it;
(5) Reciprocity between states;
(6) Stranded investment costs and benefits;
(7) Clarification of State and federal jurisdiction;
(8) Environmental impact of restructuring;
(9) Impact of competition on tax revenues;
(10) Alternative forms of regulation;
(11) Obligation to serve and the obligation to receive service;
(12) Ways to eliminate or equalize subsidies and tax preferences;
(13) Customer choice of electric providers;

(14) Functional unbundling of electric power generation, transmission, and distribution services;
(15) Impact of competition on service to low-income consumers;
(16) Impact of competition on renewable energy, conservation, and efficiency programs;
(17) Impact of competition on the energy expenditures by State and local government;
(18) Impact of competition on economic development;
(19) Impact of competition on municipal electric utilities and rural electric cooperatives;
(20) Prevention of anticompetitive or discriminatory conduct or the unlawful exercise of market power; and
(21) Other relevant and appropriate subjects.

Section 3. The Commission may contract for consultant services as provided by G.S. 120-32.02. Upon approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional and clerical staff to assist in the work of the Commission. Clerical staff shall be furnished to the Commission through the offices of the House of Representatives and Senate Supervisors of Clerks. The Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission. The Commission, while in the discharge of official duties, may exercise all the powers provided under the provisions of G.S. 120-19 through G.S. 120-19.4, including the power to request all officers, agents, agencies, and departments of the State to provide any information, data, or documents within their possession, ascertainable from their records, or otherwise available to them, and the power to subpoena witnesses.

Members of the Commission shall receive per diem, subsistence, and travel allowances as follows:

(1) Commission members who are members of the General Assembly at the rate established in G.S. 120-3.1;
(2) Commission members who are officials or employees of the State or of local government agencies at the rate established in G.S. 138-6; and
(3) All other Commission members at the rate established in G.S. 138-5.

Section 4. The Commission shall make a report to the 1998 Regular Session of the 1997 General Assembly, which may contain recommendations if the Commission deems it advisable at that time, and shall report the results of its study and its recommendations to the 1999 General Assembly. The Commission shall terminate upon filing its final report.

Section 5. This act is effective when it becomes law.

VISITOR REGISTRATION SHEET

RULES, CALENDAR AND OPERATIONS OF THE HOUSE — 3/18/97
Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Amy Jo Bain	Smith Anderson
Michelle Cook	Weyerhaeuser
David Simmons	205 Alley, PA
Tim McDonnell	NCHICA
Doug Boykin	EMC
Marvin Isbell	House of Rep Staff
Mike Carpenter	NCGSA

MINUTES
COMMITTEE ON RULES, CALENDAR, AND OPERATIONS OF THE HOUSE
March 20, 1997

The Committee on Rules, Calendar, and Operations of the House met March 20, 1997, at 11:00 a.m. in Room 421 in the Legislative Office Building. Representative Morgan, Committee Chair, called the meeting to order and asked the clerk to call the roll. The following members were present: Representative Bowie, Vice Chair; and Representatives Crawford, Culp, Gulley, Hill, McMahan and Miner.

The Chair announced that Senate Bill 38 was back before the Committee. Representative Miner moved that the vote by which the House Committee Substitute for SB 38 was given a favorable report be reconsidered. Motion carried.

Representative Miner then moved for the adoption of the proposed House Committee Substitute for Senate Bill 38 for the purpose of Committee discussion. Motion carried.

Representative Dickson, Finance Committee Co-Chair and handler of the Senate Bill, was recognized for an explanation of the proposed House Committee Substitute. He noted that the only change was to raise from four to six members to be appointed by the Speaker of the House of Representatives and the President ProTempore of the Senate. The change would increase the voting membership from twenty to twenty-four. Representative Miner moved to give a favorable report to the proposed House Committee Substitute for Senate Bill 38, and unfavorable to the original bill. Motion carried.

There being no further business, the meeting adjourned.

Representative Richard T. Morgan
Committee Chair

Anne M. Cole
Acting Committee Clerk

Attachments:
Committee Report
Bill
Visitor's Sheet

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **MORGAN** for the Committee on **RULES, CALENDAR, AND OPERATIONS OF THE HOUSE.**

☒ Committee Substitute for
S.B. 38 A BILL TO BE ENTITLED AN ACT TO ESTABLISH THE STUDY COMMISSION ON THE FUTURE OF ELECTRIC SERVICE 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.

☐ 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 D

SENATE BILL 38*
Corrected Copy 2/4/97
Rules and Operations of the Senate Committee Substitute Adopted 2/12/97
Proposed House Committee Substitute S38-PCS7616

Short Title: Study Comm./Future of Electric Service. (Public)

Sponsors:

Referred to:

February 3, 1997

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE STUDY COMMISSION ON THE FUTURE OF ELECTRIC SERVICE IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. The Study Commission on the Future of Electric Service in North Carolina is created. The Commission shall consist of 24 voting members as follows:

(1) Six members of the Senate to be appointed by the President Pro Tempore of the Senate;

(2) Six members of the House of Representatives to be appointed by the Speaker of the House of Representatives;

(3) The Chief Executive Officer of the North Carolina Electric Membership Corporation or the Chief Executive Officer's designee;

(4) The Chief Executive Officer of ElectriCities of North Carolina or the Chief Executive Officer's designee;

(5) The Chief Executive Officer of Duke Power Company or the Chief Executive Officer's designee;

(6) The Chief Executive Officer of North Carolina Power Company or the Chief Executive Officer's designee;

(7) The Chief Executive Officer of Carolina Power and Light Company or the Chief Executive Officer's designee;
(8) Two residential consumers of electricity to be appointed by the Governor;
(9) One commercial consumer of electricity to be appointed by the President Pro Tempore of the Senate;
(10) Two industrial consumers of electricity, one to be appointed by the Speaker of the House of Representatives and one to be appointed by the President Pro Tempore of the Senate;
(11) One member of the environmental community to be appointed by the Governor; and
(12) One person representing a nationwide electric power marketer to be appointed by the Speaker of the House of Representatives.

The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair from the General Assembly membership serving on the Commission. The Commission shall meet upon the call of the cochairs. A majority of the Commission shall constitute a quorum for the transaction of business.

Section 2. The Commission shall examine the cost, adequacy, availability, and pricing of electric rates and service in North Carolina to determine whether legislation is necessary to assure an adequate and reliable source of electricity and economical, fair, and equitable rates for all consumers of electricity in North Carolina. The Commission shall gather data and other information as may be necessary to accomplish the purposes of the Commission, including testimony at public hearings, and shall work cooperatively with other boards, commissions, and entities, taking advantage of their resources and activities for the provision of useful information and insight. In the course of its study, the Commission shall seek input and advice from the Attorney General, the North Carolina Utilities Commission, and the Public Staff of the Utilities Commission. The Commission shall also obtain guidance by reviewing electric utility restructuring experiments conducted in other states.

In the course of its study and in making its recommendations, the Commission shall fully address the following issues:
(1) Assurance of fairness and equity among all customer classes;
(2) Reliability of power supply;
(3) Fair treatment of competing power providers;
(4) Universal access to electric energy and assignment of responsibility to provide it;
(5) Reciprocity between states;
(6) Stranded investment costs and benefits;
(7) Clarification of State and federal jurisdiction;
(8) Environmental impact of restructuring;
(9) Impact of competition on tax revenues;
(10) Alternative forms of regulation;

(11) Obligation to serve and the obligation to receive service;
(12) Ways to eliminate or equalize subsidies and tax preferences;
(13) Customer choice of electric providers;
(14) Functional unbundling of electric power generation, transmission, and distribution services;
(15) Impact of competition on service to low-income consumers;
(16) Impact of competition on renewable energy, conservation, and efficiency programs;
(17) Impact of competition on the energy expenditures by State and local government;
(18) Impact of competition on economic development;
(19) Impact of competition on municipal electric utilities and rural electric cooperatives;
(20) Prevention of anticompetitive or discriminatory conduct or the unlawful exercise of market power; and
(21) Other relevant and appropriate subjects.

Section 3. The Commission may contract for consultant services as provided by G.S. 120-32.02. Upon approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional and clerical staff to assist in the work of the Commission. Clerical staff shall be furnished to the Commission through the offices of the House of Representatives and Senate Supervisors of Clerks. The Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission. The Commission, while in the discharge of official duties, may exercise all the powers provided under the provisions of G.S. 120-19 through G.S. 120-19.4, including the power to request all officers, agents, agencies, and departments of the State to provide any information, data, or documents within their possession, ascertainable from their records, or otherwise available to them, and the power to subpoena witnesses.

Members of the Commission shall receive per diem, subsistence, and travel allowances as follows:

(1) Commission members who are members of the General Assembly at the rate established in G.S. 120-3.1;
(2) Commission members who are officials or employees of the State or of local government agencies at the rate established in G.S. 138-6; and
(3) All other Commission members at the rate established in G.S. 138-5.

Section 4. The Commission shall make a report to the 1998 Regular Session of the 1997 General Assembly, which may contain recommendations, and shall report the results of its study and its recommendations to the 1999 General Assembly. The Commission shall terminate upon filing its final report.

Section 5. This act is effective when it becomes law.

VISITOR REGISTRATION SHEET

RULES, CALENDAR, AND OPERATIONS OF THE HOUSE **MARCH 20, 1997**

Name of Committee Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ruth Sapphire	NCDOT
Paul Williams	NCHBA
Joyce Peters	Electricities
Alice Garland	Electricities
Steven Lewis	NCAE
Sue Lenchikes	AMP Incorporated
Jerry Lobuts	C.U.C.A.
PERRI MORGAN	NFIB
Roslyn Sawyer	Lobbyist
Robin Barnes	NCSBA
Bill Stanhouse	DuPont
Michelle Cook	Weyerhaeuser
Don Bowen	Carolina Power & Light Co.
Elaine Marshall	NCBA

MINUTES
COMMITTEE ON RULES, CALENDAR, AND OPERATIONS OF THE HOUSE
March 26, 1997

The Committee on Rules, Calendar, and Operations of the House met March 26, 1997, at 4:20 p.m. in Room 412 in the Legislative Office Building. Representative Morgan, Committee Chair, called the meeting to order and asked the clerk to call the roll. The following members were present: Representative Bowie, Vice-Chair; and Representatives Culp, Dockham, Esposito, Gulley, Hill, Miner, Mitchell, Thompson, C. Wilson, and Wood.

The first order of business was the consideration of House Bill 292 - TOWN MANAGERS/DUAL OFFICE HOLDING, which is identical to Senate Bill 199. House Bill 292 was temporarily displaced at the request of Representative Hill, the bill sponsor. Representative Hill was recognized to explain Senate Bill 199. In response to a question by Representative Thompson, constitutionally this bill could not be a local bill. Representative Dockham was recognized to send forth an amendment that would change the title by adding "municipal" before the word "elective", and he moved for its adoption. Motion carried and the amendment would be rolled into a committee substitute. Representative Dockham made a motion to give a favorable report to the committee substitute, which changes the title, unfavorable to original bill. Motion carried.

The next bill before the Committee was House Bill 578 - DESIGNATED HOUSE SEATS. Representative Allred, bill sponsor, was recognized to explain his bill. A motion was made to report the bill without prejudice and recommend that it be re-referred to the Committee on Election Laws and Campaign Reform. Motion carried.

The Chair announced that House Bill 382 - LOBBYIST POLITICAL ACTIVITY - was before the committee for discussion purposes only. Representative McComas, bill sponsor, was recognized to explain the bill and answer questions. Representative Thompson asked if campaign contributions could be accepted by incumbents or candidates, the answer was no. Representative Miner, who is a co-sponsor of the bill, commented that PACS may continue to make political contributions and recommended the bill to the Committee. Representative Wood expressed concern that there might be loopholes in the bill and asked staff to furnish information to the Committee that speaks to this concern. Representative Bowie expressed doubt as to the enforceability of the provisions of the bill that prohibits lobbyists from advising any political action committee which is affiliated with any entity for which that lobbyist is registered. Representative Dockham asked if honorariums would be considered a lobbyist's contribution. Discussion followed but no definitive answer was reached. The bill was temporarily displaced for further discussion and debate.

The meeting adjourned at 5:05 p.m.

Representative Richard T. Morgan
Committee Chair

Anne M. Cole
Acting Committee Clerk

Attachments: Committee Reports, Bills, Visitor's Sheet

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar, and Operations of the House.**

☐ Committee Substitute for
S.B. 199 A BILL TO BE ENTITLED AN ACT TO ALLOW TOWN MANAGERS OF SMALL TOWNS TO HOLD CONCURRENTLY APPOINTIVE AND ELECTIVE OFFICES 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 House 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.

☐ 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 D

SENATE BILL 199
Proposed Committee Substitute S199-PCS1663

Short Title: Town Managers/Dual Office Holding. (Public)

Sponsors:

Referred to:

February 20, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW TOWN MANAGERS OF SMALL TOWNS TO HOLD CONCURRENTLY APPOINTIVE AND MUNICIPAL ELECTIVE OFFICES UNDER CERTAIN CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-147 reads as rewritten:

"**§ 160A-147. Appointment of city manager; dual office holding.**

(a) In cities whose charters provide for the council-manager form of government, the council shall appoint a city manager to serve at its pleasure. The manager shall be appointed solely on the basis of ~~his~~ the manager's executive and administrative qualifications. ~~He~~ The manager need not be a resident of the city or State at the time of ~~his~~ appointment. The office of city manager is hereby declared to be an office that may be held concurrently with other appointive (but not elective) offices pursuant to Article VI, Sec. 9, of the Constitution.

(b) Notwithstanding the provisions of subsection (a), a city manager may serve on a county board of education ~~which~~ that is elected on a non-partisan basis if the following criteria are met:

(1) The population of the city by which the city manager is employed does not exceed 10,000;

(2) The city is located in two counties; and

(3) The population of the county in which the city manager resides does not exceed 40,000.

(c) Notwithstanding the provisions of subsection (a), a city manager may hold elective office if the following criteria are met:

(1) The population of the city by which the city manager is employed does not exceed 3,000.

(2) The city manager is an elected official of a city other than the city by which the city manager is employed.

(d) For the purposes of this section, ~~The~~ population figures shall be according to the latest United States decennial figures issued at the time the second office is assumed. If census figures issued after the second office is assumed increase the city or county population beyond the limits of this ~~subsection,~~ section, the city manager may complete the term ~~on the county board of education which he~~ of elected office that the city manager is then serving."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 199

Short Title: Town Managers/Dual Office Holding. (Public)

Sponsors: Senator Soles.

Referred to: State Government, Local Government, and Personnel.

February 20, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW TOWN MANAGERS OF SMALL TOWNS TO HOLD CONCURRENTLY APPOINTIVE AND ELECTIVE OFFICES UNDER CERTAIN CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-147 reads as rewritten:

"**§ 160A-147. Appointment of city manager; dual office holding.**

(a) In cities whose charters provide for the council-manager form of government, the council shall appoint a city manager to serve at its pleasure. The manager shall be appointed solely on the basis of ~~his~~ the manager's executive and administrative qualifications. ~~He~~ The manager need not be a resident of the city or State at the time of ~~his~~ appointment. The office of city manager is hereby declared to be an office that may be held concurrently with other appointive (but not elective) offices pursuant to Article VI, Sec. 9, of the Constitution.

(b) Notwithstanding the provisions of subsection (a), a city manager may serve on a county board of education ~~which~~ that is elected on a non-partisan basis if the following criteria are met:

(1) The population of the city by which the city manager is employed does not exceed 10,000;

(2) The city is located in two counties; and

(3) The population of the county in which the city manager resides does not exceed 40,000.

(c) Notwithstanding the provisions of subsection (a), a city manager may hold elective office if the following criteria are met:

(1) The population of the city by which the city manager is employed does not exceed 3,000.

(2) The city manager is an elected official of a city other than the city by which the city manager is employed.

(d) For the purposes of this section, ~~The~~ population figures shall be according to the latest United States decennial figures issued at the time the second office is assumed. If census figures issued after the second office is assumed increase the city or county population beyond the limits of this ~~subsection,~~ section, the city manager may complete the term ~~on the county board of education which he~~ of elected office that the city manager is then serving."

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

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar, and Operations of the House.**

☐ Committee Substitute for
H.B. 578 A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR DESIGNATED SEATS FOR ELECTION IN MULTIMEMBER DISTRICTS OF THE HOUSE OF REPRESENTATIVES.

☐ 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.

☐ 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. and re-refer to Committee on Election Laws.

☐ 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 578

Short Title: Designated House Seats. (Public)

Sponsors: Representatives Allred; Barbee, Capps, Daughtry, Davis, Reynolds, and Buchanan.

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

March 20, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR DESIGNATED SEATS FOR ELECTION IN MULTIMEMBER DISTRICTS OF THE HOUSE OF REPRESENTATIVES.

The General Assembly of North Carolina enacts:

Section 1. Article 10 of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-118.1. Designated seats.**

In each representative district entitled to elect more than one member of the State House of Representatives the positions shall bear identifying letters assigned by the State Board of Elections. Each seat shall be considered a separate office for the purpose of this Chapter. Votes cast for any candidate in a general election shall be effective only for the seat for which the candidate has been nominated by a political party or for which the unaffiliated or write-in candidacy has been filed."

Section 2. G.S. 163-106(d) reads as rewritten:

"(d) Notice of Candidacy for Certain Offices to Indicate Vacancy. -- In any primary in which there are two or more vacancies for Chief Justice and associate justices of the Supreme Court, two or more vacancies for judge of the Court of Appeals, or two vacancies for United States Senator from North Carolina or two or more vacancies for the office of district court judge to be filled by nominations, each candidate shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the vacancy to which he seeks nomination. Votes cast for a candidate shall be effective only for his nomination to the vacancy for which he has given notice of candidacy as provided in this subsection.

In any primary in any representative district entitled to elect more than one member of the State House of Representatives, the positions being designated as provided by G.S. 163-117, each candidate shall, at the time of filing notice of candidacy, file with the appropriate county board of elections a written statement designating the seat to which nomination is sought. No candidate may file for more than one seat. Votes cast for a candidate shall be effective only for nomination to the vacancy for which he has given notice of candidacy as provided in this subsection.

A person seeking party nomination for a specialized district judgeship established under G.S. 7A-147 shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the specialized judgeship to which he seeks nomination."

Section 3. This act becomes effective January 1, 1998.

VISITOR REGISTRATION SHEET

RULES, CALENDAR, AND OPERATIONS OF THE HOUSE **MARCH 26 1997**

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tom Bean	NC Wildlife Federation Rale. gh NC 27605
Jonathan Breeden	Citizen
KEITH HUNDLEY	WEYERHAEUSER
Michelle Cook	Weyerhaeuser
Nancy Bradley	NCCPD
Art Pope	DENR
Curt Williams	Governor's Office
JERRY SCHILL	NC FISHERIES ASSOCIATION

MINUTES
COMMITTEE ON RULES, CALENDAR, AND OPERATIONS OF THE HOUSE
April 15, 1997

The Committee on Rules, Calendar, and Operations of the House met April 15, 1997, at 4:30 p.m. in Room 421 in the Legislative Office Building. Representative Morgan, Committee Chair, called the meeting to order and asked the clerk to call the roll. The following members were present: Representative Bowie, Vice Chair; and Representatives Culp, Esposito, Hill, Miner and Mitchell.

Senate Joint Resolution 107 - A JOINT RESOLUTION PROVIDING FOR THE CONFIRMATION OF THE APPOINTMENT OF WILLIAM R. PITTMAN MADE BY THE GOVERNOR TO MEMBERSHIP ON THE NORTH CAROLINA UTILITIES COMMISSION was before the Committee. Senator Roy Cooper, bill sponsor, was recognized for comments. Mr. Pittman was then recognized to speak briefly on his background and qualifications for the appointment. His resume is attached to and made a part of the minutes. Representative Miner expressed his support for Mr. Pittman and moved for a favorable report. Motion carried.

House Bill 898 - A BILL TO BE ENTILTLED AN ACT TO AMEND THE PUBLIC RECORDS LAW AND THE OPEN MEETINGS LAW TO CLARIFY PROVISIONS - was temporarily displaced.

House Joint Resolution 683 - A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF DR. JOY JOSEPH JOHNSON, FORMER MEMBER OF THE GENERAL ASSEMBLY- was next before the Committee. . Representative Bonner, bill sponsor, offered a proposed committee substitute for Committee consideration. Representative Hill moved for its adoption. Motion carried. Representative Bonner was recognized to explain the committee substitute. He said that there were four errors of fact that were originally obtained from the obituary of Dr. Joy Joseph Johnson. The committee substitute would correct those errors. Representative Hill moved for a favorable report to the committee substitute bill and an unfavorable report to the original bill. Motion carried.

The next bill before the Committee was House Joint Resolution 664 - A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF RUSSELL ATKINSON SWINDELL, FORMER MEMBER OF THE GENERAL ASSEMBLY. Representative Mosley, bill sponsor, was recognized to explain the bill. .Representative Hill made the motion for a favorable report. Motion carried. Representative Mosley requested that the resolution be placed on the House Calendar on May 14, which would be the 81st birthday of Russell Swindell.

House Bill 506 - A BILL TO BE ENTITLED AN ACT RELATING TO HERTFORD COUNTY - was displaced.

The next bill before the Committee was House Bill 408 - A BILL TO BE ENTITLED AN ACT TO CREATE A FUEL PIPING LICENSE FOR PLUMBING AND HEATING CONTRACTORS, TO AUTHORIZE THE BOARD OF EXAMINERS OF PLUMBING, HEATING, AND FIRE SPRINKLER CONTRACTORS TO CREATE OTHER RESTRICTED LICENSE CLASSIFICATIONS, AND TO ALLOW THE REVOCATION OR SUSPENSION OF A LICENSE FOR FAILURE TO COMPLY WITH RULES PROMULGATED BY THE BOARD. Linwood Jones, Committee Staff Counsel, was recognized to explain the bill. This bill creates a special fuel piping license for certain plumbing and heating contractors. The Committee on Rules, Calendar, and Operations of the House reviewed the bill and determined that it was not subject to the Committee on New Licensing Boards. Representative Miner moved to give the bill a favorable report and the motion carried.

The Committee adjourned at 5:00 p.m.

Representative Richard T. Morgan
Committee Chair

Anne M. Cole
Acting Committee Clerk

Attachments:
Committee Reports
Bills
Resume of Mr. William R. Pittman
Visitor's Sheet

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **MORGAN** for the Committee on **RULES, CALENDAR, AND OPERATIONS OF THE HOUSE.**

☐ Committee Substitute for
S.J.R. 107 A JOINT RESOLUTION PROVIDING FOR THE CONFIRMATION OF THE APPOINTMENT OF WILLIAM R. PITTMAN MADE BY THE GOVERNOR TO MEMBERSHIP ON THE NORTH CAROLINA UTILITIES 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 .)

☐ 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.

☐ 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)

fav report

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE JOINT RESOLUTION 107

Sponsors: Senators Cooper; and Reeves.

Referred to: Commerce.

February 13, 1997

A JOINT RESOLUTION PROVIDING FOR THE CONFIRMATION OF THE APPOINTMENT OF WILLIAM R. PITTMAN MADE BY THE GOVERNOR TO MEMBERSHIP ON THE NORTH CAROLINA UTILITIES COMMISSION.

Whereas, under the provisions of G.S. 62-10 appointments made by the Governor to membership on the North Carolina Utilities Commission are subject to confirmation by the General Assembly by joint resolution; and

Whereas, a vacancy has occurred on the North Carolina Utilities Commission because of the resignation of Hugh Wells; and

Whereas, the Governor has submitted to the presiding officers of the House of Representatives and the Senate, the name of his appointee to serve the remainder of the unexpired term of Hugh Wells on the North Carolina Utilities Commission, which will expire June 30, 2001;

Now, therefore, be it resolved by the Senate, the House of Representatives concurring:

Section 1. The appointment of William R. Pittman to the North Carolina Utilities Commission for a term to expire June 30, 2001, is confirmed.

Section 2. This resolution is effective upon ratification.

WILLIAM R. (BILL) PITTMAN

EXPERIENCE

1995-1997: Counsel to Governor James B. Hunt, Jr.

1994-1995: Associate General Counsel to Governor James B. Hunt, Jr. and from February through November, 1995, Executive Director, Governor's Crime Commission.

1993-1994: Partner, Bass, Bryant and Moore law firm.

1987-1993: Administrator and Assistant District Attorney, Wake County District Attorney's Office.

1981-1987: Consultant and founding co-owner, Southern Strategies, Inc., political consulting and lobbying firm.

1979-1981: Special Assistant, North Carolina Department of Crime Control & Public Safety.

1976-1979: Policy Advisor to Governor James B. Hunt, Jr.

Other work experience includes: Congressional aide, campaign management, newspaper reporter and magazine editor, property and farm management.

MILITARY

United States Air Force, 1971-1975, Electronic Intelligence. Awarded the Air Medal.

EDUCATION

LL.B., magna cum laude, North Carolina Central University School of Law
North Carolina Weslyan College (politics)
University of North Carolina at Chapel Hill (journalism & political science)
National Cryptologic School
N.C. State University (international trade series)
Wilson, North Carolina public schools.

PROFESSIONAL & CIVIC

Member, North Carolina State Bar and Tenth Judicial District Bar
District Bar Fee Arbitration Committee
Member, North Carolina Bar Association
Legislation and Law Reform Council, Bar Center Steering Committee
Member, Wake County Bar Association
Professionalism Committee
Barrister, Susie Sharp Chapter, American Inns of Court
Member, Advisory Board, Administrative Officer's Management Program, NCSU
Member, North Carolina State Centered Program Steering Committee
Former member, Raleigh Housing Appeals Board
Past president, Exchange Club of Greater Raleigh
Charter member, Sir Walter Jaycees
Former member, Juvenile Justice Committee, Governor's Crime Commission

PERSONAL

Married to the former Judy Gardner, two children. Member, First Presbyterian Church of Garner.

1997

NORTH CAROLINA BOARD OF ETHICS
116 WEST JONES STREET
RALEIGH 27603-8003
(919) 733-5103

SUPPLEMENTAL STATEMENT OF ECONOMIC INTEREST

FOR EXECUTIVE ORDER NUMBER ONE DATED JANUARY 9, 1993, BY GOVERNOR JAMES B. HUNT, JR.

FOR A COPY OF YOUR PREVIOUS STATEMENT, OR ASSISTANCE, CALL MILLIE DONAVANT AT 919-733-5103.

PLEASE NOTE THAT THIS FORM REQUIRES YOU TO ADD NEW INFORMATION, AND TO DELETE INFORMATION WHICH IS NO LONGER APPLICABLE, TO YOUR STATEMENT OF ECONOMIC INTEREST FOR EXECUTIVE ORDER NUMBER ONE DATED JANUARY 9, 1993. IF YOU HAVE NOT FILED THAT STATEMENT, PLEASE REQUEST THE STATEMENT OF ECONOMIC INTEREST FORM. IT IS NOT NECESSARY TO HAVE THE SUPPLEMENTAL FORM NOTARIZED.

THE PERSON FILING SHALL INCLUDE IN THE FOLLOWING THE ASSETS, LIABILITIES, AND SOURCES OF INCOME OF HIS OR HER SPOUSE WHICH ARE DERIVED FROM THE ASSETS OR INCOME OF THE PERSON FILING, CONTROLLED BY THE PERSON FILING, OR FOR WHICH THE PERSON FILING IS JOINTLY OR SEVERALLY LIABLE.

Name of Person Filing WILLIAM R. PITTMAN

COMMISSIONER
State Employee Position, Agency

UTILITIES COMMISSION
Name of Board or Commission

IF YOU DO NOT HAVE CHANGES TO REPORT, PLEASE SIGN YOUR NAME, ADD DATE, AND RETURN THIS PAGE TO THE ABOVE ADDRESS.

William R. Pittman 2/21/97
Signature Date

NORTH CAROLINA BOARD OF ETHICS
116 WEST JONES STREET
RALEIGH 27603-8003
(919) 733-5103

1996

SUPPLEMENTAL STATEMENT OF ECONOMIC INTEREST

FOR EXECUTIVE ORDER NUMBER ONE DATED JANUARY 9, 1993, BY GOVERNOR JAMES B. HUNT, JR.

FOR A COPY OF YOUR PREVIOUS STATEMENT, OR ASSISTANCE, CALL MILLIE DONAVANT AT 919-733-5103.

PLEASE NOTE THAT THIS FORM REQUIRES YOU TO ADD NEW INFORMATION, AND TO DELETE INFORMATION WHICH IS NO LONGER APPLICABLE, TO YOUR STATEMENT OF ECONOMIC INTEREST FOR EXECUTIVE ORDER NUMBER ONE DATED JANUARY 9, 1993. IF YOU HAVE NOT FILED THAT STATEMENT, PLEASE REQUEST THE STATEMENT OF ECONOMIC INTEREST FORM. IT IS NOT NECESSARY TO HAVE THE SUPPLEMENTAL FORM NOTARIZED.

THE PERSON FILING SHALL INCLUDE IN THE FOLLOWING THE ASSETS, LIABILITIES, AND SOURCES OF INCOME OF HIS OR HER SPOUSE WHICH ARE DERIVED FROM THE ASSETS OR INCOME OF THE PERSON FILING, CONTROLLED BY THE PERSON FILING, OR FOR WHICH THE PERSON FILING IS JOINTLY OR SEVERALLY LIABLE.

Name of Person Filing William R. Pittman

Counsel to the Governor, Governor's Ofc
State Employee Position, Agency

Name of Board or Commission

IF YOU DO NOT HAVE CHANGES TO REPORT, PLEASE SIGN YOUR NAME, ADD DATE, AND RETURN THIS PAGE TO THE ABOVE ADDRESS.

William R. Pittman 1/18/96
Signature Date

1995

NORTH CAROLINA BOARD OF ETHICS
116 WEST JONES STREET
RALEIGH 27603-8003
(919) 733-5103

SUPPLEMENTAL STATEMENT OF ECONOMIC INTEREST

FOR EXECUTIVE ORDER NUMBER ONE DATED JANUARY 9, 1993, BY GOVERNOR JAMES B. HUNT, JR.

FOR A COPY OF YOUR PREVIOUS STATEMENT, OR ASSISTANCE, CALL MILLIE DONAVANT AT 919-733-5103.

PLEASE NOTE THAT THIS FORM REQUIRES YOU TO ADD NEW INFORMATION, AND TO DELETE INFORMATION WHICH IS NO LONGER APPLICABLE, TO YOUR STATEMENT OF ECONOMIC INTEREST FOR EXECUTIVE ORDER NUMBER ONE DATED JANUARY 9, 1993. IF YOU HAVE NOT FILED THAT STATEMENT, PLEASE REQUEST THE STATEMENT OF ECONOMIC INTEREST FORM. IT IS NOT NECESSARY TO HAVE THE SUPPLEMENTAL FORM NOTARIZED.

THE PERSON FILING SHALL INCLUDE IN THE FOLLOWING THE ASSETS, LIABILITIES, AND SOURCES OF INCOME OF HIS OR HER SPOUSE WHICH ARE DERIVED FROM THE ASSETS OR INCOME OF THE PERSON FILING, CONTROLLED BY THE PERSON FILING, OR FOR WHICH THE PERSON FILING IS JOINTLY OR SEVERALLY LIABLE.

Name of Person Filing WILLIAM R. PITTMAN

ASSOC. GEN. COUNSEL, GOV'S OFC
State Employee Position, Agency

Name of Board or Commission

IF YOU DO NOT HAVE CHANGES TO REPORT, PLEASE SIGN YOUR NAME, ADD DATE, AND RETURN THIS PAGE TO THE ABOVE ADDRESS.

Signature Date

Home or Business Address, and Telephone Numbers _____

1. List all parcels of real estate located in North Carolina in which you have an ownership interest of more than $5,000, and asterisk (*) parcels valued more than $10,000. Give street address or other description adequate to determine the location of each parcel. If persons other than your spouse have an ownership interest in the property, state the type of ownership and name of the person having the interest. If any parcels are located in an area over which the board you are serving on has regulatory authority or could otherwise be affected by board decisions, please state the particulars.

* RESIDENCE 312 THOMAS DR, CLAYTON, NC (WAKE COUNTY)

2. List the name of each publicly-owned company in which you own securities valued more than $10,000. These companies are required to register with the Securities and Exchange Commission.

NONE

3. List the name of each non-publicly-owned company or business entity in which you own securities or other equity interests with a value exceeding $5,000. Asterisk (*) all with a value exceeding $10,000.

NONE

With respect to the entities listed with a value exceeding $10,000, should any of the entities own securities or equity interests exceeding $10,000 in other companies or business entities, list the name of the company or business entity.

N/A

Are you or any of the entities listed licensed by, regulated by, or have business relationships with the same area of state government with which you are associated? If so, state the particulars.

LAW LICENSE, NC STATE BAR

4. If you, your spouse, or your dependent children are the beneficiary of a trust created, established or controlled by you which holds assets, and if those assets are known, list the name and address of the trustee and describe the trust. List each business in which the trust has an ownership interest exceeding $5,000, and asterisk (*) all with a value exceeding $10,000.

N/A

5. List assets with a value exceeding $5,000 each held by you which have not been listed elsewhere, and asterisk (*) all with a value exceeding $10,000. Some examples are mutual funds, certificates of deposit, and retirement accounts. It is not necessary to list household furniture, jewelry, automobiles, and other personal effects.

* CERTIFICATE(S) OF DEPOSIT

6. List liabilities with a value exceeding $5,000 each, asterisk (*) all with a value exceeding $10,000, give the name of the creditor, and describe the nature of the liability. It is not necessary to list credit card debts, mortgage for personal residence, automobile loans, and loans of this nature.

N/A

7. List sources of income shown on the most recent federal and state income tax returns of the person filing where $5,000 or more was received from each source. For each source listed, describe the type of income received, and state the name of the business entity or individual from which the income was received. Some examples of income are salary or wages, professional fees, honoraria, interest, stock dividends, capital gains, and business profits.

BASS, BRYANT & MOORE - PROFESSIONAL FEES

State the particulars if any of the sources of income are regulated by, receive permits from, or otherwise connected with the same area of state government with which you are connected.

N/A

8. If you are a practicing attorney, check each category of legal representation in which you and/or the law firm with which you are associated has during any single year of the past five years earned legal fees in excess of $5,000 from any of the following categories of legal representation:

( ) Admiralty ( ) Taxation ( ) Decedent's estates
(X) Negligence (representing plaintiffs)
( ) Negligence (representing defendants)
(X) Criminal law ( ) Labor law ( ) Insurance law
( ) Utilities regulation or representation of regulated utilities
(X) Corporation law ( ) Administrative law
(X) Real property ( ) Representation of local governments

9. List all businesses you have been associated with during the past five years as an employee, officer, director, partner, or a material owner of a security or other equity interest which have not been previously listed. Include your present employment if not previously listed. You are not required to disclose stock in publicly-owned companies valued less than $10,000 (see Question 2).

For each business listed, state your association, and the time period of your association.

To the best of your knowledge, state whether any of the businesses listed does business with the state, the nature of the business, and whether you or the business is licensed by, regulated by, receives permits, grants or other funding from, or otherwise connected with the same area of state government with which you are connected.

It is not necessary to list not-for-profit organizations or civic organizations unless the entities receive benefits from the same area of state government with which you are connected.

87-93 WAKE COUNTY DISTRICT ATTORNEY'S OFFICE - EMPLOYEE - GOV'T A
93-94 BASS, BRYANT & MOORE - PARTNER - PROFESSIONAL PARTNERSHIP
94-PRESENT GOVERNOR'S OFFICE - EMPLOYEE - GOV'T AGENCY

10. Explain any involvement your spouse has with any business or organization which might create a conflict of interest for you.

N/A

11. List all gifts received with a value exceeding $100 during the past twelve months preceding the date of this statement from sources other than your spouse or relatives. N/A

List all gifts received with a value exceeding $50 from any source having business with or regulated by the state.

N/A

12. Having read Executive Order Number One, state any problems or conflicts of interest you may have which are not fully covered in previous questions. Include an explanation of how you would propose to resolve the matter.

NONE

VERIFICATION

I hereby do certify that I have read this Statement of Economic interest, and all attachments, and to the best of my knowledge and belief it is true, correct and complete.

I hereby do certify that I have not transferred, and will not transfer, any asset, interest or property for the purpose of concealing it from disclosure while retaining an equitable interest therein.

5/4/95
Date

William A. Hatton
Signature

5/4/94

NORTH CAROLINA BOARD OF ETHICS
116 WEST JONES STREET
RALEIGH 27603-8003
(919) 733-5103

STATEMENT OF ECONOMIC INTEREST FOR EXECUTIVE ORDER NUMBER ONE DATED JANUARY 9, 1993, BY GOVERNOR JAMES B. HUNT, JR.

MAIL FORM TO THE BOARD OF ETHICS, 116 WEST JONES STREET, RALEIGH, NC 27603. FOR ASSISTANCE, CALL MILLIE DONAVANT AT 919-733-5103.

THE PERSON FILING SHALL INCLUDE IN THE FOLLOWING THE ASSETS, LIABILITIES, AND SOURCES OF INCOME OF HIS OR HER SPOUSE WHICH ARE DERIVED FROM THE ASSETS OR INCOME OF THE PERSON FILING, CONTROLLED BY THE PERSON FILING, OR FOR WHICH THE PERSON FILING IS JOINTLY OR SEVERALLY LIABLE.

Name of Person Filing: WILLIAM R. PITTMAN

Home Address: 312 THOMAS DR
CLAYTON, NC 27520

Home Telephone: 919 550 1045

Occupation, Position, or Title: ASSOCIATE GENERAL COUNSEL TO THE GOVERNOR

Employer: GOVERNOR'S OFFICE

Office Address: 116 W. JONES ST.
RALEIGH, NC 27603-8003

Office Telephone: 919 733 7737

If you are filing as an appointee, please list the name of the board or commission on which you are serving, and the position on the board that you are appointed to.

Name of Board

Position (example = at large position)

1. List all parcels of real estate located in North Carolina in which you have an ownership interest of more than $5,000, and asterisk (*) parcels valued more than $10,000. Give street address or other description adequate to determine the location of each parcel. If persons other than your spouse have an ownership interest in the property, state the type of ownership and name of the person having the interest. If any parcels are located in an area over which the board you are serving on has regulatory authority or could otherwise be affected by board decisions, please state the particulars.

* 312 THOMAS DR, CLAYTON, NC 27520

HOUSE & LOT

2. List the name of each publicly-owned company in which you own securities valued more than $10,000. These companies are required to register with the Securities and Exchange Commission.

NONE

3. List the name of each non-publicly-owned company or business entity in which you own securities or other equity interests with a value exceeding $5,000. Asterisk (*) all with a value exceeding $10,000.

NONE

With respect to the entities listed with a value exceeding $10,000, should any of the entities own securities or equity interests exceeding $10,000 in other companies or business entities, list the name of the company or business entity.

N/A

Are you or any of the entities listed licensed by, regulated by, or have business relationships with the same area of state government with which you are associated? If so, state the particulars.

N/A

4. If you, your spouse, or your dependent children are the beneficiary of a trust created, established or controlled by you which holds assets, and if those assets are known, list the name and address of the trustee and describe the trust. List each business in which the trust has an ownership interest exceeding $5,000, and asterisk (*) all with a value exceeding $10,000.

N/A

5. List assets with a value exceeding $5,000 each held by you which have not been listed elsewhere, and asterisk (*) all with a value exceeding $10,000. Some examples are mutual funds, certificates of deposit, and retirement accounts. It is not necessary to list household furniture, jewelry, automobiles, and other personal effects.

* STATE EMPLOYEES RETIREMENT ACCOUNT

6. List liabilities with a value exceeding $5,000 each, asterisk (*) all with a value exceeding $10,000, give the name of the creditor, and describe the nature of the liability. It is not necessary to list credit card debts, mortgage for personal residence, automobile loans, and loans of this nature.

NONE

7. List each source of income received by you with a value exceeding $5,000 shown on your most recent federal and state tax returns. For each source listed, describe the type of income received, and state the name of the business entity or individual from which the income was received. Some examples of income are salary or wages, professional fees, honoraria, interest, stock dividends, capital gains, and business profits.

STATE OF NC, ADMINISTRATIVE OFFICE OF THE COURTS - SALARY

BASS, BRYANT & MOORE, ATTORNEYS - WAGES/PROFESSIONAL FEES

State the particulars if any of the sources of income are regulated by, receive permits from, or otherwise connected with the same area of state government with which you are connected.

8. If you are a practicing attorney, check each category of legal representation in which you and/or the law firm with which you are associated has during any single year of the past five years earned legal fees in excess of $5,000 from any of the following categories of legal representation:

( ) Admiralty ( ) Taxation ( ) Decedent's estates
(X) Negligence (representing plaintiffs)
(X) Negligence (representing defendants)
(X) Criminal law ( ) Labor law ( ) Insurance law
( ) Utilities regulation or representation of regulated utilities
(X) Corporation law ( ) Administrative law
(X) Real property ( ) Representation of local governments

9. List all businesses you have been associated with during the past five years as an employee, officer, director, partner, or a material owner of a security or other equity interest which have not been previously listed. Include your present employment if it is not listed in Question three.

For each business listed, state your association, and the time period of your association.

To the best of your knowledge, state whether any of the businesses listed does business with the state, the nature of the business, and whether you or the business is licensed by, regulated by, receives permits, grants or other funding from, or otherwise connected with the same area of state government with which you are connected.

It is not necessary to list not-for-profit organizations or civic organizations unless the entities receive benefits from the same area of state government with which you are connected.

N/A

10. Explain any involvement your spouse has with any business or organization which might create a conflict of interest for you.

N/A

11. List all gifts received with a value exceeding $100 during the past twelve months preceding the date of this statement from sources other than your spouse or relatives.

NONE

List all gifts received with a value exceeding $50 from any source having business with or regulated by the state.

NONE

12. Having read Executive Order Number One, state any problems or conflicts of interest you may have which are not fully covered in previous questions. Include an explanation of how you would propose to resolve the matter.

NONE

VERIFICATION

I hereby do certify that I have read this Statement of Economic interest, and all attachments, and to the best of my knowledge and belief it is true, correct and complete.

I hereby do certify that I have not transferred, and will not transfer, any asset, interest or property for the purpose of concealing it from disclosure while retaining an equitable interest therein.

5/4/93
Date

William R. Stone
Signature

STATE OF NORTH CAROLINA

COUNTY OF Wake

Subscribed and sworn to before me this the 4th day of May 1994.

My Commission Expires:
November 27, 1998

Gail P. Simmons
Notary Public

GAIL P. SIMMONS NOTARY PUBLIC WAKE COUNTY, NC

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **MORGAN** for the Committee on **RULES, CALENDAR, AND OPERATIONS OF THE HOUSE.**

☐ Committee Substitute for
H.J.R. 683 A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF DR. JOY JOSEPH JOHNSON, FORMER MEMBER OF THE GENERAL ASSEMBLY.

☐ 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.

☐ 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 D

HOUSE JOINT RESOLUTION 683
Proposed Committee Substitute H683-PCS2256

Sponsors:

Referred to:

March 31, 1997

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF DR. JOY JOSEPH JOHNSON, FORMER MEMBER OF THE GENERAL ASSEMBLY.

Whereas, Dr. Joy Joseph Johnson was born in Laurel Hill on November 2, 1921, to William Joseph Johnson and Edith Buchanan Johnson; and

Whereas, Dr. Joy Joseph Johnson attended the Scotland County Public Schools, graduated from the Laurinburg Institute in 1941, and Shaw University in 1945, and received a Doctor of Divinity degree from Friendship College, South Carolina, in 1965; and

Whereas, Dr. Joy Joseph Johnson was a minister and served as pastor of the First Baptist Church in Fairmont; and

Whereas, Dr. Joy Joseph Johnson rendered distinguished service to various religious organizations, serving as a moderator of the Lumber River Baptist Association, as President of the Southern Region of the National Progressive Convention of the United States of America in 1968, and aš President of the North Carolina General Baptist Convention from 1974 to 1978; and

Whereas, Dr. Joy Joseph Johnson made significant contributions as a Mason and as a member of the Alpha Phi Alpha Fraternity, the United Order of Salem, and the Independent Order of St. Luke; and

Whereas, Dr. Joy Joseph Johnson was a man of integrity who was genuinely interested in the people of his community, serving as the first African-American mayor and town commissioner of Fairmont, as Chair of the Fairmont Good Neighbor Council, as President of Lumber River Housing Development, Inc., and as a member of the Organized People's Investment Company; and

Whereas, Dr. Joy Joseph Johnson served as Vice-Chair of the Robeson County Democratic Executive Committee and as State Secretary of the North Carolina Branches of the NAACP; and

Whereas, Dr. Joy Joseph Johnson served with honor and distinction as a member of the North Carolina House of Representatives from 1971 to 1978; and

Whereas, Dr. Joy Joseph Johnson left the General Assembly upon his appointment to the North Carolina Parole Commission on which he served from 1978 to 1985; and

Whereas, Dr. Joy Joseph Johnson received numerous awards and recognitions including an honorary doctorate degree from Shaw University in 1972; and

Whereas, Dr. Joy Joseph Johnson was an active and devoted member of the Missionary Baptist Church; and

Whereas, Dr. Joy Joseph Johnson dedicated his life to the enrichment of many other lives, as a minister, civic leader, public servant, and devoted family member; and

Whereas, Dr. Joy Joseph Johnson died on December 30, 1996; and

Whereas, Dr. Joy Joseph Johnson is survived by his wife, Omega Foster Johnson; his daughter, Deborah Johnson Killens; his grandchildren, Joy Alexandria Killens and Jenee' Johnson Killens; and other close relatives and friends;

Now, therefore, be it resolved by the House of Representatives, the Senate concurring:

Section 1. The General Assembly honors the memory of Dr. Joy Joseph Johnson and expresses the deep gratitude and appreciation of this State and its citizens for his life and service to North Carolina.

Section 2. The General Assembly extends its deepest sympathy to the family and friends of Dr. Joy Joseph Johnson.

Section 3. The Secretary of State shall transmit a certified copy of this resolution to the family of Dr. Joy Joseph Johnson.

Section 4. This resolution is effective upon ratification.

un-fav

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE JOINT RESOLUTION 683

Sponsors: Representatives Bonner; Blue, Fitch, Goodwin, McAllister, Michaux, Morris, and Wainwright.

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

March 31, 1997

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF DR. JOY JOSEPH JOHNSON, FORMER MEMBER OF THE GENERAL ASSEMBLY.

Whereas, Dr. Joy Joseph Johnson was born in Laurel Hill on November 2, 1922, to William Joseph Johnson and Edith Buchanan Johnson; and

Whereas, Dr. Joy Joseph Johnson attended the Scotland County Public Schools, graduated from the Laurinburg Institute in 1941, and Shaw University in 1945, and received a Doctor of Divinity degree from Friendship College, South Carolina, in 1965; and

Whereas, Dr. Joy Joseph Johnson was a minister and served as pastor of the First Baptist Church in Fairmont; and

Whereas, Dr. Joy Joseph Johnson rendered distinguished service to various religious organizations, serving as a member of the Lumber River Baptist Association, as President of the Southern Region of the National Progressive Convention of the United States of America in 1968, and as President of the North Carolina General Baptist Convention from 1974 to 1978; and

Whereas, Dr. Joy Joseph Johnson made significant contributions as a Mason and as a member of the Alpha Phi Alpha Fraternity, the United Order of Salem, and the Independent Order of St. Luke; and

Whereas, Dr. Joy Joseph Johnson was a man of integrity who was genuinely interested in the people of his community, serving as the first African-American mayor and town commissioner of Fairmont, as Chair of the Fairmont Good Neighbor Council, as President of Lumber River Housing Development, Inc., and as a member of the Organized People's Investment Company; and

Whereas, Dr. Joy Joseph Johnson served as Vice-Chair of the Robeson County Democratic Executive Committee and as State Secretary of the North Carolina Branches of the NAACP; and

Whereas, Dr. Joy Joseph Johnson served with honor and distinction as a member of the North Carolina House of Representatives from 1971 to 1978; and

Whereas, Dr. Joy Joseph Johnson left the General Assembly upon his appointment to the North Carolina Parole Commission on which he served from 1978 to 1985; and

Whereas, Dr. Joy Joseph Johnson received numerous awards and recognitions including an honorary doctorate degree from Shaw University in 1972; and

Whereas, Dr. Joy Joseph Johnson was an active and devoted member of the Missionary Baptist Church; and

Whereas, Dr. Joy Joseph Johnson dedicated his life to the enrichment of many other lives, as a minister, civic leader, public servant, and devoted family member; and

Whereas, Dr. Joy Joseph Johnson died on December 30, 1996; and

Whereas, Dr. Joy Joseph Johnson is survived by his wife, Omega Foster Johnson; his daughter, Deborah Foster Killens; his grandchildren, Joy Alexandria Killens and Jenee' Killens; and other close relatives and friends;

Now, therefore, be it resolved by the House of Representatives, the Senate concurring:

Section 1. The General Assembly honors the memory of Dr. Joy Joseph Johnson and expresses the deep gratitude and appreciation of this State and its citizens for his life and service to North Carolina.

Section 2. The General Assembly extends its deepest sympathy to the family and friends of Dr. Joy Joseph Johnson.

Section 3. The Secretary of State shall transmit a certified copy of this resolution to the family of Dr. Joy Joseph Johnson.

Section 4. This resolution is effective upon ratification.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **MORGAN** for the Committee on **RULES, CALENDAR, AND OPERATIONS OF THE HOUSE.**

☐ Committee Substitute for
H.J.R. 664 A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF RUSSELL ATKINSON SWINDELL, FORMER MEMBER OF THE GENERAL ASSEMBLY.

☑ 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.

☐ 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 JOINT RESOLUTION 664

Sponsors: Representatives Mosley, Blue, Hensley; Capps, Goodwin, Hill, Luebke, Sexton, Smith, Tolson, and Wood.

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

March 27, 1997

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF RUSSELL ATKINSON SWINDELL, FORMER MEMBER OF THE GENERAL ASSEMBLY.

Whereas, Russell Atkinson Swindell was born in Swan Quarter, North Carolina, on May 14, 1916, to John Harold Swindell, Sr. and Mary Atkinson Swindell; and

Whereas, Russell Atkinson Swindell graduated from Swan Quarter High School in 1935, and from Louisburg College in 1938; and

Whereas, Russell Atkinson Swindell proudly served his country as a member of the United States Army; and

Whereas, Russell Atkinson Swindell found a rewarding vocation in farming and was active in farming issues, serving as President of the Hyde County USDA and of the Hyde County Farm Bureau; and

Whereas, Russell Atkinson Swindell had great effect in his community, serving as a Mason, a charter member and president of the Hyde County Lions Club, as chaplain of the American Legion, and as Chair of the Hyde County Polio Foundation; and

Whereas, Russell Atkinson Swindell served with honor and distinction as a member of the General Assembly in the House of Representatives during the 1951, 1953, and 1955 Sessions; and

Whereas, after his service with the General Assembly, Russell Atkinson Swindell worked for the Department of Education, where he helped set up the State's community college system; and

Whereas, later, Russell Atkinson Swindell served as executive director of the North Carolina Railroad Association; and

Whereas, Russell Atkinson Swindell became a successful lobbyist, working on behalf of numerous trade associations and organizations and serving as a mentor to other lobbyists; and

Whereas, in 1982, Russell Atkinson Swindell was named Outstanding Senior Citizen of the Year by the Town of Cary; and

Whereas, Russell Atkinson Swindell was active in the First United Methodist Church in Cary; and

Whereas, Russell Atkinson Swindell died on March 3, 1997, after a lifetime of unselfish and distinguished service to his community and State, and leaves to mourn his wife, Martha Easterling Swindell; his daughters, Sue Martin and Mary-Anne Brannon; his son, A. B. Swindell; eight grandchildren; two great-grandchildren; and two godchildren;

Now, therefore, be it resolved by the House of Representatives, the Senate concurring:

Section 1. The General Assembly expresses its deep appreciation for the life and the accomplishments of Russell Atkinson Swindell and for the great service he rendered to the nation, the State of North Carolina, and his community.

Section 2. The General Assembly extends its deepest sympathy to the family of Russell Atkinson Swindell for the loss of its distinguished member.

Section 3. The Secretary of State shall transmit a certified copy of this resolution to the family of Russell Atkinson Swindell.

Section 4. This resolution is effective upon ratification.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **MORGAN** for the Committee on **RULES, CALENDAR, AND OPERATIONS OF THE HOUSE.**

☐ Committee Substitute for
H.B. 408 A BILL TO BE ENTITLED AN ACT TO CREATE A FUEL PIPING LICENSE FOR PLUMBING AND HEATING CONTRACTORS, TO AUTHORIZE THE BOARD OF EXAMINERS OF PLUMBING, HEATING, AND FIRE SPRINKLER CONTRACTORS TO CREATE OTHER RESTRICTED LICENSE CLASSIFICATIONS, AND TO ALLOW THE REVOCATION OR SUSPENSION OF A LICENSE FOR FAILURE TO COMPLY WITH RULES PROMULGATED BY THE BOARD.

☑ 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.

☐ 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)

fav report

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 408

Short Title: Plumbing/Heating Contractors/AB. (Public)

Sponsors: Representative Ives.

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

March 6, 1997

A BILL TO BE ENTITLED

AN ACT TO CREATE A FUEL PIPING LICENSE FOR PLUMBING AND HEATING CONTRACTORS, TO AUTHORIZE THE BOARD OF EXAMINERS OF PLUMBING, HEATING, AND FIRE SPRINKLER CONTRACTORS TO CREATE OTHER RESTRICTED LICENSE CLASSIFICATIONS, AND TO ALLOW THE REVOCATION OR SUSPENSION OF A LICENSE FOR FAILURE TO COMPLY WITH RULES PROMULGATED BY THE BOARD.

The General Assembly of North Carolina enacts:

Section 1. G.S. 87-21(b) reads as rewritten:

"(b) Classes of Licenses; Eligibility and Examination of Applicant; Necessity for License. --

(1) In order to protect the public health, comfort and safety, the Board shall establish two classes of licenses: Class I covering all plumbing, heating, and fire sprinkler systems for all structures, and Class II covering plumbing and heating systems in single-family detached residential dwellings.

(2) Effective April 15, 1998, the Board shall establish and issue a fuel piping license for use by persons who do not possess the required Class I or Class II plumbing or heating license, but desire to engage in the contracting or installing of fuel piping extending from an approved fuel source at or near the premises, which piping is used or may be used partly or entirely to supply fuel to plumbing or heating systems or equipment or which, by its installation, may

alter or affect the fuel supply to plumbing or heating systems or equipment within the meaning of G.S. 87-21(a).

The Board may also establish additional restricted classifications to provide for: (i) the licensing of any person, partnership, firm, or corporation desiring to engage in a specific phase of heating, plumbing, or fire sprinkling contracting; (ii) the licensing of any person, partnership, firm, or corporation desiring to engage in a specific phase of heating, plumbing, or fire sprinkling contracting that is an incidental part of their primary business, which is a lawful business other than heating, plumbing, or fire sprinkling contracting; or (iii) the licensing of persons desiring to engage in contracting and installing fuel piping from an approved fuel source on the premises to a point inside the residence.

(3) The Board shall prescribe the standard of competence, experience and efficiency to be required of an applicant for license of each class, and shall give an examination designed to ascertain the technical and practical knowledge of the applicant concerning the analysis of plans and specifications, estimating costs, fundamentals of installation and design, codes, fire hazards, and related subjects as these subjects pertain to plumbing, heating, or fire sprinkler systems. The examination for a fire sprinkler contractor's license shall include such materials as would test the competency of the applicant and which may include the minimum requirements of certification for Level III, subfield of Automatic Sprinkler System Layout, National Institute for Certification of Engineering Technologies (NICET). As a result of the examination, the Board shall issue a certificate of license of the appropriate class in plumbing, heating, or fire sprinkler contracting, and a license shall be obtained, in accordance with the provisions of this Article, before any person, firm or corporation shall engage in, or offer to engage in, the business of plumbing, heating, or fire sprinkler contracting, or any combination thereof. The Board may require experience as a condition of examination, provided that (i) the experience required may not exceed two years, (ii) that up to one-half the experience may be in the form of academic or technical courses of study, and (iii) that registration is not required at the commencement of the period of experience.

(4) Conditions of examination set by the Board shall be uniformly applied to each applicant within each license classification. It is the purpose and intent of this section that the Board shall provide an examination for plumbing, heating group number one, or heating group number two, or heating group number three, or each restricted classification, and may provide an examination for fire sprinkler contracting or may accept a current certification of the

National Institute for Certification in Engineering Technologies for Fire Protection Engineering Technician, Level III, subfield of Automatic Sprinkler System Layout.

(5) The Board is authorized to issue a certificate of license limited to either plumbing or heating group number one, or heating group number two, or heating group number three, or fire sprinkler contracting, or any combination thereof. The Board is also authorized to issue a certificate of license limited to one or more restricted classifications that are established pursuant to this section.

(6) Each application for examination shall be accompanied by a check, post-office money order, or cash, in the amount of the annual license fee required by this Article. Regular examinations shall be given in the months of April and October of each year, and additional examinations may be given at such other times as the Board may deem wise and necessary. Any person may demand in writing a special examination, and upon payment by the applicant of the cost of holding such examination and the deposit of the amount of the annual license fee, the Board in its discretion will fix a time and place for such examination. Upon satisfactory proof of the applicant's inability to write and upon demand of an applicant for a Class II plumbing or heating license six weeks prior to an examination, the Board shall conduct the examination of that applicant orally, and shall not require that applicant to take a written examination as to examination inquiries answered other than by preparation of diagrams. Signed statements from two reliable citizens resident in the home county of the applicant shall constitute satisfactory proof of an applicant's inability to write. A person who fails to pass any examination shall not be reexamined until the next regular examination."

Section 2. G.S. 87-22 reads as rewritten:

"**§ 87-22. License fee based on population; expiration and renewal; penalty.**

All persons, firms, or corporations engaged in the business of either plumbing or heating contracting, or both, in cities or towns of 10,000 inhabitants or more shall pay an annual license fee not exceeding seventy-five dollars ($75.00), and in cities or towns of less than 10,000 inhabitants an annual license fee not exceeding fifty dollars ($50.00). The annual fee for a piping or restricted classification license shall not exceed that for a plumbing or heating license. All persons, firms, or corporations engaged in the business of fire sprinkler contracting shall pay an initial application fee not to exceed seventy-five dollars ($75.00) and an annual license fee not to exceed three hundred dollars ($300.00). In the event the Board refuses to license an applicant, the license fee deposited shall be returned by the Board to the applicant. All licenses shall expire on the last day of December in each year following their issuance or renewal. It shall be the duty of the secretary and treasurer to cause to be

mailed to every licensee registered hereunder notice to ~~his~~ the licensee's last known address reflected on the records of the Board of the amount of fee required for renewal of license, such notice to be mailed at least one month in advance of the expiration of ~~said~~ the license. In the event of failure on the part of any person, firm or corporation to renew the license certificate annually and pay the fee therefor during the month of January in each year, the Board shall increase ~~said~~ the license fee ten per centum (10%) for each month or fraction of a month that payment is delayed; provided that the penalty for nonpayment shall not exceed the amount of the annual fee, and provided further that the Board requires reexamination upon failure of a licensee to renew license within three years after expiration. The Board may adopt regulations requiring attendance at programs of continuing education as a condition of license renewal. A licensee employed full time as a local government plumbing, heating, or mechanical inspector and holding qualifications from the Code Officials Qualifications Board may renew ~~his~~ the license at a fee not to exceed twenty-five dollars ($25.00)."

Section 3. G.S. 87-23(a) reads as rewritten:

"(a) The Board shall have power to revoke or suspend the license of or order the reprimand or probation of any plumbing, heating, or fire sprinkler contractor, or any combination thereof, who is guilty of any fraud or deceit in obtaining or renewing a license, or who fails to comply with any provision or requirement of this Article, or the rules adopted by the Board, or for gross negligence, incompetency, or misconduct, in the practice of or in carrying on the business of a plumbing, heating, or fire sprinkler contractor, or any combination thereof, as defined in this Article. Any person may prefer charges of such fraud, deceit, gross negligence, incompetency, misconduct, or failure to comply with any provision or requirement of this Article, or the rules of the Board, against any plumbing, heating, or fire sprinkler contractor, or any combination thereof, who is licensed under the provisions of this Article. All of ~~such~~ the charges shall be in writing and ~~verified by the complainant, and such charges shall be heard and determined~~ investigated by the Board. Any proceedings on the charges shall be carried out by the Board in accordance with the provisions of Chapter 150B of the General Statutes."

Section 4. This act is effective when it becomes law.

VISITOR REGISTRATION SHEET

RULES, CALENDAR, AND OPERATIONS OF THE HOUSE APRIL 15, 1997

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Suzanne Williams	Bone Assoc
Bernard Allen	Secy of State
Cam Cover	BPOHL
Ann Coxe	DEHNR
Michelle Cook	Weyerhaeuser
Andy Allen	NC Farm Bureau
KEITH HUNDLEY	WEYERHAEUSER
Tommy Wolfe	Carolinas Healthcare System
Carmen Hooker Buell	Carolinas HealthCare System
Brenda Dougherty	Sprint
Bryan Houck	BellSouth
Jane Mosley	HD 63
Durwood L. Landsdowne	NS
Evelyn Armstrong	NCHA
Wade Rawlins	News & Observer
Brad Adcock	BCBSNC

MINUTES
COMMITTEE ON RULES, CALENDAR, AND OPERATIONS OF THE HOUSE
April 23, 1997

The Committee on Rules, Calendar, and Operations of the House met April 23, 1997, at 3:00 p.m. in Room 412 in the Legislative Office Building. Representative Morgan, Committee Chair, called the meeting to order and asked the clerk to call the roll. The following members were present: Representative Bowie, Vice Chair; and Representatives Culp, Daughtry, Dockham, Gulley, McMahan, Miner, Mitchell, Neely ,Thompson, C. Wilson, and Wood.

The first order of business before the Committee was the consideration of House Bill 898 - AN ACT TO AMEND THE PUBLIC RECORDS LAW AND THE OPEN MEETINGS LAW TO CLARIFY PROVISIONS. Representative Daughtry, bill sponsor, was recognized to explain the bill. A proposed committee substitute was offered and Representative Mitchell moved for its adoption for Committee discussion, motion carried. Representative Neely moved to give a favorable report to the committee substitute bill, and unfavorable to the original bill. Motion carried. There was a title change in the bill.

House Bill 597 - AN ACT TO AMEND THE PUBLIC LAWS - was next for Committee consideration. Representative McMahan, bill sponsor, was recognized to explain the bill. A proposed committee substitute for House Bill 597 was offered and Representative McMahan moved that it be adopted for Committee discussion. Motion carried. The bill would broaden the authority of municipalities and hospital authorities regarding leases and joint ventures. Representative Connie Wilson moved to give a favorable report to the proposed committee substitute bill and an unfavorable report to the original bill. Motion carried. There was a title change in the bill.

House Bill 631 - AN ACT RELATING TO FORSYTH COUNTY - was the next agenda item. Representative Decker, bill sponsor, was recognized to explain the bill and offered a proposed committee substitute for House Bill 631. Representative Culp moved for its adoption for Committee discussion. Motion carried. The bill would modify the formula for distributing the proceeds of the Forsyth County occupancy taxes. Representative Neely moved to give the proposed committee substitute bill a favorable report and unfavorable to the original bill and that the committee substitute bill be re-referred to the Committee on Finance. Motion carried. There was a title change in the bill.

House Bill 649 - AN ACT RELATING TO THE 53RD HOUSE OF REPRESENTATIVES DISTRICT - was the next bill before the Committee. Representative Carpenter, bill sponsor, was recognized to explain the bill. A proposed committee substitute was offered and Representative Bowie moved for its adoption for the purpose of Committee discussion. Motion carried. The bill would abolish the Office of the Coroner in Cherokee County. Representative Dockham moved to give a favorable report to the proposed committee substitute bill and an unfavorable report to the original bill. Motion carried. There was a title change in the bill.

House Bill 464 -AN ACT TO ENHANCE AND IMPROVE CHILD CARE IN NORTH CAROLINA - was before the committee. Representative Alexander, bill sponsor, was recognized to explain the bill and offered a proposed committee substitute. Representative Bowie moved for its adoption for Committee discussion, motion carried. Representative Alexander explained that this was an agency bill and it was designed to strengthen and streamline child care in North Carolina. Representative Neely moved for a favorable report to the proposed committee substitute bill and unfavorable as to the original bill, and that the committee substitute bill be referred to the Committee on Human Resources. Motion carried.

House Bill 804 - AN ACT TO AFFECT THE MAINTENANCE OF CERTAIN SECONDARY ROADS IN LINCOLN COUNTY - was before the Committee. Representative Kiser, bill sponsor, was recognized to explain the bill. A proposed committee substitute bill was offered and Representative Bowie moved for its adoption for Committee discussion. Motion carried. The bill would give Lincoln County authority to build and improve roads within Lincoln County that are not part of the State highway system. Representative Thompson moved for a favorable report to the proposed committee substitute bill, unfavorable to the original bill and the committee substitute be referred to the Committee on Finance. Motion carried. There was a title change in the bill.

House Bill 655 - AN ACT RELATING TO ROCKINGHAM COUNTY - was the next bill for Committee consideration. Representative Sexton, bill sponsor, was recognized to explain the bill. A proposed committee substitute for House Bill 655 was offered and Representative Gulley moved for its adoption for Committee discussion. Motion carried. The bill concerns the annexation of noncontiguous areas by the Town of Madison. Representative Neely moved to give a favorable report to the proposed committee substitute bill and an unfavorable report to the original bill and recommended that it be re-referred to the Committee on Finance. Motion carried. There was a title change to the bill.

House Bill 506 - AN ACT TO ALLOW HERTFORD AND NORTHAMPTON COUNTIES TO ACQUIRE PROPERTY FOR USE BY THEIR COUNTY BOARDS OF EDUCATION - was the next bill before the Committee. A proposed committee substitute was offered and Representative Mitchell moved for its adoption for Committee discussion. Motion carried. Committee Staff Counsel, Linwood Jones, was recognized to explained the bill in the absence of the bill sponsor, Representative Robert Hunter. Representative Thompson moved to give the proposed committee substitute a favorable report and an unfavorable report to the original bill. Motion carried.

House Bill 307 - AN ACT TO ENACT THE ENVIRONMENTALLY SOUND POLICY ACT (ESP) AND TO PROVIDE A MENU OF MEASURES TO PROTECT HEALTH AND THE ENVIRONMENT. Representative Morgan, the bill sponsor, relinquished

the Chair to Representative Bowie, Vice Chair,, while he explained the bill. A proposed committee substitute was offered and Representative Mitchell moved for its adoption for discussion purposes. Motion carried. Representative Morgan explained the changes. Representative Neely asked to be excused from voting pursuant to House Rule 24.1A. Representative Dockham moved to give a favorable report to the proposed committee substitute bill and unfavorable to the original bill. Motion carried.

House Bill 515 - AN ACT TO ENACT THE ENVIRONMENTALLY SOUND POLICY ACT (ESP) AND TO PROVIDE A MENU OF MEASURES TO PROTECT HEALTH AND THE ENVIRONMENT. Representative Morgan, bill sponsor, offered a proposed committee substitute. Representative Mitchell moved for its adoption and the motion carried. Representative Morgan explained that the committee substitute was basically the same as House Bill 307, with a few minor changes. Representative Neely asked to be excused from voting pursuant to House Rule 24.1A. Representative Dockham moved to give a favorable report to the proposed committee substitute bill and unfavorable to the original bill. Motion carried.

The meeting adjourned at 3:45 P.M.

Representative Richard T. Morgan
Committee Chair

Anne M. Cole
Acting Committee Clerk

Attachments:
Committee Reports
Bills
Visitor's Sheet

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **MORGAN** for the Committee on **RULES, CALENDAR, AND OPERATIONS OF THE HOUSE.**

☐ Committee Substitute for
H.B. 898 A BILL TO BE ENTITLED AN ACT TO AMEND THE PUBLIC RECORDS LAW AND THE OPEN MEETINGS LAW TO CLARIFY PROVISIONS.

☐ 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.

☐ 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 D

HOUSE BILL 898*
Proposed Committee Substitute H898-PCS6232

Short Title: Public Records Law Amendments. (Public)

Sponsors:

Referred to:

April 8, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PUBLIC RECORDS LAW TO CLARIFY PROVISIONS CONCERNING CORRESPONDENCE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 132-6 is amended by adding a new subsection to read:

"(g) Upon receipt of a request by any person to inspect, examine or copy letters or other documents transmitted or received by a public agency by any mode of delivery or communication (including, but not limited to, the United States Postal Service, commercial postal delivery, electronic means, or hand delivery) the custodian of the agency's records: (i) shall promptly sort the letters or other documents to remove any items that are not public records, (ii) is not required to permit the inspection, examination or copying of items that are not public records, and (iii) is not required to permit the inspection, examination or copying of items that are public records until such sorting has occurred. Nothing in this section restricts the right of the addressee or recipient to route a letter or other document received in the course of public business to another person, but the addressee or recipient may make copies of the letter or other document and make them available for inspection and copying as provided by this Chapter."

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

unfav

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 898*

Short Title: Public Records/Meetings Law Amendments. (Public)

Sponsors: Representative Daughtry.

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

April 8, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PUBLIC RECORDS LAW AND THE OPEN MEETINGS LAW TO CLARIFY PROVISIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 132-6 is amended by adding a new subsection to read:

"(g) With respect to the request by any person to inspect, examine or obtain copies of correspondence received or transmitted (by the United States Postal Service, by commercial postal delivery, by electronic means, by hand delivery, or by any other mode of delivery or communication) by the custodian in the custodian's official capacity and which is in the custody of the custodian as of the date of the request, the custodian is required to permit such inspection or examination, consistent with the provisions of subsection (a) of this section, only of specific items of correspondence which constitute public records and which are identified in the request by the approximate date of receipt or transmission, by the names of the correspondents, and by the general subject matter."

Section 2. Chapter 132 of the General Statutes is amended by adding two new sections to read:

"**§ 132-1.5. Preliminary draft not public record.**

Public records, as defined by G.S. 132-1, do not include preliminary drafts of documents before they are received by the officer, employee, or governmental agency authorized to take final action concerning the subject matter of the draft document.

"**§ 132-1.6. Attorney work product not public record.**

Public records, as defined by G.S. 132-1, do not include material which represents or consists of the work product of an attorney employed by or otherwise representing a governmental agency or an officer, employee, or agent of a governmental agency.

"**§ 132-1.7. Certain donor records not public record.**

Public records, as defined by G.S. 132-1, do not include information regarding past, present, or prospective individual donors of charitable gifts to a governmental agency; provided documents or portions of documents that reveal only the name of an individual or institutional donor and the type and amount of the donor's gift are public records, unless the donor requires anonymity as a condition of the donation. In the case of such anonymity, only the identity of the donor is not a public record.

"**§ 132-1.8. Certain alumni records not public record.**

Public records, as defined by G.S. 132-1, do not include records regarding alumni of public institutions of higher education; provided that documents or portions of documents containing only the names, dates of attendance, and degrees received by alumni are public records."

Section 3. G.S. 143-318.10 reads as rewritten:

"**§ 143-318.10. All official meetings of public bodies open to the public.**

(a) Except as provided in G.S. 143-318.11, G.S. 143-318.14A, G.S. 143-318.15, and G.S. 143-318.18, each official meeting of a public body shall be open to the public, and any person is entitled to attend such a meeting.

(b) As used in this Article, 'public body' means any elected or appointed authority, board, commission, committee, council, or other body of the State, or of one or more counties, cities, school administrative units, ~~constituent institutions~~ or of The University of North ~~Carolina,~~ Carolina and its constituent institutions, or of other political subdivisions or public corporations in the State that (i) is composed of two or more members and (ii) exercises or is authorized to exercise a legislative, policy-making, quasi-judicial, administrative, or advisory function. In addition, 'public body' means the governing board of a 'public hospital' as defined in G.S. 159-39 and the governing board of any nonprofit corporation to which a hospital facility has been sold or conveyed pursuant to G.S. 131E-8, any subsidiary of such nonprofit corporation, and any nonprofit corporation owning the corporation to which the hospital facility has been sold or conveyed.

(c) 'Public body' does not include (1) a ~~meeting solely among~~ body composed solely of the professional staff of ~~a public body,~~ the State, or one or more counties, cities, or school administrative units, or The University of North Carolina and its constituent institutions, or other political subdivisions or public corporations of the State, ~~or~~ (2) the medical staff of a public hospital or the medical staff of a hospital that has been sold or conveyed pursuant to ~~G.S. 131E-8.~~ G.S. 131E-8, or (3) an administrative, faculty, or student government agency of a constituent institution of The University of North Carolina that exercises authority delegated to it by a chancellor concerning matters of student discipline.

(c1) 'Professional staff' includes employees and agents of The University of North Carolina and its constituent institutions and students when serving as officers or

designated representatives of student governments of the constituent institutions of The University of North Carolina.

(d) 'Official meeting' means a meeting, assembly, or gathering together at any time or place or the simultaneous communication by conference telephone or other electronic means of a majority of the members of a public body for the purpose of conducting hearings, participating in deliberations, or voting upon or otherwise transacting the public business within the jurisdiction, real or apparent, of the public body. However, a social meeting or other informal assembly or gathering together of the members of a public body does not constitute an official meeting unless called or held to evade the spirit and purposes of this Article.

(e) Every public body shall keep full and accurate minutes of all official meetings, including any closed sessions held pursuant to G.S. 143-318.11. Such minutes may be in written form or, at the option of the public body, may be in the form of sound or video and sound recordings. Such minutes shall be public records within the meaning of the Public Records Law, G.S. 132-1 et seq.; provided, however, that minutes of a closed session conducted in compliance with G.S. 143-318.11 may be withheld from public inspection so long as public inspection would frustrate the purpose of a closed session."

Section 4. G.S. 143-318.12 is amended by adding a new subsection to read:

"(c) If a public body intends to hold a closed session, as permitted by G.S. 143-318.11(6) to meet with, interview, and assess the qualifications of a candidate or candidates for public employment, and if public notice of such a meeting would frustrate the purpose of the closed session by enabling persons other than members of the public body to ascertain the identity of a candidate or candidates, the public body need not give public notice of the time and place of the meeting that would otherwise be required by this section."

Section 5. This act is effective when it becomes law.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar, and Operations of the House**.

☐ Committee Substitute for
H.B. 597 A BILL TO BE ENTITLED AN ACT TO AMEND THE PUBLIC LAWS.

☐ 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.

☐ 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 D

HOUSE BILL 597
Proposed Committee Substitute H597-PCS2309

Short Title: Municipal Hospital Lease/Venture. (Public)

Sponsors:

Referred to:

March 25, 1997

A BILL TO BE ENTITLED

AN ACT TO BROADEN THE AUTHORITY OF MUNICIPALITIES AND HOSPITAL AUTHORITIES REGARDING LEASES AND JOINT VENTURES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 131E-6 reads as rewritten:

"**§ 131E-6. Definitions.**

As used in this Part, unless otherwise specified:

(1) 'City,' as defined in G.S. 160A-1(2), means a municipal corporation organized under the laws of this State for the better government of the people within its jurisdiction and having the powers, duties, privileges, and immunities conferred by law on cities, towns, and villages. The term 'city' does not include counties or municipal corporations organized for a special purpose under any statute or law. The word 'city' is interchangeable with the words 'town' and 'village' and shall mean any city as defined in this subdivision without regard to the terminology employed in charters, local acts, other portions of the General Statutes, or local customary usage.

(2) 'Community general hospital' means a short-term nonfederal hospital that provides diagnostic and therapeutic services to patients for a variety of medical conditions, both surgical and nonsurgical, such services being available for use primarily by residents of the community in which it is located.

(3) 'Corporation, foreign or domestic, authorized to do business in North Carolina' means a corporation for profit or having a capital stock which is created and organized under Chapter 55 of the General Statutes or any other general or special act of this State, or a foreign corporation which has procured a certificate of authority to transact business in this State pursuant to Article 10 of Chapter 55 of the General Statutes.

(4) 'Hospital facility' means any ~~type of hospital, facility operated in connection with a hospital such as a clinic, including mental health clinics; nursing, convalescent, or rehabilitative facility; public health center; or any facility of a local health department. The term 'hospital facility' also includes related facilities such as laboratories, outpatient departments, housing and training facilities for nurses and other health care professionals, central service facilities operated in connection with hospitals, and all equipment necessary for its operation.~~ one or more buildings, structures, additions, extensions, improvements or other facilities, whether or not located on the same site or sites, machinery, equipment, furnishings or other real or personal property suitable for health care or medical care; and includes, without limitation, general hospitals; chronic disease, maternity, mental, tuberculosis and other specialized hospitals; nursing homes, including skilled nursing facilities and intermediate care facilities; adult care homes for the aged and disabled; public health center facilities; housing or quarters for local public health departments; facilities for intensive care and self-care; clinics and outpatient facilities; clinical, pathological and other laboratories; health care research facilities; laundries; residences and training facilities for nurses, interns, physicians and other staff members; food preparation and food service facilities; administrative buildings, central service and other administrative facilities; communication, computer and other electronic facilities; fire-fighting facilities; pharmaceutical and recreational facilities; storage space; X ray, laser, radiotherapy and other apparatus and equipment; dispensaries; utilities; vehicular parking lots and garages; office facilities for hospital staff members and physicians; and such other health and hospital facilities customarily under the jurisdiction of or provided by hospitals, or any combination of the foregoing, with all necessary, convenient or related interests in land, machinery, apparatus, appliances, equipment, furnishings, appurtenances, site preparation, landscaping, and physical amenities.

(4.1) 'Hospital land' means air and ground rights to unimproved real property held either in fee or by lease, with all easements, rights-of-way, appurtenances, landscaping, and physical amenities such as

utilities, parking lots, and garages, but excluding other improvements to land described in subsection (4) of this section and G.S. 131E-16(15).

(5) 'Municipality' means any county, city, or other political subdivision of this State, or any hospital district created under Part C of this Article.

(6) 'Nonprofit association' or 'nonprofit corporation' means any association or corporation from which no part of the net earnings inures or may lawfully inure to the benefit of a private shareholder or individual."

Section 2. G.S. 131E-13 reads as rewritten:

"**§ 131E-13. Lease or sale of hospital facilities to or from for-profit or nonprofit corporations or other business entities by municipalities and hospital authorities.**

(a) A municipality or hospital authority as defined in G.S. 131E-16(14), may lease, sell, or convey any hospital facility, or part, to a corporation, foreign or domestic, authorized to do business in North Carolina, subject to these conditions, which shall be included in the lease, agreement of sale, or agreement of conveyance:

(1) The corporation shall continue to provide the same or similar clinical hospital services to its patients in medical- surgery, obstetrics, pediatrics, outpatient and emergency treatment, including emergency services for the indigent, that the hospital facility provided prior to the lease, sale, or conveyance. These services may be terminated only as prescribed by Certificate of Need Law prescribed in Article 9 of Chapter 131E of the General Statutes, or, if Certificate of Need Law is inapplicable, by review procedure designed to guarantee public participation pursuant to rules adopted by the Secretary of the Department of Human Resources.

(2) The corporation shall ensure that indigent care is available to the population of the municipality or area served by the hospital authority at levels related to need, as previously demonstrated and determined mutually by the municipality or hospital authority and the corporation.

(3) The corporation shall not enact financial admission policies that have the effect of denying essential medical services or treatment solely because of a patient's immediate inability to pay for the services or treatment.

(4) The corporation shall ensure that admission to and services of the facility are available to beneficiaries of governmental reimbursement programs (Medicaid/Medicare) without discrimination or preference because they are beneficiaries of those programs.

(5) The corporation shall prepare an annual report that shows compliance with the requirements of the lease, sale, or conveyance.

The corporation shall further agree that if it fails to substantially comply with these conditions, or if it fails to operate the facility as a community general hospital open to the general public and free of discrimination based on race, creed, color, sex, or national origin unless relieved of this responsibility by operation of law, or if the corporation dissolves without a successor corporation to carry out the terms and conditions of the lease, agreement of sale, or agreement of conveyance, all ownership or other rights in the hospital facility, including the building, land and equipment associated with the hospital, shall revert to the municipality or hospital authority or successor entity originally conveying the hospital; provided that any building, land, or equipment associated with the hospital facility that the corporation has constructed or acquired since the sale may revert only upon payment to the corporation of a sum equal to the cost less depreciation of the building, land, or equipment.

This section shall not apply to leases, sales, or conveyances of nonmedical services or commercial activities, including the gift shop, cafeteria, the flower shop, or to surplus hospital property that is not required in the delivery of necessary hospital services at the time of the lease, sale, or conveyance.

~~Neither G.S. 153A-176 nor Article 12 of Chapter 160A of the General Statutes shall apply to leases, sales or conveyances under this section.~~

(b) In the case of a sale or conveyance, if either general obligation bonds or revenue bonds issued for the benefit of the hospital to be conveyed are outstanding at the time of sale or conveyance, then the corporation shall agree to the following:

By the effective date of sale or conveyance, the corporation shall place into an escrow fund money or direct obligations of, or obligations the principal of and interest on which, are unconditionally guaranteed by the United States of America (as approved by the Local Government Commission), the principal of and interest on which, when due and payable, will provide sufficient money to pay the principal of and the interest and redemption premium, if any, on all bonds then outstanding to the maturity date or dates of such bonds or to the date or dates specified for the redemption thereof. The corporation shall furnish to the Local Government Commission such evidence as the Commission may require that the securities purchased will satisfy the requirements of this section. A hospital which has placed funds in escrow to retire outstanding general obligation or revenue bonds, as provided in this section, shall not be considered a public hospital, and G.S. 159-39(a)(3) shall be inapplicable to such hospitals.

No bonds, notes or other evidences of indebtedness shall be issued by a municipality or hospital authority to finance equipment for or the acquisition, extension, construction, reconstruction, improvement, enlargement, or betterment of any hospital facility if the facility has been sold or conveyed to a corporation, foreign or domestic, authorized to do business in North Carolina.

(c) In the case of a lease, the municipality or hospital authority shall determine the length of the lease. No lease executed under this section shall be deemed to convey a freehold interest. Any sublease or assignment of the lease shall be subject to the conditions prescribed by this section. If the term of the lease is more than 10 years, and either general obligation bonds or revenue bonds issued for the benefit of

the hospital to be leased are outstanding at the time of the lease, then the corporation shall agree to the following:

By the effective date of the lease, the corporation shall place into an escrow fund money or direct obligations of, or obligations the principal of and interest on which, are unconditionally guaranteed by the United States of America (as approved by the Local Government Commission), the principal of and interest on which, when due and payable, will provide sufficient money to pay the principal of and the interest and redemption premium, if any, on all bonds then outstanding to the maturity date or dates of such bonds or to the date or dates specified for the redemption thereof. The corporation shall furnish to the Local Government Commission such evidence as the Commission may require that the securities purchased will satisfy the requirements of this section.

No bonds, notes or other evidences of indebtedness shall be issued by a municipality or hospital authority to finance equipment for or the acquisition, extension, construction, reconstruction, improvement, enlargement, or betterment of any hospital facility when the facility is leased to a corporation, foreign or domestic, authorized to do business in North Carolina.

(d) The municipality or hospital authority shall comply with the following procedures before leasing, selling, or conveying a hospital facility, or part thereof:

(1) The municipality or hospital authority shall first adopt a resolution declaring its intent to sell, lease, or convey the hospital facility at a regular meeting on 10 days' public notice. Notice shall be given by publication in one or more papers of general circulation in the affected area describing the intent to lease, sell, or convey the hospital facility involved, known potential buyers or lessees, a solicitation of additional interested buyers or lessees and intent to negotiate the terms of the lease or sale. Specific notice, given by certified mail, shall be given to the local office of each state-supported program that has made a capital expenditure in the hospital facility, to the Department of Human Resources, and to the Office of State Budget and Management.

(2) At the meeting to adopt a resolution of intent, the municipality or hospital authority shall request proposals for lease or purchase by direct solicitation of at least five prospective lessees or buyers. The solicitation shall include a copy of G.S. 131E-13.

(3) The municipality or hospital authority shall conduct a public hearing on the resolution of intent not less than 15 days after its adoption. Notice of the public hearing shall be given by publication at least 15 days before the hearing. All interested persons shall be heard at the public hearing.

(4) Before considering any proposal to lease or purchase, the municipality or hospital authority shall require information on charges, services, and indigent care at similar facilities owned or operated by the proposed lessee or buyer.

(5) Not less than 45 days after adopting a resolution of intent and not less than 30 days after conducting a public hearing on the resolution of intent, the municipality or hospital authority shall conduct a public hearing on proposals for lease or purchase that have been made. Notice of the public hearings shall be given by publication at least 10 days before the hearing. The notice shall state that copies of proposals for lease or purchase are available to the public.

(6) The municipality or hospital authority shall make copies of the proposals to lease or purchase available to the public at least 10 days before the public hearing on the proposals.

(7) Not less than 60 days after adopting a resolution of intent, the municipality or hospital authority at a regular meeting shall approve any lease, sale, or conveyance by a resolution. The municipality or hospital authority shall adopt this resolution only upon a finding that the lease, sale, or conveyance is in the public interest after considering whether the proposed lease, sale, or conveyance will meet the health-related needs of medically underserved groups, such as low income persons, racial and ethnic minorities, and handicapped persons. Notice of the regular meeting shall be given at least 10 days before the meeting and shall state that copies of the lease, sale, or conveyance proposed for approval are available.

(8) At least 10 days before the regular meeting at which any lease, sale, or conveyance is approved, the municipality or hospital authority shall make copies of the proposed contract available to the public.

(e) Notwithstanding the provisions of subsections (c) and (d) of this section or G.S. 131E-23, a hospital authority as defined in G.S. 131E-16(14) or a municipality may lease or sublease hospital land to a corporation or other business entity, whether for profit or not for profit, and may participate as an owner, joint venturer, or other equity participant with a corporation or other business entity for the development, construction, and operation of medical office buildings and other health care or hospital facilities, so long as the municipality, hospital authority, or other entity continues to maintain hospital facilities as required by subsection (a) of this section or as required by G.S. 131E-23(c).

(f) A municipality, public hospital, or hospital authority may permit or consent to the pledge of hospital land or leasehold estates to facilitate the development, construction, and operation of medical office buildings and other health care or hospital facilities. A municipality, public hospital, or hospital authority also may, as lessee, enter into master leases or agreements to fund for temporary vacancies relating to hospital land or hospital facilities for use in the provision of health care.

(g) Neither G.S. 153A-176 nor Article 12 of Chapter 160A of the General Statutes shall apply to leases, subleases, sales, or conveyances under this Chapter."

Section 3. G.S. 131E-16 reads as rewritten:

"**§ 131E-16. Definitions.**

As used in this Part, unless otherwise specified:

(1) 'Board of county commissioners' means the legislative body charged with governing the county.

(2) 'Bonds' means any bonds or notes issued by the hospital authority pursuant to this Part and the Local Government Finance Act, Chapter 159 of the General Statutes.

(3) 'City' means any city or town which is, or is about to be, included in the territorial boundaries of a hospital authority when created hereunder.

(4) 'City clerk' and 'mayor' means the clerk and mayor, respectively, of the city, or the officers thereof charged with the duties customarily imposed on the clerk and mayor, respectively.

(5) 'City council' means the legislative body, council, board of commissioners, board of trustees, or other body charged with governing the city or town.

(6) 'Commissioner' means one of the members of a hospital authority appointed in accordance with the provisions of this Part.

(7) 'Community general hospital' means a short-term nonfederal hospital that provides diagnostic and therapeutic services to patients for a variety of medical conditions, both surgical and nonsurgical, such services being available for use primarily by residents of the community in which it is located.

(8) 'Contract' means any agreement of a hospital authority with or for the benefit of an obligee whether contained in a resolution, trust indenture, mortgage, lease, bond or other instrument.

(9) 'Corporation, foreign or domestic, authorized to do business in North Carolina' means a corporation for profit or having a capital stock which is created and organized under Chapter 55 of the General Statutes or any other general or special act of this State, or a foreign corporation which has procured a certificate of authority to transact business in this State pursuant to Article 10 of Chapter 55 of the General Statutes.

(10) 'County' means the county which is, or is about to be, included in the territorial boundaries of a hospital authority when created hereunder.

(11) 'County clerk' and 'chairman of the board of county commissioners' means the clerk and chairman, respectively, of the county or the officers thereof charged with the duties customarily imposed on the clerk and chairman, respectively.

(12) 'Federal government' means the United States of America, or any agency, instrumentality, corporate or otherwise, of the United States of America.

(13) 'Government' means the State and federal governments and any subdivision, agency or instrumentality, corporate or otherwise, of either of them.

(14) 'Hospital authority' means a public body and a body corporate and politic organized under the provisions of this Part.

(15) 'Hospital facilities' means any one or more buildings, structures, additions, extensions, improvements or other facilities, whether or not located on the same site or sites, machinery, equipment, furnishings or other real or personal property suitable for health care or medical care; and includes, without limitation, general hospitals; chronic disease, maternity, mental, tuberculosis and other specialized hospitals; nursing homes, including skilled nursing facilities and intermediate care facilities; adult care homes for the aged and disabled; public health center facilities; housing or quarters for local public health departments; facilities for intensive care and self-care; clinics and outpatient facilities; clinical, pathological and other laboratories; health care research facilities; laundries; residences and training facilities for nurses, interns, physicians and other staff members; food preparation and food service facilities; administrative buildings, central service and other administrative facilities; communication, computer and other electronic facilities; fire-fighting facilities; pharmaceutical and recreational facilities; storage space; X ray, laser, radiotherapy and other apparatus and equipment; dispensaries; utilities; vehicular parking lots and garages; office facilities for hospital staff members and physicians; and such other health and hospital facilities customarily under the jurisdiction of or provided by hospitals, or any combination of the foregoing, with all necessary, convenient or related interests in land, machinery, apparatus, appliances, equipment, furnishings, appurtenances, site preparation, landscaping and physical amenities.

(15.1) 'Hospital land' means air and ground rights to unimproved real property held either in fee or by lease, with all easements, rights-of-way, appurtenances, landscaping, and physical amenities such as utilities, parking lots, and garages, but excluding other improvements to land described in G.S. 131E-6(4) and subsection (15) of this section.

(16) 'Municipality' means any county, city, town or incorporated village, other than a city as defined above, which is located within or partially within the territorial boundaries of an authority.

(17) 'Real property' means lands, lands under water, structures, and any and all easements, franchises and incorporeal hereditaments and every estate and right therein, legal and equitable, including terms for years and liens by way of judgment, mortgage or otherwise.

(18) 'State' means the State of North Carolina."

Section 4. This act is effective when it becomes law.

cm/law

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H **1**

HOUSE BILL 597

Short Title: Public Laws. (Public)

Sponsors: Representative McMahan.

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

March 25, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PUBLIC LAWS.

The General Assembly of North Carolina enacts:

Section 1. This act amends the public laws of North Carolina.

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

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar, and Operations of the House.**

☐ Committee Substitute for
H.B. 631 A BILL TO BE ENTITLED AN ACT RELATING TO FORSYTH COUNTY.

☐ 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 Finance)

☐ 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.

☐ 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 D

HOUSE BILL 631
Proposed Committee Substitute H631-PCS7245

Short Title: Forsyth Room Tax Distribution. (Local)

Sponsors:

Referred to:

March 26, 1997

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE FORMULA FOR DISTRIBUTING THE PROCEEDS OF THE FORSYTH COUNTY OCCUPANCY TAXES.

The General Assembly of North Carolina enacts:

Section 1. Section 28 of Chapter 908 of the 1983 Session Laws, as amended, reads as rewritten:

"Sec. 28. Disposition of ~~Taxes Collected.~~ Two Percent (2%) and One Percent (1%) Taxes. (a) Forsyth County shall remit the net proceeds of the occupancy ~~tax~~ taxes levied under Sections 24, 25, and 30.1 of this Part on a quarterly basis as follows: ~~(i) five~~

(1) Five percent (5%) of the net proceeds shall be divided among the municipalities in Forsyth County, other than Winston-Salem, on a pro rata ~~basis; and (ii) the~~ basis.

(2) If ninety-five percent (95%) of the net proceeds of the taxes levied on businesses located in a municipality in Forsyth County, other than Winston-Salem, for a calendar quarter exceeds the amount the municipality receives under subdivision (1) of this subsection, then the excess shall be distributed to that municipality.

(3) The remaining net proceeds shall be remitted to the Forsyth County Tourism Development Authority.

'Net proceeds' means gross proceeds less the cost to the county of administering and collecting the tax.

(b) A municipality may expend funds distributed to it pursuant to subsection (a) only for economic development and cultural and recreational purposes. The Forsyth County Tourism Development Authority shall expend the funds distributed to it pursuant to subsection (a) to further the development of travel, tourism, and conventions within Forsyth County. The Forsyth County Tourism Development Authority may not use more than ten percent (10%) of the funds distributed to it pursuant to subsection (a) for administrative expenses."

Section 2. Section 30.2 of Part VII of Chapter 908 of the 1983 Session Laws, as enacted by Chapter 870 of the 1989 Session Laws, reads as rewritten:

"Sec. 30.2. Additional Tax. (a) In addition to the taxes authorized by Sections 24, 25, and 30.1 of this Part, the Forsyth County Board of Commissioners may levy a room occupancy and tourism development tax of three percent (3%) of the gross receipts derived from the rental of accommodations taxable under those sections. The levy, collection, administration, and repeal of the tax authorized by this section shall be in accordance with Sections 24 through 27 and 29 through 30 of this Part. Forsyth County may not levy a tax under this section unless it also levies taxes under Sections 24, 25, and 30.1 of this Part.

(b) The net proceeds of the tax levied under this section shall be distributed as follows:

(1) ~~(i) five~~ Five percent (5%) of the net proceeds shall be divided among the municipalities in Forsyth County, other than Winston-Salem, on a pro rata ~~basis; and (ii) the~~ basis.

(2) If ninety-five percent (95%) of the net proceeds of the taxes levied on businesses located in a municipality in Forsyth County, other than Winston-Salem, for a calendar quarter exceeds the amount the municipality receives under subdivision (1) of this subsection, then the excess shall be distributed to that municipality.

(3) The remaining net proceeds shall be divided among Forsyth County, the City of Winston-Salem, and the Forsyth County Tourism Development Authority on a pro rata basis.

'Net proceeds' means gross proceeds less the cost to the county of administering and collecting the tax.

(c) Forsyth County or a municipality may expend funds distributed to it pursuant to subsection (b) only for economic development and cultural and recreational purposes. The Forsyth County Tourism Development Authority shall expend the funds distributed to it pursuant to subsection (b) in accordance with Section 28(b) of this Part."

Section 3. This act becomes effective July 1, 1997, and applies to taxes levied on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 631
Proposed Committee Substitute H631-PCS7245

Short Title: Forsyth Room Tax Distribution. (Local)

Sponsors:

Referred to:

March 26, 1997

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE FORMULA FOR DISTRIBUTING THE PROCEEDS OF THE FORSYTH COUNTY OCCUPANCY TAXES.

The General Assembly of North Carolina enacts:

Section 1. Section 28 of Chapter 908 of the 1983 Session Laws, as amended, reads as rewritten:

"Sec. 28. Disposition of ~~Taxes Collected.~~ Two Percent (2%) and One Percent (1%) Taxes. (a) Forsyth County shall remit the net proceeds of the occupancy ~~tax~~ taxes levied under Sections 24, 25, and 30.1 of this Part on a quarterly basis as follows: ~~(i) five~~

(1) Five percent (5%) of the net proceeds shall be divided among the municipalities in Forsyth County, other than Winston-Salem, on a pro rata ~~basis; and (ii) the~~ basis.

(2) If ninety-five percent (95%) of the net proceeds of the taxes levied on businesses located in a municipality in Forsyth County, other than Winston-Salem, for a calendar quarter exceeds the amount the municipality receives under subdivision (1) of this subsection, then the excess shall be distributed to that municipality.

(3) The remaining net proceeds shall be remitted to the Forsyth County Tourism Development Authority.

'Net proceeds' means gross proceeds less the cost to the county of administering and collecting the tax.

(b) A municipality may expend funds distributed to it pursuant to subsection (a) only for economic development and cultural and recreational purposes. The Forsyth County Tourism Development Authority shall expend the funds distributed to it pursuant to subsection (a) to further the development of travel, tourism, and conventions within Forsyth County. The Forsyth County Tourism Development Authority may not use more than ten percent (10%) of the funds distributed to it pursuant to subsection (a) for administrative expenses."

Section 2. Section 30.2 of Part VII of Chapter 908 of the 1983 Session Laws, as enacted by Chapter 870 of the 1989 Session Laws, reads as rewritten:

"Sec. 30.2. Additional Tax. (a) In addition to the taxes authorized by Sections 24, 25, and 30.1 of this Part, the Forsyth County Board of Commissioners may levy a room occupancy and tourism development tax of three percent (3%) of the gross receipts derived from the rental of accommodations taxable under those sections. The levy, collection, administration, and repeal of the tax authorized by this section shall be in accordance with Sections 24 through 27 and 29 through 30 of this Part. Forsyth County may not levy a tax under this section unless it also levies taxes under Sections 24, 25, and 30.1 of this Part.

(b) The net proceeds of the tax levied under this section shall be distributed as follows:

(1) ~~(i) five~~ Five percent (5%) of the net proceeds shall be divided among the municipalities in Forsyth County, other than Winston-Salem, on a pro rata ~~basis; and (ii) the~~ basis.

(2) If ninety-five percent (95%) of the net proceeds of the taxes levied on businesses located in a municipality in Forsyth County, other than Winston-Salem, for a calendar quarter exceeds the amount the municipality receives under subdivision (1) of this subsection, then the excess shall be distributed to that municipality.

(3) The remaining net proceeds shall be divided among Forsyth County, the City of Winston-Salem, and the Forsyth County Tourism Development Authority on a pro rata basis.

'Net proceeds' means gross proceeds less the cost to the county of administering and collecting the tax.

(c) Forsyth County or a municipality may expend funds distributed to it pursuant to subsection (b) only for economic development and cultural and recreational purposes. The Forsyth County Tourism Development Authority shall expend the funds distributed to it pursuant to subsection (b) in accordance with Section 28(b) of this Part."

Section 3. This act becomes effective July 1, 1997, and applies to taxes levied on or after that date.

confpa

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 631

Short Title: Forsyth Local Act. (Local)

Sponsors: Representative Decker.

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

March 26, 1997

A BILL TO BE ENTITLED

AN ACT RELATING TO FORSYTH COUNTY.

The General Assembly of North Carolina enacts:

Section 1. This act relates to Forsyth County only.

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

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar, and Operations of the House**.

☐ Committee Substitute for
H.B. 649 A BILL TO BE ENTITLED AN ACT RELATING TO THE 53RD HOUSE OF REPRESENTATIVES DISTRICT.

☐ 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.

☐ 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 D

HOUSE BILL 649
Proposed Committee Substitute H649-PCS2298

Short Title: Abolish Cherokee Coroner. (Local)

Sponsors:

Referred to:

March 27, 1997

A BILL TO BE ENTITLED

AN ACT ABOLISHING THE OFFICE OF CORONER IN CHEROKEE COUNTY.

The General Assembly of North Carolina enacts:

Section 1. The office of Coroner in Cherokee County is abolished.

Section 2. Chapter 152 of the General Statutes is not applicable in Cherokee County.

Section 3. This act shall become effective upon the expiration of the term of the current coroner in Cherokee County.

unfav

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 649

Short Title: 53rd House Dist. Act. (Local)

Sponsors: Representative Carpenter.

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

March 27, 1997

A BILL TO BE ENTITLED

AN ACT RELATING TO THE 53RD HOUSE OF REPRESENTATIVES DISTRICT.

The General Assembly of North Carolina enacts:

Section 1. This act relates to the 53rd House District only.

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

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar, and Operations of the House**.

☐ Committee Substitute for
H.B. 464 A BILL TO BE ENTITLED AN ACT TO ENHANCE AND IMPROVE CHILD CARE 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.

Human Resources

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ 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 D

HOUSE BILL 464
Proposed Committee Substitute H464-PCS1339

Short Title: Enhance Child Care/AB. (Public)

Sponsors:

Referred to:

March 10, 1997

A BILL TO BE ENTITLED

AN ACT TO ENHANCE AND IMPROVE CHILD CARE IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

PART 1. ENHANCE AND IMPROVE CHILD CARE.

Section 1. The heading for Article 7, Chapter 110 of the General Statutes reads as rewritten:

"ARTICLE 7.

~~Day Care~~ Child Care Facilities."

Section 2. G.S. 110-85 reads as rewritten:

"**§ 110-85. Legislative intent and purpose.**

~~The~~ Recognizing the importance of the early years of life to a child's development, the General Assembly hereby declares its intent with respect to ~~day~~ the early care and education of children:

(1) The State should protect ~~the growing number of~~ children ~~who are placed~~ in ~~day care~~ child care facilities ~~or in child care arrangements when these children are under the supervision and in the care of persons other than their parents, grandparents, guardians or full-time custodians during the day.~~ by ensuring that these facilities provide a physically safe and healthy environment where the developmental needs of these children are met and where these children are cared for by qualified persons of good moral character.

~~(2) This protection should assure that such children are cared for by persons of good moral character, that their physical safety and moral environment are protected,~~

~~and that the day-care resources conform to minimum standards relating to the health and safety of the children receiving day-care.~~

(3) ~~This~~ Achieving this level of protection and early education requires the following ~~elements for a comprehensive approach:~~ elements: mandatory licensing of ~~day-care~~ child care ~~facilities under minimum standards;~~ facilities; promotion of higher ~~levels of day care than required for a license~~ quality child care through the development of ~~higher~~ enhanced standards which operators may comply with on a voluntary basis; ~~registration of child day care homes which are too small to be regulated through licensing;~~ and a program of education to help operators improve their programs and to ~~develop~~ deepen public understanding of ~~day-care~~ child care needs and ~~problems.~~ issues."

Section 3. G.S. 110-86 reads as rewritten:

"**§ 110-86. Definitions.**

Unless the context or subject matter otherwise requires, the terms or phrases used in this Article shall be defined as follows:

(1) Commission. The Child ~~Day-Care~~ Care Commission created under this Article.

(2) Child ~~day~~ care. ~~Any child care~~ A program or arrangement ~~wherein~~ where three or more children less than 13 years ~~old~~ old, who do not reside where the care is provided, receive care ~~away from their own home by~~ on a regular basis of at least once per week for more than four hours but less than 24 hours per day from persons other than their ~~parents, grandparents, aunts, uncles, brothers, sisters, first cousins,~~ guardians or full-time custodians, ~~or in the child's own home where other unrelated children are in care.~~ or from persons not related to them by birth, marriage or adoption. Child ~~day~~ care does not include ~~seasonal recreational programs operated for less than four consecutive months in a year. Child day care also does not include arrangements that provide only drop-in or short-term child care for parents participating in activities that are not employment related and where the parents are on the premises or otherwise easily accessible, such as drop-in or short-term child care offered in health spas, bowling alleys, shopping malls, resort hotels, and churches.~~ the following:

(a) Arrangements operated in the home of any child receiving care if all of the children in care are related to each other and no more than two additional children are in care;

(b) Recreational programs operated for less than four consecutive months in a year;

(c) Specialized activities or instruction such as athletics, dance, art, music lessons, horseback riding, gymnastics, or organized clubs for children, such as Boy Scouts, Girl Scouts, 4-H groups, or boys and girls clubs;

(d) Drop-in or short-term care provided while parents participate in activities that are not employment related and where the parents are on the premises or otherwise easily accessible, such as drop-in or short-term care provided in health spas, bowling alleys, shopping malls, resort hotels, or churches;

(e) Public schools or any child care program operated by a public school;

(f) Nonpublic schools described in Part 2 of Article 39 of Chapter 115C of the General Statutes that are accredited by the Southern Association of Colleges and Schools and that operate a child care facility as defined in subsection (3) of this section for less than six and one-half hours per day either on or off the school site;

(g) State-approved charter schools as described in Part 6A of Article 16 of Chapter 115C of the General Statutes.

(h) Bible schools conducted during vacation periods;

(i) Care provided by facilities licensed under Article 2 of Chapter 122C of the General Statutes;

(j) Cooperative arrangements among parents to provide care for their own children as a convenience rather than for employment; and

(k) Any child care program or arrangement consisting of two or more separate components, each of which operates for four hours or less per day with different children attending each component.

(3) Child ~~day~~ care facility. Includes ~~any~~ child ~~day~~ care ~~center~~ centers, family child care homes, and any other ~~or~~ child care arrangement not excluded by G.S. 110-86(2), ~~which~~ that provides ~~day~~ child ~~care for more than five children, not including the operator's own school-aged children, under the age of 13 years, on a regular basis of at least once per week for more than four hours but less than 24 hours per day;~~ care, regardless of the time of ~~day~~ day, ~~and regardless of whether the same or different children attend.~~ wherever operated, and whether or not operated for profit. ~~The following are not included: public schools; nonpublic schools described in Part 2 of Article 39 of Chapter 115C of the General Statutes and accredited by the Southern Association of Colleges and Schools, which regularly provide a course of grade school instruction and which do not provide child day care as defined in subdivision (2) of this section or operate a child day care facility as defined herein for children under five years of age for more than six and one-half hours per day either on or off the school site; summer camps having children in full-time residence; Bible schools~~

~~conducted during vacation periods; facilities licensed under Article 2 of Chapter 122C of the General Statutes; and cooperative arrangements among parents to provide care for their own children as a convenience rather than for employment.~~

~~Child day care facilities are separated by capacity into the following categories which determine applicable requirements and standards as established by the Commission pursuant to G.S. 110-88:~~

~~Facility Type~~
~~Large Home~~
~~Small Center~~
~~Medium Center~~
~~Large Center~~

~~The Commission shall establish the maximum capacity for each of the four categories of facilities.~~

a. A child care center is an arrangement where, at any one time, there are six or more preschool age children or nine or more school age children receiving child care.

b. A family child care home is a child care arrangement located in a residence where, at any one time, more than two children, but less than nine children, receive child care.

~~(4) Child day care home. Any day care program or child care arrangement wherein any person not excluded in G.S. 110-86(2) provides day care on a regular basis of at least once per week for more than four hours per day for more than two children under 13 years of age, but not to exceed a maximum of eight children at any one time, wherever operated, and whether or not operated for profit. Of the children present at any one time, no more than five children shall be preschool-aged, as defined in rules adopted by the Commission. The four hour limit applies regardless of the time of day and regardless of whether the same or different children attend. Cooperative arrangements among parents to provide care for their own children as a convenience rather than for employment are not included.~~

~~To determine whether a child care arrangement is a child day care home, all children shall be counted except the operator's own school-aged children and school-aged children who reside at the location of the day care home.~~

(4.1) Department. Department of Human Resources.

(5) Repealed by Session Laws 1975, c. 879, s. 15.

(6) License. A ~~license~~ permit issued by the Secretary to any ~~day-care~~ child care facility which meets the statutory standards established under this Article.

(7) Operator. Includes the owner, director or other person having primary responsibility for operation of a child ~~day~~ care facility subject to licensing.

(8) Secretary. The Secretary of the Department of Human Resources.

(9) Lead teacher. An individual who is responsible for planning and implementing the daily program of activities for a group of children in a child care center.

(10) Child care administrator. A person who is responsible for the operation of a child care center and is on site on a regular basis."

Section 4. G.S. 110-88 reads as rewritten:

"**§ 110-88. Powers and duties of the Commission.**

The Commission shall have the following powers and duties:

(1) To develop policies and procedures for the issuance of a license to any child ~~day~~ care facility ~~which~~ that meets all applicable standards established under this Article.

(1a) To adopt applicable rules and standards based upon the capacity of a child care facility.

(2) To require inspections by and satisfactory written reports from representatives of local or State health agencies and fire ~~and building~~ inspection agencies and from representatives of the Department prior to the issuance of a license to any child ~~day~~ care ~~facility.~~ center.

(2a) To require annually inspections by and satisfactory written reports from representatives of local or State health agencies and fire inspection agencies after a license is issued.

~~(3) To make rules establishing minimum and reasonable standards for the operation of child day care homes and the issuance of registration certificates. These rules shall establish minimum standards of health and safety that will be required in child day care homes and will recognize the vital role that parents and guardians play in the monitoring of the care provided in child day care homes.~~

(4) Repealed by Session Laws 1975, c. 879, s. 15.

(5) To ~~make~~ adopt rules and develop policies for implementation of this Article, including procedures for application, approval, ~~renewal~~ and revocation of licenses.

(6) To ~~make~~ adopt rules for the issuance of a provisional license that shall be in effect for no more than 12 consecutive months to a child ~~day~~ care facility ~~and a provisional registration certificate to a child day care home~~ that does not conform in every respect

with the standards established in this Article and rules adopted by the Commission pursuant to this ~~Article, provided that the Secretary finds that~~ Article but that ~~the operator~~ is making a reasonable effort to conform to the ~~standards, except that a provisional license or provisional registration certificate shall not be issued for more than 12 consecutive months and shall not be renewed.~~ standards.

(6a) To ~~make~~ adopt rules for administrative action against a child ~~day~~ care facility ~~or child day care home~~ when the Secretary's investigations pursuant to G.S. 110-105(a)(3) ~~or G.S. 110-105.1(a)(4)~~ substantiate that child abuse or neglect did occur in the ~~facility or home.~~ facility. The rules shall provide for ~~type~~ types of ~~sanction shall be determined by~~ sanctions which shall depend upon the severity of the incident and the probability of reoccurrence. The ~~administrative actions shall include~~ rules shall also provide for written warnings and special provisional ~~licenses or registration certificates.~~ licenses.

~~A written warning may be issued which shall specify any corrective action to be taken by the operator. The Department shall make an unannounced visit within one month after issuance of the written warning to determine whether the corrective action has occurred. If the corrective action has not occurred, a special provisional license or registration certificate may be issued.~~

~~When a special provisional license or registration certificate is issued, it shall require specific corrective action. It shall be in effect for no more than six months from imposition and shall not be renewed. imposition. The special provisional license or registration certificate and the letter which clearly states the reasons for the special provisional status shall be posted where parents can see them. Under the terms of the special provisional license or registration, the facility or home shall not enroll any new children until notified by the Department that it is satisfied the abusive or neglectful situation no longer exists. The Department shall make an unannounced visit at least every eight weeks during the period the special provisional license or registration certificate is in effect. Specific corrective action required by a written warning, special provisional license or special provisional registration certificate, or any other administrative penalty authorized by this Article may include the permanent removal from day care of the substantiated abuser or neglecter.~~

~~Nothing in this subdivision shall restrict the Secretary from using any other statutory or administrative remedies available.~~

(7) To develop and ~~promulgate~~ adopt voluntary enhanced program standards which reflect higher ~~levels of day~~ quality child care than

~~required by the standards established by this Article, which will recognize better physical facilities, more qualified personnel, and higher quality programs. The Commission may adopt rules for the issuance of two grades of licenses: an "A" license for compliance with the provisions of the Article, and an "AA" license for those licensees meeting the voluntary higher standards promulgated by the Commission.~~ the mandatory standards established by this Article. These enhanced program standards must address, at a minimum, staff/child ratios, staff qualifications, parent involvement, operational and personnel policies, developmentally appropriate curricula, and facility square footage.

(8) To develop a procedure by which the Department shall furnish those forms as may be required for implementation of this Article.

(9) Repealed by Session Laws 1985, c. 757, s. 156(66).

(10) To ~~develop~~ adopt rules for the issuance of a temporary license which shall expire in ~~90 days~~ six months and which may be issued to the operator of a new ~~facility~~ center or to the operator of a previously licensed ~~facility~~ center when a change in ownership or location occurs.

(11) To ~~develop~~ adopt rules for ~~the care of sick~~ child care facilities which provide care for children ~~in facilities and homes~~ who are mildly sick.

(12) To adopt rules regulating the amount of time a child care administrator shall be on site at a child care center."

Section 5. G.S. 110-90 reads as rewritten:

"**§ 110-90. Powers and duties of Secretary of Human Resources.**

The Secretary ~~of Human Resources~~ shall have the following powers and duties under the policies and rules of the Commission:

(1) To administer the licensing program for child ~~day~~ care ~~facilities and the registration system for child day care homes.~~ facilities.

(2) To obtain and coordinate the necessary services from other State departments and units of local government which are necessary to implement the provisions of this Article.

(3) To employ the administrative personnel and staff as may be necessary to implement this Article where required services, inspections or reports are not available from existing State agencies and units of local government.

(4) To issue a rated license ~~effective for one year~~ to any child ~~day~~ care facility which meets the standards established by this Article. The rating shall be based on program standards, education levels of staff, and compliance history of the child care facility.

(5) To revoke the license of any child ~~day~~ care facility ~~or the registration certificate of any child day care home which~~ that ceases to meet the standards established by this Article and rules

on these standards adopted by the Commission, or ~~which~~ that demonstrates a pattern of noncompliance with this Article or the rules, or to deny a license ~~or registration certificate~~ to any applicant that fails to meet the standards or the rules. These revocations and denials shall be done in accordance with the procedures set out in G.S. 150B and this Article and rules adopted by the Commission.

(6) To prosecute or defend on behalf of the State, through the office of the Attorney General, any legal actions arising out of the administration or enforcement of this Article.

(7) To promote and coordinate educational programs and materials for operators of child ~~day~~ care facilities ~~and child day care homes~~ which are designed to improve the quality of ~~day~~ child care available in the State, using the resources of other State and local agencies and educational institutions where appropriate.

~~(8) To issue a rated license when any operator of a child day care facility required to be licensed hereunder or requiring licensure pursuant to subdivision (11) of this section has satisfied the Secretary that it has met the voluntary standards developed and adopted by the Commission.~~

(9) To levy a civil penalty pursuant to G.S. 110-103.1, or an administrative penalty pursuant to G.S. 110-102.2, or to order summary suspension of a ~~license or registration.~~ license. These actions shall be done in accordance with the procedures set out in G.S. 150B and this Article and rules adopted by the Commission.

(10) To issue final agency decisions in all G.S. 150B contested cases proceedings filed as a result of actions taken under this Article including, but not limited to the denial, ~~revocation~~ revocation, or suspension of a license or the levying of a civil or administrative penalty.

(11) To issue a license ~~or registration certificate~~ to any child care arrangement that does not meet the definition of child ~~day~~ care facility ~~or child day care home~~ in G.S. 110-86 whenever the operator of the arrangement chooses to comply with the requirements of this Article and the rules adopted by the ~~Commission,~~ Commission and voluntarily applies for a child ~~day~~ care facility ~~license or child day care home registration certificate.~~ license. The Commission shall adopt rules for the issuance or removal of the ~~licenses or registration certificates.~~ licenses."

Section 6. G.S. 110-90.1 is repealed.

Section 7. G.S. 110-90.2 reads as rewritten:

"**§ 110-90.2. Mandatory ~~day~~ child care providers' criminal history checks.**

(a) For purposes of this section:

(1) 'Child ~~day~~ care', notwithstanding the definition in G.S. 110-86, means any child ~~day~~ care provided in child ~~day~~ care facilities ~~and child-day-care homes, including child-day-care facilities and child day-care homes~~ required to be licensed ~~or registered~~ under this Article and ~~nonregistered~~ nonlicensed child ~~day~~ care homes approved to receive or receiving State or federal funds for providing child ~~day~~ care.

(2) 'Child ~~day~~ care provider' means a person who:

a. Is employed by or seeks to be employed by a child ~~day~~ care facility ~~or child-day-care home~~ providing child ~~day~~ care as defined in subdivision (1) of this ~~subsection;~~ subsection and has contact with the children; ~~or~~

b. Owns or operates or seeks to own or operate a child ~~day~~ care facility or ~~child-day-care home~~ a nonlicensed child care home providing child ~~day~~ care as defined in subdivision (1) of this ~~subsection.~~ subsection; or

c. Is a member of the household in a family child care home or nonlicensed child care home and is over 15 years old and is present when children are in care. This subdivision shall apply only to new family child care homes and nonlicensed homes beginning March 1, 1998.

(3) 'Criminal history' means a county, state, or federal criminal history of conviction or pending indictment of a crime, whether a misdemeanor or a felony, that bears upon an individual's fitness to have responsibility for the safety and well-being of children as set forth in ~~G.S. 110-90.1.~~ G.S. 110-91(8). Such crimes include the following North Carolina crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 6, Homicide; Article 7A, Rape and Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 26, Offenses Against Public Morality and Decency; Article 27, Prostitution; Article 39, Protection of Minors; Article 40, Protection of the Family; and Article 59, Public Intoxication. Such crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states.

(b) Effective January 1, 1996, the Department shall ensure that the criminal history of all child ~~day~~ care providers is checked and a determination is made of the

child ~~day~~ care provider's fitness to have responsibility for the safety and well-being of children based on the criminal history. The Department shall ensure that child ~~day~~ care providers who have lived in North Carolina continuously for the previous five years are checked for county and State criminal histories. The Department shall ensure that all other child ~~day~~ care providers are checked for county, State, and national criminal histories. The Department may prohibit a child ~~day~~ care provider from providing child ~~day~~ care if the Department determines that the child ~~day~~ care provider is unfit to have responsibility for the safety and well-being of children based on the criminal history, in accordance with ~~G.S. 110-90.1.~~ G.S. 110-91(8).

(c) The Department of Justice shall provide to the Division of Child Development, Department of Human Resources, the criminal history from the State and National Repositories of Criminal Histories of any child ~~day~~ care provider as requested by the Division.

The Division shall provide to the Department of Justice, along with the request, the fingerprints of the provider to be checked, any additional information required by the Department of Justice, and a form consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the repositories signed by the child ~~day~~ care provider to be checked. The fingerprints of the provider shall be forwarded to the State Bureau of Investigation for a search of their criminal history record file and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check.

At the time of application the ~~day~~ child care provider whose criminal history is to be checked shall be furnished with a statement substantially similar to the following:

'NOTICE

CHILD ~~DAY~~ CARE PROVIDER

MANDATORY CRIMINAL HISTORY CHECK

NORTH CAROLINA LAW REQUIRES THAT A CRIMINAL HISTORY CHECK BE CONDUCTED ON ALL PERSONS WHO PROVIDE CHILD ~~DAY~~ CARE IN A LICENSED ~~OR REGISTERED~~ CHILD ~~DAY~~ CARE FACILITY, AND ALL PERSONS PROVIDING CHILD ~~DAY~~ CARE IN ~~NONREGISTERED~~ NONLICENSED CHILD ~~DAY~~ CARE HOMES THAT RECEIVE STATE OR FEDERAL FUNDS.

'Criminal history' includes county, state, and federal convictions or pending indictments of any of the following crimes: the following Articles of Chapter 14 of the General Statutes: Article 6, Homicide; Article 7A, Rape and Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 26, Offenses Against Public Morality and Decency; Article 27, Prostitution; Article 39, Protection of Minors; Article 40, Protection of the Family; and Article 59, Public Intoxication; violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and

alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5; or similar crimes under federal law or under the laws of other states. Your fingerprints will be used to check the criminal history records of the State Bureau of Investigation (SBI) and the Federal Bureau of Investigation (FBI).

If it is determined, based on your criminal history, that you are unfit to have responsibility for the safety and well-being of children, you shall have the opportunity to complete, or challenge the accuracy of, the information contained in the SBI or FBI identification records.

If you disagree with the determination of the North Carolina Department of Human Resources on your fitness to provide child ~~day~~ care, you may file a civil lawsuit within 60 days after receiving written notification of disqualification in the district court in the county where you live.

Any child ~~day~~ care provider who intentionally falsifies any information required to be furnished to conduct the criminal history shall be guilty of a Class 2 misdemeanor.'

Refusal to consent to a criminal history check is grounds for the Department to prohibit the child ~~day~~ care provider from providing child ~~day~~ care. Any child ~~day~~ care provider who intentionally falsifies any information required to be furnished to conduct the criminal history shall be guilty of a Class 2 misdemeanor.

(d) The Department shall notify in writing the child ~~day~~ care provider, and the child ~~day~~ care provider's employer, if any, or for nonlicensed child care homes the local purchasing agency, of the determination by the Department whether the ~~day~~ child care provider is qualified to provide child ~~day~~ care based on the child ~~day~~ care provider's criminal history. In accordance with the law regulating the dissemination of the contents of the criminal history file furnished by the Federal Bureau of Investigation, the Department shall not release nor disclose any portion of the child ~~day~~ care provider's criminal history to the child ~~day~~ care provider or the child ~~day~~ care provider's ~~employer.~~ employer or local purchasing agency. The Department shall also notify the child ~~day~~ care provider of the procedure for completing or challenging the accuracy of the criminal history and the child ~~day~~ care provider's right to contest the Department's determination in court.

A child ~~day~~ care provider who disagrees with the Department's decision may file a civil action in the district court of the county of residence of the child ~~day~~ care ~~provider.~~ provider within 60 days after receiving written notification of disqualification.

(e) All the information that the Department receives through the checking of the criminal history is privileged information and is not a public record but is for the exclusive use of the Department and those persons authorized under this section to receive the information. The Department may destroy the information after it is used for the purposes authorized by this section after one calendar year.

(f) There shall be no liability for negligence on the part of an employer of a child ~~day~~ care provider, an owner or operator of a child ~~day~~ care ~~home or~~ facility, a State or local agency, or the employees of a State or local agency, arising from any action taken or omission by any of them in carrying out the provisions of this section. The immunity established by this subsection shall not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The immunity established by this subsection ~~shall be deemed to have been~~ is waived to the extent of indemnification by insurance, indemnification under Article 31A of Chapter 143 of the General Statutes, and to the extent sovereign immunity is waived under the Torts Claim Act, as set forth in Article 31 of Chapter 143 of the General Statutes.

(g) The child ~~day~~ care provider ~~who seeks to be employed in child day care and the child day care provider who seeks to own or operate child day care~~ shall pay the cost of the fingerprinting and the local ~~check at the time the child day care provider seeks to provide child day care.~~ check. The Department of Justice shall perform the State criminal history check. If the Department determines that a ~~day~~ child care provider who has lived continuously in the State less than five years is not disqualified based on the local and State criminal history record check, the Department shall request a criminal history check from the National Repository of Criminal History from the Department of Justice. The Department of Human Resources shall pay the cost for the national criminal history record check."

Section 8. (a) G.S. 110-91 reads as rewritten:

"**§ 110-91. Mandatory standards for a license.**

All child care facilities shall comply with all State and federal laws and local ordinances that pertain to child health, safety, and welfare. ~~The~~ Except as otherwise provided in this Article, the ~~following~~ standards in this section shall be complied with by all child ~~day~~ care ~~facilities, except as otherwise provided in this Article.~~ facilities. However, none of the standards in this section apply to the school age children of the operator of a child care facility but do apply to the preschool age children of the operator. Children 13 years of age or older may receive child care on a voluntary basis provided all applicable required standards are met. ~~These~~ The standards in this section, along with any other applicable State and federal laws or local ordinances, shall be the ~~only~~ required standards for the issuance of a license by the Secretary under the policies and procedures of the Commission except that the Commission may, in its discretion, adopt ~~less stringent~~ appropriate standards for the licensing of facilities ~~subject to licensing but~~ which provide care on a temporary, part-time, drop-in, seasonal, after-school or other than a full-time basis.

(1) Medical Care and Sanitation. -- The Commission for Health Services shall adopt rules which establish minimum sanitation standards for child ~~day~~ care facilities and their personnel. The sanitation rules adopted by the Commission for Health Services shall cover such matters as the cleanliness of floors, walls, ceilings, storage spaces, utensils, and other facilities; adequacy of ventilation; sanitation of water supply, lavatory facilities, toilet facilities, sewage disposal, food protection facilities,

bactericidal treatment of eating and drinking utensils, and solid-waste storage and disposal; methods of food preparation and serving; infectious disease control; sleeping facilities; and other items and facilities as are necessary in the interest of the public health. These rules shall be developed in consultation with the Department.

The Commission shall adopt rules for child care facilities to establish minimum requirements for child and staff health assessments and medical care procedures. These rules shall be developed in consultation with the Department of Environment, Health, and Natural Resources. Each child shall have a health assessment before being admitted or within 30 days following admission to a child ~~day~~ care facility. The assessment shall be done by: (i) a licensed physician, (ii) the physician's authorized agent who is currently approved by the North Carolina Medical Board, or comparable certifying board in any state contiguous to North Carolina, (iii) a certified nurse practitioner, or (iv) a public health nurse meeting the Department of Environment, Health, and Natural Resources' Standards for Early Periodic Screening, Diagnosis, and Treatment Program. ~~A record of each child's assessment shall be on file in the records of the facility.~~ However, no health assessment shall be required of ~~any~~ any staff or child who is and has been in normal health ~~and whose~~ when the staff, or the child's parent, guardian, or full-time custodian objects in writing to a health assessment on religious grounds which conform to the teachings and practice of any recognized church or religious denomination.

~~Each child shall be immunized in a manner that meets the requirements of Article 6 of Chapter 130A of the General Statutes and the pertinent rules adopted by the Commission for Health Services.~~

~~Each child day care facility shall have a plan of emergency medical care which shall include provisions for communication with and transportation to a specified medical resource, unless otherwise previously instructed. No child receiving day care shall be administered any drug or other medication without specific written instructions from a physician or the child's parent, guardian or full-time custodian. Emergency information on each child in care, including the names, addresses, and telephone numbers of the child's physician and parents, legal guardian or full-time custodian shall be readily available to the staff of the child day care facility while children are in care.~~

~~Nonprofit, tax-exempt organizations~~ Organizations that provide prepared meals to ~~day~~ child care centers only are considered ~~day~~ child care centers for purposes of compliance with appropriate sanitation standards.

(2) Health-Related Activities. -- ~~Each child in a child day care facility shall receive nutritious food and refreshments under rules to be adopted by the Commission.~~ The Commission shall adopt rules for child care

facilities to ensure that all children receive nutritious food and beverages according to their developmental needs. After consultation with the State Health Director, nutrition standards shall provide for ~~specific~~ requirements appropriate for ~~infants.~~ children of different ages. ~~Nutrition standards shall provide for specific requirements for children older than infants, including a daily food plan for meals and snacks served that shall be adequate for good nutrition. The number and size of servings and snacks shall be appropriate for the ages of the children and shall be planned according to the number of hours the child is in care. Menus for meals and snacks shall be planned at least one week in advance, dated, and posted where they can be seen by parents.~~

Each child ~~day~~ care facility shall have a rest period for each child in care after lunch or at some other appropriate time and arrange for each child in care to be out-of-doors each day if weather conditions permit.

~~Each child day care facility shall have a rest period for each child in care after lunch or at some other appropriate time.~~

~~No child day care facility shall care for more than 25 children in one group. Facilities providing care for 26 or more children shall provide for two or more groups according to the ages of children and shall provide separate supervisory personnel for each group.~~

(3) Location. -- Each child ~~day~~ care facility shall be located in an area which is free from conditions which are ~~deemed~~ considered hazardous to the physical and moral welfare of the children in care in the opinion of the ~~Commission.~~ Secretary.

(4) Building. -- Each child ~~day~~ care facility shall be located in a building which meets the appropriate requirements of the North Carolina Building Code under standards which shall be developed by the Building Code ~~Council, subject to adoption by the Commission~~ Council specifically for child ~~day~~ care facilities, including facilities operated in a private residence. These standards shall be consistent with the provisions of this Article. Satisfactorily written reports from representatives of building inspection agencies shall be required prior to the issuance of a license and whenever renovations are made to a child care center, or when the operator requests licensure of space not previously approved for child care.

(5) Fire Prevention. -- Each child ~~day~~ care facility shall be located in a building that meets ~~the~~ appropriate requirements for fire prevention and safe evacuation that apply to child ~~day~~ care facilities as established by the Department of ~~Insurance, subject to adoption by the Commission.~~ Insurance. ~~Each~~ Except for child care centers located on State property, each child ~~day~~ care ~~facility~~ center shall be inspected at least annually by a local fire

department or volunteer fire department for compliance with these ~~requirements, except that child day~~ requirements. Child care ~~facilities~~ centers located on State property shall be inspected at least annually by an official designated by the Department of Insurance.

(6) Space and Equipment Requirements. -- There shall be no less than 25 square feet of indoor space for each child for which a child ~~day~~ care ~~facility~~ center is licensed, exclusive of closets, passageways, kitchens, and bathrooms, and this floor space shall provide during rest periods 200 cubic feet of airspace per child for which the ~~facility~~ center is licensed. There shall be adequate outdoor play area for each child under rules adopted by the Commission which shall be related to the size ~~and type~~ of ~~facility,~~ the center and availability and location of outside land ~~area, except in~~ area. In no event shall the minimum required exceed 75 square feet per ~~child, which~~ child. The outdoor area shall be protected to assure the safety of the children receiving ~~day~~ child care by an adequate fence or other ~~protection; provided, however, that a~~ protection. A ~~facility~~ center operated in a public school shall be deemed to have adequate fencing ~~protection; provided, also, that a facility~~ protection. A center operating exclusively during the evening and early morning hours, between 6:00 P.M. and 6:00 A.M., need not meet the outdoor play area requirements mandated by this subdivision.

Each child ~~day~~ care facility shall provide indoor area equipment and furnishings that are child size, sturdy, safe, and in good repair. Each child care center shall provide outdoor play area equipment and surfacing that are child size, sturdy, free of hazards that pose a threat of serious injury to children while engaged in normal play activities, and in good repair. The Commission shall adopt standards to establish minimum requirements for equipment appropriate for the size of child care ~~facility being operated pursuant to G.S. 110-86(3).~~ facility. Space shall be available for proper storage of beds, cribs, mats, cots, sleeping garments, and linens as well as designated space for each child's personal belongings.

The Department shall develop guidelines pertaining to outdoor play area equipment and surfacing at child care centers. These guidelines shall not be considered rules under Chapter 150B of the General Statutes and are not binding upon child care operators. These guidelines shall be designed to assist operators in determining whether the equipment and surfacing they currently or intend to provide is child-size, sturdy, safe, and in good repair. Inspection of outdoor equipment and surfacing shall be included in

center inspections conducted pursuant to this Article. The Department shall make these guidelines available to operators and shall also make available information and technical assistance that will better enable operators to provide and maintain a safe outdoor play environment. A child care center operator shall make available to consumers of the center's services the most recent inspection report findings with respect to outdoor play area equipment and surfacing at the child care center.

Rules adopted by the Commission regarding outdoor play area equipment and surfacing at child care centers shall be limited to ensuring that outdoor play area equipment and surfacing at child care centers are free of hazards that pose a threat of serious injury to children while engaged in normal play activities.

(7) Staff-Child ~~Ratio.~~ Ratio and Group Size. -- In determining the staff-child ratio, all children younger than 13 years old shall be counted. The Commission shall adopt rules for child care centers regarding staff-child ratios, group sizes and multi-age groupings ~~for each category of facility~~ other than for infants and toddlers, provided that these rules shall be no less stringent than those currently required for staff-child ratios as enacted in Section 156(e) of Chapter 757 of the 1985 Session Laws. The staff-child ratios and group sizes for infants and toddlers shall be no less stringent than as follows:

Age	Ratio	Group Size
0 to 12 months	5	10
12 to 24 months	6	12
2 to 3 years	10	20.

No child care center shall care for more than 25 children in one group. Child care centers providing for 26 or more children shall provide for two or more groups according to the ages of children and shall provide separate supervisory personnel and separate identifiable space for each group.

(7a) Family Child Care Home Capacity. -- Of the children present at any one time in a family child care home, no more than five children shall be preschool aged, including the operator's own preschool age children.

(8) Qualifications for Staff. -- All child care center administrators shall be at least 21 years of age and have at least a North Carolina Early Childhood Administration Credential or its equivalent as defined by the Department. Each child ~~day~~ care ~~facility~~ center shall be under the direction or supervision of a ~~literate~~ person ~~at least 21 years of age.~~ meeting these requirements. All staff counted ~~in determining~~ toward meeting the required staff-child ratio shall be at least 16 years of age, provided that persons younger than 18

years of age work under the direct supervision of a ~~literate~~ credentialed staff person who is at least 21 years of age. All lead teachers in a child care center shall have at least a North Carolina Early Childhood Credential or its equivalent as determined by the Department.

The Department in collaboration with the North Carolina Institute for Early Childhood Professional Development shall establish categories to recognize the levels of education achieved by child care center administrators and teachers. The Department shall use these categories to establish appropriate staffing based on the size center and the individual staff responsibilities.

Effective January 1, 1998, an operator of a licensed family child care home shall be at least 21 old and have a high school diploma or its equivalent. Operators of a family child care home licensed prior to January 1, 1998 shall be at least 18 years of age and literate. Literate is defined as understanding licensing requirements and having the ability to communicate with the family and relevant emergency personnel. Any operator of a licensed family child care home shall be the person on site providing child care.

No person shall be an operator of nor be employed in a child ~~day~~ care facility who has been convicted of a crime involving child neglect, child abuse, or moral turpitude, or who is an habitually excessive user of alcohol or who illegally uses narcotic or other impairing drugs, or who is mentally or emotionally impaired to an extent that may be injurious to children.

The Commission shall adopt standards to establish ~~minimum~~ appropriate qualifications for ~~operators, supervisors, caregivers and~~ all other staff ~~who have direct contact with the children.~~ in child care centers. These standards shall reflect training, experience, education ~~or~~ and credentialing and shall be appropriate for the size ~~facility being operated according to the categories defined in G.S. 110-86(3).~~ center and the level of individual staff responsibilities. It is the intent of this provision to guarantee that all children in ~~day~~ child care are cared for by qualified ~~people but also to recognize that qualifications for good child care may not be limited to formal education or training standards. To this end, the standards adopted by the Commission pertaining to training and educational requirements shall include provision that these requirements may be met by informal as well as formal training and educational experience.~~ people. No requirements may interfere with the teachings or doctrine of any established religious organization.

(9) Records. -- Each child ~~day~~ care facility shall keep accurate records on each child receiving care in the child ~~day~~ care facility and on each staff member or other person delegated responsibility for the care of children in accordance with a form furnished or approved by the Commission, and shall submit ~~attendance reports~~ records as required by the Department.

~~Each child day care facility shall keep accurate records on each staff member or other person delegated responsibility for the care of children in accordance with a form approved by the Commission.~~

All records of any child ~~day~~ care facility, except financial records, shall be ~~subject to~~ available for review by the Secretary or by duly authorized representatives of the Department or a cooperating agency who shall be designated by the ~~Secretary.~~ Secretary and shall be submitted as required by the Department.

~~Any effort to falsify information provided to the Department shall be deemed by the Secretary to be evidence of violation of this Article on the part of the operator or sponsor of the child day care facility and shall constitute a cause for revoking or denying a license to this child day care facility.~~

(10) Each operator or staff member shall ~~truly and honestly show each~~ attend to any child in ~~that person's care true love, devotion and tender care.~~ a nurturing and appropriate manner, and in keeping with the child's developmental needs.

Each ~~day~~ child care facility shall have a written policy on discipline, describing the methods and practices used to discipline children enrolled in that facility. This written policy shall be discussed with, and a copy given to, each child's parent prior to the first time the child attends the facility. Subsequently, any change in discipline methods or practices shall be communicated in writing to the parents prior to the effective date of the change.

The use of corporal punishment as a form of discipline is prohibited in ~~day~~ child care facilities and may not be used by any operator or staff member of any ~~day~~ child care facility, except that corporal punishment may be used in ~~church~~ religious sponsored child ~~day~~ care facilities as defined in G.S. 110-106, only if (i) the ~~church~~ religious sponsored child ~~day~~ care facility files with the Department a notice stating that corporal punishment is part of the religious training of its program, and (ii) the ~~church~~ religious sponsored child ~~day~~ care facility clearly states in its written policy of discipline that corporal punishment is part of the religious training of its program. The written policy on discipline of ~~nonchurch~~ nonreligious sponsored child ~~day~~ care facilities shall clearly state the prohibition on corporal punishment.

(11) Staff Development. -- The Commission shall adopt minimum standards for ongoing staff development for ~~facilities.~~ facilities but limited to the following topic areas:

a. Planning a safe, healthy learning environment;
b. Steps to advance children's physical and intellectual development;
c. Positive ways to support children's social and emotional development;
d. Strategies to establish productive relationships with families;
e. Strategies to manage an effective program operation;
f. Maintaining a commitment to professionalism;
g. Observing and recording children's behavior;
h. Principles of child growth and development; and
i. Learning activities that promote inclusion of children with special needs.

These standards shall include annual requirements for ongoing ~~in-service training for all staff.~~ staff development appropriate to job responsibilities. Contact hours of inservice training received annually shall not carry over from year to year.

(12) ~~Planned Age~~ Developmentally Appropriate Activities. -- Each ~~child day care~~ facility shall have ~~a planned schedule of activities posted in a prominent place to enable parents to review it, and a written plan of age~~ developmentally appropriate activities ~~available to parents. Each facility shall have age appropriate activities and play materials to implement the written plan.~~ and play materials. The Commission shall establish minimum standards for ~~age-appropriate~~ developmentally appropriate activities ~~appropriate~~ for ~~each category of facility as defined in G.S. 110-86(3).~~ child care facilities. Each child care facility shall have a planned schedule of developmentally appropriate activities posted in a prominent place for parents to review and the appropriate materials and equipment available to implement the scheduled activities. Each child care center shall make four of the following activity areas available daily: art and other creative play, children's books, blocks and block building, manipulatives, and family living and dramatic play.

(13) Transportation. -- ~~All child day care facilities shall abide by North Carolina law regulating the use of seat belts and child passenger restraint devices. All vehicles operated by any facility staff person or volunteer to transport children shall be properly equipped with appropriate seat belts or child restraint devices as approved by the Commissioner of Motor Vehicles.~~ ~~Each~~ When a child care facility staff person or a volunteer of a child care facility transports children in a vehicle, each adult and child shall be restrained by an

appropriate seat safety belt or restraint device when the vehicle is in motion. ~~These restraint regulations do not apply to vehicles not required by federal law to be equipped with seat restraints. All vehicles used to transport children shall meet and maintain the safety inspection standards of the Division of Motor Vehicles of the Department of Transportation and the facility shall comply with all other applicable State and federal laws and regulations concerning the operation of a motor vehicle.~~ Children may never be left unattended in a vehicle.

The ratio of adults to children in child ~~day~~ care vehicles may not be less than the staff/child ratios prescribed by ~~G.S. 110-91(7).~~ G.S. 110-91(7) and G.S. 110-91(7a). The Commission shall adopt standards for transporting children under the age of two, including standards addressing this particular age's staff/child ratio during transportation.

(14) Any effort to falsify information provided to the Department shall be considered by the Secretary to be evidence of violation of this Article on the part of the operator or sponsor of the child care facility and shall constitute a cause for revoking or denying a license to such child care facility."

(b) The provision in G.S. 110-91(8) regarding child care center administrators is effective January 1, 2003. The provision in G.S. 110-91(8) regarding lead teachers is effective January 1, 2002.

Section 9. G.S. 110-92 reads as rewritten:

"**§ 110-92. Duties of State and local agencies.**

When requested by an operator of a ~~day-care facility~~ child care center or by the ~~Secretary~~ Secretary, it shall be the duty of local and district health departments to visit and inspect a ~~day-care facility~~ child care center to determine whether the ~~facility~~ center complies with the health and sanitation standards required by this Article and with the minimum sanitation standards adopted as rules by the Commission for Health Services as authorized by G.S. 110-91(1), and to submit written reports on ~~such~~ these visits or inspections to the Department on forms approved and provided by the Department of Environment, Health, and Natural Resources.

When requested by an operator of a ~~day-care facility~~ child care center or by the Secretary, it shall be the duty of the ~~local and district health departments, and any~~ building inspector, fire prevention inspector, or fireman employed by local government, or any fireman having jurisdiction, or other officials or personnel of local government to visit and inspect a ~~day-care facility~~ child care center for the purposes specified in this Article, including plans for evacuation of the premises and protection of children in case of fire, and to report on ~~such~~ these visits or inspections in writing to the Secretary so that ~~such~~ these reports may serve as the basis for action or decisions by the Secretary or Department as authorized by this Article."

Section 10. G.S. 110-93 reads as rewritten:

"**§ 110-93. ~~Licensing procedure.~~ Application for a license.**

(a) Each ~~operator of~~ person who seeks to operate a ~~day care~~ child care facility shall ~~annually~~ apply to the Department for a license. The application shall be in ~~such~~ the form ~~as is~~ required by the Department. Each operator seeking a license shall be responsible for ~~accompanying his application with~~ supplying with the application the necessary supporting data and reports to show conformity with rules adopted by the Commission for Health Services pursuant to G.S. 110-91(1) and with the standards established or authorized by this ~~Article~~ Article, including any required reports from the local and district health departments, local building inspectors, local firemen, voluntary firemen, and others, on forms which shall be provided by the Department.

(b) If an operator conforms to the rules ~~adopted by the Commission for Health Services pursuant to G.S. 110-91(1)~~ and ~~with~~ the standards established or authorized by this Article as shown in ~~his~~ the application and other supporting data, the Secretary ~~of Human Resources~~ shall issue a license ~~for no more than 12 months~~ that shall remain valid until the Secretary notifies the licensee otherwise pursuant to 150B-3 or other provisions of this Article, subject to suspension or revocation for cause as provided in this Article. If the applicant fails to conform to the required rules and standards, the Secretary may issue a provisional license under the policies of the ~~Commission provided that the~~ Commission. The Department shall notify the operator ~~shall be notified~~ in writing by registered or certified mail ~~of~~ the reasons the Department issued ~~for issuance of~~ a provisional license.

~~(c) Each licensed operator of a child day care facility must annually apply in order to renew the license and must accompany such renewal application with such supporting data and reports as are required to show conformity with the standards established under this Article.~~

(d) Repealed by Session Laws 1977, c. 929, s. 1."

Section 11. G.S. 110-94 reads as rewritten:

"**§ 110-94. Administrative Procedure Act.**

The provisions of ~~General Statutes~~ Chapter 150B of the General Statutes ~~known as the Administrative Procedure Act~~ shall be applicable to the ~~Commission and~~ Commission, to the rules ~~it~~ the Commission ~~adopts. The Administrative Procedure Act shall also apply~~ adopts, and to child ~~day~~ care contested cases. However, a child ~~day~~ care operator shall have 30 days to file a petition for a contested case pursuant to G.S. 150B-23. The contested case hearing shall be scheduled to be held within 120 days of the date the petition for a hearing is received, pursuant to G.S. 150B-23(a), in any contested case resulting from administrative action taken by the ~~Department~~ Secretary to revoke a ~~license,~~ license ~~registration certificate,~~ or Letter of Compliance or from administrative action taken in a situation in which child abuse or neglect in a child ~~day~~ care facility ~~or home~~ has been substantiated. A request for continuance of a hearing shall be granted upon a showing of good cause by either party."

Section 12. G.S. 110-98 reads as rewritten:

"**§ 110-98. Mandatory compliance.**

It shall be unlawful for any ~~operator or employee of a day care facility or day care home~~ person ~~to~~ to:

(1) ~~offer~~ Offer or provide ~~day~~ child care without complying with the provisions of this ~~Article.~~ Article; or

(2) Advertise without disclosing the child care facility's license or other identifying number that is on the license or the letter of compliance."

Section 13. G.S. 110-98.1 reads as rewritten:

"**§ 110-98.1. Prima facie evidence of existence of ~~day-care.~~ child care.**

A ~~child-care~~ child care arrangement providing ~~day~~ child care for more than two children for more than four hours per day on two or more consecutive days shall be prima facie evidence of the existence of a ~~day-care~~ child care ~~facility or day-care home.~~ facility."

Section 14. G.S. 110-99 reads as rewritten:

"**§110-99. Display of license.**

(a) Each ~~day-care~~ child care facility shall ~~maintain~~ display its current license ~~displayed~~ in a prominent place designated by the Department at all times so that the public may be on notice that the facility is licensed and may observe any grade or rating which may appear on the license. Any license issued to a child care facility under this Article shall remain the property of the State and may be removed by persons employed or designated by the Secretary in the event that the license is revoked or suspended, or in the event that the grade or rating is changed.

(b) A person who provides only drop-in or short term child care as described in G.S. 110-86(2)(d) shall notify the Department that the person is providing only drop-in or short term child care. Any person providing only drop-in or short term child care as described in G.S. 110-86(2)(d) shall display in a prominent place at all times a notice that the child care arrangement is not required to be licensed and regulated by the Department and is not licensed and regulated by the Department."

Section 15. G.S. 110-100 is repealed.

Section 16. G.S. 110-101 is repealed.

Section 17. G.S. 110-101.1 reads as rewritten:

"**§ 110-101.1. Corporal punishment banned in certain ~~'nonregistered'~~ nonlicensed homes.**

The use of corporal punishment as a form of discipline is prohibited in those ~~day~~ child care homes that are not required to be ~~registered~~ licensed under this Article but that receive State or federal subsidies for child ~~day~~ care unless this care is provided to children by their parents, stepparents, grandparents, aunts, uncles, step-grandparents, or great-grandparents. Care provided children by their parents, stepparents, grandparents, aunts, uncles, step-grandparents, or great-grandparents is not subject to this section. Religious sponsored ~~nonregistered~~ nonlicensed homes are also exempt from this section."

Section 18. G.S. 110-102 reads as rewritten:

"**§110-102. Information for parents.**

The Secretary ~~of Human Resources~~ shall provide to each operator of a ~~day-care~~ child care facility a summary of this Article for the parents, guardian, or full-time custodian of each child receiving ~~day~~ child care in the facility to be distributed by the

operator. The summary shall include the name and address of the Secretary ~~of Human Resources~~ and the address of the Commission. The summary shall also include a statement regarding the mandatory duty prescribed in G.S. 7A-543 of any person suspecting child abuse or neglect has taken place in ~~day~~ child care, or elsewhere, to report to the county Department of Social Services. The statement shall include the definitions of child abuse and neglect described in the Juvenile Code in G.S. 7A-517 and of child abuse described in the Criminal Code in G.S. 14-318.2 and G.S. 14- 318.4. The statement shall stress that this reporting law does not require that the person reporting reveal ~~his~~ the person's identity."

Section 19. G.S. 110-102.1 reads as rewritten:

"**§ 110-102.1. Reporting of missing or deceased children.**

(a) Operators and staff, as defined in G.S. 110-86(7), ~~110-90.1~~ and 110-91(8), or any adult present with the approval of the care provider in a ~~day-care~~ child care facility ~~or home,~~ as defined in ~~G.S. 110-86(3), (4)~~ G.S. 110-86(3) and 110-106, upon learning that a child which has been placed in their care or presence is missing, shall immediately report the missing child to law enforcement. For purposes of this Article, a child is anyone under the age of 18.

(b) If a child dies while in ~~day~~ child care, or of injuries sustained in ~~day~~ child care, a report of the death must be made by the ~~day~~ child care operator to the Secretary within 24 hours of the child's death or on the next working day."

Section 20. G.S. 110-103 reads as rewritten:

"**§ 110-103. Criminal penalty.**

Any person who violates the provisions of G.S. 110-98 through G.S. ~~110-100~~ 110-99 or G.S. 110-102 shall be guilty of a Class 1 ~~misdemeanor.~~ misdemeanor, except that ~~Any~~ any person operating a family child care home as defined in G.S. 110-86(3) ~~who violates G.S. 110-101~~ shall be guilty of a Class 3 misdemeanor."

Section 21. G.S. 110-103.1(a) reads as rewritten:

"(a) A civil penalty may be levied against any operator of any child ~~day~~ care facility ~~or home~~ who violates any provision of this Article. The penalty shall not exceed one thousand dollars ($1,000) for each violation documented on any given date. Every operator shall be provided a schedule of the civil penalties established by the Commission pursuant to this Article."

Section 22. G.S. 110-104 reads as rewritten:

"**§ 110-104. Injunctive relief.**

The Secretary or ~~his~~ the Secretary's designee may seek injunctive relief in the district court of the county in which a ~~day-care~~ child care facility ~~or day-care home~~ is located against the continuing operation of that ~~day-care~~ child care facility ~~or day-care home~~ at any time, whether or not any administrative proceedings are pending. The district court may grant injunctive relief, temporary, preliminary, or permanent, when there is any violation of this Article or of the rules promulgated by the Commission or the Commission for Health Services that threatens serious harm to children in the ~~day-care~~ child care ~~facility or day-care home,~~ facility, or when a final order to deny or revoke a license ~~or registration~~ has been violated, or when a ~~day-care~~ child care facility is operating without a ~~license or a day-care home is~~

~~operating without being registered,~~ license, or when a ~~day care~~ child care facility ~~or day care home~~ repeatedly violates the provisions of this Article or rules adopted pursuant to it after having been notified of the violation."

Section 23. G.S. 110-105 reads as rewritten:

"**§ 110-105. Authority to inspect facilities.**

(a) The Commission shall adopt standards and rules under this subsection which provide for the following types of inspections:

(1) An initial licensing ~~or certification~~ inspection, which shall not occur until the administrator of the facility receives prior notice of the initial inspection ~~or certification~~ visit;

(2) A plan for ~~routine inspections of~~ visits to all facilities, including announced and unannounced visits which shall be confidential unless a court orders its disclosure, and which ~~shall~~ may be conducted without prior notice to the facility;

(3) An inspection that may be conducted without notice, if there is probable cause to believe that an emergency situation exists or there is a complaint alleging a violation of licensure law. When the Department is notified by the county director of social services that the director has received a report of child abuse or neglect in a child ~~day care~~ care facility, or when the Department is notified by any other person that alleged abuse or neglect has occurred in a facility, the Commission's rules shall provide for an inspection conducted without notice to the child ~~day care~~ care facility to determine whether the alleged abuse or neglect has occurred. This inspection shall be conducted within seven calendar days of receipt of the report, and when circumstances ~~warrant~~ warrant, additional ~~visits, the second inspection shall be conducted within one month of the first visit.~~ visits shall be conducted.

The Secretary or the Secretary's designee, upon presenting appropriate credentials to the operator of the child ~~day care~~ care facility, ~~is authorized to~~ may perform inspections in accordance with the standards and rules promulgated under this subsection. The Secretary or the Secretary's designee may inspect any area of a building in which there is reasonable evidence that children are in care.

(b) If an operator refuses to allow the Secretary or ~~his~~ the Secretary's designee to inspect the ~~day care~~ child care facility, the Secretary shall seek an administrative warrant in accordance with G.S. 15-27.2."

Section 24. G.S. 110-105.1 is repealed.

Section 25. G.S. 110-105.2 reads as rewritten:

"**§ 110-105.2. Abuse and neglect violations.**

(a) For purposes of this Article, child abuse and neglect, as defined in G.S. 7A-517 and in G.S. 14-318.2 and G.S. 14-318.4, occurring in ~~day care~~ child care ~~facilities and homes,~~ facilities are violations of the licensure ~~and registration~~ standards and of the licensure ~~and registration~~ law.

(b) When an investigation pursuant to G.S. 110-105(a)(3) substantiates that child abuse or neglect did occur in a child care facility, the Department may issue a written warning which shall specify any corrective action to be taken by the operator. The Department shall make an unannounced visit within one month after issuance of the written warning to determine whether the corrective action has occurred. If the corrective action has not occurred, then the Department may issue a special provisional license.

(c) When the Department issues a special provisional license pursuant to this section, the Department shall send a letter which states the reasons for the special provisional status, and the license shall specify corrective action that shall be taken by the operator. A special provisional license issued pursuant to this section shall be in effect for no more than six months from issuance. The operator shall post, where parents can see them, the letter stating the reasons for the special provisional status and the special provisional license. Under the terms of the special provisional license, the Secretary may limit enrollment of new children until satisfied the abusive or neglectful situation no longer exists. The Department shall make unannounced visits as often as the Department believes it is necessary during the period the special provisional license is in effect.

(d) Specific corrective action required by a written warning, special provisional license, or any other administrative penalty authorized by this Article may include the permanent removal of the substantiated abuser or neglecter from child care.

(e) Nothing in this section shall restrict the Secretary from using any other statutory or administrative remedies available."

Section 26. G.S. 110-106 reads as rewritten:

"**§ 110-106. Religious sponsored ~~day-care~~ child care facilities.**

(a) The term '~~church-day-care~~ 'religious sponsored child care facility' as used ~~herein~~ in this section shall include any ~~day-care~~ child care facility or summer day camp operated by a church, synagogue or school of religious charter.

(b) ~~Reporting~~ Procedure Regarding ~~of Church Day Care~~ Religious Sponsored Child Care Facilities. --

(1) ~~Church-day~~ Religious sponsored child care facilities shall file with the Department a notice of intent to operate a ~~day~~ child care facility and the date it will begin operation at least 30 days prior to that date. Within 30 days after beginning operation, the facility shall provide to the Department written reports and supporting data which show the facility is in compliance with applicable provisions of G.S 110-91. After the ~~church-day~~ religious sponsored child care facility has filed this information with the Department, the facility shall be visited by a representative of the Department to ~~assure~~ ensure compliance with the applicable provisions of G.S. 110-91.

(2) Each ~~church-day-care~~ religious sponsored child care facility shall ~~annually~~ file with the Department a report indicating that it meets the minimum standards for facilities as provided in the applicable

provisions of G.S. ~~110-91.~~ 110-91 as required by the Department. The reports shall be in accordance with rules adopted by the Commission. Each ~~church day care~~ religious sponsored child care facility shall be responsible for ~~accompanying~~ supplying with its report ~~with~~ the necessary supporting data to show conformity with those minimum standards, including reports from the local and district health departments, local building inspectors, local firemen, volunteer firemen, and other, on forms which shall be provided by the Department.

(3) It shall be the responsibility of the Department to notify the facility if it fails to meet the minimum requirements. The Secretary shall be responsible for carrying out the enforcement provisions provided by the General Assembly in Article 7 of Chapter 110 including inspection to ~~insure~~ ensure compliance. The Secretary ~~shall be empowered to~~ may issue an order requiring a ~~church day care~~ religious sponsored child care facility which fails to meet the standards established pursuant to this Article to cease operating. A ~~church day care~~ religious sponsored child care facility may request a hearing to determine if it is in compliance with the applicable provisions of G.S. 110-91. If the Secretary determines that it is not, ~~it~~ the Secretary may order the facility to cease operation until it is in compliance.

(4) ~~Church day care~~ Religious sponsored child care facilities including summer day camps shall be exempt from the requirement that they obtain a license and that the license be displayed and shall be exempt from any subsequent rule or regulatory program not dealing specifically with the minimum standards as provided in the applicable provisions of G.S. 110-91. Nothing in this Article shall be interpreted to allow the State to regulate or otherwise interfere with the religious training offered as a part of any ~~church day care~~ religious sponsored child care program. Nothing in this Article shall prohibit any ~~church operated, synagogue operated, or religious affiliated~~ religious sponsored child care facility from becoming licensed by the State if it so chooses.

(5) ~~Church day care~~ Religious sponsored child care facilities found to be in violation of the applicable provisions of G.S. 110-91 shall be subject to the injunctive provisions of G.S. 110-104, except that they may not be enjoined for operating without a license. The Secretary ~~is empowered to~~ may seek an injunction against any ~~such~~ religious sponsored child care facility under the conditions specified in G.S. 110-104 with the above exception and when any ~~such~~ religious sponsored child care facility operates without submitting the required forms and following the procedures required by this Article.

(c) G.S. 110-91(8), G.S. 110-91(11), G.S. ~~110-91(12),~~ 110-91(12) ~~and the second paragraph of G.S. 110-91(8)~~ do not apply to religious sponsored ~~day care~~ child care facilities, and these facilities are exempt from any requirements prescribed by subsection (b) of this section that arise out of these provisions. ~~No staff qualifications other than those preseribed by the first paragraph of G.S. 110-91(8) shall apply to religious sponsored day care facilities.~~

(d) No person shall be an operator of nor be employed in a religious sponsored child care facility who has been convicted of a crime involving child neglect, child abuse, or moral turpitude, or who is a habitually excessive user of alcohol or who illegally uses narcotic or other impairing drugs, or who is mentally or emotionally impaired to an extent that may be injurious to children.

(e) Each religious sponsored child care center shall be under the direction or supervision of a literate person at least 21 years of age. All staff counted toward meeting the required staff/child ratio shall be at least 16 years old, provided that persons younger than 18 years old work under the direct supervision of a literate staff person at least 21 years old. Effective January 1, 1998, a person operating a religious sponsored family child care home must be at least 21 years old and literate. Persons operating religious sponsored family child care homes prior to January 1, 1998 shall be at least 18 years old and literate. The definition of literate in G.S. 110-91(8) shall apply to this subsection."

Section 27. G.S. 110-106.1 is repealed.

Section 28. Pursuant to G.S. 150B-21.7, rules adopted by the Child Care Commission pertaining to outdoor play area equipment and surfacing at child care centers that become effective on January 1, 1999, are repealed.

Section 28.1. The following rules are repealed:

10 NCAC 3U .0510(e), Activity Areas: Preschool Children Two Years and Older; and

10 NCAC 3U .0714(g), Other Staffing Requirements.

PART 2. STATUTORY TECHNICAL AND CONFORMING CHANGES.

Section 29. G.S. 7A-474.3(b) reads as rewritten:

" (b) Eligible Cases. Legal assistance shall be provided to eligible clients under this Article only in the following types of cases:

(1) Family violence or spouse abuse;

(2) Assistance for the disabled in obtaining federal Social Security benefits;

(3) Representation of eligible farmers faced with the potential of farm foreclosure;

(4) Representation of eligible clients over the age of 60 regarding the following matters:

a. Wills and estates;

b. Safe and sanitary housing;

c. Pensions and retirement rights;

d. Social Security and Medicare rights;

e. Access to health care;

f. Food and nutrition; and
g. Transportation.

(5) Representation of eligible clients designed to enable them to obtain the necessary skills and means to obtain meaningful employment at a decent wage and reduce the public welfare rolls; and

(6) Representation of eligible clients under the age of 21 or eligible families with legal problems affecting persons under the age of 21 regarding the following matters:
a. Financial support and custody of children;
b. ~~Day~~ Child care;
c. Child abuse or neglect;
d. Safe and sanitary housing;
e. Food and nutrition; and
f. Access to health care."

Section 30. G.S. 7A-517(5) reads as rewritten:

" (5) Caretaker. -- Any person other than a parent, guardian, or custodian who has responsibility for the health and welfare of a juvenile in a residential setting. A person responsible for a juvenile's health and welfare means a stepparent, foster parent, an adult member of the juvenile's household, an adult relative entrusted with the juvenile's care, or any person such as a house parent or cottage parent who has primary responsibility for supervising a juvenile's health and welfare in a residential child care facility or residential educational facility. 'Caretaker' also means any person who has the responsibility for the care of a juvenile in a ~~child day care home or~~ child ~~day~~ care facility as defined in Article 7 of Chapter 110 of the General Statutes and includes any person who has the approval of the care provider to assume responsibility for the juveniles under the care of the care provider. Nothing in this subdivision shall be construed to impose a legal duty of support under Chapter 50 or Chapter 110 of the General Statutes. The duty imposed upon a caretaker as defined in this subdivision shall be for the purpose of Chapter 7A of the General Statutes only."

Section 31. G.S. 7A-542 reads as rewritten:

"§ 7A-542. Protective services.

The Director of the Department of Social Services in each county of the State shall establish protective services for juveniles alleged to be abused, neglected, or dependent.

Protective services shall include the investigation and screening of complaints, casework or other counseling services to parents or other caretakers as provided by the director to help the parents or other caretakers and the court to prevent abuse or neglect, to improve the quality of child care, to be more adequate parents or caretakers, and to preserve and stabilize family life.

The provisions of this Article shall also apply to child ~~day~~ care facilities ~~and child day care homes~~ as defined in G.S. 110-86."

Section 32. G.S. 7A-543 reads as rewritten:

"§ 7A-543. Duty to report child abuse, neglect, dependency, or death due to maltreatment.

Any person or institution who has cause to suspect that any juvenile is abused, neglected, or dependent, as defined by G.S. 7A-517, or has died as the result of maltreatment, shall report the case of that juvenile to the Director of the Department of Social Services in the county where the juvenile resides or is found. The report may be made orally, by telephone, or in writing. The report shall include information as is known to the person making it including the name and address of the juvenile; the name and address of the juvenile's parent, guardian, or caretaker; the age of the juvenile; the names and ages of other juveniles in the home; the present whereabouts of the juvenile if not at the home address; the nature and extent of any injury or condition resulting from abuse, neglect, or dependency; and any other information which the person making the report believes might be helpful in establishing the need for protective services or court intervention. If the report is made orally or by telephone, the person making the report shall give the person's name, address, and telephone number. Refusal of the person making the report to give a name shall not preclude the Department's investigation of the alleged abuse, neglect, dependency, or death as a result of maltreatment.

Upon receipt of any report of child sexual abuse in a ~~day~~ child care ~~facility or day care home,~~ facility, the Director shall notify the State Bureau of Investigation within 24 hours or on the next work day. If child sexual abuse in a ~~day~~ child care facility ~~or day care home~~ is not alleged in the initial report, but during the course of the investigation there is reason to suspect that child sexual abuse has occurred, the Director shall immediately notify the State Bureau of Investigation. Upon notification that child sexual abuse may have occurred in a ~~day~~ child care ~~facility or day care home,~~ facility, the State Bureau of Investigation may form a task force to investigate the report."

Section 33. G.S. 7A-548 reads as rewritten:

"§ 7A-548. Duty of Director to report evidence of abuse, neglect; investigation by local law enforcement; notification of Department of Human Resources and State Bureau of Investigation.

(a) If the Director finds evidence that a juvenile may have been abused as defined by G.S. 7A-517(1), the Director shall make an immediate oral and subsequent written report of the findings to the district attorney or the district attorney's designee and the appropriate local law enforcement agency within 48 hours after receipt of the report. The local law enforcement agency shall immediately, but no later than 48 hours after receipt of the information, initiate and coordinate a criminal investigation with the protective services investigation being conducted by the county Department of Social Services. Upon completion of the investigation, the district attorney shall determine whether criminal prosecution is appropriate and may request the Director or the Director's designee to appear before a magistrate.

If the Director receives information that a juvenile may have been physically harmed in violation of any criminal statute by any person other than the juvenile's parent, guardian, custodian, or caretaker, the Director shall make an immediate oral and subsequent written report of that information to the district attorney or the district attorney's designee and to the appropriate local law enforcement agency within 48 hours after receipt of the information. The local law enforcement agency shall immediately, but no later than 48 hours after receipt of the information, initiate a criminal investigation. Upon completion of the investigation, the district attorney shall determine whether criminal prosecution is appropriate.

If the report received pursuant to G.S. 7A-543 involves abuse or neglect of a juvenile in ~~day~~ child care, ~~either in a day care facility or a day care home,~~ the Director shall notify the Department of Human Resources within 24 hours or on the next working day of receipt of the report.

(a1) If the Director finds evidence that a juvenile has been abused or neglected as defined by G.S. 7A-517 in a ~~day~~ child care ~~facility or day care home, he~~ facility, the Director shall immediately so notify the Department of Human Resources and, in the case of child sexual abuse, the State Bureau of Investigation, in such a way as does not violate the law guaranteeing the confidentiality of the records of the Department of Social Services.

(a2) Upon completion of the investigation, the Director shall give the Department written notification of the results of the investigation required by G.S. 7A-544. Upon completion of an investigation of child sexual abuse in a ~~day~~ child care ~~facility or day care home,~~ facility, the Director shall also make written notification of the results of the investigation to the State Bureau of Investigation.

The Director of the Department of Social Services shall submit a report of alleged abuse, neglect, or dependency cases or child fatalities that are the result of alleged maltreatment to the central registry under the policies adopted by the Social Services Commission.

(b) Repealed by Session Laws 1991, (Reg. Sess., 1992), c. 923, s. 4."

Section 34. G.S. 95-28.3(a) reads as rewritten:

" (a) It is the belief of the General Assembly that parent involvement is an essential component of school success and positive student outcomes. Therefore, employers shall grant four hours per year leave to any employee who is a parent, guardian, or person standing **in loco parentis** of a school-aged child so that the employee may attend or otherwise be involved at that child's school. However, any leave under this section is subject to the following conditions:

(1) The leave shall be at a mutually agreed upon time between the employer and the employee.

(2) The employer may require an employee to provide the employer with a written request for the leave at least 48 hours before the time desired for the leave.

(3) The employer may require that the employee furnish written verification from the child's school that the employee attended or was otherwise involved at that school during the time of the leave.

For the purpose of this section, 'school' means any (i) public school, (ii) private church school, church of religious charter, or nonpublic school described in Parts 1 and 2 of Article 39 of Chapter 115C of the General Statutes that regularly provides a course of grade school instruction, (iii) preschool, and (iv) child ~~day~~ care facility as defined in G.S. 110-86(3)."

Section 35. G.S. 105-60 reads as rewritten:

"**§ 105-60. ~~Day-care~~ Child care facilities.**

Every person, firm or corporation engaged in operating a ~~day-care~~ child care facility as defined in G.S. 110-86(3) shall pay an annual license tax for the privilege of operating a ~~day-care~~ child care facility. This privilege license tax for a ~~day-care~~ child care facility licensed by the Department of Human Resources under Article 7, Chapter 110 of the General Statutes shall be as follows: fifty dollars ($50.00) for fewer than 50 children; one hundred dollars ($100.00) for 50 to 99 children; two hundred dollars ($200.00) for 100 to 149 children; three hundred dollars ($300.00) for 150 to 200 children; and four hundred dollars ($400.00) for more than 200 children."

Section 36. G.S. 105-164.13(26a) reads as rewritten:

"(26a) Food sold not for profit by a public school cafeteria to a child ~~day~~ care center that participates in the Child and Adult Care Food Program of the Department of Public Instruction."

Section 37. G.S. 114-15.3 reads as rewritten:

"**§ 114-15.3. Investigations of child sexual abuse in ~~day~~ child care.**

The Director of the Bureau may form a task force to investigate and gather evidence following a notification by the director of a county department of social services, pursuant to G.S. 7A-543, that child sexual abuse may have occurred in a ~~day~~ child care ~~facility or day care home.~~ facility."

Section 38. G.S. 114-19.3(a) reads as rewritten:

" (a) Authority. -- The Department of Justice may provide to any of the following entities a criminal record check of an individual who is employed by that entity, has applied for employment with that entity, or has volunteered to provide direct care on behalf of that entity:

(1) Hospitals licensed under Chapter 131E of the General Statutes.
(2) Nursing homes or combination homes licensed under Chapter 131E of the General Statutes.
(3) Adult care homes licensed under Chapter 131D of the General Statutes.
(4) Home care agencies or hospices licensed under Chapter 131E of the General Statutes.
(5) Child placing agencies licensed under Chapter 131D of the General Statutes.
(6) Residential child care facilities licensed under Chapter 131D of the General Statutes.
(7) Hospitals licensed under Chapter 122C of the General Statutes.
(8) Area mental health, developmental disabilities, and substance abuse authorities licensed under Chapter 122C of the General

Statutes, including a contract agency of an area authority that is subject to the provisions of Article 4 of that Chapter.

(9) Licensed child ~~day~~ care facilities ~~and registered~~ and nonregistered child ~~day~~ care homes regulated by the State.

(10) Any other organization or corporation, whether for profit or nonprofit, that provides direct care or services to children, the sick, the disabled, or the elderly."

Section 39. G.S. 114-19.5 reads as rewritten:

"**§ 114-19.5. Criminal record checks of child ~~day~~ care providers.**

The Department of Justice may provide to the Division of Child Development, Department of Human Resources, the criminal history from the State and National Repositories of Criminal Histories in accordance with G.S. 110-90.2, of any child ~~day~~ care provider, as defined in G.S. 110-90.2. The Division shall provide to the Department of Justice, along with the request, the fingerprints of the provider to be checked, any additional information required by the Department of Justice, and a form consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the State or National Repositories signed by the child ~~day~~ care provider to be checked. The Division shall keep all information pursuant to this section privileged, as provided in G.S. 110-90.2(e). The Department of Justice shall charge a reasonable fee only for conducting the checks of the national criminal history records authorized by this section."

Section 40. G.S. 115C-468(c)reads as rewritten:

"(c) The Superintendent of Public Instruction may earmark up to twenty percent (20%) of the funds available for scholarship loans each year for awards to applicants who have been employed for at least one year as teacher assistants and who are currently employed as teacher assistants. Preference for these scholarship loans from funds earmarked for teacher assistants shall be given first to applicants who worked as teacher assistants for at least five years and whose positions as teacher assistants were abolished and then to applicants who already hold a baccalaureate degree or who have already been formally admitted to an approved teacher education program in North Carolina. The criteria for awarding scholarship loans to applicants who worked as teacher assistants for at least five years and whose positions as teacher assistants were abolished shall include whether the teacher assistant has been admitted to an approved teacher education program in North Carolina.

The Superintendent of Public Instruction may further earmark a portion of these funds each year for two-year awards to applicants who have been employed for at least one year as teacher assistants to attend community colleges to get other skills of use in public schools or to get an early childhood associate degree. The provisions of this Article shall apply to these scholarship loans except that a recipient of one of these scholarship loans may receive credit upon the amount due by reason of the loan as provided in G.S. 115C-471(5) or by working in a nonteaching position in the North Carolina public schools or by working in a licensed ~~day~~ child care center in North Carolina."

Section 41. G.S. 120-70.71 reads as rewritten:

"**§ 120-70.71. Powers and duties.**

The Commission shall study State government policy and programs affecting the family, specifically addressing family issues from the point of existing laws, governmental programs needed or already functioning, and current family life issues. The Commission shall work in close collaboration with various agencies and programs dealing with the family. Among the issues the Commission may consider studying are the following:

(1) The feasibility of establishing model projects that would be located primarily in low-income, high dropout rate communities in North Carolina:
   a. To teach adults in the family to read; and
   b. To provide after school care for school-aged children using volunteers who could be retirees in the provision of services;

(2) The fiscal impact of a cash stipend created by a tax deduction or by industry dollars to promote literacy or the obtainment of a General Education Development Degree for persons who are presently illiterate or outside the school system;

(3) The need for ~~day~~ care for children and senior citizens, an increase in Aid to Families with Dependent Children payments and eligibility requirements, coordination of State law with federal welfare reform programs, in-home services for the elderly, additional funding for adult day care, and incentives for industries to develop ~~day~~ child care programs;

(4) The relationship between the decline of real income and the tax structure, college tax credits, the minimum wage, and welfare support systems;

(5) The State's efforts in the areas of adolescent pregnancy and teaching about adolescent sexuality;

(6) A comprehensive review of State and federal programs encouraging business and industry to provide adequate child care for their employees;

(7) An analysis of what the State is currently doing to encourage North Carolina businesses and industry to provide adequate child care for their employees;

(8) A survey of North Carolina employers that presently provide child care options for their employees and what types of options they provide;

(9) A comprehensive study of the types of tax incentives and other incentives that would encourage North Carolina businesses -- especially those that have 50 or more employees -- to either provide on-site child care facilities or provide other child care options and the cost to the State of these tax incentives;

(10) Recommendations of what the State could be doing to encourage North Carolina businesses to provide on-site child care facilities or other child care options for their employees;
(11) Recommendations of a comprehensive policy for North Carolina to encourage businesses within the State to provide on-site child care facilities or other child care options for their employees;
(12) The concept of requiring coverage of child health supervision services in all health insurance policies sold or delivered within the State;
(13) The issue of domestic violence; and
(14) The problem of suicide among the youth of the State."

Section 42. G.S. 120-123(44) reads as rewritten:

"(44) The Child ~~Day Care~~ Care Commission, as established by G.S. 143B-168.3."

Section 43. G.S. 122C-22(a) reads as rewritten:

" (a) The following are excluded from the provisions of this Article and are not required to obtain licensure under this Article:
(1) Physicians and psychologists engaged in private office practice;
(2) General hospitals licensed under Article 5 of Chapter 131E of the General Statutes, that operate special units for the mentally ill, developmentally disabled, or substance abusers;
(3) State and federally-operated facilities;
(4) Adult care homes licensed under Chapter 131D of the General Statutes;
(5) Developmental child ~~day~~ care centers licensed under Article 7 of Chapter 110 of the General Statutes;
(6) Persons subject to licensure under rules of the Social Services Commission;
(7) Persons subject to rules and regulations of the Division of Vocational Rehabilitation Services; and
(8) Facilities that provide occasional respite care for not more than two individuals at a time; provided that the primary purpose of the facility is other than as defined in G.S. 122C-3(14)."

Section 44. G.S. 122E-8(d) reads as rewritten:

(d) The Agency shall also give priority to applications which include provisions such as:
(1) Interest rates and loan terms more favorable than those conventionally offered;
(2) Developer contributions to project costs;
(3) Local government contributions to project costs, including infrastructure improvements, contributions of publicly owned land for housing development, and the provision of funds for such services as ~~day~~ child care and job training;

(4) Coordination with other housing and/or infrastructure investments in the community;
(5) Provision of housing to the disabled, single parent households, or rurally isolated households; or
(6) Provision of housing to persons whose current housing fails to meet basic standards of health and safety and who have little prospect of improving the condition of their housing except by residing in an eligible project receiving assistance under this Chapter."

Section 45. G.S. 130A-131.5 reads as rewritten:

"**§ 130A-131.5. Commission to adopt rules.**

(a) For the protection of the public health, the Commission shall adopt rules for the prevention and control of lead poisoning in children. The rules shall include provisions for:

(1) Reporting by laboratories of elevated blood lead levels in children less than six years of age; the rules shall specify the public health agency to which reports shall be made, and shall establish when a blood lead level is considered to be elevated. The rules shall further provide the specific information to be included in the reports, the time limits for reporting, and the form in which reports shall be submitted;
(2) Investigation by the Department to determine the source of elevated blood lead levels;
(3) Identification of lead poisoning hazards;
(4) Examination and testing of children less than six years of age who are reasonably suspected of having elevated blood lead levels; and
(5) Abatement of lead poisoning hazards in dwellings, schools and ~~day~~ child care facilities determined by the Department to be a potential source of an elevated blood lead level in a child less than six years of age.

(b) Abatement orders issued by the Department pursuant to this section shall require elimination of the lead poisoning hazard. Removal of children from the dwelling, school, or ~~day~~ child care facility shall not constitute abatement if the property continues to be used for a dwelling, school, or ~~day~~ child care facility."

Section 46. G.S. 130A-136 reads as rewritten:

"**§ 130A-136. School principals and ~~day-care~~ child care operators to report.**

A principal of a school and an operator of a ~~day-care~~ child care facility, as defined in G.S. 110-86(3), who has reason to suspect that a person within the school or ~~day-care~~ child care facility has a communicable disease or communicable condition declared by the Commission to be reported, shall report information required by the Commission to the local health director of the county or district in which the school or facility is located."

Section 47. G.S. 130A-155 reads as rewritten:

"**§130A-155. Submission of certificate to ~~day-care~~ child care facility and school authorities; record maintenance; reporting.**

(a) No child shall attend a school (K-12), whether public, private or religious, or a ~~day-care~~ child care facility as defined in G.S. 110- 86(3), unless a certificate of immunization indicating that the child has received the immunizations required by G.S. 130A-152 is presented to the school or facility. The parent, guardian, or responsible person must present a certificate of immunization on the child's first day of attendance to the principal of the school or operator of the facility, as defined in G.S. 110-86(7). If a certificate of immunization is not presented on the first day, the principal or operator shall present a notice of deficiency to the parent, guardian or responsible person. The parent, guardian or responsible person shall have 30 calendar days from the first day of attendance to obtain the required immunization for the child. If the administration of vaccine in a series of doses given at medically approved intervals requires a period in excess of 30 calendar days, additional days upon certification by a physician may be allowed to obtain the required immunization. Upon termination of 30 calendar days or the extended period, the principal or operator shall not permit the child to attend the school or facility unless the required immunization has been obtained.

(b) The school or ~~day-care~~ child care facility shall maintain on file immunization records for all children attending the school or facility which contain the information required for a certificate of immunization as specified in G.S. 130A-154. These certificates shall be open to inspection by the Department and the local health department during normal business hours. When a child transfers to another school or facility, the school or facility which the child previously attended shall, upon request, send a copy of the child's immunization record at no charge to the school or facility to which the child has transferred.

(c) Within 60 calendar days after the commencement of a new school year, the school shall file an immunization report with the Department. The ~~day-care~~ child care facility shall file an immunization report annually with the Department. The report shall be filed on forms prepared by the Department and shall state the number of children attending the school or facility, the number of children who had not obtained the required immunization within 30 days of their first attendance, the number of children who received a medical exemption and the number of children who received a religious exemption.

(d) Any adult who attends school (K-12), whether public, private or religious, shall obtain the immunizations required in G.S. 130A-152 and shall present to the school a certificate in accordance with this section. The physician or local health department administering a required vaccine to the adult shall give a certificate of immunization to the person. The certificate shall state the person's name, address, date of birth and sex; the number of doses of the vaccine given; the date the doses were given; the name and addresses of the physician or local health department administering the required immunization; and other relevant information required by the Commission."

Section 48. The heading for Article 3E, Chapter 143 of the General Statutes reads as rewritten:

"ARTICLE 3E.

State/Public School Child ~~Day~~ Care Contracts."

Section 49. G.S. 143-64.50 reads as rewritten:

"§ 143-64.50. State/public school-contracted on-, near-site ~~day~~ child care facilities; location authorization; contract for program services authorization.

State agencies and local boards of education may contract with any city, county, or other political subdivision of the State, governmental or private agency, person, association, or corporation to establish child ~~day~~ care services in State buildings and public schools. If the child ~~day~~ care program is located in a State building that is not used for legislative activity, the procedure for approving the location of the program shall be pursuant to G.S. 143-341(4). If the child ~~day~~ care program is located in a State building used for legislative activity, the procedure for approving the location of the program shall be pursuant to G.S. 120-32.1. If the child ~~day~~ care program is located in any other State building, the procedure for contracting for child ~~day~~ care services shall be pursuant to G.S. 143-49(3). If the child ~~day~~ care program is located in a State building used for legislative activity, the procedure for contracting for child ~~day~~ care services shall be pursuant to G.S. 120-32(4).

Contracts for services awarded pursuant to this section are exempt from the provisions of G.S. 66-58(a) and the contract may provide for payment of rent by the lessee or the operator of the facility."

Section 50. G.S. 143-64.51 reads as rewritten:

"§ 143-64.51. State/public school-contracted child ~~day~~ care facilities; licensing requirements.

All child ~~day~~ care facilities established pursuant to this Article shall be licensed and regulated under the provisions of Article 7 of Chapter 110 of the General Statutes, entitled '~~Day~~ Child Care Facilities.'"

Section 51. G.S. 143-64.52 reads as rewritten:

"§ 143-64.52. State/public school-contracted child ~~day~~ care facilities; limitation of State/local board liability.

The operators of the child ~~day~~ care facilities established pursuant to this Article shall assume all financial and legal responsibility for the operation of the programs and shall maintain adequate insurance coverage for the operations taking place in the facilities. Neither the operator or any of the staff of the facilities are considered State employees or local board of education employees by virtue of this Article alone. The State or the local boards of education are financially and legally responsible only for the maintenance of the building."

Section 52. G.S. 143-576.2(b) reads as rewritten:

"(b) Each Local Team shall consist of the following persons:

(1) The director of the county department of social services, and a member of the director's staff;

(2) A local law enforcement officer, appointed by the board of county commissioners;

(3) An attorney from the district attorney's office, appointed by the district attorney;

(4) The executive director of the local community action agency, as defined by the Division of Economic Opportunity, Department of Human Resources, or the executive director's designee;
(5) The superintendent of each local school administrative unit located in the county, or the superintendent's designee;
(6) A member of the county board of social services, appointed by the chair of that board;
(7) A local mental health professional, appointed by the director of the area authority established under Chapter 122C of the General Statutes;
(8) The local guardian **ad litem** coordinator, or the coordinator's designee;
(9) The director of the local department of public health; and
(10) A local health care provider, appointed by the local board of health.

In addition, a Local Team that reviews the records of additional child fatalities shall include the following four additional members:

(1) An emergency medical services provider or firefighter, appointed by the board of county commissioners;
(2) A district court judge, appointed by the chief district judge in that district;
(3) A county medical examiner, appointed by the Chief Medical Examiner;
(4) A representative of a local ~~day~~ child care facility or Head Start program, appointed by the director of the county department of social services; and
(5) A parent of a child who died before reaching the child's eighteenth birthday, to be appointed by the board of county commissioners.

The Team Coordinator shall serve as an ex officio member of each Local Team that reviews the records of additional child fatalities. The board of county commissioners may appoint a maximum of five additional members to represent county agencies or the community at large to serve on any Local Team. Vacancies on a Local Team shall be filled by the original appointing authority."

Section 53. G.S. 143-599 reads as rewritten:

"**§ 143-599. Exemptions.**

All of the following facilities shall be exempt from the provisions of this Article:

(1) Any primary or secondary school or ~~day~~ child care center, except for a teacher's lounge.
(2) An enclosed elevator.
(3) Public school bus.
(4) Hospital, nursing home, rest home, and State facility operated under the authority of G.S. 122C-181.
(5) Local health department.

(6) Any nonprofit organization or corporation whose primary purpose is to discourage the use of tobacco products by the general public.
(7) Tobacco manufacturing, processing, and administrative facilities."

Section 54. G.S. 143B-138 reads as rewritten:

"**§ 143B-138. Department of Human Resources -- functions and organization.**

(a) Repealed by Session Laws 1989, c. 727, s. 5.

(b) All functions, powers, duties, and obligations heretofore vested in commissions, boards, councils, committees, or subunits of the Department of Human Resources which are not transferred by G.S. 143B-279.3 shall continue to be vested in the Department of Human Resources. These shall include, but are not limited to, the following:

(1) Division of Aging.
(2) Respite Care Program.
(3) Governor's Advisory Council on Aging.
(4) Division of Services for the Blind.
(5) Commission for the Blind.
(6) Professional Advisory Committee.
(7) Consumer and Advocacy Advisory Committee for the Blind.
(8) Division of Medical Assistance.
(9) Division of Mental Health, Developmental Disabilities, and Substance Abuse Services.
(10) Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services.
(11) Division of Social Services.
(12) Social Services Commission.
(13) Division of Facility Services.
(14) Medical Care Commission.
(15) Child ~~Day Care~~ Care Commission.
(16) Emergency Medical Services Advisory Council.
(17) Division of Vocational Rehabilitation.
(18) Division of Youth Services.
(19) Division of Schools for the Deaf and the Blind.
(20) Board of Directors of the Governor Morehead School.
(21) Board of Directors for the North Carolina Schools for the Deaf.
(22) North Carolina Council for the Hearing Impaired.
(23) Council on Developmental Disabilities.
(24) North Carolina Council on the Holocaust.

(c) All functions, powers, duties, and obligations heretofore vested in the Economic Opportunity Division of the Department of Natural Resources and Community Development are hereby transferred to and vested in the Department of Human Resources by a Type I transfer as defined in G.S. 143A-6.

(d) The Department of Human Resources is vested with all other functions, powers, duties, and obligations as are conferred by the Constitution and laws of this State."

Section 55. G.S. 143B-153(8) reads as rewritten:

"(8) The Commission may establish by regulation, except for Title XX services provided solely through the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, rates or fees for:

a. A fee schedule for the payment of the costs of necessary ~~day~~ child care in licensed facilities and registered plans for minor children of needy families.

b. A fee schedule for the payment by recipients for services which are established in accordance with Title XX of the Social Security Act and implementing regulations; and

c. The payment of an administrative fee not to exceed two hundred dollars ($200.00) to be paid by public or nonprofit agencies which employ students under the Plan Assuring College Education (PACE) program.

d. Child support enforcement services as defined by G.S. 110-130.1."

Section 56. G.S. 143B-168.3 reads as rewritten:

"§ 143B-168.3. Child ~~Day-Care~~ Care Commission -- powers and duties.

The Child Day-Care Licensing Commission of the Department of Administration is transferred, recodified, and renamed the Child ~~Day-Care~~ Care Commission of the Department of Human Resources with the power and duty to adopt rules to be followed in the licensing and operation of child ~~day~~ care facilities ~~and child day care homes~~ as provided by Article 7 of Chapter 110 of the General Statutes.

(a) The Child ~~Day-Care~~ Care Commission shall adopt rules:

(1) For the issuance of licenses to any ~~day~~ child care facility; and

(2) To ~~register child day care homes and to~~ adopt rules as provided by Article 7 of Chapter 110 of the General Statutes of the State of North Carolina, and to establish standards for ~~"AA"~~ enhanced program licenses, as authorized by G.S. 110-88(7).

(b) The Commission shall adopt rules consistent with the provisions of this Chapter. All rules not inconsistent with the provisions of this Chapter heretofore adopted by the Child Day-Care Licensing Commission shall remain in full force and effect unless and until repealed or superseded by action of the Child ~~Day-Care~~ Care Commission. All rules and regulations adopted by the Commission shall be enforced by the Department of Human Resources."

Section 57. G.S. 143B-168.4(a) reads as rewritten:

"§ 143B-168.4. Child ~~Day-Care~~ Care Commission -- members; selection; quorum.

(a) The Child ~~Day-Care~~ Care Commission of the Department of Human Resources shall consist of 15 members. Seven of the members shall be appointed by the Governor and eight by the General Assembly, four upon the recommendation of the President Pro Tempore of the Senate, and four upon the recommendation of the Speaker of the House of Representatives. Four of the members appointed by the Governor, two by the General Assembly on the recommendation of the President Pro

Tempore of the Senate, and two by the General Assembly on the recommendation of the Speaker of the House of Representatives, shall be members of the public who are not employed in, or providing, ~~day~~ child care and who have no financial interest in a ~~day~~ child care ~~facility or home.~~ facility. Two of the foregoing public members appointed by the Governor, one of the foregoing public members recommended by the President Pro Tempore of the Senate, and one of the foregoing public members recommended by the Speaker of the House of Representatives shall be parents of children receiving ~~day~~ child care services. Of the remaining two public members appointed by the Governor, one shall be a pediatrician currently licensed to practice in North Carolina. Three of the members appointed by the Governor shall be ~~day~~ child care providers, one of whom shall be affiliated with a for profit ~~day~~ child care ~~facility,~~ center, one of whom shall be affiliated with a for profit ~~day~~ family child care home, and one of whom shall be affiliated with a nonprofit ~~home or~~ facility. Two of the members appointed by the General Assembly on the recommendation of the President Pro Tempore of the Senate, and two by the General Assembly on recommendation of the Speaker of the House of Representatives, shall be ~~day~~ care providers, one affiliated with a for profit ~~day~~ care ~~facility or home,~~ facility, and one affiliated with a nonprofit ~~day~~ care ~~facility or home.~~ facility. None may be employees of the State."

Section 58. G.S. 143B-168.5 reads as rewritten:

"**§ 143B-168.5. Child ~~Day~~ Care -- special unit.**

There is established within the Department of Human Resources a special unit to deal primarily with violations involving child abuse and neglect in child ~~day~~ care arrangements. The Child ~~Day~~ Care Commission shall make rules for the investigation of reports of child abuse or neglect and for administrative action when child abuse or neglect is substantiated, pursuant to G.S. 110-88(6a), 110-105, and ~~110-105.1.~~ 110-105.2."

Section 59. G.S. 143B-168.14 reads as rewritten:

"**§ 143B-168.14. Local partnerships; conditions.**

(a) In order to receive State funds, the following conditions shall be met:

(1) Each local demonstration project shall be coordinated by a new local partnership responsible for developing a comprehensive, collaborative, long-range plan of services to children and families in the service-delivery area. The board of directors of each local partnership shall consist of members including representatives of public and private nonprofit health and human service agencies, ~~day~~ child care providers, the business community, foundations, county and municipal governments, local education units, and families. The Department, in cooperation with the North Carolina Partnership, may specify in its requests for applications the local agencies that shall be represented on a local board of directors. No existing local, private, nonprofit 501(c)(3) organization, other than one established on or after July 1, 1993, and that meets the guidelines for local partnerships as established under this Part,

shall be eligible to apply to serve as the local partnership for the purpose of this Part.

(2) Each local partnership shall agree to adopt procedures for its operations that are comparable to those of Article 33C of Chapter 143 of the General Statutes, the Open Meetings Law, and Chapter 132 of the General Statutes, the Public Records Law, and provide for enforcement by the Department.

(3) Each local partnership shall adopt procedures to ensure that all personnel who provide services to young children and their families under this Part know and understand their responsibility to report suspected child abuse, neglect, or dependency, as defined in G.S. 7A-517.

(4) Each local partnership shall participate in the uniform, standard fiscal accountability plan developed and adopted by the North Carolina Partnership.

(b) Each local partnership shall be subject to audit and review by the State Auditor under Article 5A of Chapter 147 of the General Statutes. The State Auditor shall conduct annual financial and compliance audits of the local partnerships."

Section 60. G.S. 143B-168.15 reads as rewritten:

§ 143B-168.15. Use of State funds.

(a) State funds allocated to local projects for services to children and families shall be used to meet assessed needs, expand coverage, and improve the quality of these services. The local plan shall address the assessed needs of all children to the extent feasible. It is the intent of the General Assembly that the needs of both young children below poverty who remain in the home, as well as the needs of young children below poverty who require services beyond those offered in child care settings, be addressed. Therefore, as local partnerships address the assessed needs of all children, they should devote an appropriate amount of their State allocations, considering these needs and other available resources, to meet the needs of children below poverty and their families.

(b) Depending on local, regional, or statewide needs, funds may be used to support activities and services that shall be made available and accessible to providers, children, and families on a voluntary basis. Of the funds allocated to local partnerships that are designated by the Secretary for direct services, seventy-five percent (75%) shall be used for any one or more of the following activities and services:

(1) Child ~~day~~ care services, including:

a. Child ~~day~~ care subsidies to reduce waiting lists;

b. Raising the county child ~~day~~ care subsidy rate to the State market rate, if applicable, in return for improvements in the quality of child ~~day~~ care services;

c. Raising the income eligibility for child ~~day~~ care subsidies to seventy-five percent (75%) of the State median family income;

d. Start-up funding for child ~~day~~ care providers;
e. Assistance to enable child ~~day~~ care providers to conform to licensing and building code requirements;
f. Child ~~day~~ care resources and referral services;
g. Enhancement of the quality of child ~~day~~ care provided;
h. Technical assistance for child ~~day~~ care providers;
i. Quality grants for child ~~day~~ care centers or family child ~~day~~ care homes;
j. Expanded services or enhanced rates for children with special needs;
k. Head Start services;
l. Development of comprehensive child ~~day~~ care services that include child health and family support;
m. Activities to reduce staff turnover;
n. Activities to serve children with special needs;
o. Transportation services related to providing child ~~day~~ care services;
p. Evaluation of plan implementation of child ~~day~~ care services; and
q. Needs and resources assessments for child ~~day~~ care services.

(2) Family- and child-centered services, including early childhood education and child development services, including:
a. Enhancement of the quality of family- and child-centered services provided;
b. Technical assistance for family- and child-centered services;
c. Needs and resource assessments for family- and child-centered services;
d. Home-centered services; and
e. Evaluation of plan implementation of family- and child-centered services.

(3) Other appropriate activities and services for child ~~day~~ care providers and for family- and child-centered services, including:
a. Staff and organizational development, leadership and administrative development, technology assisted education, and long-range planning; and
b. Procedures to ensure that infants and young children receive needed health, immunization, and related services.

(c) Long-term plans for local projects that do not receive their full allocation in the first year, other than those selected in 1993, should consider how to meet the assessed needs of low-income children and families within their neighborhoods or communities. These plans also should reflect a process to meet these needs as additional allocations and other resources are received.

(d) State funds designated for start-up and related activities may be used for capital expenses or to support activities and services for children, families, and

providers. State funds designated to support direct services for children, families, and providers shall not be used for major capital expenses unless the North Carolina Partnership approves this use of State funds based upon a finding that a local partnership has demonstrated that (i) this use is a clear priority need for the local plan, (ii) it is necessary to enable the local partnership to provide services and activities to underserved children and families, and (iii) the local partnership will not otherwise be able to meet this priority need by using State or federal funds available to that local partnership. The funds approved for capital projects in any two consecutive fiscal years may not exceed ten percent (10%) of the total funds for direct services allocated to a local partnership in those two consecutive fiscal years.

(e) State funds allocated to local partnerships shall not supplant current expenditures by counties on behalf of young children and their families, and maintenance of current efforts on behalf of these children and families shall be sustained. State funds shall not be applied without the Secretary's approval where State or federal funding sources, such as Head Start, are available or could be made available to that county.

(f) Local partnerships may carry over funds from one fiscal year to the next, subject to the following conditions:

(1) Local partnerships in their first year of receiving direct services funding may, on a one-time basis only, carry over any unspent funds to the subsequent fiscal year.

(2) Any local partnership may carry over any unspent funds to the subsequent fiscal year, subject to the limitation that funds carried over may not exceed the increase in funding the local partnership received during the current fiscal year over the prior fiscal year.

(g) Not less than thirty percent (30%) of each local partnership's direct services allocation shall be used to expand child ~~day~~ care subsidies. To the extent practicable, these funds shall be used to enhance the affordability, availability, and quality of child ~~day~~ care services as described in this section."

Section 61. G.S. 143B-178 reads as rewritten:

"**§ 143B-178. Council on Developmental Disabilities -- definitions.**

The following definitions apply to this Chapter:

(1) The term 'developmental disability' means a severe, chronic disability of a person which:

a. Is attributable to a mental or physical impairment or combination of mental and physical impairments;

b. Is manifested before the person attains age 22, unless the disability is caused by a traumatic head injury and is manifested after age 22;

c. Is likely to continue indefinitely;

d. Results in substantial functional limitations in three or more of the following areas of major life activity: (i) self-care, (ii) receptive and expressive language, (iii) learning, (iv)

mobility, (v) self-direction, (vi) capacity for independent living, and (vii) economic self-sufficiency; and

e. Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

(2) The term 'services for persons with developmental disabilities,' as it is used in this Article, means:

a. Alternative community living arrangement services, employment related activities, child development services, and case management services; and

b. Any other specialized services or special adaptations of generic services including diagnosis, evaluation, treatment, personal care, ~~day~~ child care, adult care, special living arrangements, training, education, sheltered employment, recreation and socialization, counseling of the individual with such a disability and of his family, protective and other social and sociolegal services, information and referral services, follow-along services, nonvocational social-developmental services, and transportation services necessary to assure delivery of services to persons with developmental disabilities, and services to promote and coordinate activities to prevent developmental disabilities.

Section 62. G.S. 153A-234 reads as rewritten:

"**§153A-234. Fire marshal.**

A county may appoint a fire marshal and employ persons as his assistants. A county may also impose any duty that might be imposed on a fire marshal on any other officer or employee of the county. The board of commissioners shall set the duties of the fire marshal, which may include but are not limited to:

(1) Advising the board on improvements in the fire-fighting or fire prevention activities under the county's supervision or control.

(2) Coordinating fire-fighting and training activities under the county's supervision or control.

(3) Coordinating fire prevention activities under the county's supervision or control.

(4) Assisting incorporated volunteer fire departments in developing and improving their fire-fighting or fire prevention capabilities.

(5) Making fire prevention inspections, including the periodic inspections and reports of school buildings required by Chapter 115 and the inspections of ~~day-care~~ child care facilities required by Chapter 110. A fire marshal shall not make electrical inspections unless he is qualified to do so under G.S. 153A-351."

Section 63. Except as otherwise provided in this act, this act is effective when it becomes law.

unfav

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 464

Short Title: Enhance Child Care/AB. (Public)

Sponsors: Representatives Alexander; Boyd-McIntyre, Miller, and Wainwright.

Referred to: Rules.

March 10, 1997

A BILL TO BE ENTITLED

AN ACT TO ENHANCE AND IMPROVE CHILD CARE IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

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

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar, and Operations of the House.**

☐ Committee Substitute for
H.B. 804 A BILL TO BE ENTITLED AN ACT TO AFFECT THE MAINTENANCE OF CERTAIN SECONDARY ROADS IN LINCOLN COUNTY.

☐ 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 Finance.)

☐ 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.

☐ 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 D

HOUSE BILL 804
Proposed Committee Substitute H804-PCSA364

Short Title: Lincoln Local Roads. (Local)

Sponsors:

Referred to:

April 3, 1997

A BILL TO BE ENTITLED

AN ACT TO GIVE LINCOLN COUNTY AUTHORITY TO BUILD AND IMPROVE ROADS WITHIN LINCOLN COUNTY THAT ARE NOT PART OF THE STATE HIGHWAY SYSTEM.

The General Assembly of North Carolina enacts:

Section 1. A county may build, construct, improve, reconstruct, widen, pave, install curbs and gutters, and otherwise build and improve roads and streets that are located in the county and outside a city and that are not part of the State highway system and may advertise, accept bids, enter into contracts, and undertake any other action reasonably necessary to carry out the powers granted by this act. A county shall make special assessments against benefitted property to pay for any work in accordance with the procedures set forth in this act. The authority granted by this act shall include the authority to make any improvements necessary to bring roads up to State standards so that they may be accepted into the State highway system.

Section 2. Before a county may finance all or a portion of the cost of improvements to a subdivision or residential street, it must receive a petition for the improvements signed by at least seventy-five percent (75%) of the owners of property to be assessed, who must represent at least seventy-five percent (75%) of all the lineal feet of frontage of the lands abutting on the street or portion thereof to be improved. The petition shall state that portion of the cost of the improvement to be assessed, which shall be the local share required by policies of the Secondary Roads Council. A county may treat as a unit and consider as one street two or more connecting State-maintained subdivision or residential streets in a petition filed under this

subsection calling for the improvement of subdivision or residential streets subject to property owner sharing in the cost of improvement under policies of the Department of Transportation.

Property owned by the United States shall not be included in determining the lineal feet of frontage on the improvement, nor shall the United States be included in determining the number of owners of property abutting the improvement. Property owned by the State of North Carolina shall be included in determining frontage and the number of owners only if the State has consented to assessment as provided in G.S. 153A-189. Property owned, leased, or controlled by railroad companies shall be included in determining frontage and the number of owners to the extent the property is subject to assessment under G.S. 160A-222. Property owned, leased, or controlled by railroad companies that is not subject to assessment shall not be included in determining frontage or the number of owners.

No right of action or defense asserting the invalidity of street assessments on grounds that the county did not comply with this subsection in securing a valid petition may be asserted except in an action or proceeding begun within 90 days after the day of publication of the notice of adoption of the preliminary assessment resolution.

Section 3. This act is intended to provide a means of assisting in financing improvements to streets and roads that are not on the State highway system. By financing improvements under this act, a county does not acquire or assume any responsibility for the streets or roads involved, and a county has no liability arising from the construction of an improvement to a road or the maintenance of the street or road.

Section 4. A county may make assessments against benefitted property to recoup all or part of the costs of the work authorized in this act on the basis of:

(1) The frontage abutting on the project, at an equal rate per foot of frontage; or

(2) The street frontage of the lots served, or subject to being served, by the project, at an equal rate per foot of frontage; or

(3) The area of land served, or subject to being served, by the project, at an equal rate per unit of area; or

(4) The valuation of land served, or subject to being served, by the project, being the value of the land without improvements as shown on the tax records of the county, at an equal rate per dollar of valuation; or

(5) A combination of two or more of these bases. For each project, the Board of Commissioners shall endeavor to establish an assessment method from among the bases set out in this section that will most accurately assess each lot or parcel of land according to the benefit conferred upon it by the project. The Board's decision as to the method of assessment is final and not subject to further review and challenge.

Section 5. The Board of Commissioners shall develop guidelines for determining which projects, authorized by this act, to pursue and in what order. The Board of Commissioners may consider, among other reasonable factors:

(1) The chronological order in which it receives petitions as provided for in this act;

(2) The number of citizens to be served per mile by the proposed project;

(3) The severity of the need to be alleviated by the proposed project relative to other similar situations in the county; or

(4) Funds advanced, if any, by the citizens to be served by the proposed project to participate in paying for the project.

Section 6. Except as otherwise provided in this act, a county shall follow the procedures set forth in Article 9 of Chapter 153A of the General Statutes in making, giving notice of, providing for payment of, and enforcing assessments for projects authorized in this act.

Section 7. This act applies to Lincoln County only.

Section 8. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 804

Short Title: Lincoln Local Roads. (Local)

Sponsors: Representatives Kiser; and Berry.

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

April 3, 1997

A BILL TO BE ENTITLED

AN ACT TO AFFECT THE MAINTENANCE OF CERTAIN SECONDARY ROADS IN LINCOLN COUNTY.

The General Assembly of North Carolina enacts:

Section 1. This act affects the maintenance of certain secondary roads in Lincoln County.

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

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar, and Operations of the House**.

☐ Committee Substitute for
H.B. 655 A BILL TO BE ENTITLED AN ACT RELATING TO ROCKINGHAM COUNTY.

☐ 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 Finance .)

☐ 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.

☐ 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 D

HOUSE BILL 655
Proposed Committee Substitute H655-PCSX8181

Short Title: Madison Annexation. (Local)

Sponsors:

Referred to:

March 27, 1997

A BILL TO BE ENTITLED

AN ACT CONCERNING THE ANNEXATION OF NONCONTIGUOUS AREAS BY THE TOWN OF MADISON.

The General Assembly of North Carolina enacts:

Section 1. Effective as of midnight June 30, 1997, the noncontiguous area described herein which lies within the extraterritorial jurisdiction of the Town of Madison and is delineated on the Official Zoning Map of the Town of Madison is annexed to the Town of Madison:

BEGINNING AT A POINT being the intersection of the centerlines of State Highway 704 and Grogan Lake Road (SR 1178), thence east southeast approximately 1540 feet along the centerline of State Highway 704 to a point being the intersection of the centerline of State Highway 704 and Island Drive (SR 1169), thence south approximately 2420 feet to a point on the centerline of Island Drive parallel to the northernmost point of parcel 7916.16-74-6129, thence west southwest approximately 1910 feet along the northern boundary of said parcel to a point being the northwest boundary corner of said parcel, thence north approximately 1020 feet along the eastern and southeastern property boundaries of parcels 7906-65-3798 and 7906-76-7040, thence east approximately 565 feet to a point in the centerline of Grogan Lake Road (SR 1178), thence north approximately 320 feet to a point on the centerline of Grogan Lake Road (SR 1178) parallel to the southwest property boundary corner of parcel 7906-86-2975, thence east approximately 212 feet to a point being the southeast property corner of said parcel, thence north approximately 546 feet along the eastern property boundary lines of parcels 7906-86-2975, 7906-87-2073 and 7918-84-2298 to a

point being the northeast property boundary corner of parcel 7918-84-2298, thence west approximately 215 feet along the northern boundary of said parcel to the centerline of Grogan Lake Road (SR 1178), thence north approximately 200 feet along the centerline of Grogan Lake Road (SR 1178) to a point parallel to the southwest property boundary corner of parcel 7906.08-87-3727, thence east approximately 215 feet along the southern boundary of said parcel to a point being the southeast property boundary corner of said parcel, thence north approximately 400 feet along the eastern boundaries of parcels 7906.08-87-3727 and 7906.08-87-3937 to a point being the northeast property boundary corner of parcel 7906-87-3937, thence west approximately 215 feet to a point in the centerline of Grogan Lake Road (SR 1178) parallel to the northwest property boundary corner of said parcel, thence north approximately 476 feet along the centerline of Grogan Lake Road (SR 1178) to a point parallel to the southwest boundary corner of parcel 7915.05-28-3666, thence east approximately 211 feet to a point being the southeast boundary corner of said parcel, thence north approximately 221 feet to a point being the northeast boundary corner of said parcel, thence west approximately 208 feet to the centerline of Grogan Lake Road (SR 1178) to a point parallel to the northwest boundary corner of said parcel, thence north approximately 534 feet along the centerline of Grogan Lake Road (SR 1178) to the BEGINNING.

Section 2. G.S. 160A-58.1(b)(2) does not apply to the area set out in Section 1 of this act.

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

unfav

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 655

Short Title: Rockingham County Local Act. (Local)

Sponsors: Representative Sexton.

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

March 27, 1997

A BILL TO BE ENTITLED

AN ACT RELATING TO ROCKINGHAM COUNTY.

The General Assembly of North Carolina enacts:

Section 1. This act applies to Rockingham County only.

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

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar, and Operations of the House.**

☐ Committee Substitute for
H.B. 506 A BILL TO BE ENTITLED AN ACT RELATING TO HERTFORD COUNTY.

☐ 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.

☐ 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 D

HOUSE BILL 506
Proposed Committee Substitute H506-PCSA298

Short Title: Hertford/Northampton School Acquisition. (Local)

Sponsors:

Referred to:

March 12, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW HERTFORD AND NORTHAMPTON COUNTIES TO ACQUIRE PROPERTY FOR USE BY THEIR COUNTY BOARDS OF EDUCATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-158.1 reads as rewritten:

"**§ 153A-158.1. Acquisition and improvement of school property in certain counties.**

(a) Acquisition by County. -- A county may acquire, by any lawful method, any interest in real or personal property for use by a school administrative unit within the county. In exercising the power of eminent domain a county shall use the procedures of Chapter 40A. The county shall use its authority under this subsection to acquire property for use by a school administrative unit within the county only upon the request of the board of education of that school administrative unit and after a public hearing.

(b) Construction or Improvement by County. -- A county may construct, equip, expand, improve, renovate, or otherwise make available property for use by a school administrative unit within the county. The local board of education shall be involved in the design, construction, equipping, expansion, improvement, or renovation of the property to the same extent as if the local board owned the property.

(c) Lease or Sale by Board of Education. -- Notwithstanding the provisions of G.S. 115C-518 and G.S. 160A-274, a local board of education may, in connection with additions, improvements, renovations, or repairs to all or part of any of its property,

lease or sell the property to the board of commissioners of the county in which the property is located for any price negotiated between the two boards.

(d) Board of Education May Contract for Construction. -- Notwithstanding the provisions of G.S. 115C-40 and G.S. 115C-521, a local board of education may enter into contracts for the erection or repair of school buildings upon sites owned in fee simple by one or more counties in which the local school administrative unit is located.

(e) Scope. -- This section applies to Alleghany, Ashe, Avery, Bladen, Brunswick, Cabarrus, Carteret, Cherokee, Chowan, Columbus, Currituck, Dare, Duplin, Edgecombe, Forsyth, Franklin, Graham, Greene, Guilford, Halifax, Harnett, Haywood, Hertford, Hyde, Iredell, Jackson, Johnston, Jones, Lee, Macon, Madison, Martin, Moore, Nash, New Hanover, Northampton, Orange, Pasquotank, Pender, Person, Pitt, Randolph, Richmond, Rockingham, Rowan, Sampson, Scotland, Stanly, Surry, Union, Vance, Wake, Wilson, and Watauga Counties."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 506

Short Title: Hertford Local Act. (Local)

Sponsors: Representative H. Hunter.

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

March 12, 1997

A BILL TO BE ENTITLED

AN ACT RELATING TO HERTFORD COUNTY.

The General Assembly of North Carolina enacts:

Section 1. The law relating to Hertford County is amended.

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

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar, and Operations of the House.**

☐ Committee Substitute for
H.B. 307 A BILL TO BE ENTITLED AN ACT RELATING TO ENVIRONMENTAL LAWS 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.

☐ 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 D

HOUSE BILL 307
Proposed Committee Substitute H307-PCS4103

Short Title: Environmentally Sound Policy Act. (Public)

Sponsors:

Referred to:

February 24, 1997

A BILL TO BE ENTITLED

AN ACT TO ENACT THE ENVIRONMENTALLY SOUND POLICY ACT (ESP) AND TO PROVIDE A MENU OF MEASURES TO PROTECT HEALTH AND THE ENVIRONMENT.

The General Assembly of North Carolina enacts:

Section 1. This act shall be known and may be cited as the "Environmentally Sound Policy Act of 1997 (ESP)".

Section 2. Article 67 of Chapter 106 of the General Statutes reads as rewritten:

"ARTICLE 67.

"Swine Farms.

"§ 106-800. Title.

This Article shall be known as the 'Swine Farm Siting Act'.

"§ 106-801. Purpose.

The General Assembly finds that certain limitations on the siting of swine houses and lagoons for swine farms can assist in the development of pork production, which contributes to the economic development of the State, by lessening the interference with the use and enjoyment of adjoining property.

"§ 106-802. Definitions.

As used in this Article, unless the context clearly requires otherwise:

(1a) 'Intensive animal feeding operation' means a new or enlarged swine farm with a design capacity of more than 800,000 pounds steady state live weight.

(1) 'Lagoon' means a confined body of water to hold animal byproducts including bodily waste from animals or a mixture of waste with feed, bedding, litter or other agricultural materials.

(2) Repealed by Session Laws 1997 (Regular Session, 1996), c. 626, s. 7.

(3) 'Occupied residence' means a dwelling actually inhabited by a person on a continuous basis as exemplified by a person living in his or her home.

(3a) 'Outdoor recreational facility' means any plot or tract of land on which there is located an outdoor swimming pool, tennis court, or golf course that is open to either the general public or to the members and guests of any organization having 100 or more members.

(4) 'Site evaluation' means an investigation to determine if a site meets all federal and State standards as evidenced by the Waste Management Facility Site Evaluation Report on file with the Soil and Water Conservation District office or a comparable report certified by a professional engineer or a comparable report certified by a technical specialist approved by the North Carolina Soil and Water Conservation Commission.

~~Department of Environment, Health and Natural Resources~~

(5) 'Swine farm' means a tract of land devoted to raising 250 or more animals of the porcine species.

(6) 'Swine house' means a building that shelters porcine animals on a continuous basis.

"§ 106-803. Siting requirements for swine houses, lagoons, and land areas onto which waste is applied at swine farms.

(a) A swine house or a lagoon that is a component of a swine farm shall be ~~located~~ located:

(1) ~~at~~ At least 1,500 feet from any occupied residence;

(2) ~~at~~ At least 2,500 feet from any school, hospital, national or State park or forest, wildlife refuge, fragile or historic area, or outdoor recreational facility, or church;

(3) At least 1,320 feet from any surface waters of the State;

(4) At least 1,000 feet from any property boundary for any new or enlarged swine farm with a design capacity of at least 500,000 pounds steady state live weight;

(5) At least 1,500 feet from any property boundary for any new or enlarged swine farm with a design capacity of more than 1,000,000 pounds steady state live weight;

(6) ~~at~~ At least 500 feet from any property ~~boundary.~~ boundary or public or private drinking water supply.

(a1) The outer perimeter of the land area onto which waste is applied from a lagoon that is a component of a swine farm shall be at least 50 feet from any

boundary of property on which an occupied residence is located from any perennial stream or river, other than an irrigation ditch or canal.

(a2) No component of a liquid animal waste management system for which a permit is required under Part 1A of Article 21 of Chapter 143 of the General Statutes, other than a land application site, shall be constructed on land that is located within the 100-year floodplain.

(b) A swine house or a lagoon that is a component of a swine farm may be located closer to a residence, school, hospital, church, or a property boundary than is allowed under subsection (a) of this section if written permission is given by the owner of the property and recorded with the Register of Deeds.

"**§ 106-804. Enforcement.**

(a) Any person ~~owning~~ who owns property directly affected by the siting requirements of G.S. 106-803 pursuant to subsection (b) of this section may bring a civil action against a swine farmer who has violated G.S. 106-803 and may seek any one or more of the following:

(1) Injunctive relief.

(2) An order enforcing the siting requirements under G.S. 106-803.

(3) Damages caused by the violation.

(b) A person is directly affected by the siting requirements of G.S. 106-803 only if the person ~~owns:~~ owns a facility or property located less than the siting requirements specified under G.S. 106-803.

~~(1) An occupied residence located less than 1,500 feet from a swine house or lagoon in violation of G.S. 106-803.~~

~~(2) A school, hospital, or church located less than 2,500 feet from a swine house or lagoon in violation of G.S. 106-803.~~

~~(3) Property whose boundary is located less than 500 feet from a swine house or lagoon in violation of G.S. 106-803.~~

~~(4) Property on which an occupied residence is located and whose boundary is less than 50 feet from the outer perimeter of the land area onto which waste is applied from a lagoon that is a component of a swine farm in violation of G.S. 106-803.~~

~~(5) Property that abuts a perennial stream or river, or on which a perennial stream or river is located, and that property and that perennial stream or river are less than 50 feet from the outer perimeter of the land area onto which waste is applied from a lagoon that is a component of a swine farm in violation of G.S. 106-803.~~

(c) If the court determines it is appropriate, the court may award court costs, including reasonable attorneys' fees and expert witnesses' fees, to any party. If a temporary restraining order or preliminary injunction is sought, the court may require the filing of a bond or equivalent security. The court shall determine the amount of the bond or security.

(d) Nothing in this section shall restrict any other right that any person may have under any statute or common law to seek injunctive or other relief.

"**§ 106-805. Written notice of swine farms.**

Any person who intends to construct a swine farm whose animal waste management system is subject to a permit under Part 1A of Article 21 of Chapter 143 of the General Statutes shall, after completing a site evaluation and before the farm site is modified, ~~attempt to~~ notify all adjoining property ~~owners and~~ owners, all property owners who own property located across a public road, street, or highway from the swine ~~farm~~ farm, the county or counties in which the farm site is located, and the local health departments of that person's intent to construct the swine farm. This notice shall be by certified mail sent to the address on record at the property tax office in the county in which the land is located. The written notice shall include all of the following:

(1) The name and address of the person intending to construct a swine farm.

(2) The type of swine farm and the design capacity of the animal waste management system.

(3) The name and address of the technical specialist preparing the waste management plan.

(4) The address of the local Soil and Water Conservation District office.

(5) Information informing the adjoining property owners and the property owners who own property located across a public road, street, or highway from the swine farm that they may submit written comments to the Division of Water Quality, Department of Environment, Health, and Natural Resources.

Prior to issuing a permit for an intensive animal feeding operation, the Department shall conduct a public hearing at the applicant's expense if the Department receives at least 20 written requests for the public hearing from persons who live within one mile of the proposed site."

Section 2.1. G.S. 143-215.107(a) is amended by adding a new subdivision to read:

"(11) To develop and adopt standards and plans necessary to implement programs to control the emission of odors from animal operations, as defined in G.S. 143-215.10B."

Section 3. G.S. 143-215(e) is repealed.

Section 4. G.S. 153A-340 reads as rewritten:

"**§ 153A-340. Grant of power.**

(a) For the purpose of promoting health, safety, morals, or the general welfare, a county may regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lots that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes, and to provide density credits or severable development rights for dedicated rights-of-way pursuant to G.S. 136-66.10 or G.S. 136-66.11.

(b) These regulations may not affect bona fide farms, but any use of farm property for nonfarm purposes is subject to the regulations. Bona fide farm purposes include the production and activities relating or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agricultural products having a domestic or foreign market. These regulations may apply to intensive animal feeding operations, as defined in G.S. 106-802. An intensive animal feeding operation is not a farm for the purpose of this Part.

(c) The regulations may provide that a board of adjustment may determine and vary their application in harmony with their general purpose and intent and in accordance with general or specific rules therein contained. The regulations may also provide that the board of adjustment or the board of commissioners may issue special use permits or conditional use permits in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified therein and may impose reasonable and appropriate conditions and safeguards upon these permits. Where appropriate, the conditions may include requirements that street and utility rights-of-way be dedicated to the public and that recreational space be provided. When issuing or denying special use permits or conditional use permits, the board of commissioners shall follow the procedures for boards of adjustment except that no vote greater than a majority vote shall be required for the board of commissioners to issue such permits, and every such decision of the board of commissioners shall be subject to review by the superior court by proceedings in the nature of certiorari.

(d) A county may regulate the development over estuarine waters and over lands covered by navigable waters owned by the State pursuant to G.S. 146-12, within the bounds of that county.

(e) For the purpose of this section, the term 'structures' shall include floating homes.

(f) Any petition for review by the superior court shall be filed with the clerk of superior court within 30 days after the decision of the board of commissioners is filed in such office as the ordinance specifies, or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the clerk at the time of the hearing of the case, whichever is later. The decision of the board of commissioners may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested."

Section 5. A zoning regulation applicable to intensive animal feeding operations adopted by a board of county commissioners prior to the date Section 4 of this act becomes effective is hereby retroactively validated.

Section 6. There is established a one-year moratorium for any new or expanding swine farm or lagoon for which a permit is required under Part 1A of Chapter 143 of the General Statutes for any area in the State that: (i) has a county population of less than 75,000 according to the most recent decennial federal census; (ii) has over one hundred fifty million dollars ($150,000,000) on expenditures for travel and tourism based on the most recent figures of the Department of Commerce;

and (iii) is not in the coastal area as defined by G.S. 113A-103. Effective 1 January 1997, until the expiration of a one-year period beginning on the date this act becomes effective, the Environmental Management Commission shall not issue a permit for an animal waste management system, as defined in G.S. 143-215.10B, or for a new or expanded swine farm or lagoon, as defined in G.S. 106-802.

Section 7. There is established a one-year moratorium on the construction or expansion of swine farms and lagoons. The Environmental Management Commission shall not issue a permit for an animal waste management system, as defined in G.S. 143-215.10B, for a new or expanded swine farm or lagoon, as defined in G.S. 106-802, for a one-year period beginning on the date this act becomes effective except as provided by this section. This section prohibits the construction or expansion of an animal waste management system for a swine farm for one year from the date this act becomes effective regardless of the date on which a site evaluation for the swine farm is completed and regardless of whether the animal waste management system is permitted under Part 1A of Article 21 of Chapter 143 of the General Statutes or deemed permitted under 15A North Carolina Administrative Code 2H.0217 but does not prohibit:

(1) Construction to repair a component of an existing swine farm or lagoon.

(2) Construction to replace a component of an existing swine farm or lagoon if the replacement does not result in an increase in swine population, except as provided in subdivision (4) of this section.

(3) Construction or expansion, if the person undertaking the construction or expansion of the swine farm, lagoon, or animal waste management system has, prior to the effective date of this section, either:

a. Entered into a bona fide contract to purchase land, materials, or equipment for the construction or expansion; or

b. Been approved for a loan or line of credit from a lending institution to finance the construction or expansion and has obligated or expended funds derived from the loan or line of credit.

(4) Construction or expansion on or after the date this act becomes law for the purpose of increasing the swine population to the projected population or to the population that the animal waste management system serving that swine farm is designed to accommodate, as set forth in a registration of the swine operation filed with the Department of Environment, Health, and Natural Resources before the date this act becomes law.

(5) Construction or expansion on or after the date this act becomes law for the purpose of complying with applicable animal waste management rules and not for the purpose of increasing the swine population.

Section 8. (a) Except as provided in subsection (b) of this section, Section 2 of this act is effective when it becomes law and applies to the construction or enlargement, on or after the effective date of this act, of swine houses, lagoons, and land areas onto which waste is applied from a lagoon that are components of a swine farm. Section 2 of this act does not apply under each of the following circumstances when the construction or enlargement occurs on or after the effective date of this act:

(1) For the purpose of increasing the swine population to that set forth as the projected population in a registration of the swine operation filed with the Department of Environment, Health, and Natural Resources prior to the effective date of this act.

(2) For the purpose of increasing the swine population to the population that the animal waste management system is designed to accommodate as that system is set forth in a registration of the swine operation filed with the Department of Environment, Health, and Natural Resources, or an animal waste management plan approved prior to the effective date of this act.

(3) For the purpose of complying with applicable animal waste management rules and not for the purpose of increasing the swine population.

(b) Section 1 and Sections 3 through 8 of this act are effective when this act becomes law. Section 1, Sections 3 through 8, and the provisions of Section 2 of this act applicable to intensive animal feeding operations as defined in G.S. 106-802, as amended by Section 2 of this act, apply to any intensive animal feeding operation for which construction began on or after 1 January 1997, regardless of the date on which the site evaluation was completed.

(c) Section 2.1 of this act is effective when it becomes law. The Environmental Management Commission shall publish the text of a proposed rule to regulate the emission of odors from animal operations under G.S. 143-215.107(11), as enacted by Section 2.1 of this act, within six months of the date on which the North Carolina Agricultural Research Service at North Carolina State University issues its final report on economically feasible odor control technologies as provided in Section 27.3 of Chapter 18 of the 1995 Session Laws (1996 Second Extra Session) and in any event, not later than 1 May 1998. The Environmental Management Commission shall adopt a rule to regulate the emission of odors from animal waste management systems within one year of the date the Commission publishes the text of a proposed rule as required by this subsection and in any event, not later than 1 May 1999. The Board of Governors of The University of North Carolina shall present its final report and recommendations on economically feasible odor control technologies to the Environmental Review Commission and the Environmental Management Commission not later than 1 November 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 307

Short Title: Environmental Laws Act. (Public)

Sponsors: Representatives Morgan; and Mosley.

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

February 24, 1997

A BILL TO BE ENTITLED

AN ACT RELATING TO ENVIRONMENTAL LAWS IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. This act relates to environmental laws in North Carolina.

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

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar, and Operations of the House**.

☐ Committee Substitute for
H.B. 515 A BILL TO BE ENTITLED AN ACT TO ENACT THE ENVIRONMENTALLY SOUND POLICY ACT (ESP) AND TO PROVIDE A MENU OF MEASURES TO PROTECT HEALTH AND THE ENVIRONMENT.

☐ 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.

☐ 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 D

HOUSE BILL 515
Proposed Committee Substitute H515-PCS4104

Short Title: Environmentally Sound Policy Act. (Public)

Sponsors:

Referred to:

March 13, 1997

A BILL TO BE ENTITLED

AN ACT TO ENACT THE ENVIRONMENTALLY SOUND POLICY ACT (ESP) AND TO PROVIDE A MENU OF MEASURES TO PROTECT HEALTH AND THE ENVIRONMENT.

The General Assembly of North Carolina enacts:

Section 1. This act shall be known and may be cited as the "Environmentally Sound Policy Act of 1997 (ESP)".

Section 2. Article 67 of Chapter 106 of the General Statutes reads as rewritten:

"ARTICLE 67.

"Swine Farms.

"§ 106-800. Title.

This Article shall be known as the 'Swine Farm Siting Act'.

"§ 106-801. Purpose.

The General Assembly finds that certain limitations on the siting of swine houses and lagoons for swine farms can assist in the development of pork production, which contributes to the economic development of the State, by lessening the interference with the use and enjoyment of adjoining property.

"§ 106-802. Definitions.

As used in this Article, unless the context clearly requires otherwise:

(1a) 'Intensive animal feeding operation' means a new or enlarged swine farm with a design capacity of more than 800,000 pounds steady state live weight.

(1) 'Lagoon' means a confined body of water to hold animal byproducts including bodily waste from animals or a mixture of waste with feed, bedding, litter or other agricultural materials.

(2) Repealed by Session Laws 1997 (Regular Session, 1996), c. 626, s. 7.

(3) 'Occupied residence' means a dwelling actually inhabited by a person on a continuous basis as exemplified by a person living in his or her home.

(3a) 'Outdoor recreational facility' means any plot or tract of land on which there is located an outdoor swimming pool, tennis court, or golf course that is open to either the general public or to the members and guests of any organization having 50 or more members.

(4) 'Site evaluation' means an investigation to determine if a site meets all federal and State standards as evidenced by the Waste Management Facility Site Evaluation Report on file with the Soil and Water Conservation District office or a comparable report certified by a professional engineer or a comparable report certified by a technical specialist approved by the North Carolina Soil and Water Conservation Commission.

~~Department of Environment, Health and Natural Resources~~

(5) 'Swine farm' means a tract of land devoted to raising 250 or more animals of the porcine species.

(6) 'Swine house' means a building that shelters porcine animals on a continuous basis.

"§ 106-803. Siting requirements for swine houses, lagoons, and land areas onto which waste is applied at swine farms.

(a) A swine house or a lagoon that is a component of a swine farm shall be ~~located~~ located:

(1) ~~at~~ At least 1,500 feet from any occupied residence;

(2) ~~at~~ At least 2,500 feet from any school, hospital, national or State park or forest, wildlife refuge, fragile or historic area, or outdoor recreational facility, or church;

(3) At least 1,320 feet from any surface waters of the State;

(4) At least 1,000 feet from any property boundary for any new or enlarged swine farm with a design capacity of at least 500,000 pounds steady state live weight;

(5) At least 1,500 feet from any property boundary for any new or enlarged swine farm with a design capacity of more than 1,000,000 pounds steady state live weight; and

(6) ~~at~~ At least 500 feet from any property ~~boundary.~~ boundary or public or private drinking water supply.

(a1) The outer perimeter of the land area onto which waste is applied from a lagoon that is a component of a swine farm shall be at least 50 feet from any

boundary of property on which an occupied residence is located from any perennial stream or river, other than an irrigation ditch or canal.

(a2) No component of a liquid animal waste management system for which a permit is required under Part 1A of Article 21 of Chapter 143 of the General Statutes, other than a land application site, shall be constructed on land that is located within the 100-year floodplain.

(b) A swine house or a lagoon that is a component of a swine farm may be located closer to a residence, school, hospital, church, or a property boundary than is allowed under subsection (a) of this section if written permission is given by the owner of the property and recorded with the Register of Deeds.

"**§ 106-804. Enforcement.**

(a) Any person ~~owning~~ who owns property directly affected by the siting requirements of G.S. 106-803 pursuant to subsection (b) of this section may bring a civil action against a swine farmer who has violated G.S. 106-803 and may seek any one or more of the following:

(1) Injunctive relief.

(2) An order enforcing the siting requirements under G.S. 106-803.

(3) Damages caused by the violation.

(b) A person is directly affected by the siting requirements of G.S. 106-803 only if the person ~~owns:~~ owns a facility or property located less than the siting requirements specified under G.S. 106-803.

~~(1) An occupied residence located less than 1,500 feet from a swine house or lagoon in violation of G.S. 106-803.~~

~~(2) A school, hospital, or church located less than 2,500 feet from a swine house or lagoon in violation of G.S. 106-803.~~

~~(3) Property whose boundary is located less than 500 feet from a swine house or lagoon in violation of G.S. 106-803.~~

~~(4) Property on which an occupied residence is located and whose boundary is less than 50 feet from the outer perimeter of the land area onto which waste is applied from a lagoon that is a component of a swine farm in violation of G.S. 106-803.~~

~~(5) Property that abuts a perennial stream or river, or on which a perennial stream or river is located, and that property and that perennial stream or river are less than 50 feet from the outer perimeter of the land area onto which waste is applied from a lagoon that is a component of a swine farm in violation of G.S. 106-803.~~

(c) If the court determines it is appropriate, the court may award court costs, including reasonable attorneys' fees and expert witnesses' fees, to any party. If a temporary restraining order or preliminary injunction is sought, the court may require the filing of a bond or equivalent security. The court shall determine the amount of the bond or security.

(d) Nothing in this section shall restrict any other right that any person may have under any statute or common law to seek injunctive or other relief.

"**§ 106-805. Written notice of swine farms.**

Any person who intends to construct a swine farm whose animal waste management system is subject to a permit under Part 1A of Article 21 of Chapter 143 of the General Statutes shall, after completing a site evaluation and before the farm site is modified, ~~attempt to~~ notify all adjoining property ~~owners and~~ owners, all property owners who own property located across a public road, street, or highway from the swine ~~farm~~ farm, the county or counties in which the farm site is located, and the local health departments of that person's intent to construct the swine farm. This notice shall be by certified mail sent to the address on record at the property tax office in the county in which the land is located. The written notice shall include all of the following:

(1) The name and address of the person intending to construct a swine farm.

(2) The type of swine farm and the design capacity of the animal waste management system.

(3) The name and address of the technical specialist preparing the waste management plan.

(4) The address of the local Soil and Water Conservation District office.

(5) Information informing the adjoining property owners and the property owners who own property located across a public road, street, or highway from the swine farm that they may submit written comments to the Division of Water Quality, Department of Environment, Health, and Natural Resources.

Prior to issuance of a permit for an intensive animal feeding operation, the Environmental Management Commission may hold a public hearing if it finds, upon its own initiative or in response to a request from a member of the public, that there is a significant public interest in holding the hearing. The notice and conduct of the hearing shall be in accordance with the relevant public meeting provisions of G.S. 143-215.1(c)(3).

Section 2.1. G.S. 143-215.107(a) is amended by adding a new subdivision to read:

"(11) To develop and adopt standards and plans necessary to implement programs to control the emission of odors from animal operations, as defined in G.S. 143-215.10B."

Section 3. G.S. 143-215(e) is repealed.

Section 4. G.S. 153A-340 reads as rewritten:

"**§ 153A-340. Grant of power.**

(a) For the purpose of promoting health, safety, morals, or the general welfare, a county may regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lots that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes, and to

provide density credits or severable development rights for dedicated rights-of-way pursuant to G.S. 136-66.10 or G.S. 136-66.11.

(b) These regulations may not affect bona fide farms, but any use of farm property for nonfarm purposes is subject to the regulations. Bona fide farm purposes include the production and activities relating or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agricultural products having a domestic or foreign market. These regulations may apply to intensive animal feeding operations, as defined in G.S. 106-802. An intensive animal feeding operation is not a farm for the purpose of this Part.

(c) The regulations may provide that a board of adjustment may determine and vary their application in harmony with their general purpose and intent and in accordance with general or specific rules therein contained. The regulations may also provide that the board of adjustment or the board of commissioners may issue special use permits or conditional use permits in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified therein and may impose reasonable and appropriate conditions and safeguards upon these permits. Where appropriate, the conditions may include requirements that street and utility rights-of-way be dedicated to the public and that recreational space be provided. When issuing or denying special use permits or conditional use permits, the board of commissioners shall follow the procedures for boards of adjustment except that no vote greater than a majority vote shall be required for the board of commissioners to issue such permits, and every such decision of the board of commissioners shall be subject to review by the superior court by proceedings in the nature of certiorari.

(d) A county may regulate the development over estuarine waters and over lands covered by navigable waters owned by the State pursuant to G.S. 146-12, within the bounds of that county.

(e) For the purpose of this section, the term 'structures' shall include floating homes.

(f) Any petition for review by the superior court shall be filed with the clerk of superior court within 30 days after the decision of the board of commissioners is filed in such office as the ordinance specifies, or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the clerk at the time of the hearing of the case, whichever is later. The decision of the board of commissioners may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested."

Section 5. A zoning regulation applicable to intensive animal feeding operations adopted by a board of county commissioners prior to the date Section 4 of this act becomes effective is hereby retroactively validated.

Section 6. There is established a one-year moratorium for any new or expanding swine farm or lagoon for which a permit is required under Part 1A of Chapter 143 of the General Statutes for any area in the State that: (i) has a county population of less than 75,000 according to the most recent decennial federal census;

(ii) has over one hundred fifty million dollars ($150,000,000) on expenditures for travel and tourism based on the most recent figures of the Department of Commerce; and (iii) is not in the coastal area as defined by G.S. 113A-103. Effective 1 January 1997, until the expiration of a one-year period beginning on the date this act becomes effective, the Environmental Management Commission shall not issue a permit for an animal waste management system, as defined in G.S. 143-215.10B, or for a new or expanded swine farm or lagoon, as defined in G.S. 106-802.

Section 7. There is established a one-year moratorium on the construction or expansion of swine farms and lagoons. The Environmental Management Commission shall not issue a permit for an animal waste management system, as defined in G.S. 143-215.10B, for a new or expanded swine farm or lagoon, as defined in G.S. 106-802, for a one-year period beginning on the date this act becomes effective except as provided by this section. This section prohibits the construction or expansion of an animal waste management system for a swine farm for one year from the date this act becomes effective regardless of the date on which a site evaluation for the swine farm is completed and regardless of whether the animal waste management system is permitted under Part 1A of Article 21 of Chapter 143 of the General Statutes or deemed permitted under 15A North Carolina Administrative Code 2H.0217 but does not prohibit:

(1) Construction to repair a component of an existing swine farm or lagoon.

(2) Construction to replace a component of an existing swine farm or lagoon if the replacement does not result in an increase in swine population, except as provided in subdivision (4) of this section.

(3) Construction or expansion of a component or components of a swine farm or lagoon, if actual construction began prior to March 1, 1997, or if the owner of the swine farm entered into a bona fide contract to build the component or components prior to March 1, 1997. For purposes of this subdivision, "actual construction" is limited to the component or components of a swine farm or lagoon for which the foundation has been laid prior to March 1, 1997, from a blueprint drawing.

(4) Construction or expansion on or after the date this act becomes law for the purpose of increasing the swine population to the projected population or to the population that the animal waste management system serving that swine farm is designed to accommodate, as set forth in a registration of the swine operation filed with the Department of Environment, Health, and Natural Resources before the date this act becomes law.

(5) Construction or expansion on or after the date this act becomes law for the purpose of complying with applicable animal waste management rules and not for the purpose of increasing the swine population.

(6) Construction or expansion of an innovative animal waste system approved by the Department.

Section 8. (a) Except as provided in subsection (b) of this section, Section 2 of this act is effective when it becomes law and applies to the construction or enlargement, on or after the effective date of this act, of swine houses, lagoons, and land areas onto which waste is applied from a lagoon that are components of a swine farm. Section 2 of this act does not apply under each of the following circumstances when the construction or enlargement occurs on or after the effective date of this act:

(1) For the purpose of increasing the swine population to that set forth as the projected population in a registration of the swine operation filed with the Department of Environment, Health, and Natural Resources prior to the effective date of this act.

(2) For the purpose of increasing the swine population to the population that the animal waste management system is designed to accommodate as that system is set forth in a registration of the swine operation filed with the Department of Environment, Health, and Natural Resources, or an animal waste management plan approved prior to the effective date of this act.

(3) For the purpose of complying with applicable animal waste management rules and not for the purpose of increasing the swine population.

(b) Section 1 and Sections 3 through 8 of this act are effective when this act becomes law. Section 1, Sections 3 through 8, and the provisions of Section 2 of this act applicable to intensive animal feeding operations as defined in G.S. 106-802, as amended by Section 2 of this act, apply to any intensive animal feeding operation for which construction began on or after 1 January 1997, regardless of the date on which the site evaluation was completed.

(c) Section 2.1 of this act is effective when it becomes law. The Environmental Management Commission shall publish the text of a proposed rule to regulate the emission of odors from animal operations under G.S. 143-215.107(11), as enacted by Section 2.1 of this act, within six months of the date on which the North Carolina Agricultural Research Service at North Carolina State University issues its final report on economically feasible odor control technologies as provided in Section 27.3 of Chapter 18 of the 1995 Session Laws (1996 Second Extra Session) and in any event, not later than 1 May 1998. The Environmental Management Commission shall adopt a rule to regulate the emission of odors from animal waste management systems within one year of the date the Commission publishes the text of a proposed rule as required by this subsection and in any event, not later than 1 May 1999. The Board of Governors of The University of North Carolina shall present its final report and recommendations on economically feasible odor control technologies to the Environmental Review Commission and the Environmental Management Commission not later than 1 November 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 515

Short Title: Environmentally Sound Policy Act.-2. (Public)

Sponsors: Representative Morgan.

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

March 13, 1997

A BILL TO BE ENTITLED

AN ACT TO ENACT THE ENVIRONMENTALLY SOUND POLICY ACT (ESP) AND TO PROVIDE A MENU OF MEASURES TO PROTECT HEALTH AND THE ENVIRONMENT.

The General Assembly of North Carolina enacts:

Section 1. This act shall be known and may be cited as the "Environmentally Sound Policy Act of 1997 (ESP)".

Section 2. Article 67 of Chapter 106 of the General Statutes reads as rewritten:

"ARTICLE 67.

"Swine Farms.

"§ 106-800. Title.

This Article shall be known as the 'Swine Farm Siting Act'.

"§ 106-801. Purpose.

The General Assembly finds that certain limitations on the siting of swine houses and lagoons for swine farms can assist in the development of pork production, which contributes to the economic development of the State, by lessening the interference with the use and enjoyment of adjoining property.

"§ 106-802. Definitions.

As used in this Article, unless the context clearly requires otherwise:

(1a) 'Intensive animal feeding operation' means a new or enlarged swine farm with a design capacity of more than 800,000 lbs. steady state live weight.

(1) 'Lagoon' means a confined body of water to hold animal byproducts including bodily waste from animals or a mixture of waste with feed, bedding, litter or other agricultural materials.

(2) Repealed by Session Laws 1997 (Regular Session, 1996), c. 626, s. 7.

(3) 'Occupied residence' means a dwelling actually inhabited by a person on a continuous basis as exemplified by a person living in his or her home.

(4) 'Site evaluation' means an investigation to determine if a site meets all federal and State standards as evidenced by the Waste Management Facility Site Evaluation Report on file with the Soil and Water Conservation District office or a comparable report certified by a professional engineer or a comparable report certified by a technical specialist approved by the North Carolina Soil and Water Conservation Commission.

~~Department of Environment, Health and Natural Resources~~

(5) 'Swine farm' means a tract of land devoted to raising 250 or more animals of the porcine species.

(6) 'Swine house' means a building that shelters porcine animals on a continuous basis.

"§ 106-803. Siting requirements for swine houses, lagoons, and land areas onto which waste is applied at swine farms.

(a) A swine house or a lagoon that is a component of a swine farm shall be ~~located~~ located:

(1) ~~at~~ At least 1,500 feet from any occupied residence;

(2) ~~at~~ At least 2,500 feet from any school, hospital, national or State park or forest, wildlife refuge, fragile or historic area, area or facility used for outdoor recreation, or church;

(3) At least 1,320 feet (1/4 mile) from any surface waters of the State;

(4) At least 1,000 feet from any property boundary for any new or enlarged swine farm with a design capacity of at least 500,000 lbs. steady state live weight;

(5) At least 1,500 feet from any property boundary for any new or enlarged swine farm with a design capacity of more than 1,000,000 lbs. steady state live weight;

(6) ~~at~~ At least 500 feet from any property ~~boundary.~~ boundary or public or private drinking water supply.

The outer perimeter of the land area onto which waste is applied from a lagoon that is a component of a swine farm shall be at least ~~50~~ 100 feet from any boundary of property on which an occupied residence is located from any perennial stream or river, other than an irrigation ditch or canal.

(a1) A new or expanding swine house or a lagoon that is a component of a swine farm shall not be located in a 100-year floodplain unless protected from flooding as provided for in regulations of the Federal Emergency Management Agency and the

National Flood Insurance Program on Floodplain Management. Such construction or expansion must be certified by the Department of Environment, Health, and Natural Resources.

(b) A swine house or a lagoon that is a component of a swine farm may be located closer to a residence, school, hospital, church, or a property boundary than is allowed under subsection (a) of this section if written permission is given by the owner of the property and recorded with the Register of Deeds.

"§ 106-804. Enforcement.

(a) Any person ~~owning~~ who owns property directly affected by the siting requirements of G.S. 106-803 pursuant to subsection (b) of this section may bring a civil action against a swine farmer who has violated G.S. 106-803 and may seek any one or more of the following:

(1) Injunctive relief.
(2) An order enforcing the siting requirements under G.S. 106-803.
(3) Damages caused by the violation.

(b) A person is directly affected by the siting requirements of G.S. 106-803 only if the person ~~owns:~~ owns a facility or property located less than the siting requirements specified under G.S. 106-803.

~~(1) An occupied residence located less than 1,500 feet from a swine house or lagoon in violation of G.S. 106-803.~~
~~(2) A school, hospital, or church located less than 2,500 feet from a swine house or lagoon in violation of G.S. 106-803.~~
~~(3) Property whose boundary is located less than 500 feet from a swine house or lagoon in violation of G.S. 106-803.~~
~~(4) Property on which an occupied residence is located and whose boundary is less than 50 feet from the outer perimeter of the land area onto which waste is applied from a lagoon that is a component of a swine farm in violation of G.S. 106-803.~~
~~(5) Property that abuts a perennial stream or river, or on which a perennial stream or river is located, and that property and that perennial stream or river are less than 50 feet from the outer perimeter of the land area onto which waste is applied from a lagoon that is a component of a swine farm in violation of G.S. 106-803.~~

(c) If the court determines it is appropriate, the court may award court costs, including reasonable attorneys' fees and expert witnesses' fees, to any party. If a temporary restraining order or preliminary injunction is sought, the court may require the filing of a bond or equivalent security. The court shall determine the amount of the bond or security.

(d) Nothing in this section shall restrict any other right that any person may have under any statute or common law to seek injunctive or other relief.

"§ 106-805. Written notice of swine farms.

Any person who intends to construct a swine farm whose animal waste management system is subject to a permit under Part 1A of Article 21 of Chapter 143

of the General Statutes shall, after completing a site evaluation and before the farm site is modified, ~~attempt to~~ notify all adjoining property ~~owners and~~ owners, all property owners who own property located across a public road, street, or highway from the swine ~~farm~~ farm, the county or counties in which the farm site is located, and the local health departments of that person's intent to construct the swine farm. This notice shall be by certified mail sent to the address on record at the property tax office in the county in which the land is located. The written notice shall include all of the following:

(1) The name and address of the person intending to construct a swine farm.

(2) The type of swine farm and the design capacity of the animal waste management system.

(3) The name and address of the technical specialist preparing the waste management plan.

(4) The address of the local Soil and Water Conservation District office.

(5) Information informing the adjoining property owners and the property owners who own property located across a public road, street, or highway from the swine farm that they may submit written comments to the Division of Water Quality, Department of Environment, Health, and Natural Resources.

Prior to issuing a permit for an intensive animal feeding operation, the Department shall conduct a public hearing at the applicant's expense if the Department receives at least 20 written requests for the public hearing.

"**§ 106-806. Emission of undesirable level of odor in outdoor recreational areas.**

(a) No intensive animal feeding operation may cause, allow, or permit emission into the ambient air of an outdoor recreational area any substance or combination of substances in a quantity that is determined to be an undesirable level of odor unless preventative measures are taken to abate or control the emission to the satisfaction of the Department of Environment, Health, and Natural Resources. When the Department receives an odor complaint, the Department shall determine through field surveillance or specific complaints, if the odor is at an undesirable level, and shall require remediation of the undesirable level of odor.

(b) Nothing in this section shall prohibit an individual or group of persons from bringing a complaint against an intensive animal feeding operation as defined under G.S. 106-802."

Section 3. G.S. 130A-39(b) reads as rewritten:

"(b) A local board of health may adopt a more stringent rule in an area regulated by the Commission for Health Services or the Environmental Management Commission where, in the opinion of the local board of health, a more stringent rule is required to protect the public health; otherwise, the rules of the Commission for Health Services or the rules of the Environmental Management Commission shall prevail over local board of health rules. However, a local board of health may not adopt a rule concerning the grading, operating, and permitting of food and lodging

facilities as listed in Part 6 of Article 8 of this Chapter and as defined in G.S. 130A-247(1), and a local board of health may adopt rules concerning wastewater collection, treatment and disposal systems which are not designed to discharge effluent to the land surface or surface waters only in accordance with G.S. 130A-335(c). A local board of health may adopt a rule governing intensive animal feeding operations, as defined by G.S. 106-802, that is more stringent than rules adopted by the Commission for Health Services or the Environmental Management Commission."

Section 4. G.S. 143-215(e) reads as rewritten:

"(e) Except as required by federal law or regulations, the Commission may not adopt effluent standards or limitations applicable to animal and poultry feeding operations. Notwithstanding the foregoing, where manmade pipes, ditches, or other conveyances have been constructed for the purpose of willfully discharging pollutants to the waters of the State, the Secretary shall have the authority to assess fines and penalties not to exceed ten thousand dollars ($10,000) for the first offense. The definitions and provisions of 40 Code of Federal Regulations § 122.23 (July 1, 1990 Edition) shall apply to this subsection. This subsection does not apply to an intensive animal feeding operation, as defined by G.S. 106-802. Effluent standards and limitations applicable to intensive animal feeding operations shall be adopted and enforced as otherwise provided by this Article."

Section 5. G.S. 153A-340 reads as rewritten:

"**§ 153A-340. Grant of power.**

(a) For the purpose of promoting health, safety, morals, or the general welfare, a county may regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lots that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes, and to provide density credits or severable development rights for dedicated rights-of-way pursuant to G.S. 136-66.10 or G.S. 136-66.11.

(b) These regulations may not affect bona fide farms, but any use of farm property for nonfarm purposes is subject to the regulations. Bona fide farm purposes include the production and activities relating or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agricultural products having a domestic or foreign market. These regulations may apply to intensive animal feeding operations, as defined in G.S. 106-802. An intensive animal feeding operation is not a farm for the purpose of this Part.

(c) The regulations may provide that a board of adjustment may determine and vary their application in harmony with their general purpose and intent and in accordance with general or specific rules therein contained. The regulations may also provide that the board of adjustment or the board of commissioners may issue special use permits or conditional use permits in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified therein and may impose reasonable and appropriate conditions and safeguards upon

these permits. Where appropriate, the conditions may include requirements that street and utility rights-of-way be dedicated to the public and that recreational space be provided. When issuing or denying special use permits or conditional use permits, the board of commissioners shall follow the procedures for boards of adjustment except that no vote greater than a majority vote shall be required for the board of commissioners to issue such permits, and every such decision of the board of commissioners shall be subject to review by the superior court by proceedings in the nature of certiorari.

(d) A county may regulate the development over estuarine waters and over lands covered by navigable waters owned by the State pursuant to G.S. 146-12, within the bounds of that county.

(e) For the purpose of this section, the term 'structures' shall include floating homes.

(f) Any petition for review by the superior court shall be filed with the clerk of superior court within 30 days after the decision of the board of commissioners is filed in such office as the ordinance specifies, or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the clerk at the time of the hearing of the case, whichever is later. The decision of the board of commissioners may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested."

Section 6. A rule regulating intensive animal feeding operations adopted by a local board of health prior to the date Section 3 of this act becomes effective is hereby retroactively validated. A zoning regulation applicable to intensive animal feeding operations adopted by a board of county commissioners prior to the date Section 5 of this act becomes effective is hereby retroactively validated.

Section 7. There is established a 16-month moratorium for any new or expanding swine farm or lagoon for which a permit is required under Part 1A of Chapter 143 of the General Statutes. Effective January 1, 1997, until May 1, 1998, no permit for a new or expanding swine farm or lagoon shall be issued by the Environmental Management Commission.

Section 8. (a) Except as provided in subsection (b) of this section, Section 2 of this act is effective when it becomes law and applies to the construction or enlargement, on or after the effective date of this act, of swine houses, lagoons, and land areas onto which waste is applied from a lagoon that are components of a swine farm. Section 2 of this act does not apply under each of the following circumstances when the construction or enlargement occurs on or after the effective date of this act:

(1) For the purpose of increasing the swine population to that set forth as the projected population in a registration of the swine operation filed with the Department of Environment, Health, and Natural Resources prior to the effective date of this act.

(2) For the purpose of increasing the swine population to the population that the animal waste management system is designed to accommodate as that system is set forth in a registration of the

swine operation filed with the Department of Environment, Health, and Natural Resources, or an animal waste management plan approved prior to the effective date of this act.

(3) For the purpose of complying with applicable animal waste management rules and not for the purpose of increasing the swine population.

(b) Sections 1, Sections 3 through 8, and the provisions of Section 2 of this act applicable to intensive animal feeding operations as defined in G.S. 106-802, as amended by Section 2 of this act, apply to any intensive animal feeding operation for which construction began on or after January 1, 1997, regardless of the date on which the site evaluation was completed.

THE NEWS & OBSERVER

March 3, 1997

President Spangler
Chancellor Chambers
Chancellor Hooker
Chancellor Monteith

Dear President Spangler:

As part of an effort to improve our coverage of higher education, we'd like our reporters to review the mail that comes in and out of your office, which we understand to be public records. I'm told there has been some discussion and debate about this already. So I wanted to make this a formal request and outline the basis on which we ask for this review.

We'd rely on the definition of public records as "all documents, papers, letters... made or received pursuant to law or ordinance in connection with the transaction of public business ... [by] every public office, public officer, or official... "N.C. GEN. STAT. § 132-1(a). Additionally, "every person having custody of public records shall permit them to be inspected and examined at reasonable times and under reasonable supervision by any person, and shall as promptly as possible, furnish certified copies thereof upon payment of fees as prescribed by law.'' N.C. GEN. STAT . § 132-6. Of course, we recognize that you are free to withhold from inspection any document that is specifically deemed confidential under the North Carolina General Statutes and may charge the actual cost of reproduction of any document requested.

We'd like to work out a standing time for our reporters to review these public records, preferably weekly. In the event that you claim that your mail is not open to public inspection under the Public Records Law, would you please identify the specific exemption(s) that you are citing?

Thank you for your attention. I look forward to your timely reply.

Cordially,

Anders Gyllenhaal
Executive Editor

215 South McDowell Street, Post Office Box 191, Raleigh, North Carolina 27602

VISITOR REGISTRATION SHEET

RULES, CALENDAR, AND OPERATIONS OF THE HOUSE **April 23, 1997**

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Anne Winner	NCBA
R. Paul Wilson	NCMBA
John Crabb	NCHA
Pam Cone	BPMHL
Mat Fuller	NCHA
Jason Worth	Carolina Healthcare Sys
[illegible]	Capital Strategies
Brooks	News & Observer
[illegible]	NCBA
Henry Jones	Attorney - Raleigh
Rodney E. Clark	NCPA
Ballard Ernest	NCPA
Evelyn Hawthorne	NCHA
[illegible]	Winston - Salem
[illegible]	Mayo - Van Allen
[illegible]	[illegible]
[illegible]	BMS Office
[illegible]	NCPA
Stephanie Jaquel	DHR - DCD
Janice Jain	DHR - DCD
Maya Bradley	NCCBS
[illegible]	CPA
[illegible]	NCADA
Amy Jo Bohn	Smith Anderson
Lucia C. Dell	NC Medical Society

MINUTES
COMMITTEE ON RULES, CALENDAR, AND OPERATIONS OF THE HOUSE
April 29, 1997

The Committee on Rules, Calendar, and Operations of the House met April 29, 1997, at 3:00 p.m. in Room 421 in the Legislative Office Building. Representative Morgan, Committee Chair, called the meeting to order and asked the clerk to call the roll. The following members were present: Representatives Crawford, Culp, Dockham, Esposito, Gulley, Hill, McMahan, Miner, Mitchell, Neely, Thompson and C. Wilson.

The first order of business before the Committee was the consideration of House Bill 1128 -AN ACT TO AMEND THE EDUCATION REQUIREMENTS FOR CERTIFIED PUBLIC ACCOUNTANTS. Representative Miner, bill sponsor, was recognized to explain the bill. Representative Neely moved for a favorable report and the motion carried.

House Bill 1033 - AN ACT RELATING TO BANK CHARTERS - was next before the Committee. The Chair recognized Representative Church to explain the bill and offer a proposed committee substitute. Representative Culp moved for its adoption for the purpose of Committee discussion. Motion carried. Representative Church explained that the committee substitute would give out-of-state banks two more years to establish and maintain a de novo branch through acquisition pursuant to certain conditions. Representative Thompson made a motion to give a favorable report to the committee substitute bill and unfavorable to the original bill. Motion carried. There was a title change in the bill.

House Bill 569 - AN ACT RELATING TO WAKE COUNTY - was the next agenda item. The Chair explained that this was a blank bill and recognized the bill sponsor, Representative Eddins, to explain the bill. A proposed committee substitute was offered and Representative Culp moved for its adoption for Committee discussion. Motion carried. Representative Eddins explained that the proposed committee substitute would clarify that in elections to fill vacancies on the Wendell Town Board for the remainder of the unexpired term, the next highest vote-getter receives a two-year term, rather than having a separate election on the ballot. Representative Neely made a motion to give a favorable report to the committee substitute bill and an unfavorable report to the original bill. The motion carried. There was a title change in the bill.

House Bill 565 -AN ACT RELATING TO WAKE COUNTY- was next before the Committee. Representative Ellis, bill sponsor, was recognized to explain the bill. He explained this was a blank bill and that he was offering a proposed committee substitute that would change several laws affecting Wake County. Representative Neely moved for the adoption of the proposed committee substitute for the purpose of Committee discussion. Motion carried. Representative Dockham moved to give the

proposed committee substitute a favorable report and unfavorable as to the original bill. Motion carried. There was a title change in the bill.

House Bill 768 -AN ACT RELATING TO PROPERTY ACQUISITIONS BY LARGE WATER AND SEWER AUTHORITIES - was the next bill before the Committee. Representative Culp, bill sponsor, was recognized to explain the bill. He offered a proposed committee substitute and moved for its adoption for the purpose of Committee discussion. Motion carried. Representative Culp explained that the bill would authorize a water and sewer authority holding a certificate under G.S. 162A-7 to exercise the power of eminent domain for specified purposes. Representative Dockham moved to give a favorable report to the proposed committee substitute and unfavorable as to the original bill. Motion carried and there was a title change in the bill.

House Joint Resolution 1153 -A JOINT RESOLUTION COMMEMORATING THE ONE HUNDRED FIFTIETH ANNIVERSARY OF THE TOWN OF FRANKLINVILLE AND HONORING THE MEMORY OF JESSE FRANKLIN-was explained by Representative Culp, the bill sponsor. Representative Dockham moved for a favorable report and the motion carried.

House Bill 853 -AN ACT TO AMEND THE PROFESSIONAL CORPORATION ACT TO ALLOW COLLABORATIVE PRACTICES BETWEEN PHYSICIANS AND AUDIOLOGISTS - was the next bill before the Committee. Representative Nye, the bill sponsor, was recognized to explain the bill. Representative Hill moved to give House Bill 853 a favorable report. Motion carried.

House Bill 890 -AN ACT RELATING TO WAKE COUNTY - was the next agenda item for consideration. Representative Miner, the bill sponsor, was recognized to explain the bill and offered a proposed committee substitute and moved for its adoption for Committee consideration. Motion carried. Representative Miner explained that the bill would authorize certain cities in Wake County to adopt ordinances regulating removal, replacement, and preservation of trees and shrubs within the city and areas within each city's extraterritorial planning jurisdiction. He then offered an amendment that would delete the city of Wake Forest from the bill and moved for its adoption. Motion carried. Representative Neely moved to give the proposed committee substitute, as amended and rolled into a committee substitute, a favorable report and unfavorable as to the original bill. Motion carried. There was a title change in the bill.

House Bill 1107 - AN ACT TO AMEND THE FACILITY AUTHORITY ACT RELATING TO THE COMPOSITION OF FACILITY AUTHORITIES AND THE LEVYING OF TAXES TO PAY FOR CAPITAL COSTS - was before the Committee.

Representative Neely, bill sponsor, was recognized to explain the bill. He offered a proposed committee substitute and moved for its adoption for committee discussion. Motion carried. He then explained that the bill would amend the Facility Authority Act relating to the membership of facility authorities and room occupancy tax allocations for capital improvements. Representative Miner made the motion to give a favorable report to the proposed committee substitute and unfavorable as to the original bill. The motion carried and there was a title change in the bill.

House Joint Resolution 1155 - A JOINT RESOLUTION INVITING THE REVEREND BILLY GRAHAM TO ADDRESS A JOINT SESSION OF THE HOUSE OF REPRESENTATIVES AND THE SENATE AND INVITING GOVERNOR JAMES B. HUNT, JR. - was the next bill before the Committee. Representative Thompson, bill sponsor, was recognized to explain the bill. Representative Esposito moved for a favorable report; motion carried.

House Bill 1051 - AN ACT PERTAINING TO THE DUTY OF HOSPITALS AND OTHER AGENCIES WITH RESPECT TO ORGAN PROCUREMENT AND DONATION - was next before the Committee for consideration. Representative Miller, bill sponsor, was recognized to explain the bill. Representative Hill moved for a favorable report and the motion carried.

House Bill 789 - AN ACT RELATING TO THE TOWN OF OAKBORO was the next bill before the Committee. The Chair noted that this was a blank bill and recognized Representative Barbee, bill sponsor, to explain the bill. He offered a proposed committee substitute for House Bill 789 and Representative Gulley moved for its adoption for Committee discussion. Motion carried. The proposed committee substitute would revise the boundaries of the Town of Oakboro. Representative Culp moved to give a favorable report to the proposed committee substitute bill and an unfavorable report to the original bill and recommend that it be re-referred to the Committee on Finance. Motion carried. There was a title change in the bill.

House Joint Resolution 956 - A JOINT RESOLUTION COMMEMORATING THE ONE HUNDRED FIFTIETH ANNIVERSARY OF THE CITY OF GOLDSBORO AND HONORING THE MEMORY OF MAJOR MATTHEW TILGHMAN GOLDSBOROUGH- was before the Committee. Representative Baddour, bill sponsor, was recognized to explain the resolution. Representative Neely moved for a favorable report and the motion carried.

House Bill 722 - AN ACT RELATING TO BEAUFORT COUNTY - was before the Committee for consideration. Representative Hardy, bill sponsor, was

recognized to explain the bill and offered a proposed committee substitute for Committee consideration. Representative Mitchell moved for its adoption; motion carried. The committee substitute would allow the City of Washington to negotiate annexation agreements. Representative Dockham moved for a favorable report to the committee substitute bill and unfavorable as to original bill and recommended that it be re-referred to the Committee on Finance. Motion carried. There was a title change in the bill.

House Bill 305 - AN ACT TO AMEND THE PUBLIC LAWS AND DIRECTLY AFFECT THE STATE BUDGET- was before the Committee for consideration. Representative Brown explained the bill and offered a proposed committee substitute for Committee consideration. Representative Mitchell moved for its adoption and motion carried. The committee substitute bill would increase the limit for an assessment when the assessment is paid by peanut producers for the promotion of peanuts. Representative Hill moved for a favorable report to the committee substitute for House Bill 305, unfavorable as to original bill and recommended that it be re-referred to the Committee on Finance. The motion carried. There was a title change in the bill.

House Bill 604 - AN ACT TO CLARIFY THE NEWPORT-MOREHEAD BOUNDARIES - was next before the Committee. Representative Smith, bill sponsor, was recognized to explain the bill and offered a proposed committee substitute for Committee discussion. Motion carried. The committee substitute would allow the towns of Morehead City and Newport to exercise extraterritorial planning jurisdiction over an area extending not more than two miles from their corporate limits. Representative Hill moved for a favorable report to the committee substitute and unfavorable as to the original bill. Motion carried. There was a title change in the bill.

House Bill 698 - AN ACT RELATING TO MOREHEAD-NEWPORT ANNEXATIONS- was the next bill before the Committee. Representative Smith, bill sponsor, was recognized to explain the bill and he offered a proposed committee substitute for Committee discussion Representative Connie Wilson moved for its adoption and motion carried. The committee substitute bill would limit the authority of the Towns of Morehead City and Newport to annex noncontiguous areas. Representative McMahan offered a technical amendment and moved for its adoption. Motion carried and the amendment was rolled into a committee substitute. Representative Neely moved to give a favorable report to the committee substitute bill and an unfavorable report to the original bill. Motion carried. There was a title change in the bill.

House Bill 699 -AN ACT RELATING TO MINIMUM HOUSING IN THE TOWN OF NEWPORT - was the final bill before the Committee. Representative Smith, bill sponsor, was recognized to explain the bill and he offered a proposed

committee substitute for Committee consideration. Representative Esposito moved for its adoption; motion carried. The committee substitute bill would grant authority to the Town of Newport to address abandoned structures in the same manner as municipalities in counties with a population of over one hundred sixty-three thousand. Representative Dockham moved to give the committee substitute bill a favorable report and an unfavorable report to the original bill. Motion carried. There was a title change in the bill.

The meeting adjourned at 3:45 p.m.

Representative Richard T. Morgan
Committee Chair

Anne M. Cole
Acting Committee Clerk

Attachments:
Committee Reports
Bills
Amendments
Visitor's Sheet

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House.**

☐ Committee Substitute for
H.B. 1128 A BILL TO BE ENTITLED AN ACT TO AMEND THE EDUCATION REQUIREMENTS FOR CERTIFIED PUBLIC ACCOUNTANTS.

☑ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

HOUSE BILL 1128

Short Title: CPA Education Requirements. (Public)

Sponsors: Representatives Miner; Adams, Alexander, Arnold, Baddour, Barbee, Berry, Bonner, Bowie, Brawley, Brown, Buchanan, Cansler, Capps, Carpenter, Church, Clary, Cole, Creech, Culpepper, Davis, Dedmon, Dickson, Eddins, Fox, Gamble, Gulley, Hall, Hardy, Hiatt, Hill, Ives, Jarrell, Justus, Kinney, Kiser, McComas, McCombs, McCrary, McMahan, Mitchell, Moore, Morris, Neely, Nichols, Owens, Preston, Rayfield, Redwine, Reynolds, Rogers, Russell, Saunders, Sherrill, Shubert, Smith, Starnes, Tallent, Thompson, Warwick, Watson, Weatherly, Wilkins, C. Wilson, G. Wilson, Wood, and Wright.

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

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE EDUCATION REQUIREMENTS FOR CERTIFIED PUBLIC ACCOUNTANTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 93-12(5) reads as rewritten:

"(5) To issue certificates of qualification admitting to practice as certified public accountants, each applicant who, having the qualifications herein specified, ~~shall have~~ has passed an examination to the satisfaction of the Board, in 'accounting,' 'auditing,' 'business law,' and other related subjects.

A person is eligible to take the examination given by the Board, or to receive a certificate of qualification to practice as a certified public accountant, ~~who~~ if the person is a citizen of the United States, has declared the intention of becoming a citizen, is a resident alien, or is a citizen of a foreign jurisdiction which extends to citizens of this State like or similar privileges to be examined or

certified, is 18 years of age or over, and is of good moral ~~character, and submits evidence satisfactory to the Board that:~~ character.

~~a. He holds a bachelor's degree from a college or university accredited by one of the regional accrediting associations or from a college or university determined by the Board to have standards substantially equivalent to a regionally accredited institution, and~~

~~b. His degree studies included a concentration in accounting as defined by the Board or that he supplemented his degree studies with courses that the Board determines to be substantially equivalent to a concentration in accounting.~~

~~c. Repealed by Session Laws 1991, c. 214, s. 1, effective January 1, 1997.~~

To be eligible to take the examination given by the Board, a person shall submit evidence satisfactory to the Board that the person holds a bachelors degree from a college or university that is accredited by one of the regional accrediting associations or from a college or university determined by the Board to have standards that are substantially equivalent to a regionally accredited institution. The degree studies shall include a concentration in accounting as prescribed by the Board or shall be supplemented with courses that are determined by the Board to be substantially equivalent to a concentration in accounting.

~~Provided, however, the~~ The Board may, in its discretion, waive the education requirement of any candidate if the Board is satisfied from the result of a special written examination given the candidate by the Board to test ~~his~~ the candidate's educational qualifications that ~~he~~ the candidate is as well qualified as if ~~he~~ the candidate met the education requirements specified above. The Board may provide by regulation for the general scope of such examinations and may obtain such advice and assistance as it deems appropriate to assist it in preparing, administering and grading such special examinations.

To be eligible to receive a certificate of qualification to practice as a certified public accountant, a person shall submit evidence satisfactory to the Board that:

a. The person has completed 150 semester hours and received a bachelors degree with a concentration in accounting and other courses that the Board may require from a college or university that is accredited by a regional accrediting association or from a college or university determined by the

Board to have standards that are substantially equivalent to those of a regionally accredited institution.

b. ~~Such applicant, in addition to passing the examination given by the Board, shall have~~ The person has the endorsement as to ~~his~~ the person's eligibility of three certified public accountants who currently hold licenses in any state or territory of the United States or the District of ~~Columbia and shall have had either:~~ Columbia.

c. The person has one of the following:

~~a.~~1. Two years of experience in the field of accounting under the direct supervision of a certified public accountant who currently holds a valid license in any state or territory of the United States or the District of ~~Columbia, or~~ Columbia.

~~b.~~2. Five years of experience teaching accounting in a four-year college or university accredited by one of the regional accrediting associations or in a college or university determined by the Board to have standards substantially equivalent to a regionally accredited ~~institution; or~~ institution.

~~c.~~3. Five years of experience in the field of ~~accounting;~~ accounting.

4. ~~or five~~ Five years of experience teaching college transfer accounting courses at a community college or technical institute accredited by one of the regional accrediting ~~associations; or~~ associations.

~~d.~~5. Any combination of such experience determined by the Board to be substantially equivalent to the foregoing.

A Master's or more advanced degree in accounting, tax law, economics, business administration, or the equivalent thereof, or a law degree with emphasis in taxation or accounting from ~~an~~ a regionally accredited college or university may be substituted for one year of experience. The Board may permit persons otherwise eligible to take its examinations and withhold certificates until ~~such~~ the person ~~shall have~~ has had the required experience."

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

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Rules** for the Committee on **Rules, Calendar and Operations of the House.**

☐ Committee Substitute for
H.B. 1033 A BILL TO BE ENTITLED AN ACT RELATING TO BANK CHARTERS.

☐ 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)

4/24/97

com auth
for

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1033
Proposed Committee Substitute H1033-PCS6243

Short Title: Establishment of Bank Branches. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO GIVE OUT-OF-STATE BANKS TWO MORE YEARS TO ESTABLISH AND MAINTAIN A DE NOVO BRANCH OR A BRANCH THROUGH ACQUISITION PURSUANT TO CERTAIN CONDITIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 53-224.14(c) reads as rewritten:

"(c) Prior to June 1, ~~1997,~~ 1999, an out-of-state bank may establish and maintain a de novo branch or may establish and maintain a branch through acquisition of a branch if:

(1) In the case of a de novo branch, the laws of the home state of the out-of-state bank permit North Carolina banks to establish and maintain de novo branches in that state under substantially the same terms and conditions as herein set forth; and

(2) In the case of a branch established through the acquisition of a branch, the laws of the home state of the out-of-state bank permit North Carolina banks to establish and maintain branches in that state through the acquisition of branches under substantially the same terms and conditions as herein set forth."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 1033

Short Title: Banking Charters. (Public)

Sponsors: Representative Church.

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

April 21, 1997

A BILL TO BE ENTITLED

AN ACT RELATING TO BANK CHARTERS.

The General Assembly of North Carolina enacts:

Section 1. This act relates to bank charters.

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

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House.**

☐ Committee Substitute for
H.B. 569 A BILL TO BE ENTITLED AN ACT RELATING TO WAKE COUNTY.

☐ 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)

4/24/97

Comm Amd

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 569
Proposed Committee Substitute H569-PCS8196

Short Title: Wendell Vacancy Elections. (Local)

Sponsors:

Referred to:

March 20, 1997

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT IN ELECTIONS TO FILL VACANCIES ON THE WENDELL TOWN BOARD FOR THE REMAINDER OF THE UNEXPIRED TERM, THE NEXT HIGHEST VOTE GETTER RECEIVES A TWO-YEAR TERM, RATHER THAN HAVING A SEPARATE ELECTION ON THE BALLOT.

The General Assembly of North Carolina enacts:

Section 1. Section 4.2 of the Charter of the Town of Wendell, being Chapter 107 of the 1985 Session Laws, reads as rewritten:

"Sec. 4.2. Conduct and Method of Election. Elections for Mayor and Board of Commissioners shall be by the nonpartisan plurality method set out in the General Statutes. All elections and referendums of the Town of Wendell shall be held and conducted as provided by the applicable General Statutes.

If a vacancy occurs on the Board of Commissioners and under G.S. 160A-63 there is an election to fill the remainder of the unexpired term, then the election to fill the remainder of the unexpired term shall be held on the same ballot, the candidates receiving the highest number of votes equal to the number of persons to be elected to four-year terms receive those terms, and the candidate or candidates receiving the next highest numbers of votes equal to the number of persons to be elected to two-year terms receive those terms. There shall be no separate designation on the ballot for the two-year terms, and each voter shall have as many votes as there are persons to be elected."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 569

Short Title: Wake Local Act. (Local)

Sponsors: Representative Ellis.

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

March 20, 1997

A BILL TO BE ENTITLED

AN ACT RELATING TO WAKE COUNTY.

The General Assembly of North Carolina enacts:

Section 1. The law relating to Wake County is amended.

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

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House.**

☐ Committee Substitute for
H.B. 565 A BILL TO BE ENTITLED AN ACT RELATING TO WAKE COUNTY.

☐ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 565
Proposed Committee Substitute H565-PCS7290

Short Title: Wake Omnibus Act. (Local)

Sponsors:

Referred to:

March 20, 1997

A BILL TO BE ENTITLED

AN ACT TO CHANGE SEVERAL LAWS AFFECTING WAKE COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Chapter 279 of the 1989 Session Laws is repealed.

Section 2. G.S. 62A-8 reads as rewritten:

"**§ 62A-8. Payments from Fund.**

(a) Money from the Emergency Telephone System Fund shall be used only to pay for:

(1) The lease, purchase, or maintenance of emergency telephone equipment, including necessary computer hardware, software and database provisioning, addressing, and nonrecurring costs of establishing a 911 system, and

(2) The rates associated with the service supplier's 911 service and other service supplier recurring charges.

(3) The purchase of mobile or portable communications equipment.

(b) The following expenses are not eligible for payment from the Fund: the lease or purchase of real estate, cosmetic remodeling of emergency dispatch centers, hiring, training, and compensating dispatchers, and the purchase of ~~mobile communications vehicles,~~ ambulances, fire engines, or other emergency vehicles.

(c) A local government may contract with a service supplier for any term negotiated by the service supplier and the local government and may make payments from the Emergency Telephone System Fund to provide any payments required by the contract."

Section 3. G.S. 90-95.3(b) reads as rewritten:

"(b) When any person is convicted of an offense under this Article, the court may order him to make restitution in the sum of one hundred dollars ($100.00) to the State of North Carolina or to a unit of local government for the expense of analyzing any controlled substance possessed by him or his agent as part of an investigation leading to his conviction. Any funds received under this subsection shall be deposited in the General ~~Fund.~~ Fund, or with a unit of local government if it provided the controlled substance analysis."

Section 4. This act applies only to Wake County.

Section 5. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 565

Short Title: Wake Local Act. (Local)

Sponsors: Representatives Ellis; and Decker.

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

March 20, 1997

A BILL TO BE ENTITLED

AN ACT RELATING TO WAKE COUNTY.

The General Assembly of North Carolina enacts:

Section 1. The law relating to Wake County is amended.

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

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House.**

☐ Committee Substitute for
H.B. 768 A BILL TO BE ENTITLED AN ACT RELATING TO PROPERTY ACQUISITIONS BY LARGE WATER AND SEWER AUTHORITIES.

☐ 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)

4/24/97

fav com 2nd

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 768
Proposed Committee Substitute H768-PCS4110

Short Title: Water Authority Property. (Public)

Sponsors:

Referred to:

April 3, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE A WATER AND SEWER AUTHORITY HOLDING A CERTIFICATE UNDER G.S. 162A-7 TO EXERCISE THE POWER OF EMINENT DOMAIN FOR SPECIFIED PURPOSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 162A-6 is amended by adding a new subdivision to read:

"(17) If it holds a certificate issued by the Environmental Management Commission under G.S. 162A-7, to exercise the power of eminent domain:

a. For the purposes enumerated in G.S. 40A-3(b)(1), (4), and (7); or

b. To acquire property for wetlands mitigation, or

to otherwise acquire property for any of these purposes. This subdivision grants authority for the purposes of G.S. 40A-3(b)(1) only to relocate a road or to construct a road necessitated by construction of a water supply project."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 768

Short Title: Water Authority Property. (Public)

Sponsors: Representatives Culp; Adams, Bonner, Bowie, Dockham, Jarrell, and Jeffus.

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

April 3, 1997

A BILL TO BE ENTITLED

AN ACT RELATING TO PROPERTY ACQUISITIONS BY LARGE WATER AND SEWER AUTHORITIES.

The General Assembly of North Carolina enacts:

Section 1. This act relates to acquisition of property by water and sewer authorities with two larger cities as members.

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

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House**.

☐ Committee Substitute for
H.J.R. 1153 A JOINT RESOLUTION COMMEMORATING THE ONE HUNDRED FIFTIETH ANNIVERSARY OF THE TOWN OF FRANKLINVILLE AND HONORING THE MEMORY OF JESSE FRANKLIN.

☑ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE JOINT RESOLUTION 1153

Sponsors: Representative Culp.

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

April 23, 1997

A JOINT RESOLUTION COMMEMORATING THE ONE HUNDRED FIFTIETH ANNIVERSARY OF THE TOWN OF FRANKLINVILLE AND HONORING THE MEMORY OF JESSE FRANKLIN.

Whereas, the antebellum cotton factories of the Town of Franklinville in Randolph County were among this State's pioneer textile mills, and have caused the Town to be called "the cradle of the Deep River textile industry"; and

Whereas, the Town of Franklinville is home to numerous structures that are included in a historic district listed on the National Register of Historic Places and were built before the Civil War which illustrate all aspects of life in a nineteenth century mill village; and

Whereas, the Town of Franklinville was created by the legislature in 1847, to incorporate the neighboring mill villages of Franklinville, founded in 1838, and Island Ford, founded in 1846; and

Whereas, the chartering of the Town of Franklinville by the legislature was the first incorporation of any North Carolina mill village; and

Whereas, the Town of Franklinville is named for Jesse Franklin, who served as Governor of North Carolina from 1820 to 1821; and

Whereas, the Town of Franklinville is one of the pivotal landmarks of the history of economic and industrial development in the State of North Carolina;

Now, therefore, be it resolved by the House of Representatives, the Senate concurring:

Section 1. The General Assembly honors the memory of Jesse Franklin and recognizes the Town of Franklinville as one of the original success stories of domestic manufacturing in the State. The General Assembly further honors the occasion of the Town's 150th Anniversary by designating the Town as the State of North Carolina's first Textile Heritage Village.

Section 2. The Secretary of State shall transmit a certified copy of this resolution to the Mayor of the Town of Franklinville.

Section 3. This resolution is effective upon ratification.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House.**

☐ Committee Substitute for
H.B. 853 A BILL TO BE ENTITLED AN ACT TO AMEND THE PROFESSIONAL CORPORATION ACT TO ALLOW COLLABORATIVE PRACTICES BETWEEN PHYSICIANS AND AUDIOLOGISTS.

☑ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 853

Short Title: Amend Professional Corporation Act. (Public)

Sponsors: Representative Nye.

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

April 7, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PROFESSIONAL CORPORATION ACT TO ALLOW COLLABORATIVE PRACTICES BETWEEN PHYSICIANS AND AUDIOLOGISTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 55B-14(c) reads as rewritten:

"(c) A professional corporation may also be formed by and between or among:

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

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

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

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

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

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

(7) A physician and an audiologist who is licensed under Article 22 of Chapter 90 of the General Statutes to render audiological and related medical services that the respective stockholders are licensed, certified, or otherwise approved to provide."

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

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House**.

☐ Committee Substitute for
H.B. 890 A BILL TO BE ENTITLED AN ACT RELATING TO WAKE COUNTY.

☐ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 890
Proposed Committee Substitute H890-PCSA370

Short Title: Wake Tree Ordinances. (Local)

Sponsors:

Referred to:

April 7, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE CERTAIN CITIES IN WAKE COUNTY TO ADOPT ORDINANCES REGULATING REMOVAL, REPLACEMENT, AND PRESERVATION OF TREES AND SHRUBS WITHIN THE CITY AND AREAS WITHIN EACH CITY'S EXTRATERRITORIAL PLANNING JURISDICTION.

The General Assembly of North Carolina enacts:

Section 1. In order to preserve and enhance one of the most valuable natural resources of the community and to protect the health, safety, and welfare of its citizens, a municipality may adopt ordinances to regulate the planting, removal, and preservation of trees and shrubs on public and private property within the municipality.

Section 2. Prior to adopting an ordinance authorized by Section 1 of this act, a public hearing shall be held before the municipality's governing board. Notice of the hearing shall be given in accordance with G.S. 160A-364.

Section 3. This act shall apply only to the cities of Cary and Apex and to areas within each of those cities' extraterritorial planning jurisdiction under Article 19 of Chapter 160A of the General Statutes.

Section 4. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 890
Proposed Committee Substitute H890-PCS7295

Short Title: Wake Tree Ordinances. (Local)

Sponsors:

Referred to:

April 7, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE CERTAIN CITIES IN WAKE COUNTY TO ADOPT ORDINANCES REGULATING REMOVAL, REPLACEMENT, AND PRESERVATION OF TREES AND SHRUBS WITHIN THE CITY AND AREAS WITHIN EACH CITY'S EXTRATERRITORIAL PLANNING JURISDICTION.

The General Assembly of North Carolina enacts:

Section 1. In order to preserve and enhance one of the most valuable natural resources of the community and to protect the health, safety, and welfare of its citizens, a municipality may adopt ordinances to regulate the planting, removal, and preservation of trees and shrubs on public and private property within the municipality.

Section 2. Prior to adopting an ordinance authorized by Section 1 of this act, a public hearing shall be held before the municipality's governing board. Notice of the hearing shall be given in accordance with G.S. 160A-364.

Section 3. This act shall apply only to the cities of Cary, Apex, and Wake Forest and to areas within each of those cities' extraterritorial planning jurisdiction under Article 19 of Chapter 160A of the General Statutes.

Section 4. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 890

Short Title: Wake Local Act. (Local)

Sponsors: Representative Miner.

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

April 7, 1997

A BILL TO BE ENTITLED

AN ACT RELATING TO WAKE COUNTY.

The General Assembly of North Carolina enacts:

Section 1. This act relates to Wake County only.

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

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House.**

☐ Committee Substitute for
H.B. 1107 A BILL TO BE ENTITLED AN ACT TO AMEND THE FACILITY AUTHORITY ACT RELATING TO THE COMPOSITION OF FACILITY AUTHORITIES AND THE LEVYING OF TAXES USED TO PAY FOR CAPITAL COSTS.

☐ 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 Finance

☐ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1107
Proposed Committee Substitute H1107-PCSXA355

Short Title: Facility Authorities. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE FACILITY AUTHORITY ACT RELATING TO THE MEMBERSHIP OF FACILITY AUTHORITIES AND ROOM OCCUPANCY TAX ALLOCATIONS FOR CAPITAL IMPROVEMENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-480.3(b) reads as rewritten:

"(b) Membership. -- An authority shall have eight or ~~13~~ 17 members. Members shall be chosen for terms as follows:

(1) Four shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, at least one of whom shall be a resident of the territorial jurisdiction of the authority;

(2) Four shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, at least one of whom shall be a resident of the territorial jurisdiction of the authority; and

(3) If the territorial jurisdiction of the authority is a county where the main campus of a constituent institution of The University of North Carolina is located, then:

a. ~~Two~~ Four members shall be appointed by the board of commissioners of that ~~county;~~ county, one of whom at the time of appointment is a resident of the municipality with

the second largest population in the county, according to the most recent decennial federal census;

b. ~~Two~~ Four members shall be appointed by the city council of the city with the largest population in the county, according to the most recent decennial federal census; and

c. One member shall be appointed jointly by the mayors of all the cities in that ~~county.~~ county;

d. Beginning January 1, 1999, a majority of any executive committee, or other committee however termed having supervisory or management authority over the facility to be constructed by the authority, shall consist of authority members appointed under this subdivision;

e. The Chancellor and Board of Trustees of the constituent institution of The University of North Carolina whose main campus is located within the county shall make recommendations to the General Assembly no later than April 1 of each odd-numbered year for persons to be appointed under subdivisions (1) and (2) of this section, and the General Assembly may consider such recommendations; and

f. ~~The~~ Neither the board of commissioners ~~may not~~ nor the city council may appoint a member of its board to serve on the authority.

Two of the initial appointments under subdivision (1) of this subsection, two of the initial appointments under subdivision (2) of this subsection, one of the initial appointments under subdivision (3)a. of this subsection, and one of the initial appointments under subdivision (3)b. of this section shall be for terms expiring July 1 of the second year after the year in which the authority is created. The remaining initial appointments shall be for terms expiring July 1 of the fourth year after the year in which the authority is created. Successors shall be appointed in the same manner for four-year terms. In 1999, the third member appointed by the board of commissioners shall serve a two-year term beginning January 1, and the fourth member appointed by the board of commissioners shall serve a four-year term beginning January 1. In 1999, the third member appointed by the city council shall serve a two-year term beginning January 1, and the fourth member appointed by the city council shall serve a four-year term beginning January 1. A member may be removed by the appointing authority for cause. Vacancies occurring in the membership of the authority shall be filled by the remaining members."

Section 2. G.S. 160A-480.8(c)(3) reads as rewritten:

"(3) With the approval of the county levying the tax, by receipts, if any, from a room occupancy and prepared food and beverage tax levied by a county and distributed to the Authority; provided, however, that any agreement or undertaking by a county to distribute receipts, if any, from the tax to the Authority may not obligate the

county to exercise any power of taxation, or restrict the ability of the county to repeal the tax. However, no action by a county to discontinue, decrease, or repeal a room occupancy tax shall become effective while previously issued bonds or notes secured by receipts from such a tax allocated to an authority by the county remain outstanding."

Section 3. Section 19 of Chapter 594 of the 1991 Session Laws, as rewritten by Section 5 of Chapter 458 of the 1995 Session Laws, reads as rewritten:

"Sec. 19. Repeal. -- The taxes levied pursuant to this authority may be repealed by the county by enacting an ordinance of repeal. No such repeal shall be effective until at least 180 days after the passage of the repeal ~~ordinance.~~ ordinance, provided the levy of any occupancy tax in effect on January 1, 1997, shall not be decreased and no repeal thereof shall become effective until all obligations secured by receipts from such tax and issued under G.S. 160A-480.8 or G.S. 160A-480.12 have ceased to be outstanding. Repeal of a tax levied under this act does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal."

Section 4. Section 1 of this act becomes effective January 1, 1999. The remainder of this act becomes effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 1107

Short Title: Facility Authorities. (Public)

Sponsors: Representative Neely.

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

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE FACILITY AUTHORITY ACT RELATING TO THE COMPOSITION OF FACILITY AUTHORITIES AND THE LEVYING OF TAXES USED TO PAY FOR CAPITAL COSTS.

The General Assembly of North Carolina enacts:

Section 1. This act amends the Facility Authority Act.

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

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House**.

☐ Committee Substitute for
H.J.R. 1155 A JOINT RESOLUTION INVITING THE REVEREND BILLY GRAHAM TO ADDRESS A JOINT SESSION OF THE HOUSE OF REPRESENTATIVES AND THE SENATE AND INVITING GOVERNOR JAMES B. HUNT, JR.

☑ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE JOINT RESOLUTION 1155

Sponsors: Representatives Thompson; Brubaker, Adams, Aldridge, Alexander, Allred, Arnold, Baddour, Baker, Barbee, Beall, Berry, Black, Blue, Bonner, Bowie, Boyd-McIntyre, Braswell, Brawley, Brown, Buchanan, Cansler, Capps, Carpenter, Church, Clary, Cole, Crawford, Creech, Culp, Culpepper, Cunningham, Daughtry, Davis, Decker, Dedmon, Dickson, Dockham, Earle, Easterling, Eddins, Ellis, Esposito, Fitch, Fox, Gamble, Gardner, Goodwin, Grady, Gray, Gulley, Hackney, Hall, Hardaway, Hardy, Hensley, Hiatt, Hightower, Hill, Holmes, Howard, H. Hunter, R. Hunter, Hurley, Insko, Ives, Jarrell, Jeffus, Justus, Kinney, Kiser, Luebke, McAllister, McComas, Mccombs, McCrary, McMahan, Mercer, Michaux, Miller, Miner, Mitchell, Moore, Morgan, Morris, Mosley, Neely, Nesbitt, Nichols, Nye, Oldham, Owens, Preston, Ramsey, Rayfield, Redwine, Reynolds, Rogers, Russell, Saunders, Sexton, Sherrill, Shubert, Smith, Starnes, Sutton, Tallent, Tolson, Wainwright, Warner, Warwick, Watson, Weatherly, Wilkins, C. Wilson, G. Wilson, Womble, Wood, Wright, and Yongue.

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

April 24, 1997

A JOINT RESOLUTION INVITING THE REVEREND BILLY GRAHAM TO ADDRESS A JOINT SESSION OF THE HOUSE OF REPRESENTATIVES AND THE SENATE AND INVITING GOVERNOR JAMES B. HUNT, JR.

Whereas, Billy Graham has distinguished himself through his contributions to morality, racial equality, family, philanthropy, and religion; and

Whereas, perhaps America's most respected and admired evangelical leader of the past half century, Billy Graham has reached millions of people through crusades and television; and

Whereas, Billy Graham has exemplified the highest ideals of teaching, counseling, ethics, charity, faith, and family; and

Whereas, Billy Graham's daily newspaper column and numerous books have provided spiritual counseling and personal enrichment to millions of people; and

Whereas, Billy Graham and Ruth Graham, his wife of 53 years, have been the driving force to create the Ruth and Billy Graham Children's Health Center at Memorial Mission Hospital in Asheville, North Carolina, whose vision it is to improve the health and well-being of children and to become a new resource for ending the pain and suffering of children; and

Whereas, Billy Graham has received numerous awards and honorary degrees including the Congressional Gold Medal in 1996, the North Carolina Award for Public Service in 1986, the Presidential Medal of Freedom in 1983, the Sylvanus Thayer Award from the United States Military Academy Association of Graduates at West Point in 1972, the International Brotherhood Award from the National Conference of Christians and Jews in 1971, and the Gold Award of the George Washington Carver Memorial Institute in 1964; and

Whereas, Billy Graham has participated in eight presidential inaugurations from the inauguration of President Lyndon B. Johnson in 1965 to the inauguration of President William J. Clinton in 1997;

Now, therefore, be it resolved by the House of Representatives, the Senate concurring:

Section 1. The Reverend Billy Graham is invited to address a joint session of the House of Representatives and the Senate in the Hall of the House of Representatives at 6:00 p.m., Monday, May 5, 1997.

Section 2. The Honorable James B. Hunt, Jr., Governor, is invited to the joint session.

Section 3. The Secretary of State shall transmit a certified copy of this resolution to the Reverend Billy Graham and the Governor of the State of North Carolina.

Section 4. This resolution is effective upon ratification.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House.**

☐ Committee Substitute for
H.J.R. 1152 A JOINT RESOLUTION SETTING THE DATE FOR THE HOUSE OF REPRESENTATIVES AND SENATE TO ELECT MEMBERS TO THE STATE BOARD OF COMMUNITY COLLEGES.

☑ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE JOINT RESOLUTION 1152

Sponsors: Representatives Rayfield; Bonner, Bowie, Brawley, Brown, Cansler, Capps, Dickson, Eddins, Grady, Gulley, Hardy, Morris, Reynolds, Saunders, Sexton, and Watson.

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

April 22, 1997

A JOINT RESOLUTION SETTING THE DATE FOR THE HOUSE OF REPRESENTATIVES AND SENATE TO ELECT MEMBERS TO THE STATE BOARD OF COMMUNITY COLLEGES.

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

Section 1. Pursuant to G.S. 115D-2.1(b)(4)f., the Senate and the House of Representatives shall elect members to the State Board of Community Colleges during the regular sessions of the two chambers held on Wednesday, May 21, 1997. At that time the House of Representatives shall elect two members to the State Board each for a term of six years beginning July 1, 1997; the Senate shall elect two members to the State Board each for a term of six years beginning July 1, 1997.

Section 2. Each chamber shall follow the procedure set out in G.S. 115D-2.1 for the nomination and election of members of the State Board.

Section 3. This resolution is effective upon ratification.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House.**

☐ Committee Substitute for
H.B. 1051 A BILL TO BE ENTITLED AN ACT PERTAINING TO THE DUTY OF HOSPITALS AND OTHER AGENCIES WITH RESPECT TO ORGAN PROCUREMENT AND DONATION.

☑ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 1051

Short Title: Organ Donation/Procurement. (Public)

Sponsors: Representatives Miller; Preston and Wainwright.

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

April 21, 1997

A BILL TO BE ENTITLED

AN ACT PERTAINING TO THE DUTY OF HOSPITALS AND OTHER AGENCIES WITH RESPECT TO ORGAN PROCUREMENT AND DONATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-412.1 reads as rewritten:

"**§ 130A-412.1. Duty of hospitals to establish organ procurement protocols.**

~~(a) In order to facilitate the goals of this Part, each hospital shall be required to establish written protocols for the identification of potential organ and tissue donors that:~~

~~(1) Assure that the families of potential organ and tissue donors are made aware of the option of organ or tissue donation and their option to decline;~~

~~(2) Encourage discretion and sensitivity with respect to the circumstances, views and beliefs of such families;~~

~~(3) Require that only the organ procurement agency designated by the Secretary of Health and Human Services be notified of potential organ and tissue donors; and~~

~~(4) Assure that procedures are established for identifying and consulting with holders of properly executed donor cards.~~

~~(b) The family of any person whose organ or tissue is donated for transplantation shall not be financially liable for any costs related to the evaluation of the suitability of the donor's organ or tissue for transplantation or any costs of retrieval of the organ or tissue.~~

~~(e) The requirements of this section, or of any hospital organ procurement protocols established pursuant to this section shall not exceed those provided for by the hospital organ protocol provisions of Title XI of the Social Security Act, except for the purposes of this section the term "organ and tissue donors" shall include cornea and tissue donors for transplantation.~~

(a) In order to facilitate the goals of this Part, each hospital shall establish written protocols that:

(1) Require that only the organ procurement organization designated by the Secretary of Health and Human Services be notified of all deaths or impending brain deaths meeting criteria for notification as established by the designated organ procurement organization; and

(2) Ensure that notification required under subdivision (1) of this subsection is made as soon as it is determined that brain death is imminent or cardiac arrest has occurred.

(b) Hospitals shall provide organ procurement organizations and applicable tissue banks access to patient's medical records for the purpose of determining organ potential.

(c) The family of any person whose organ or tissue is donated for transplantation shall not be financially liable for any costs related to the evaluation of the suitability of the donor's organ or tissue for transplantation, or for any costs of retrieval of the organ or tissue.

(d) Each hospital shall provide its federally designated organ procurement organization with access to the medical records of deceased patients for the following purposes:

(1) Determining the hospital's organ and tissue donation potential;

(2) Assessing the educational needs of the hospital in regard to the organ and tissue donation process; and

(3) Providing documentation to the hospital to evaluate the effectiveness of the hospital's efforts.

(e) Each hospital shall have a signed agreement with its federally designated organ procurement organization that addresses the requirements of this section.

(f) The requirements of this section, or of any hospital procurement protocols established pursuant to this section, shall not exceed those provided for by the hospital organ protocol provisions of Title XI of the Social Security Act, except for the purposes of this section the term 'organ and tissue donors' shall include cornea and tissue donors for transplantation.

(g) Hospitals and hospital personnel shall not be subject to civil or criminal liability nor to discipline for unprofessional conduct for actions taken in good faith to comply with this section."

Section 2. Chapter 130A is amended by adding the following new section to read:

"**§ 130A-412.2. Duty of designated organ procurement organizations and tissue banks.**

(a) After notification regarding an impending brain death, brain death, or cardiac death has been made to the designated organ procurement organization, the organ procurement organization or applicable tissue bank shall evaluate donation potential.

(b) The designated organ procurement organization or applicable tissue bank shall encourage discretion and sensitivity with respect to the circumstances, views, and beliefs of the families of potential organ and tissue donors.

(c) The designated organ procurement organization or applicable tissue bank shall assure that families of potential organ and tissue donors are made aware of the option of organ and tissue donation and their option to decline.

(d) The designated organ procurement organization or applicable tissue bank shall request consent for organ or tissue donation in the order of priority established under G.S. 130A-404(b) and shall have designated, trained staff available to perform the consent process 24 hours a day, 365 days a year.

(e) All hospital and patient information, interview, reports, statements, memoranda, and other data obtained or created by a tissue bank or federally designated organ procurement organization from the medical records review described in G.S. 130A-412.1(d) shall be privileged and confidential and may be used by the tissue bank or organ procurement organization only for the purposes set forth in G.S. 130A-412.1(d) and shall not be admissible as evidence or discoverable in an action of any kind before a court or administrative agency."

Section 3. This act becomes effective October 1, 1997.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House.**

☐ Committee Substitute for
H.B. 789 A BILL TO BE ENTITLED AN ACT RELATING TO THE TOWN OF OAKBORO.

☐ 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 Finance

☐ 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)

4/24/97

re-order
Annexation

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 789
Proposed Committee Substitute H789-PCS7291

Short Title: Town of Oakboro. (Local)

Sponsors:

Referred to:

April 3, 1997

A BILL TO BE ENTITLED

AN ACT TO REVISE THE BOUNDARIES OF THE TOWN OF OAKBORO.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 51 of the Private Laws of 1915, as amended by Chapter 18 of the Private Laws of 1929 and Chapter 254 of the 1993 Session Laws, reads as rewritten:

"Sec. 2 The corporate limits of the town are as follows:

BEGINNING AT A POINT in the centerline of NC 742 marked by a railroad spike in the present south corporate limits of the Town of Oakboro; thence, easterly 1113 feet across NC 742 and along the south property line of Parcels 6510 and 2637 (Map 6503) to the southeast corner of Parcel 2637, 1204 feet, to a corner with Parcel 2036 (Map 6503.02); thence, northeasterly 310 feet along the property line to the most easterly corner of Parcel 2036; thence, northwesterly, 2580 feet along the northeast property line of Parcel 2036 to a corner with Parcel 3130 (Map 6503.02); thence, northeasterly 380 feet along the property line of Parcel 3130 and continuing in the same line across the Norfolk and Southern Railway and NC 138 to a point in the north right-of-way line of NC 138.

Thence, southeasterly, 600 feet, along the north right-of-way line of NC 138 to the southeastern corner of Parcel 8456 (Map 6503); thence, northerly, 600 feet to the northeastern corner of Parcel 8456; thence, westerly 450 feet, to a corner with Lot 3 of the Whitley Estate (within Parcel 7947, Map 6503); thence, northerly, 660 feet along the east lot line of Lot 3 and across Alonzo Road (SR 1974) to the north right-

of-way line of Alonzo Road; thence, southwesterly, 700 feet, along the north right-of-way of Alonzo Road to a corner with Lot 4, Whitley Estate (within Parcel 3643, Map 6503); thence, northerly, 1000 feet, to the northwest corner of Lot 4; thence, westerly along the north lot line of Lot 5, Whitley Estate, and across St. Martin Road (First Street), 450 feet, to a point in the north right-of-way of St. Martin Road at the most southerly corner of Parcel 5215 (Map 6504.04); thence, northeasterly 930 feet along St. Martin Road to the eastern corner of Parcel 0817 (Map 6504.04); thence, northwesterly 770 feet along the eastern property lines of Parcels 0817, 8990, 5994, and the west property line of Parcel 8633 (Map 6504.04) to the southwest corner of Parcel 8633; thence northerly 1195 feet along the west property line of Parcel 8633 to the easternmost corner of Parcel 9086 (Map 6504.04); thence, 880 feet along the eastern property line of Parcels 9086, 7379, 7761, and 7867 (Map 6504.04) to northeastern corner of Parcel 7867; thence, westerly 370 feet to the west right-of-way of East Eighth Street (SR 1976); thence, southwesterly 3020 feet along East Eighth Street to the easternmost corner of Parcel 9226 (Map 6504.03); thence, northwesterly, 400 feet, along the property line of Parcel 5054 (Map 6504.03) to a corner with a new Parcel F09-4-3H (Map 6504.03); thence, meandering northeasterly and northwesterly, 300 feet, along the property line of Parcel F09-4-3H to a point in the south right-of-way line of E. Tenth Street; thence, northeasterly, 1530 feet, along the south right-of-way of E. Tenth Street to intersection with the southernmost corner of Parcel 993 (Map 6504); thence northwesterly along the East Tenth Street right-of-way line, 1020 feet, to the most easterly corner of Parcel 0520 (Map 6504.03); thence, meandering northwesterly, 1335 feet, along the northern property lines of Parcels 0520 and 7624 (Map 6504.03), across Pecan Drive, and along the north property lines of Parcels 4752 and 1797 (Map 6504.03) to the most northerly corner of Parcel 1797; thence, southwesterly, 1570 feet, along the southeast property lines of Parcels 9161 and 0356 (Map 6504) to the most southerly corner of Parcel 0356; thence, northwesterly 1035 feet along the southwest property lines of Parcels 0356, 5588, and 7871 (Map 6504) to a corner of Parcel 7871 which is also the most northerly corner of Parcel 3450 (Map 6504); thence, northerly 150 feet to the most easterly corner of Parcel 1795 (Map 6504); thence, meandering northerly 545 feet along the eastern property lines of Parcels 1795, 1858, and 1949 (Map 6504) to the most northerly corner of Parcel 1949; thence, northwesterly 1471 feet along the northeast property lines of Parcels 0382 and 9496 (Map 6504) and Parcels 9079, 9223, 8371, 6472, 6594, and 5676 (Map 5594) to the most northerly corner of Parcel 5676; thence, northeasterly 210 feet to a point in the southeastern property line of Parcel 7254 (Map 5594); thence, northwesterly 990 feet along the southwestern property line of Parcel 7254, across Parcel 2486 (Map 5594) to a point in the southeast right-of-way line of Big Lick Road (SR 1115).

Thence southwesterly 1450 feet along Big Lick Road to the northernmost corner of Parcel 0001 (Map 594); thence, southeasterly 970 feet along the east and north property lines of Parcels 0001 and 7264 (Map 5594) to the west right-of-way of Swift Road (SR 1110); thence, southerly 2400 feet along Swift Road to a point across from Lynn Road; thence northwesterly 395 feet to a point; thence, northerly 330 feet to a

point; thence, westerly 1586 feet to the westernmost corner of Parcel 5660 (Map 5594); thence southerly and westerly 1453 feet along the west property lines of Parcels 4776 and 0340 (Map 5594) to the southwest corner of Parcel 0340; thence, southeasterly 1778 feet to the southeastern corner of Parcel 0340; thence, northerly 1418 feet along the east property lines of Parcels 0340 and 4776 to a point; thence, northeasterly 774 feet to a point; thence, 920 feet easterly and along the north property line of Parcel 1959 (Map 5594) to the northeast corner of Parcel 1959 in the west right-of-way of Swift Road; thence southerly 200 feet along Swift Road to a point; thence, easterly 2270 feet across Swift Road and along the north property lines of Parcels 8542, 3462, 5359, and 2415 (Map 5594) to the northeast corner of Parcel 2415; thence, meandering 1955 feet along the southwestern property lines of Parcel 8907 (Map 5594) and Parcels 3743, 9938 and 3774 (Map 6504) to the southernmost corner of Parcel 3774; thence, 500 feet, southeasterly along the eastern property lines of Parcels 3640, 4229, and 4177 (Map 6504) to the intersection of W. Eleventh Street and Hurley Road (SR 1112); thence, 760 feet, continuing diagonally across the intersection of W. Eleventh and Hurley Road and along the eastern property lines of Parcel 5749 (Map 6503.01) and Parcel 3808 (Map 5593) to the centerline of the Norfolk & Southern Railroad; thence, 1600 feet, southeasterly, along the Railroad to a point; thence, 1470 feet, southwesterly along the northwestern property line of Parcel 7249 (Map 6503.01) to the most westerly corner of Parcel 7249; thence, easterly, 550 feet, to a point at the northwest corner of Parcel 3991 (Map 6503.01); thence, southerly, 190 feet, to the southwest corner of Parcel 3991 in the north right-of-way of Hamilton Road; thence, easterly, 40 feet, along the north right-of-way of Hamilton Road to a point.

Thence, southerly, 830 feet, across Hamilton Road and along the western property lines of Parcels 4475 and 4965 (Map 6503) to the westernmost corner of Parcel 4965; thence, southeastern, 920 feet, along the southwest property line of Parcel 4965, the northeast property line of Parcel 5584 (Map 6503.01), across NC 205, and along the northeast property line of Parcel 7324 (Map 6503.01) to the easternmost corner of Parcel 7324; thence, northeasterly, 1940 feet, along the southeastern and eastern property lines of Parcels 8456, 9597, 1789, and 3057 (Map 6503.01) and the east right-of-way of NC 205 to the south right-of-way of Coble Mill Road (SR 1152); thence, easterly, 1965 feet, along the Coble Mill Road south right-of-way to intersection with the west right-of-way line of Rocky River Road; thence, southerly 2620 feet, along the west right-of-way of Rocky River Road to a point approximately 250 feet south of James Road; thence, easterly 1975 feet, across Rocky River Road in a line with and following the southern property lines of Parcels 5656, 0712, 4832, 6877, 8961, 9953, 0914, and 1080 (Map 6503), to the west right-of-way line of NC 742; thence, southeasterly 75 feet to the POINT OF BEGINNING."

Section 2. This act becomes effective June 30, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 789

Short Title: Town of Oakboro. (Local)

Sponsors: Representative Barbee.

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

April 3, 1997

A BILL TO BE ENTITLED

AN ACT RELATING TO THE TOWN OF OAKBORO.

The General Assembly of North Carolina enacts:

Section 1. This act relates to the Town of Oakboro.

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

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House.**

☐ Committee Substitute for
H.J.R. 956 A JOINT RESOLUTION COMMEMORATING THE ONE HUNDRED FIFTIETH ANNIVERSARY OF THE CITY OF GOLDSBORO AND HONORING THE MEMORY OF MAJOR MATTHEW TILGHMAN GOLDSBOROUGH.

☑ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE JOINT RESOLUTION 956*

Sponsors: Representatives Baddour, Braswell, Russell (Cosponsors); and Goodwin.

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

April 15, 1997

A JOINT RESOLUTION COMMEMORATING THE ONE HUNDRED FIFTIETH ANNIVERSARY OF THE CITY OF GOLDSBORO AND HONORING THE MEMORY OF MAJOR MATTHEW TILGHMAN GOLDSBOROUGH.

Whereas, the City of Goldsboro was granted a charter by the State of North Carolina on January 18, 1847; and

Whereas, the year 1997 marks the Sesquicentennial Anniversary of the incorporation of the City of Goldsboro; and

Whereas, the City of Goldsboro is recognized as being an important and significant entity contributing to the outstanding character and reputation that is enjoyed by the State of North Carolina; and

Whereas, during its 150 years as a vital member of the North Carolina community, Goldsboro has extended a warm and hospitable hand to all who have entered its boundaries, exemplifying the characteristics that define our fine State; and

Whereas, the City of Goldsboro has been represented by men and women in all wars sanctioned by the United States, to fight for the principles of democracy, freedom, and justice; and

Whereas, the City of Goldsboro possesses a rich and valuable history; and

Whereas, at this time when the City of Goldsboro is observing its Sesquicentennial Anniversary, it is only fitting to honor the memory of Major Matthew Tilghman Goldsborough, a civil engineer who was in charge of the survey and the building of the Wilmington and Weldon Railroad, for whom the city is named;

Now, therefore, be it resolved by the House of Representatives, the Senate concurring:

Section 1. The General Assembly observes the Sesquicentennial Anniversary of the City of Goldsboro and honors the memory of Major Matthew Tilghman Goldsborough.

Section 2. The Secretary of State shall transmit a certified copy of this resolution to the Mayor of the City of Goldsboro.

Section 3. This resolution is effective upon ratification.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House.**

☐ Committee Substitute for
H.B. 722 A BILL TO BE ENTITLED AN ACT RELATING TO BEAUFORT COUNTY.

☐ 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 Finance

☐ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 722
Proposed Committee Substitute H722-PCSX7283

Short Title: Beaufort County Local Act. (Local)

Sponsors:

Referred to:

April 1, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE CITY OF WASHINGTON TO NEGOTIATE ANNEXATION AGREEMENTS.

The General Assembly of North Carolina enacts:

Section 1. the City of Washington may, by agreement, provide that certain property described in the agreement may not be annexed by the City under Parts 2 or 3 of Article 4A of Chapter 160A of the General Statutes prior to December 30, 2006.

Section 2. The City of Washington may accept, as consideration for such agreement, such agreements by the parties as the City of Washington deems just and appropriate, including, but not limited to, agreements by property owners to agree to enter into agreements which obligate the property owner to create and fill a specified number of job positions for low and moderate income employees at the property owner's plant in Beaufort County, North Carolina.

Section 3. Agreements under Section 1 of this act apply only to the following described properties:

TRACT I:

All that certain tract or parcel of land lying and being situated in Chocowinity Township, Beaufort County, North Carolina, and being more particularly described as follows:

Beginning at a point in the southern right-of-way line of NCSR 1166 (Whichards Beach Road); said point being located the following courses and distances from a concrete monument located at the southeasterly corner of the subdivision known as Harbor Estates, as shown on a plat thereof recorded in plat Cabinet A, Slide 113A in the office of the Register of Deeds of Beaufort County, North Carolina (said concrete monument also being the southwesterly corner of Tract II described below): South 35° 52' 54" East 62.93 feet; South 36° 20' 33" West 30.61 feet; and South 64° 01' 09" East 16.66 feet to a point. THENCE FROM SAID POINT OF BEGINNING BEING SO LOCATED, along and with the southern right-of-way line or Whichards Beach Road South 64° 01' 03" East 132.39 feet to a point; thence south 64° 00' 52" East 49.07 feet to a point, thence South 64° 01' 18" East 50.66 feet to a point; thence South 64° 01' 12" East 220.27 feet to a point; thence South 64° 01' 09" East 45.61 feet to a point; thence continuing along and with the southern right-of-way line of NCSR 1166 with a curve to the right in a southeastwardly direction which has a chord bearing and distance of South 57° 55' 13" East 341.99 feet to a point; thence South 51° 52' 17" East 22.40 feet to a point; thence continuing South 51° 52' 17" East 300.00 feet to a point in the southern right-of-way line of NCSR 1166 (all previous calls being along and with the southern right-of-way line of NCSR 1166); thence leaving NCSR 1166 South 38° 00' 08" West 140.26 feet to a point; thence South 51° 52' 37" East 31.00 feet to a point; thence South 51° 52' East 99.57 feet to an existing concrete monument; thence continuing North 38° 18' 41" East 127.20 feet to an existing concrete monument; thence North 38° 18' 41" East 102.41 feet to an existing concrete monument; thence continuing North 38° 18' 41" East 363.45 feet to an existing concrete monument; thence continuing North 38° 18' 41" East 723.64 feet more or less to the mean highwater line on the southern shoreline of the Pamlico River; thence along and with the mean highwater line on the southern shoreline of the Pamlico River South 03° 46' 08" East 35.33 feet to a point; thence South 31° 43' 09" West 1,725.69 feet more or less to the northern right-of-way line of NCSR 1166; thence continuing along and with the northern right-of-way line of NCSR 1166 North 51° 54' 27" West 221.81 feet to the point or place of beginning, said property containing approximately 4.84 acres. The above description is from a survey by W. C. Owen of Quible and Associates, P.C.

Section 4. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 722

Short Title: Beaufort County Local Act. (Local)

Sponsors: Representative Hardy.

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

April 1, 1997

A BILL TO BE ENTITLED

AN ACT RELATING TO BEAUFORT COUNTY.

The General Assembly of North Carolina enacts:

Section 1. This law relating to Beaufort County is amended.

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

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House**.

☐ Committee Substitute for
H.B. 305 A BILL TO BE ENTITLED AN ACT TO AMEND THE PUBLIC LAWS AND DIRECTLY AFFECT THE STATE BUDGET.

☐ 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 Finance

☐ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 305
Proposed Committee Substitute H305-PCS8202

Short Title: Peanut Assessment Cap. (Public)

Sponsors:

Referred to:

February 24, 1997

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE LIMIT FOR AN ASSESSMENT WHEN THE ASSESSMENT IS PAID BY PEANUT PRODUCERS FOR THE PROMOTION OF PEANUTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 106-557 reads as rewritten:

"**§ 106-557. Notice of referendum; statement of amount, basis and purpose of assessment; maximum assessment.**

With respect to any referendum conducted under the provisions of this Article, the duly certified commission, council, board or other agency shall, before calling and announcing such referendum, fix, determine and publicly announce at least 30 days before the date determined upon for such referendum, the date, hours and polling places for voting in such referendum, the amount and basis of the assessment proposed to be collected, the means by which such assessment shall be collected if authorized by the growers, and the general purposes to which said amount so collected shall be applied; no annual assessment levied under the provisions of this Article shall exceed one half of one percent (1/2 of 1%) of the value of the year's production of such agricultural commodity grown by any farmer, producer or grower included in the group to which such referendum is submitted. Provided, that the assessment for the research and promotion programs of the American Dairy Association of North Carolina may be fixed on the volume of milk sold not to exceed one percent (1%) of the statewide blend price paid to all North Carolina producers during the previous calendar year for three and one-half percent (3.5%) milk as

computed by the North Carolina Milk Commission. Provided further, that the assessment authorized by this Article and collected by the Commissioner of Agriculture to be paid to the North Carolina Yam Commission, Inc., or other duly certified agencies entitled thereto for research, marketing and promotional programs related to yams or sweet potatoes may be levied at a rate not to exceed two percent (2%) of the value of the year's production of that agricultural commodity grown by any farmer, producer or grower included in the group to which the referendum is submitted, and when authorized by two-thirds or more of the farmers, producers or growers in the area in which the referendum is conducted, the rate of the assessment may remain in effect for the length of time provided in the referendum. Provided further, that the assessment authorized by this Article on peanuts may not exceed two percent (2%) of the price paid to the producer."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 305

Short Title: Public Laws/Budget. (Public)

Sponsors: Representative Morgan.

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

February 24, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PUBLIC LAWS AND DIRECTLY AFFECT THE STATE BUDGET.

The General Assembly of North Carolina enacts:

Section 1. This act amends the public laws of North Carolina and directly affects the State budget for fiscal year 1997-98.

Section 2. This act becomes effective July 1, 1997.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House.**

☐ Committee Substitute for
H.B. 604 A BILL TO BE ENTITLED AN ACT TO CLARIFY THE NEWPORT-MOREHEAD BOUNDARIES.

☐ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 604
Proposed Committee Substitute H604-PCS6249

Short Title: Morehead-Newport ETJ Authority. (Local)

Sponsors:

Referred to:

March 25, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE TOWNS OF MOREHEAD CITY AND NEWPORT TO EXERCISE EXTRATERRITORIAL PLANNING JURISDICTION OVER AN AREA EXTENDING NOT MORE THAN TWO MILES FROM THEIR CORPORATE LIMITS.

The General Assembly of North Carolina enacts:

Section 1. The Towns of Morehead City and Newport may exercise extraterritorial planning jurisdiction as provided in Article 19 of Chapter 160A of the General Statutes within an area extending not more than two miles beyond their respective corporate limits. In the area where the Towns' extraterritorial planning jurisdiction overlaps, the dividing line shall begin where the run of Hull Swamp Creek empties into the Newport River, and then runs with the run of Hull Swamp Creek to the northwest corner of the property of Merritt-Williams Ford in the southern right-of-way margin of U.S. Highway 70, thence northwestwardly with the southern margin of U.S. Highway 70 to the northwesternmost corner of the property of Paul Wysocki (tax parcel number 634608990762), and thence with the Wysocki northwest line in a southwestern direction to the North property line of Mamie Murdoch (tax parcel number 634704708233), and thence westwardly and southwardly with the north and West lines of the Murdoch property back to the run of Hull Swamp Creek.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 604

Short Title: Newport-Morehead Boundaries. (Local)

Sponsors: Representative Smith.

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

March 25, 1997

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE NEWPORT-MOREHEAD BOUNDARIES.

The General Assembly of North Carolina enacts:

Section 1. This act relates to clarifying the Newport-Morehead boundaries.

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

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House.**

☐ Committee Substitute for
H.B. 698 A BILL TO BE ENTITLED AN ACT RELATING TO MOREHEAD-NEWPORT ANNEXATIONS.

☐ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 698
Proposed Committee Substitute H698-PCS1356

Short Title: Morehead-Newport Annexations. (Local)

Sponsors:

Referred to:

March 31, 1997

A BILL TO BE ENTITLED

AN ACT LIMITING THE AUTHORITY OF THE TOWNS OF MOREHEAD CITY AND NEWPORT TO ANNEX NONCONTIGUOUS AREAS.

The General Assembly of North Carolina enacts:

Section 1. The Towns of Morehead City and Newport may not annex noncontiguous areas as provided in Part 4 of Article 4A of Chapter 160A of the General Statutes if the area to be annexed is less than three miles from the other Town's corporate limits. However, either Town may annex such an area if it lies within an area where the Town is exercising its extraterritorial planning jurisdiction under Article 19 of Chapter 160A of the General Statutes.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 698

Short Title: Morehead-Newport Annexations-1. (Local)

Sponsors: Representative Smith.

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

March 31, 1997

A BILL TO BE ENTITLED

AN ACT RELATING TO MOREHEAD-NEWPORT ANNEXATIONS.

The General Assembly of North Carolina enacts:

Section 1. This act relates to Morehead-Newport annexations.

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

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House**.

☐ Committee Substitute for
H.B. 699 A BILL TO BE ENTITLED AN ACT RELATING TO MINIMUM HOUSING IN THE TOWN OF NEWPORT.

☐ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 699
Proposed Committee Substitute H699-PCS7300

Short Title: Newport Minimum Housing. (Local)

Sponsors:

Referred to:

March 31, 1997

A BILL TO BE ENTITLED

AN ACT TO GRANT AUTHORITY TO THE TOWN OF NEWPORT TO ADDRESS ABANDONED STRUCTURES IN THE SAME MANNER AS MUNICIPALITIES IN COUNTIES WITH A POPULATION OF OVER ONE HUNDRED SIXTY-THREE THOUSAND.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 733 of the 1995 Session Laws reads as rewritten:

"Sec. 2. This act applies to the City of Lumberton and the Town of Newport only."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 699

Short Title: Newport Minimum Housing-1. (Local)

Sponsors: Representative Smith.

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

March 31, 1997

A BILL TO BE ENTITLED

AN ACT RELATING TO MINIMUM HOUSING IN THE TOWN OF NEWPORT.

The General Assembly of North Carolina enacts:

Section 1. This act relates to minimum housing in the Town of Newport.

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

VISITOR REGISTRATION SHEET

RULES, CALENDAR AND OPERATIONS OF THE HOUSE **APRIL 29, 1997**

Name of Committee Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
	Bode Call & Stroupe
Joanne E. Tynes	E.G.H.&S.
Jim Allen	NCACPA
Sam Johnson	Johnson Mercer Hamm + Vinegar
Henry Jones	Attorney - Raleigh
Tom BEAN	NC Wildlife Federation
PAT ADAMS	
John ADAMS	
Joseph Mayfield	GRAC
[illegible]	Central Surry Cty
Mary MacDowell	Chatham County
Lloyd Jordan	COPA 702 Johns Hopkins Dr Greenville NC 27834
Natalie Haskins	Charlotte Chamber
David Simmons	ZDA, PA
Michael Ferrell	Wake Co
David Cooke	Wake Co.
Jim Brosnahan	UNC Gen Admin - NCSU
Nancy Bradley	NCCBS
Hal Rose	DEHNR
John	GRPA
Vandasa Kay	NCAPP
R. Neal Wilson	NCMBA
Bob Slocum	NC Forestry Association
Michelle Cook	Weyerhaeuser
Shellie Bellairs	Ral. Elder abuse/Children's issues
Kathy Liddy	NCAPP
Cam Cress	BPMHL

VISITOR REGISTRATION SHEET

RULES, CALENDAR AND OPERATIONS OF THE HOUSE **APRIL 29, 1997**

Name of Committee Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Steve Keen	NC Medical Society
M. Allen	NCSA
John Nash	NCFA
Amy Jo Baucom	Smith Anderson
Wayne Sullivan	NCBA
J. Craig Keen	PCMH
Margaret Maisonneuve	BCBS of NC
Andy Romanet	N.C.L.M.
Alice Garland	Electric Cities
Tommy Worth	Carolina Healthcare System
Lynne Hornaday	BCBSNC
Andy Ellen	NC Farm Bureau
Ken Eudy	Capital Strategies
Judy Hunt	NC Organ Transplant Council
Gene Upchurch	CP&L

MINUTES
COMMITTEE ON RULES, CALENDAR, AND OPERATIONS OF THE HOUSE
April 30, 1997

The Committee on Rules, Calendar, and Operations of the House met April 30, 1997, at 1:00 p.m. in Room 412 in the Legislative Office Building. Representative Morgan, Committee Chair, called the meeting to order and asked the clerk to call the roll. The following members were present: Representative Bowie, Vice Chair; and Representatives Crawford, Culp, Dockham, Esposito, Gulley, Hill, McMahan, Miner, Mitchell, Neely, Thompson, and C. Wilson.

The first order of business was the consideration of House Joint Resolution 1054 -A JOINT RESOLUTION PROVIDING FOR A JOINT SESSION OF THE GENERAL ASSEMBLY TO ACT ON A JOINT RESOLUTION PROVIDING FOR CONFIRMATION OF THE APPOINTMENTS BY THE GOVERNOR OF NEW MEMBERS TO THE STATE BOARD OF EDUCATION - sponsored by Representative Russell. Committee Staff Counsel, Linwood Jones, was recognized to explain the resolution. Representative Dockham moved for a favorable report and motion carried.

House Bill 437 - AN ACT CHANGING THE METHOD FOR APPOINTMENT OF MEMBERS OF THE PILOT MOUNTAIN CIVIC AND RECREATION CENTER AUTHORITY - was the next agenda item to be heard. The Chair explained that this was a blank bill sponsored by Representative Hiatt and that Representative Baker would explain the bill an offer a proposed committee substitute to House Bill 437. Representative Mitchell moved for the adoption of the proposed committee substitute for Committee discussion. Motion carried. Representative McMahan moved to give the proposed committee substitute a favorable report and an unfavorable report to the original bill. Motion carried.

House Bill 382 -AN ACT TO PROVIDE THAT LOBBYIST MAY NOT GIVE TO CANDIDATES FOR CERTAIN OFFICES AT ANY TIME, AND TO PROVIDE THAT LOBBYISTS MAY NOT ADVISE POLITICAL ACTION COMMITTEES AS TO HOW TO DISTRIBUTE THEIR FUNDS - was next before the Committee for consideration. Representative McComas, bill sponsor, was recognized to explain the bill and offered a proposed committee substitute. Representative Dockham moved to adopt the proposed committee substitute for the purpose of Committee discussion. Motion carried. Representative McComas explained that the committee substitute removed the portion of the original bill that provided that lobbyists may not advise political action committees as to how to distribute their funds. Representative Neely moved to amend the proposed committee substitute bill on page 2, line 36 by adding the following provision, "(7) A contribution by a registered lobbyist to the lobbyist's own campaign." Motion carried. Representative Hill moved to give the proposed committee substitute, as amended and rolled into the committee substitute, a favorable report and unfavorable to original bill. Representative Thompson asked to be recognized for a substitute motion. Request denied. Representative Neely's motion was given a favorable report

with one dissenting vote cast by Representative Thompson. There was a title change to the bill.

The Committee adjourned at 1:45 p.m.

Representative Richard T. Morgan
Committee Chair

Anne M. Cole
Acting Committee Clerk

Attachments:
Committee Reports
Bills
Visitor's Sheet

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House.**

☐ Committee Substitute for
H.J.R. 1054 A JOINT RESOLUTION PROVIDING FOR A JOINT SESSION OF THE GENERAL ASSEMBLY TO ACT ON A JOINT RESOLUTION PROVIDING FOR CONFIRMATION OF THE APPOINTMENTS BY THE GOVERNOR OF NEW MEMBERS TO THE STATE BOARD OF EDUCATION.

☑ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE JOINT RESOLUTION 1054

Sponsors: Representatives Russell, Shubert; Davis and Hightower.

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

April 21, 1997

A JOINT RESOLUTION PROVIDING FOR A JOINT SESSION OF THE GENERAL ASSEMBLY TO ACT ON A JOINT RESOLUTION PROVIDING FOR CONFIRMATION OF THE APPOINTMENTS BY THE GOVERNOR OF NEW MEMBERS TO THE STATE BOARD OF EDUCATION.

Whereas, under the provisions of the Constitution of North Carolina and G.S. 115C-10, appointments by the Governor to membership on the State Board of Education are subject to confirmation by the General Assembly in joint session; and

Whereas, vacancies have occurred on the State Board of Education; and

Whereas, the Governor has transmitted to the presiding officers of the Senate and the House of Representatives the names of his appointees to fill the terms of membership on the State Board of Education which expire March 31, 2005;

Now, therefore, be it resolved by the House of Representatives, the Senate concurring:

Section 1. Upon the call of the Speaker of the House of Representatives and the President Pro Tempore of the Senate, the General Assembly shall meet in joint session to act on a joint resolution providing for confirmation of the appointments by the Governor of new members to the State Board of Education.

Section 2. This resolution is effective upon ratification.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House**.

☐ Committee Substitute for
H.B. 437 A BILL TO BE ENTITLED AN ACT RELATING TO THE GOVERNANCE OF SURRY COUNTY.

☐ 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)

4/24/97

fav
CS

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 437
Proposed Committee Substitute H437-PCS1354

Short Title: Pilot Mountain Recreation. (Local)

Sponsors:

Referred to:

March 10, 1997

A BILL TO BE ENTITLED

AN ACT CHANGING THE METHOD FOR APPOINTMENT OF MEMBERS OF THE PILOT MOUNTAIN CIVIC AND RECREATION CENTER AUTHORITY.

The General Assembly of North Carolina enacts:

Section 1. (a) Members of the Pilot Mountain Civic and Recreation Center Authority, heretofore appointed by the Board of Commissioners of the Town of Pilot Mountain after receiving nominations from the Pilot Mountain Foundation, Inc., shall henceforth be appointed solely by the Pilot Mountain Foundation, Inc.

(b) In case of a vacancy by resignation or death, the vacancy shall be filled by appointment of the Pilot Mountain Foundation, Inc. If any vacancy shall exist for more than 60 days after written notification of the vacancy has been given to the Pilot Mountain Foundation, Inc., by the Pilot Mountain Civic and Recreation Authority, the remaining members of the Authority may fill the vacancy for the remainder of the unexpired term.

Section 2. The Authority shall have the power to adopt rules, regulations, and bylaws governing its own operation subject only to approval of the Pilot Mountain Foundation, Inc.

Section 3. The Authority shall forward to the Pilot Mountain Foundation, Inc., copies of the minutes of its meetings, and may, but shall not be required to, forward copies of such minutes to the Town of Pilot Mountain.

Section 4. This act is effective when it becomes law.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House**.

☐ Committee Substitute for

H.B. 382 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT LOBBYISTS MAY NOT GIVE TO CANDIDATES FOR CERTAIN OFFICES AT ANY TIME, AND TO PROVIDE THAT LOBBYISTS MAY NOT ADVISE POLITICAL ACTION COMMITTEES AS TO HOW TO DISTRIBUTE THEIR FUNDS.

☐ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 382
Proposed Committee Substitute H382-PCSA377

Short Title: Lobbyist Political Activity. (Public)

Sponsors:

Referred to:

March 4, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT LOBBYISTS MAY NOT GIVE TO CANDIDATES FOR CERTAIN OFFICES AT ANY TIME.

The General Assembly of North Carolina enacts:

Section 1. G.S. 163-278.13A reads as rewritten:

"**§ 163-278.13A. No fund-raising from lobbyists for legislators or Council of State ~~members while General Assembly is in regular session.~~ members or candidates for these offices.**

(a) ~~While the General Assembly is in regular session, none~~ None of the following entities may solicit or accept a contribution from, or at the behest or recommendation of, an individual registered as a lobbyist pursuant to Article 9A of Chapter 120 of the General Statutes:

(1) A member of or candidate for the Council of State; ~~or~~

(2) A member of or candidate for the General Assembly; ~~or~~

(3) A political committee the principal purpose of which is to assist a member or members of or a candidate or candidates for the Council of State or General ~~Assembly.~~ Assembly; or

(4) A State, county, or congressional district executive committee of a political party.

(b) ~~While the General Assembly is in regular session, no~~ No individual registered as a lobbyist under Article 9A of Chapter 120 of the General Statutes may make a contribution to any of the entities listed in subdivisions (1) through (3) of subsection (a) of this section.

(c) This section does not apply to:

~~(1) Any contribution made to or by a State, county or congressional district executive committee of a political party; or~~

~~(2) Any contribution made to or solicited for a political committee that operates on a Statewide basis in conjunction with the executive committee of a political party for the purpose of assisting that party's candidates for Council of State or General Assembly; or~~

(3) Any contribution made by a member of or candidate for the Council of State or General Assembly to a political committee the principal purpose of which is to assist himself; or

(4) Any contribution made to or any solicitation for a nonprofit organization under 26 U.S.C. § ~~501(c); or~~ 501(c); or

~~(5) Any contribution accepted with the intent that it be used to defray legal or other expenses incurred in connection with the contesting of election results; or~~

~~(6) Any contribution to any of the entities listed in subdivisions (1) through (3) of subsection (a) of this section if the member of the Council of State or General Assembly has filed an official notice of candidacy with the appropriate board of elections for any elective office, provided the contribution is for the elective office for which the member has filed.~~

(7) A contribution by a registered lobbyist to the lobbyist's own campaign.

(d) A violation of this section is a Class 2 misdemeanor, but no individual or person shall be prosecuted under this section for accepting or making a contribution unless the State Board of Elections has notified the individual or person of the apparent violation in writing by certified mail, has given the individual or person an opportunity to return or to request the return of the contribution, and, within 10 days of the receipt of the notification, the individual or person has failed to return or to request the return of the contribution.

~~(e) For purposes of this section, the General Assembly is in regular session from the date set by law or resolution that the General Assembly convenes until the General Assembly either:~~

~~(1) Adjourns sine die; or~~

~~(2) Recesses or adjourns for more than 10 days.~~

(f) For the purpose of this section, a person is a candidate when that person has (i) filed a statement of organization under this Article or such a statement has been filed for a political committee created to support that person, (ii) filed an official notice of candidacy with the appropriate board of elections for any elective office, (iii) otherwise qualified for a place on the ballot, or (iv) become a write-in candidate under G.S. 163-123."

Section 2. G.S. 120-47.9 reads as rewritten:

"**§ 120-47.9. Punishment for violation.**

(a) Whoever willfully violates any provision of this Article shall be guilty of a Class 1 misdemeanor. In addition, no lobbyist who is convicted of a violation of the provisions of this Article shall in any way act as a lobbyist for a period of two years following his conviction.

(b) No lobbyist who is convicted of a second violation of G.S. 163-278.13A shall in any way act as a lobbyist for a period of two years following conviction. No lobbyist who is convicted of a third violation of G.S. 163-278.13A shall in any way act as a lobbyist."

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

need new com sub

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 382
Proposed Committee Substitute
H382-CSRN-002

Short Title: Lobbyist Political Activity (Public)

Sponsors:

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

March 4, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT LOBBYISTS MAY NOT GIVE TO CANDIDATES FOR CERTAIN OFFICES AT ANY TIME.

The General Assembly of North Carolina enacts:

Section 1. G.S. 163-278.13A reads as rewritten:

"**§ 163-278.13A. No fund-raising from lobbyists for legislators or Council of State ~~members while General Assembly is in regular session~~ members or candidates for these offices.**

(a) ~~While the General Assembly is in regular session, none~~ None of the following entities may solicit or accept a contribution from, or at the behest or recommendation of, an individual registered as a lobbyist pursuant to Article 9A of Chapter 120 of the General Statutes:

(1) A member of or candidate for the Council of State; ~~or~~

(2) A member of or candidate for the General Assembly; ~~or~~

(3) A political committee the principal purpose of which is to assist a member or members of or a candidate or candidates for the Council of State or General ~~Assembly.~~ Assembly; or

(4) A State, county or congressional district executive committee of a political party.

(b) ~~While the General Assembly is in regular session, no~~ No individual registered as a lobbyist under Article 9A of Chapter 120 of the General Statutes may make a contribution to any of the entities listed in subdivisions (1) through (3) of subsection (a) of this section.

(c) This section does not apply to:

~~(1) Any contribution made to or by a State, county or congressional district executive committee of a political party; or~~

~~(2) Any contribution made to or solicited for a political committee that operates on a Statewide basis in conjunction with the executive committee of a political party for the purpose of assisting that party's candidates for Council of State or General Assembly; or~~

(3) Any contribution made by a member of or candidate for the Council of State or General Assembly to a political committee the principal purpose of which is to assist himself; or

(4) Any contribution made to or any solicitation for a nonprofit organization under 26 U.S.C. § ~~501(c); or~~ 501(c).

~~(5) Any contribution accepted with the intent that it be used to defray legal or other expenses incurred in connection with the contesting of election results; or~~

~~(6) Any contribution to any of the entities listed in subdivisions (1) through (3) of subsection (a) of this section if the member of the Council of State or General Assembly has filed an official notice of candidacy with the appropriate board of elections for any elective office, provided the contribution is for the elective office for which the member has filed.~~

(d) A violation of this section is a Class 2 misdemeanor, but no individual or person shall be prosecuted under this section for accepting or making a contribution unless the State Board of Elections has notified the individual or person of the apparent violation in writing by certified mail, has given the individual or person an opportunity to return or to request the return of the contribution, and, within 10 days of the receipt of the

notification, the individual or person has failed to return or to request the return of the contribution.

~~(e) For purposes of this section, the General Assembly is in regular session from the date set by law or resolution that the General Assembly convenes until the General Assembly either:~~

~~(1) Adjourns sine die; or~~

~~(2) Recesses or adjourns for more than 10 days.~~

(f) For the purpose of this section, a person is a candidate when that person has (i) filed a statement of organization under this Article or such a statement has been filed for a political committee created to support that person, (ii) filed an official notice of candidacy with the appropriate board of elections for any elective office, (iii) otherwise qualified for a place on the ballot, or (iv) become a write-in candidate under G.S. 163-123.

Section 2. G.S. 120-47.9 reads as rewritten:

"**§ 120-47.9. Punishment for violation.**

(a) Whoever willfully violates any provision of this Article shall be guilty of a Class 1 misdemeanor. In addition, no lobbyist who is convicted of a violation of the provisions of this Article shall in any way act as a lobbyist for a period of two years following his conviction.

(b) No lobbyist who is convicted of a second violation of G.S. 163-278.13A shall in any way act as a lobbyist for a period of two years following conviction. No lobbyist who is convicted of a third violation of G.S. 163-278.13A shall in any way act as a lobbyist."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 382

Short Title: Lobbyist Political Activity. (Public)

Sponsors: Representatives McComas; Allred, C. Wilson, Watson, and Miner.

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

March 4, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT LOBBYISTS MAY NOT GIVE TO CANDIDATES FOR CERTAIN OFFICES AT ANY TIME, AND TO PROVIDE THAT LOBBYISTS MAY NOT ADVISE POLITICAL ACTION COMMITTEES AS TO HOW TO DISTRIBUTE THEIR FUNDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 163-278.13A reads as rewritten:

"**§ 163-278.13A. No fund-raising from lobbyists for legislators or Council of State ~~members while General Assembly is in regular session~~ members or candidates for these offices, no contributions if lobbyist has advised political action committee.**

(a) ~~While the General Assembly is in regular session, none~~ None of the following entities may solicit or accept a contribution from, or at the behest or recommendation of, an individual registered as a lobbyist pursuant to Article 9A of Chapter 120 of the General Statutes:

(1) A member of or candidate for the Council of State; ~~or~~

(2) A member of or candidate for the General Assembly; ~~or~~

(3) A political committee the principal purpose of which is to assist a member or members of or a candidate or candidates for the Council of State or General ~~Assembly.~~ Assembly; or

(4) A State, county or congressional district executive committee of a political party.

(b) ~~While the General Assembly is in regular session, no~~ No individual registered as a lobbyist under Article 9A of Chapter 120 of the General Statutes may make a

contribution to any of the entities listed in subdivisions (1) through (3) of subsection (a) of this section.

(c) This section does not apply to:

~~(1) Any contribution made to or by a State, county or congressional district executive committee of a political party; or~~

~~(2) Any contribution made to or solicited for a political committee that operates on a Statewide basis in conjunction with the executive committee of a political party for the purpose of assisting that party's candidates for Council of State or General Assembly; or~~

(3) Any contribution made by a member of or candidate for the Council of State or General Assembly to a political committee the principal purpose of which is to assist himself; or

(4) Any contribution made to or any solicitation for a nonprofit organization under 26 U.S.C. § ~~501(c); or~~ 501(c).

~~(5) Any contribution accepted with the intent that it be used to defray legal or other expenses incurred in connection with the contesting of election results; or~~

~~(6) Any contribution to any of the entities listed in subdivisions (1) through (3) of subsection (a) of this section if the member of the Council of State or General Assembly has filed an official notice of candidacy with the appropriate board of elections for any elective office, provided the contribution is for the elective office for which the member has filed.~~

(d) A violation of this section is a Class 2 misdemeanor, but no individual or person shall be prosecuted under this section for accepting or making a contribution unless the State Board of Elections has notified the individual or person of the apparent violation in writing by certified mail, has given the individual or person an opportunity to return or to request the return of the contribution, and, within 10 days of the receipt of the notification, the individual or person has failed to return or to request the return of the contribution.

~~(e) For purposes of this section, the General Assembly is in regular session from the date set by law or resolution that the General Assembly convenes until the General Assembly either:~~

~~(1) Adjourns sine die; or~~

~~(2) Recesses or adjourns for more than 10 days.~~

(f) For the purpose of this section, a person is a candidate when that person has (i) filed a statement of organization under this Article or such a statement has been filed for a political committee created to support that person, (ii) filed an official notice of candidacy with the appropriate board of elections for any elective office, (iii) otherwise qualified for a place on the ballot, or (iv) become a write-in candidate under G.S. 163-123.

(g) No lobbyist may advise any political action committee which is affiliated with any entity for which that lobbyist is registered as to which candidates, political

committees, members of the General Assembly or Council of State or political committees organized on their behalf.

(h) It is unlawful for any candidate, political committee, or member of the General Assembly or Council of State to accept any contribution from any political committee with knowledge that unlawful advice was given under subsection (g) of this section to disburse funds to that candidate, political committee, or member."

Section 2. G.S. 120-47.9 reads as rewritten:

"**§ 120-47.9. Punishment for violation.**

(a) Whoever willfully violates any provision of this Article shall be guilty of a Class 1 misdemeanor. In addition, no lobbyist who is convicted of a violation of the provisions of this Article shall in any way act as a lobbyist for a period of two years following his conviction.

(b) No lobbyist who is convicted of a second violation of G.S. 163-278.13A shall in any way act as a lobbyist for a period of two years following conviction. No lobbyist who is convicted of a third violation of G.S. 163-278.13A shall in any way act as a lobbyist."

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

VISITOR REGISTRATION SHEET

RULES, CALENDAR, AND OPERATIONS OF THE HOUSE **APRIL 30, 1997**

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tom Bean	NC Wildlife Federation
Henry Jones	Attorney Raleigh
Mark Rivers	NC Sierra Club
Ashley McHock	CCNC / Swain Co
John Rode	Poe Call & Stowe
Bob Allen	Bob Allen
David Simmons	ZDA, PA
Laura Hartsell	MCIC
Tommy Worth	Carolinas Healthcare System
Ellis Hankins	NCLM
Kim Smith	NCLM
Sandra Lee	NCAOP
Ruth Sappie	NCDOT
Leanne Winner	EGHAS
Alice Garland	Electricities
Curt Williams	Gov's Office
Natalie Haskins	Charlotte Chambers
Michelle Cook	Weyerhaeuser
Peggy Maynard	
Lucia C. Dell	NC Medical Society
Mary Stevens	Mary Stevens
Ted Oji	PFNC
David Anders	PFNC
Paul Smith	PFNC
Flo McKibben	Moore & Van Allen
Reginald E. Cuyler	NCPA
Steve Upchurch	CP&L
John McAlister	Duke Power

MINUTES
COMMITTEE ON RULES, CALENDAR, AND OPERATIONS OF THE HOUSE
May 1, 1997

The Committee on Rules, Calendar, and Operations of the House met May 1, 1997, in the House Conference Room at 1:00 p.m. Representative Morgan, Committee Chair, called the meeting to order and asked the clerk to call the roll. The following members were present: Representative Bowie, Vice Chair; and Representatives Culp, Dockham, Esposito, Gulley, Hill, McMahan, Miner, Mitchell, Neely and Thompson.

Committee Substitute for House Bill 1135 - AN ACT AMENDING THE STATE PERSONNEL ACT TO PROVIDE FOR AN INCENTIVE BONUS PROGRAM TO RECOGNIZE AND REWARD THE COST-SAVING INITIATIVE AND INNOVATIONS OF STATE EMPLOYEES was before the Committee. Representative Cansler, bill sponsor, was recognized to explain the bill. Representative Neely moved for a favorable report and motion carried.

Senate Joint Resolution 340 -A JOINT RESOLUTION INVITING THE REVEREND BILLY GRAHAM TO ADDRESS A JOINT SESSION OF THE HOUSE OF REPRESENTATIVES AND THE SENATE AND INVITING GOVERNOR JAMES B. HUNT, JR. was the next bill before the Committee. Representative Thompson moved for a favorable report and the motion carried.

Senate Joint Resolution 1072 - A JOINT RESOLUTION INVITING THE HONORABLE JESSE A. HELMS, UNITED STATES SENATOR, TO ADDRESS A JOINT SESSION OF THE HOUSE OF REPRESENTATIVES AND THE SENATE AND INVITING GOVERNOR JAMES B. HUNT, JR. - was before the Committee. Representative Thompson moved for a favorable report and the motion carried.

Committee Substitute for Senate Joint Resolution 211 - A JOINT RESOLUTION COMMEMORATING THE MEMORY OF RELIGIOUS LEADERS IN THE STATE OF NORTH CAROLINA AND NAMING BILLY GRAHAM AS WORLD EVANGELIST - was before the Committee. Representative Thompson moved for a favorable report and the motion carried.

The meeting adjourned at 1:15 p.m.

Representative Richard T. Morgan
Committee Chair

Anne M. Cole
Acting Committee Clerk

Attachments:
Committee Reports
Bills
Visitor's Sheet

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE.**

☒ Committee Substitute for
H.B. 1135 A BILL TO BE ENTITLED AN ACT AMENDING THE STATE PERSONNEL ACT TO PROVIDE FOR AN INCENTIVE BONUS PROGRAM TO RECOGNIZE AND REWARD THE COST-SAVING INITIATIVE AND INNOVATIONS OF STATE EMPLOYEES.

☑ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1135
Proposed Committee Substitute H1135-PCS8210

Short Title: State Employee Incentive Bonus. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT AMENDING THE STATE PERSONNEL ACT TO PROVIDE FOR AN INCENTIVE BONUS PROGRAM TO RECOGNIZE AND REWARD THE COST-SAVING INITIATIVE AND INNOVATIONS OF STATE EMPLOYEES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 126 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 2A.

"Incentive Bonus Program.

"**§ 126-7.3. State employee incentive bonus.**

(a) A State employee or team of State employees may receive an incentive bonus or bonuses in reward for suggestions or innovations resulting in monetary savings to the State, increased revenues to the State, or improved quality of services delivered to the public. The program is restricted to current State employees. Managers and supervisors may participate in the program.

(b) In addition to any bonuses paid directly to individual State employees, a portion of the cost-savings associated with any savings realized from permanent efficiencies implemented pursuant to this section may be contributed to a reserve fund for State employee performance bonuses. Funds for State employee incentive bonuses shall only come from savings including reversions above the baseline reversion of the employing State department, agency, or institution. For the purposes of this section, 'baseline reversion' means the two-year historical average of reversions by a State department, agency, or institution.

(c) Savings generated by suggestions and innovations shall be determined at the end of the fiscal year in which the suggestion or innovation is implemented. Any savings are to be calculated using the actual expenditures for a program, activity, or service compared to the budgeted amount for the same. The savings calculation shall include the amount of any reversions in excess of the baseline reversion. Any savings realized through the State employee incentive bonus shall be weighed against continued service to the public.

"**§ 126-7.4. Allocation of incentive bonus funds; nonmonetary recognition.**

(a) If a State employee's suggestion or innovation results in a monetary savings or increased revenue to the State, the funds saved or increased will be distributed according to the following scale:

(1) Twenty percent (20%) of the savings or fifty percent (50%) of the suggester's annual salary, whichever is less, to constitute gainsharing. If a team of State employee's is the suggester, the bonus provided in this subdivision shall be divided equally among the team members, except that no team member may receive in excess of fifty percent (50%) of the employee's annual salary.

(2) Thirty percent (30%) to a performance bonus reserve for all current State employees, to be distributed according to G.S. 126-7, the Comprehensive Compensation System for State employees.

(3) The remainder to the General Fund for nonrecurring budget items.

(b) The budget of a State agency will not be reduced by a similar amount in the following fiscal year. The agency budget will be reduced only if structural or organizational changes are made that warrant the reductions, including the transfer of responsibility for an activity or service to another agency or the elimination of some function of State government.

(c) If a suggestion or innovation results in improved quality of services to the public, but not in monetary savings to the State, the suggester shall receive a nonmonetary award in the form of a certificate, leave with pay, or other similar recognition.

"**§ 126-7.5. Suggestion and review process; role of agency coordinator and agency evaluator.**

(a) The process for a State employee or team of State employees to submit a cost-saving proposal shall begin by the employee or team of employees submitting the suggestion or innovation to an agency coordinator designated by the employing State department, agency, or institution. The agency coordinator, in conjunction with an agency evaluator, shall review the suggestion or innovation for submission to the Review Committee established in G.S. 126-7.6.

(b) The duties of the agency coordinator shall include:

(1) Serving as an information source and maintaining sufficient forms necessary to submit suggestions.

(2) Responsibility for presenting, in conjunction with the agency evaluator, the plan of implementation for a suggestion or innovation to the Review Committee.

(3) Working with an agency evaluator designated by the Review Committee of State employees empaneled pursuant to G.S. 126-7.6.

An agency may have more than one coordinator if required to provide sufficient services to State employees.

(c) The duties of an agency evaluator shall include:

(1) Reviewing the feasibility and effectiveness of cost-saving measures suggested by State employees.

(2) Being knowledgeable of the subject program, activity, or service.

(3) Determining the budgetary impact of a suggestion or innovation.

(4) Judging impartially both the positive and negative effects of a suggestion or innovation on the current functions of the subject program, activity, or service.

The specific assignments of the agency evaluator shall be determined by the agency coordinator.

(d) The State Coordinator shall be responsible for general oversight and coordination of the State employee incentive bonus program. The State Coordinator shall be a State employee working in the Office of the State Auditor.

"**§ 126-7.6. Incentive Bonus Review Committee.**

(a) The Incentive Bonus Review Committee, hereinafter 'Review Committee', shall consist of nine members, as follows:

(1) The State Coordinator.

(2) A representative of the Fiscal Research Division of the General Assembly.

(3) A representative of the Department of Justice.

(4) A representative of the Department of Labor.

(5) One State employee appointed by the Speaker of the House of Representatives.

(6) One State employee appointed by the President Pro Tempore of the Senate.

(7) Three State employees appointed by the State Employees Association of North Carolina, Inc.

(b) The duties of the Review Committee shall include:

(1) Responsibility for receiving from the various agency coordinators recommendations on suggestion and innovation implementation plans.

(2) Determining the impact of a suggestion or innovation on State government services by judging the monetary savings, increased revenues, or improved quality of services generated by a suggestion or innovation.

(3) Ensure that the State employee incentive bonus process does not result in a negative impact on services provided to taxpayers by State government.

(c) The Fiscal Research Division of the General Assembly shall provide staff and other necessary support to the Review Committee. The Review Committee shall publish an annual report."

Section 2. G.S. 126-4 reads as rewritten:

"**§ 126-4. Powers and duties of State Personnel Commission.**

Subject to the approval of the Governor, the State Personnel Commission shall establish policies and rules governing each of the following:

(1) Position classification plans which shall provide for the classification and reclassification of all positions subject to this Chapter according to the duties and responsibilities of the positions.

(2) Compensation plans which shall provide for minimum, maximum, and intermediate rates of pay for all employees subject to the provisions of this Chapter.

(3) For each class of positions, reasonable qualifications as to education, experience, specialized training, licenses, certifications, and other job-related requirements pertinent to the work to be performed.

(4) Recruitment programs designed to promote public employment, communicate current hiring activities within State government, and attract a sufficient flow of internal and external applicants; and determine the relative fitness of applicants for the respective positions.

(5) Hours and days of work, holidays, vacation, sick leave, and other matters pertaining to the conditions of employment. The legal public holidays established by the Commission as paid holidays for State employees shall include Martin Luther King, Jr.'s Birthday and Veterans Day. The Commission shall not provide for more than 11 paid holidays per year except that in those years in which Christmas Day falls on a Tuesday, Wednesday, or Thursday, the Commission shall not provide for more than 12 paid holidays.

(5a) In years in which New Year's Day falls on Saturday, the Commission may designate December 31 of the previous calendar year as the New Year's holiday, provided that the number of holidays for the previous calendar year does not exceed 12 and the number of holidays for the current year does not exceed 10. When New Year's Day falls on either Saturday or Sunday, the constituent institutions of The University of North Carolina that adopt alternative dates to recognize the legal public holidays set forth in subdivision (5) of this section and established by the Commission may designate, in accordance with the rules of the Commission and the requirements of this subdivision, December 31 of the previous calendar year as the New Year's holiday.

(6) The appointment, promotion, transfer, demotion and suspension of employees.
(7) Cooperation with the State Board of Education, the Department of Public Instruction, the University of North Carolina, and the Community Colleges of the State and other appropriate resources in developing programs in, including but not limited to, management and supervisory skills, performance evaluation, specialized employee skills, accident prevention, equal employment opportunity awareness, and customer service; and to maintain an accredited Certified Public Manager program.
(7a) The separation of employees.
(8) A program of meritorious service awards.
(9) The investigation of complaints and the issuing of appropriate action concerning employment, promotion, demotion, transfer, discharge, reinstatement, and any other issue defined as a contested case issue by this Chapter in all cases as the Commission shall find justified.
(10) Programs of employee assistance, productivity incentives, equal opportunity, safety and health as required by Part 1 of Article 63 of Chapter 143 of the General Statutes, and such other programs and procedures as may be necessary to promote efficiency of administration and provide for a fair and modern system of personnel administration. This subdivision may not be construed to authorize the establishment of an incentive pay program.
(11) In cases where the Commission finds discrimination or orders reinstatement or back pay whether (i) heard by the Commission or (ii) appealed for limited review after settlement or (iii) resolved at the agency level, the assessment of reasonable attorneys' fees and witnesses' fees against the State agency involved.
(12) Repealed by Session Laws 1987, c. 320, s. 2.
(13) Repealed by Session Laws 1987, c. 320, s. 3.
(14) The implementation of G.S. 126-5(e).
(15) Recognition of State employees, public personnel management, and management excellence.
(16) The implementation of G.S. 126-7.
(17) An alternative dispute resolution procedure.
(18) The implementation of G.S. 126-7.3.

The policies and rules of the Commission shall not limit the power of any elected or appointed department head, in the department head's discretion and upon the department head's determination that it is in the best interest of the Department, to transfer, demote, or separate a State employee who is not a career State employee as defined by this Chapter."

Section 3. This act becomes effective July 1, 1997.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **RULES, CALENDAR, AND OPERATIONS OF THE HOUSE.**

☒ Committee Substitute for
S.J.R. 340 A JOINT RESOLUTION INVITING THE REVEREND BILLY GRAHAM TO ADDRESS A JOINT SESSION OF THE HOUSE OF REPRESENTATIVES AND THE SENATE AND INVITING GOVERNOR JAMES B. HUNT, JR.

☑ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE JOINT RESOLUTION 340
Rules and Operations of the Senate Committee Substitute Adopted 4/29/97

Sponsors:

Referred to:

March 10, 1997

A JOINT RESOLUTION INVITING THE REVEREND BILLY GRAHAM TO ADDRESS A JOINT SESSION OF THE HOUSE OF REPRESENTATIVES AND THE SENATE AND INVITING GOVERNOR JAMES B. HUNT, JR.

Whereas, Billy Graham has distinguished himself through his contributions to morality, racial equality, family, philanthropy, and religion; and

Whereas, perhaps America's most respected and admired evangelical leader of the past half century, Billy Graham has reached millions of people through crusades and television; and

Whereas, Billy Graham has exemplified the highest ideals of teaching, counseling, ethics, charity, faith, and family; and

Whereas, Billy Graham's daily newspaper column and numerous books have provided spiritual counseling and personal enrichment to millions of people; and

Whereas, Billy Graham and Ruth Graham, his wife of 53 years, have been the driving force to create the Ruth and Billy Graham Children's Health Center at Memorial Mission Hospital in Asheville, North Carolina, whose vision it is to improve the health and well-being of children and to become a new resource for ending the pain and suffering of children; and

Whereas, Billy Graham has received numerous awards and honorary degrees including the Congressional Gold Medal in 1996, the North Carolina Award for Public Service in 1986, the Presidential Medal of Freedom in 1983, the Sylvanus Thayer Award from the United States Military Academy Association of Graduates at West Point in 1972, the International Brotherhood Award from the National Conference of Christians and Jews in 1971, and the Gold Award of the George Washington Carver Memorial Institute in 1964; and

Whereas, Billy Graham has participated in eight presidential inaugurations from the inauguration of President Lyndon B. Johnson in 1965 to the inauguration of President William J. Clinton in 1997;

Now, therefore, be it resolved by the Senate, the House of Representatives concurring:

Section 1. The Reverend Billy Graham is invited to address a joint session of the House of Representatives and the Senate in the Hall of the House of Representatives at 6:00 p.m., Monday, May 5, 1997.

Section 2. The Honorable James B. Hunt, Jr., Governor, is invited to the joint session.

Section 3. The Secretary of State shall transmit a certified copy of this resolution to the Reverend Billy Graham and the Governor of the State of North Carolina.

Section 4. This resolution is effective upon ratification.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **RULES, CALENDAR, AND OPERATIONS OF THE HOUSE.**

☐ Committee Substitute for
S.J.R. 1072 A JOINT RESOLUTION INVITING THE HONORABLE JESSE A. HELMS, UNITED STATES SENATOR, TO ADDRESS A JOINT SESSION OF THE HOUSE OF REPRESENTATIVES AND THE SENATE AND INVITING GOVERNOR JAMES B. HUNT, JR.

☒ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE JOINT RESOLUTION 1072

Sponsors: Senator Page.

Referred to: Rules and Operations of the Senate.

April 21, 1997

A JOINT RESOLUTION INVITING THE HONORABLE JESSE A. HELMS, UNITED STATES SENATOR, TO ADDRESS A JOINT SESSION OF THE HOUSE OF REPRESENTATIVES AND THE SENATE AND INVITING GOVERNOR JAMES B. HUNT, JR.

Now, therefore be it resolved by the Senate, the House of Representatives concurring:

Section 1. The Honorable Jesse A. Helms, is invited to address a joint session of the House of Representatives and the Senate in the Hall of the House of Representatives at 11:00 a.m., Tuesday, May 27, 1997.

Section 2. The Honorable James B. Hunt, Jr., Governor, is invited to the joint session.

Section 3. The Secretary of State shall transmit a certified copy of this resolution to the Senator and the Governor of the State of North Carolina.

Section 4. This resolution is effective upon ratification.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **MORGAN** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE.**

☒ Committee Substitute for
S.J.R. 211 A JOINT RESOLUTION COMMEMORATING THE MEMORY OF RELIGIOUS LEADERS IN THE STATE OF NORTH CAROLINA AND NAMING BILLY GRAHAM AS WORLD EVENGELIST.

☒ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE JOINT RESOLUTION 211
Rules and Operations of the Senate Committee Substitute Adopted 4/29/97

Sponsors:

Referred to:

February 20, 1997

A JOINT RESOLUTION COMMEMORATING THE MEMORY OF RELIGIOUS LEADERS IN THE STATE OF NORTH CAROLINA AND NAMING BILLY GRAHAM AS WORLD EVANGELIST.

Whereas, Article I, Section 13, of the Constitution of North Carolina speaks to religious liberty in the State of North Carolina and the right to worship Almighty God; and

Whereas, it is right and proper to recognize and commemorate the memory of all religious leaders who have led in the pursuit and practice of individual worship and thereby strengthening the moral fiber of this State; and

Whereas, Billy Graham was born William Franklin Graham on November 7, 1918, in Charlotte, North Carolina, to William Franklin Graham and Morrow Coffey Graham; and

Whereas, Billy Graham graduated from the Florida Bible Institute, now Trinity College, in 1940, and Wheaton College in 1943; and

Whereas, Billy Graham married Wheaton College classmate, Ruth McCue Bell in 1943, and from their union five children were born: Virginia Leftwich, Anne Morrow, Ruth Bell, William Franklin, and Nelson Edman; and

Whereas, from 1943 to 1945, Billy Graham served as pastor of the First Baptist Church in Western Springs, Illinois, and later joined Youth for Christ International, where he ministered to young people and service personnel from 1945 to 1950; and

Whereas, after World War II, Billy Graham began to preach throughout the United States and Europe, but gained international prominence as an evangelist through a series of crusades that began in 1949; and

Whereas, Billy Graham founded the Billy Graham Evangelistic Association in 1950, which launched his weekly radio program "Hour of Decision"; and

Whereas, Billy Graham has received numerous awards and honorary degrees including the Congressional Gold Medal in 1996, the North Carolina Award for Public Service in 1986, the Presidential Medal of Freedom in 1983, the Sylvanus Thayer Award from the United States Military Academy Association of Graduates at West Point in 1972, the International Brotherhood Award from the National Conference of Christians and Jews in 1971, and the Gold Award of the George Washington Carver Memorial Institute in 1964; and

Whereas, Billy Graham has written 17 books, all of which have become best sellers; and

Whereas, Billy Graham has participated in eight presidential inaugurations from the inauguration of President Lyndon B. Johnson through the inauguration of President Bill Clinton in 1997; and

Whereas, Billy Graham's messages have reached over 210 million people in over 185 countries through his crusades, television appearances, and radio programs, making him the most well-known preacher; and

Whereas, over the course of many years, people from all walks of life have sought Billy Graham's counsel; and

Whereas, Billy Graham has distinguished himself as a man of great faith, showing a genuine interest in reaching out to those seeking spiritual guidance; and

Whereas, Billy Graham is admired and respected by millions of people over all the world; and

Whereas, naming Billy Graham as World Evangelist would be a fitting tribute to one of North Carolina's most beloved citizens;

Now, therefore, be it resolved by the Senate, the House of Representatives concurring:

Section 1. The General Assembly commemorates the memory of religious leaders in the State of North Carolina and names Billy Graham World Evangelist.

Section 2. The Secretary of State shall transmit a certified copy of this resolution to Billy Graham.

Section 3. This resolution is effective upon ratification.

VISITOR REGISTRATION SHEET

1:00 p.m

RULES, CALENDAR, AND OPERATIONS OF THE HOUSE **MAY 1, 1997**

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[illegible]	NCATL
[illegible]	CPTL
[illegible]	Charlotte Chamber
[illegible]	NCBA
[illegible]	Gov's Office
David Simmons	ZDA, PA
Laura Hartsell	MCIC

MINUTES
COMMITTEE ON RULES, CALENDAR, AND OPERATIONS OF THE HOUSE
May 7, 1997

The Committee on Rules, Calendar, and Operations of the House met May 7, 1997, at 1:00 p.m. in Room 421 in the Legislative Office Building. Representative Morgan, Committee Chair, called the meeting to order and asked the clerk to call the roll. The following members were present: Representative Bowie, Vice Chair; and Representatives Culp, Dockham, Esposito, Gulley, Hill, McMahan, Miner, Mitchell, Neely, Thompson and C. Wilson.

The bill before the Committee was Committee Substitute for Senate Bill 945 - A BILL TO BE ENTITLED AN ACT TO REQUIRE THE PRESCRIBER'S AND THE PATIENT'S CONSENT FOR INTERCHANGE OF A LIMITED CLASS OF DRUGS. Senator Rand, bill sponsor, was recognized to explain the bill and offered a proposed House Committee Substitute for the Committee Substitute for the Senate bill. Representative Esposito moved that the proposed House Committee Substitute S945-PCS4598 be adopted for Committee discussion. Motion carried.

Dr. Christine Dean, Director of the Epilepsy Institute of North Carolina, was recognized by the Chair to speak in favor of the bill. Mr. Lou Starling from Sampson County was recognized by the Chair to speak against the bill. Dr. Christopher T. Rhodes, Professor of Applied Pharmaceutical Sciences at the University of Rhode Island, made remarks against the bill after being introduced by Mr. Lou Starling and recognized by Chairman Morgan. Dr. James Gross, Assistant Professor of Pharmacy at Campbell University School of Pharmacy, Instructor of Medicine at the University of North Carolina at Chapel Hill and Clinical Practicing Pharmacist at the Moses H. Cone Memorial Hospital; spoke in favor of the bill. Mr. Tim Sawyer, employee of Barr Laboratories, was recognized to speak in opposition of the bill. The Chair recognized Dr. David Work, Director of the North Carolina Board of Pharmacy, to speak in favor of the bill. Dr. Work let the Committee know that he was speaking on his own behalf and not for the North Carolina Board of Pharmacy, which does not support, oppose or endorse legislation.

The Chair asked for discussion and debate from the Committee. Representatives Neely, Culp, and Wilson had questions for the speakers that spoke in support of and in opposition to the bill. Representative Bowie was recognized by the Chair for comments and for a motion. The motion was for a favorable report as to the House committee substitute bill and unfavorable to the Senate committee substitute. Motion carried.

The meeting adjourned.

Representative Richard T. Morgan
Committee Chair

Anne M. Cole
Acting Committee Clerk

Attachments:
Committee Reports
Bills
Biography of Dr. Christopher T. Rhodes
Barr Laboratories, Inc., Handout on Opposition to SB 945
FDA Statement on Generic Premarin
Visitor's Sheet

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House.**

☒ Committee Substitute for
S.B. 945 A BILL TO BE ENTITLED AN ACT TO REQUIRE THE PRESCRIBER'S AND THE PATIENT'S CONSENT FOR INTERCHANGE OF A LIMITED CLASS OF DRUGS.

☐ 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, 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 945
Commerce Committee Substitute Adopted 4/22/97
Proposed Committee Substitute S945-PCS4598

Short Title: Prescription Refill Safety Act. (Public)

Sponsors:

Referred to:

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE PRESCRIBER'S AND THE PATIENT'S CONSENT FOR INTERCHANGE OF A LIMITED CLASS OF DRUGS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-85.27 reads as rewritten:

"**§ 90-85.27. Definitions.**

As used in G.S. 90-85.28 through G.S. 90-85.31:

(1) 'Equivalent drug product' means a drug product which has the same established name, active ingredient, strength, quantity, and dosage form, and which is therapeutically equivalent to the drug product identified in the prescription;

(2) 'Established name' has the meaning given in section 502(e)(3) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 352(e)(3);

(3) 'Good manufacturing practice' has the meaning given it in Part 211 of Chapter 1 of Title 21 of the Code of Federal Regulations;

(4) 'Manufacturer' means the actual manufacturer of the finished dosage form of the drug;

(4a) 'Narrow therapeutic index drugs' means those pharmaceuticals having a narrowly defined range between risk and benefit. Such drugs have less than a twofold difference in the minimum toxic concentration and minimum effective concentration in the blood or are those drug product formulations that exhibit limited or erratic

absorption, formulation-dependent bioavailability, and wide intrapatient pharmacokinetic variability that requires blood-level monitoring. Drugs identified as having narrow therapeutic indices shall be designated by the North Carolina Secretary of Human Resources upon the advice of the State Health Director, North Carolina Board of Pharmacy, and North Carolina Medical Board, as narrow therapeutic index drugs and shall be subject to the provisions of G.S. 90-85.28(b1). The North Carolina Board of Pharmacy shall submit the list of narrow therapeutic index drugs to the Codifier of Rules, in a timely fashion for publication in January of each year in the North Carolina Register.

(5) 'Prescriber' means anyone authorized to prescribe drugs pursuant to the laws of this State."

Section 2. G.S. 90-85.28 is amended by adding the following new subsection to read:

"(b1) A prescription for a narrow therapeutic index drug shall be refilled using only the same drug product by the same manufacturer that the pharmacist last dispensed under the prescription, unless the prescriber is notified by the pharmacist prior to the dispensing of another manufacturer's product, and the prescriber and the patient give documented consent to the dispensing of the other manufacturer's product. For purposes of this subsection, the term 'refilled' shall include a new prescription written at the expiration of a prescription which continues the patient's therapy on a narrow therapeutic index drug."

Section 3. This act becomes effective July 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 945
Commerce Committee Substitute Adopted 4/22/97

Short Title: Prescription Refill Safety Act. (Public)

Sponsors:

Referred to:

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE PRESCRIBER'S AND THE PATIENT'S CONSENT FOR INTERCHANGE OF A LIMITED CLASS OF DRUGS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-85.27 reads as rewritten:

"**§ 90-85.27. Definitions.**

As used in G.S. 90-85.28 through G.S. 90-85.31:

(1) 'Equivalent drug product' means a drug product which has the same established name, active ingredient, strength, quantity, and dosage form, and which is therapeutically equivalent to the drug product identified in the prescription;

(2) 'Established name' has the meaning given in section 502(e)(3) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 352(e)(3);

(3) 'Good manufacturing practice' has the meaning given it in Part 211 of Chapter 1 of Title 21 of the Code of Federal Regulations;

(4) 'Manufacturer' means the actual manufacturer of the finished dosage form of the drug;

(4a) 'Narrow therapeutic index drugs' means those pharmaceuticals having a narrowly defined range between risk and benefit. Such drugs have less than a twofold difference in the minimum toxic concentration and minimum effective concentration in the blood or are those drug product formulations that exhibit limited or erratic absorption, formulation-dependent bioavailability, and wide

intrapatient pharmacokinetic variability that requires blood-level monitoring. Drugs identified as having narrow therapeutic indices shall be designated by the North Carolina Secretary of Human Resources upon the advice of the State Health Director, North Carolina Board of Pharmacy, and North Carolina Medical Board, as narrow therapeutic index drugs and shall be subject to the provisions of G.S. 90-85.28(b1). The North Carolina Board of Pharmacy shall submit the list of narrow therapeutic index drugs to the Codifier of Rules, in a timely fashion for publication in January of each year in the North Carolina Register.

(5) 'Prescriber' means anyone authorized to prescribe drugs pursuant to the laws of this State."

Section 2. G.S. 90-85.28 is amended by adding the following new subsection to read:

"(b1) A prescription for a narrow therapeutic index drug shall be refilled using only the same drug product by the same manufacturer that the pharmacist last dispensed under the prescription, unless the prescriber is notified by the pharmacist prior to the dispensing of another manufacturer's product, and the prescriber and the patient give written consent to the dispensing of the other manufacturer's product. For purposes of this subsection, the term 'refilled' shall include a new prescription written at the expiration of a prescription which continues the patient's therapy on a narrow therapeutic index drug."

Section 3. This act becomes effective July 1, 1997.

Biography

Dr. Christopher T. Rhodes

Dr. Christopher T. Rhodes is Professor of Applied Pharmaceutical Sciences at the University of Rhode Island. After obtaining his B. Pharm. (Hons) and Ph.D. degrees at Chelsea School of Pharmacy, University of London, Dr. Rhodes was appointed Smith, Kline and French post-doctoral Research Associate at Purdue University where he worked with Dr. G. S. Banker on the development of new oral prolonged action dosage forms.

Professor Rhodes has published over two hundred papers on a variety of pharmaceutical topics associated with the design and evaluation of drug delivery systems and devices. Working with Mr. R. E. Hone he edited "Automated Analysis of Drugs and Other Substances of Pharmaceutical Interest" which was published by Medical Butterworth in 1973. In association with Dr. G. S. Banker he edited "Modern Pharmaceutics" published by Dekker in 1979, 1990 and 1995. Dr. Rhodes worked with Dr. Bruce Shearer of the Population Council and Mr. S. M. Keeney to prepare the handbook "The Purchase, Shipment, Storage and Distribution of Contraceptives in Developing Countries" under contract for the World Bank. He is the editor of Drug Development and Industrial Pharmacy.

Dr. Rhodes is President of PharmaCon Inc. of Rhode Island, a company which provides consulting services to government and industry on the formulation and analysis of drug products and devices and on clinical and regulatory aspects of their use. He has acted as an expert witness in these areas. Professor Rhodes is a Fellow of the American Association of Pharmaceutical Scientists .He has served as a member of the United States Pharmacopoeia Committee of Revision (USP). He has also served as a member of the Federal Food and Drug Administration Advisory Committee on Generic Drugs. His services as a consultant have been used by the Inland Revenue Service and the US Army.

December 1996

SB 945 Would Unnecessarily Cost Consumers and State Medicaid Millions

SB 945 is special interest legislation that will hurt consumers. It was passed hurriedly by the Senate without adequate consideration of either science or economic impact. SB 945 needlessly restricts access to important medicines and will result in significantly higher health care costs.

PLEASE VOTE AGAINST THIS LEGISLATION FOR THE FOLLOWING REASONS:

- **SB 945 Will Place a Significant Burden on Consumers**

  Limiting the substitution of generic versions of Narrow Therapeutic Index (NTI) drugs will have a significant adverse economic impact on consumers, pharmacies and the State Medicaid Program. **In the State of North Carolina alone, consumers today spend more than $31 million on NTI products. The State Medicaid Program currently spends more than $6.4 million on NTI drugs.**

- **SB 945 is Unnecessary**

  Generic NTI products have a proven track record. 16 NTI generic products have been on the market for years in North Carolina and around the nation and millions of prescriptions have been filled without any restrictions and without any documented health problems. Commenting on similar legislation, the FDA has said that:
  "NTI drugs can be substituted with the full expectation by the patient and physician that they will have the same clinical effect and safety profile... the physician, pharmacist, and patient have FDA's assurance that the physician should see the same clinical results and safety profile."

- **Doctors Already Have the Total Authority to Freely Prescribe Any Medicine**

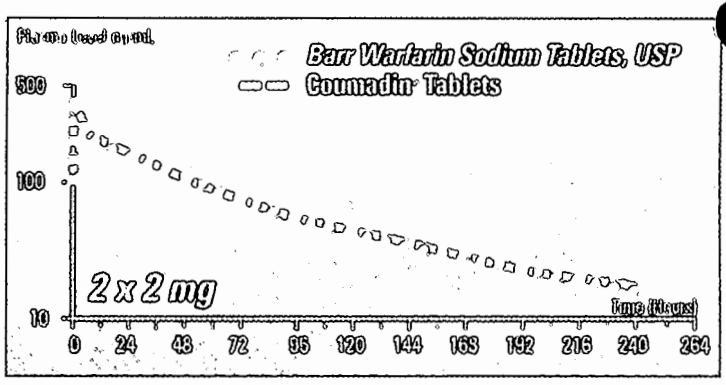
  The ultimate choice on whether a generic medicine is suitable for the patient already rests in the hands of the doctor through the use of the two line prescription pad and the patient who can always request the branded product.

- **Legislators Are Being Duped by the Pharmaceutical Giants into Passing a Bad Law**

  Presented as a "public safety" initiative, SB 945 does nothing to protect patient safety. This bill is part of a state-by-state effort by the DuPont-Merck Pharmaceutical Company to protect its Coumadin cardiovascular medicine from generic competition.

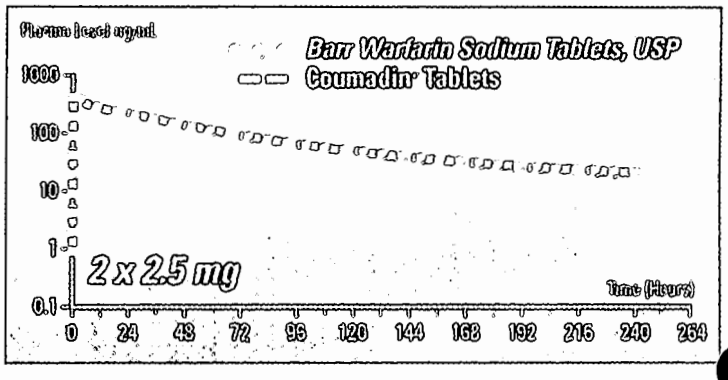
Bioequivalency/Bioavailability Studies

Study #1:
Twenty-six (26) healthy males were recruited for a two-way, single-dose, open-label, randomized, two-period, two-treatment, two-sequence, crossover study taking 2 x 2 mg tablets under fasting conditions to evaluate the relative bioavailability of Barr Warfarin Sodium Tablets, USP 2 mg to Coumadin® Tablets, 2 mg (reference product) distributed by DuPont Pharma. Twenty-five (25) subjects completed the entire clinical portion of the study. Warfarin concentrations in plasma were determined by a validated HPLC method.



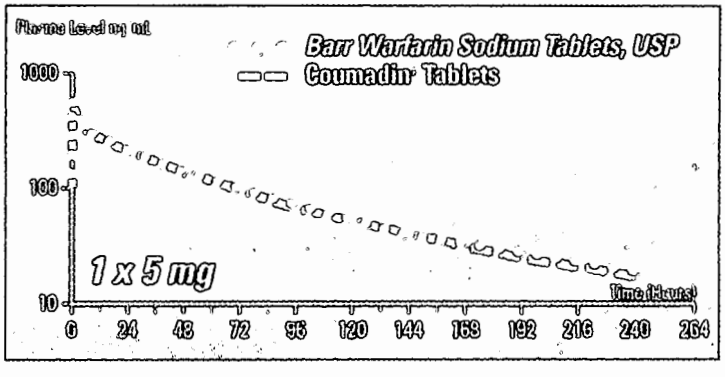
Conclusion:
Statistical analysis of Cmax and AUC in plasma demonstrated that Barr Warfarin Sodium Tablets, USP are bioequivalent to Coumadin® Tablets.

Study #2:
Twenty-six (26) healthy males were recruited for a two-way, single-dose, open-label, randomized, two-period, two-treatment, two sequence, crossover study taking 2 x 2.5 mg tablets under fasting conditions to evaluate the relative bioavailability of Barr Warfarin Sodium Tablets, USP 2.5 mg to Coumadin® Tablets, 2.5 mg (reference product) distributed by DuPont Pharma. Twenty-five (25) subjects completed the entire clinical portion of the study. Warfarin concentrations in plasma were determined by a validated HPLC method.



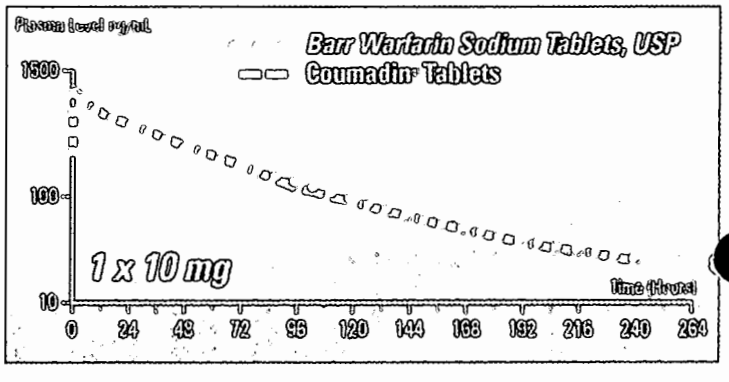
Conclusion:
Statistical analysis of Cmax and AUC in plasma demonstrated that Barr Warfarin Sodium Tablets, USP are bioequivalent to Coumadin® Tablets.

Study #3:
Twenty-six (26) healthy males were recruited for a two-way, single-dose, open-label, randomized, two-period, two-treatment, two-sequence, crossover study taking 1 x 5 mg tablets under fasting conditions to evaluate the relative bioavailability of Barr Warfarin Sodium Tablets, USP 5 mg to Coumadin® Tablets, 5 mg (reference product) distributed by DuPont Pharma. Twenty-five (25) subjects completed the entire clinical portion of the study. Warfarin concentrations in plasma were determined by a validated HPLC method.



Conclusion:
Statistical analysis of Cmax and AUC in plasma demonstrated that Barr Warfarin Sodium Tablets, USP are bioequivalent to Coumadin® Tablets.

Study #4:
Twenty-six (26) healthy males were recruited for a two-way, single-dose, open-label, randomized, two-period, two-treatment, two-sequence, crossover study taking 1 x 10 mg tablets under fasting conditions to evaluate the relative bioavailability of Barr Warfarin Sodium Tablets, USP 10 mg to Coumadin® Tablets, 10 mg (reference product) distributed by DuPont Pharma. Twenty-five (25) subjects completed the entire clinical portion of the study. Warfarin concentrations in plasma were determined by a validated HPLC method.



Conclusion:
Statistical analysis of Cmax and AUC in plasma demonstrated that Barr Warfarin Sodium Tablets, USP are bioequivalent to Coumadin® Tablets.

FDA ON THE INTERNET: http://www.fda.gov/

MESSAGE BELOW DISSEMINATED 05/05/97 TO CLIENTS OF FDA'S DIVISION OF FEDERAL-STATE RELATIONS (DFSR).

==========

P97-12
FOR IMMEDIATE RELEASE
May 5, 1997

Food and Drug Administration
Marian Segal: 301-443-3285
Broadcast Media: 301-827-3434
Consumer Hotline: 800-532-4440

FDA STATEMENT ON GENERIC PREMARIN

FDA's Center for Drug Evaluation and Research (CDER) announced today that at this time it will not approve synthetic generic forms of the estrogen-replacement drug Premarin. This is because these generic products have not been shown to contain the same active ingredients, and therefore to work the same, as the original drug in treating women with menopausal symptoms and preventing osteoporosis.

In her announcement, CDER's director, Janet Woodcock, M.D., said, "Based on currently available data, there is at this time no way to assure that synthetic generic forms of Premarin have the same active ingredients as the brand-name drug. This is essential for determining they are equivalent to the brand drug, and is also a legal requirement for their approval."

Because generic drug manufacturers do not have to repeat the clinical studies used to develop the original, brand-name drug, they must assure their products are as safe and effective by showing that the active ingredients are the same and that they are bioequivalent--that is, absorbed and used by the body in the same way as the original products.

Premarin, the brand name for conjugated estrogens, is derived from the urine of pregnant mares and contains a number of different estrogens. Precisely how each of these various estrogens contribute to the drug's overall effectiveness has not been definitively determined. Premarin's approval in 1942 predated the current requirements for such comprehensive analysis of products under review for marketing approval.

Previously it was thought that two estrogens--sodium estrone sulfate and sodium equilin sulfate, were the sole active ingredients in Premarin. Newer laboratory and clinical studies show this may not be the case. Rather, other components in Premarin may contribute to the drug's effectiveness for menopausal symptoms and osteoporosis prevention.

In addition, recent studies submitted by Wyeth-Ayerst, the manufacturer of Premarin, show that after repeated doses of Premarin in women, the blood concentration of the active metabolites of the estrogen delta (8,9) dehydroestrone sulfate (DHES) is about the same order of magnitude as the concentration of the active metabolites of estrone and equilin.

"Although this finding does not prove that the DHES in Premarin has an important therapeutic effect," Woodcock says, "it underscores the lack of precise knowledge of the makeup of Premarin and the relative importance of its components, and therefore the lack of a standard on which to evaluate a generic copy."

Over the years, there has been controversy about the required composition and testing of generic conjugated estrogens. In 1991, FDA issued new bioequivalence testing guidelines for the drug, based on recommendations of its Generic Drugs Advisory Committee.

In 1970, conjugated estrogens were officially defined in a U.S. Pharmacopeia monograph as a mixture of sodium estrone sulfate and sodium equilin sulfate. In 1992, in addition to those components, other constituents were described as "concomitant components" and as impurities.

In November 1994, Wyeth-Ayerst filed a citizen petition requesting that DHES be reclassified as a concomitant component. The firm maintained that the compound contributes to the drug's potency, and therefore, effectiveness, and further requested that FDA require the compound to be included in any generic copies of the drug.

The following July, FDA's Fertility and Maternal Health Drugs Advisory Committee reviewed Wyeth-Ayerst's request. At the end of the deliberations, the committee unanimously concluded that not enough data were available to determine whether or not components besides estrone sulfate and equilin sulfate must be present in order for Premarin to achieve its established levels of efficacy and safety.

An ad hoc agency working group on conjugated estrogens was formed in the summer of 1995 to review the scientific data on the composition of conjugated estrogens. Recently, the working group presented a final report compiling scientific information related to the composition of Premarin.

The Center has now concluded that Premarin must be better characterized before its active ingredients can be definitively identified, and that the bioequivalence guidance for conjugated estrogens should be reexamined. The guidance describes how to measure whether the rate and extent of absorption in the blood of the generic version are equivalent to those of Premarin.

The agency encourages the initiation of studies that will permit the scientific determination of the active ingredients in Premarin and provide a potential for approval of generic versions of the drug.

Several brand name and generic tablets and patches containing estrogens are available besides Premarin to treat menopausal symptoms, a number of which are also approved for long-term use to prevent osteoporosis.

####

April, 1996

North Carolina Board of Pharmacy

NEWSLETTER

Item 872 – Caution on Product Selection

North Carolina pharmacists understand that the state product selection law presumes that pharmacists can use product selection on any prescription unless it is specifically prohibited by the prescriber. There are a number of drugs, however, for which product selection would be unwise due to difficulties with therapeutic interchange. Among these are:

Coumadin
Dilantin
Lanoxin
Premarin
Procan SR
Provera
Synthroid
Tegretol
Theophylline, Sustained Release

While there may be other products for which cautions about product selection would be applicable, it is generally accepted that risks occur with substitution of the above-named drugs.

VISITOR REGISTRATION SHEET

RULES, CALENDAR, AND OPERATIONS OF THE HOUSE **MAY 7, 1997**

Name of Committee Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jim SAWYER	BARR LABORATORIES
C.T Rhodes	Univ of Rhode Island
Lew Atankin	Barr LAB
ZED Alley	Barr LAB
CHRISTINE MUNKUR	BARR LABORATORIES
Robert Bell Ph.D	Barr Labs
Nancy Bradley	NCCBSI
	WCSR
Ellen Franklin	Novartis
Carmen Horton Breed	Carolinas Health Care System
Jan Wood	" "
David Simmons	Zeb Alley, PA
Andy Romanet	NCLM
	Womble Carlyle SK.
Amy Anderson	Hunton & Williams
Charles Case	"
BILL HALE	DEPT OF INSURANCE
PR JAMES GROCE	CAMPBELL UNIVERSITY SCHOOL OF PHARMACY
David R. Bruce	Epilepsy Institute of North Carolina
Richard C Hatch	AARP
Jeff Lipe	Bayer
Robert PASchal	Venable Moore & Henderson
Amy Jo Barr	Smith Anderson
Lew Bocer	Baxman Group
Adam Searing	NC Health Access Coalition
Will Lang	NCAHC

VISITOR REGISTRATION SHEET

RULES, CALENDAR, AND OPERATIONS OF THE HOUSE **MAY 7, 1997**

Name of Committee Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John McMullan	Manning Fulton & Skinner PA
Robert Gaugler	Gaugler Consulting
Charles G. Watkins	Texas Wellness Inc
Tom Price	NCPA
Lori Ann Harris	SHERG
Laura G. Hartsell	MCIC
Bill Stanhouse	DuPont
David Work	Capitol Hill
BILL SCOGGIN	NCBA
Alan Miles	Bailey & Dixon LLP
Michael Thompson	RC Power
Genevieve Clabby	N&O
Dan Walters	AMG
Suzanne Wiles	Bowman Assoc.

MINUTES
RULES, CALENDAR AND OPERATIONS OF THE HOUSE
May 12, 1997

The Committee on Rules, Calendar, and Operations of the House met on Monday, May 12, 1997 at 6:30 p.m. in the House Conference Room. Representative Morgan, Committee Chair, called the meeting to order and asked the clerk to call the roll. The following members were present: Representative Bowie, Vice-Chair and Representatives Culp, Gulley, Hill, Neely, Thompson and C. Wilson

The first item of business was House Joint Resolution 956 COMMEMORATING THE ONE HUNDRED FIFTIETH ANNIVERSARY OF THE CITY OF GOLDSBORO AND HONORING THE MEMORY OF MAJOR MATTHEW TILGHMAN GOLDSBOROUGH. Chairman Morgan also brought forward House Joint Resolution 1153 COMMEMORATING THE ONE HUNDRED FIFTIETH ANNIVERSARY OF THE TOWN OF FRANKLINVILLE AND HONORING THE MEMORY OF JESSE FRANKLIN. Committee Counsel Linwood Jones explained the resolutions. Representative Thompson moved for a favorable report to House Joint Resolution 956 and the motion carried. Representative Thompson moved for a favorable report to House Joint Resolution 1153 and the motion carried.

The meeting adjourned at 6:35 p.m.

Representative Richard T. Morgan
Committee Chair

Dixie Epps
Committee Clerk

Attachments:
Committee Reports
Joint Resolutions

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE**.

☐ Committee Substitute for
H.J.R. 956 A JOINT RESOLUTION COMMEMORATING THE ONE HUNDRED FIFTIETH ANNIVERSARY OF THE CITY OF GOLDSBORO AND HONORING THE MEMORY OF MAJOR MATTHEW TILGHMAN GOLDSBOROUGH.

☑ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE JOINT RESOLUTION 956*

Sponsors: Representatives Baddour, Braswell, Russell (Cosponsors); and Goodwin.

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

April 15, 1997

A JOINT RESOLUTION COMMEMORATING THE ONE HUNDRED FIFTIETH ANNIVERSARY OF THE CITY OF GOLDSBORO AND HONORING THE MEMORY OF MAJOR MATTHEW TILGHMAN GOLDSBOROUGH.

Whereas, the City of Goldsboro was granted a charter by the State of North Carolina on January 18, 1847; and

Whereas, the year 1997 marks the Sesquicentennial Anniversary of the incorporation of the City of Goldsboro; and

Whereas, the City of Goldsboro is recognized as being an important and significant entity contributing to the outstanding character and reputation that is enjoyed by the State of North Carolina; and

Whereas, during its 150 years as a vital member of the North Carolina community, Goldsboro has extended a warm and hospitable hand to all who have entered its boundaries, exemplifying the characteristics that define our fine State; and

Whereas, the City of Goldsboro has been represented by men and women in all wars sanctioned by the United States, to fight for the principles of democracy, freedom, and justice; and

Whereas, the City of Goldsboro possesses a rich and valuable history; and

Whereas, at this time when the City of Goldsboro is observing its Sesquicentennial Anniversary, it is only fitting to honor the memory of Major Matthew Tilghman Goldsborough, a civil engineer who was in charge of the survey and the building of the Wilmington and Weldon Railroad, for whom the city is named;

Now, therefore, be it resolved by the House of Representatives, the Senate concurring:

Section 1. The General Assembly observes the Sesquicentennial Anniversary of the City of Goldsboro and honors the memory of Major Matthew Tilghman Goldsborough.

Section 2. The Secretary of State shall transmit a certified copy of this resolution to the Mayor of the City of Goldsboro.

Section 3. This resolution is effective upon ratification.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House.**

☐ Committee Substitute for
H.J.R. 1153 A JOINT RESOLUTION COMMEMORATING THE ONE HUNDRED FIFTIETH ANNIVERSARY OF THE TOWN OF FRANKLINVILLE AND HONORING THE MEMORY OF JESSE FRANKLIN.

☑ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE JOINT RESOLUTION 1153

Sponsors: Representative Culp.

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

April 23, 1997

A JOINT RESOLUTION COMMEMORATING THE ONE HUNDRED FIFTIETH ANNIVERSARY OF THE TOWN OF FRANKLINVILLE AND HONORING THE MEMORY OF JESSE FRANKLIN.

Whereas, the antebellum cotton factories of the Town of Franklinville in Randolph County were among this State's pioneer textile mills, and have caused the Town to be called "the cradle of the Deep River textile industry"; and

Whereas, the Town of Franklinville is home to numerous structures that are included in a historic district listed on the National Register of Historic Places and were built before the Civil War which illustrate all aspects of life in a nineteenth century mill village; and

Whereas, the Town of Franklinville was created by the legislature in 1847, to incorporate the neighboring mill villages of Franklinville, founded in 1838, and Island Ford, founded in 1846; and

Whereas, the chartering of the Town of Franklinville by the legislature was the first incorporation of any North Carolina mill village; and

Whereas, the Town of Franklinville is named for Jesse Franklin, who served as Governor of North Carolina from 1820 to 1821; and

Whereas, the Town of Franklinville is one of the pivotal landmarks of the history of economic and industrial development in the State of North Carolina;

Now, therefore, be it resolved by the House of Representatives, the Senate concurring:

Section 1. The General Assembly honors the memory of Jesse Franklin and recognizes the Town of Franklinville as one of the original success stories of domestic manufacturing in the State. The General Assembly further honors the occasion of the Town's 150th Anniversary by designating the Town as the State of North Carolina's first Textile Heritage Village.

Section 2. The Secretary of State shall transmit a certified copy of this resolution to the Mayor of the Town of Franklinville.

Section 3. This resolution is effective upon ratification.

MINUTES
COMMITTEE ON RULES, CALENDAR, AND OPERATIONS OF THE HOUSE
May 19, 1997

The Committee on Rules, Calendar, and Operations of the House met May 19, 1997, at 6:40 p.m. in the House Conference Room in the Legislative Building. Representative Morgan, Committee Chair, called the meeting to order and asked the clerk to call the roll. The following members were present: Representative Bowie, Vice Chair; and Representatives Crawford, Culp, Dockham, Hill, McMahan, Miner and C. Wilson.

House Joint Resolution 1227 - A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF GORDON HICKS GREENWOOD, FORMER MEMBER OF THE GENERAL ASSEMBLY - was before the Committee. Linwood Jones, Committee Staff Counsel, explained the bill. Representative Dockham moved for a favorable report and motion carried.

The meeting adjourned at 6:43 p.m.

Representative Richard T. Morgan
Committee Chair

Anne M. Cole
Acting Committee Clerk

Attachments:
Committee Report
Bill
Visitor's Sheet

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE..**

☐ Committee Substitute for
H.J.R. 1227 A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF GORDON HICKS GREENWOOD, FORMER MEMBER OF THE GENERAL ASSEMBLY.

☑ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE JOINT RESOLUTION 1227*

Sponsors: Representatives Sherrill, Nesbitt, Cansler; Beall, R. Hunter, and Ramsey.

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

May 12, 1997

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF GORDON HICKS GREENWOOD, FORMER MEMBER OF THE GENERAL ASSEMBLY.

Whereas, Gordon Hicks Greenwood was born in Black Mountain, North Carolina, on July 3, 1909, to James Hicks Greenwood and Louella Ray Greenwood; and

Whereas, Gordon Hicks Greenwood was a member of the first graduating class of Biltmore College, which later became the University of North Carolina at Asheville, graduating on May 30, 1930; and

Whereas, Gordon Hicks Greenwood attended North Carolina State University, where he played football for one year; and

Whereas, Gordon Hicks Greenwood received a bachelor of arts degree in journalism from the University of Illinois in 1941, and continued his education at the University of London in 1945; and

Whereas, Gordon Hicks Greenwood married Garnet Elizabeth Carder on March 8, 1941; and

Whereas, Gordon Hicks Greenwood served in the United States Army from 1943 through 1945 in the European Theater of Operations as a psychologist in an army hospital's psychiatric unit; and

Whereas, in 1946, Gordon Hicks Greenwood and his wife, Garnet, bought and published the Black Mountain News, which he continued to operate until 1967; and

Whereas, Gordon Hicks Greenwood served as director of admissions and assistant to the President at Montreat College in Buncombe County from 1973 to 1976; and

Whereas, Gordon Hicks Greenwood also served as an assistant professor of journalism at Boston University and as the manager of the New England Press Association; and

Whereas, Gordon Hicks Greenwood rendered distinguished service to the State of North Carolina as a member of the North Carolina House of Representatives, serving from 1959 through 1966 and from 1972 through 1992; and

Whereas, the State's community college system owes tremendous gratitude to Gordon Hicks Greenwood who in 1963 introduced a bill that resulted in the creation of the State's community college system; and

Whereas, Gordon Hicks Greenwood was instrumental in establishing a State-owned cemetery for veterans in the Town of Black Mountain; and

Whereas, Gordon Hicks Greenwood's other political involvement included service on the Black Mountain Town Board and the Buncombe County Board of County Commissioners, of which he also served as chair; and

Whereas, Gordon Hicks Greenwood contributed to his community through his service on numerous civic, business, and veterans organizations, including the Black Mountain Lions Club, the Chamber of Commerce, and the American Legion; and

Whereas, Gordon Hicks Greenwood was the original organizer of the Western North Carolina Development Association and served on the Board of Directors of the Asheville-Buncombe Technical College and of the University of North Carolina at Asheville; and

Whereas, Gordon Hicks Greenwood was an active member of the Black Mountain United Methodist Church, serving on the Official Board; and

Whereas, Gordon Hicks Greenwood received numerous awards and recognitions, including the North Carolina Commissioner of the Year in 1971, and the Outstanding Alumnus from the University of North Carolina at Asheville in 1981; and

Whereas, Gordon Hicks Greenwood died on February 16, 1997, at the age of 87, leaving two sons, G. Gordon Greenwood and Rick Greenwood, and three grandchildren; and

Whereas, Gordon Hicks Greenwood was a respected statesman, a devoted family man, and an individual highly dedicated to the advancement of his community; and

Whereas, the General Assembly, in warm memory and admiration, wishes to recognize the contributions of Gordon Hicks Greenwood to the well-being and betterment of Buncombe County, Western North Carolina, and the entire State;

Now, therefore, be it resolved by the House of Representatives, the Senate concurring:

Section 1. The General Assembly honors the memory of Gordon Hicks Greenwood and expresses the deep gratitude and appreciation of this State and its citizens for his life and service to North Carolina.

Section 2. The General Assembly extends its deepest sympathy to the family of Gordon Hicks Greenwood for the loss of its distinguished member.

Section 3. The Secretary of State shall transmit a certified copy of this resolution to the family of Gordon Hicks Greenwood.

Section 4. This resolution is effective upon ratification.

VISITOR REGISTRATION SHEET

RULES, CALENDAR AND OPERATIONS OF THE HOUSE MAY 19, 1997

Name of Committee Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Shawnae Williams	Bode & Assoc.
Mark Rupp	The News Observer
Laura Hartsell	MCIC

MINUTES
COMMITTEE ON RULES, CALENDAR, AND OPERATIONS OF THE HOUSE
May 21, 1997

The Committee on Rules, Calendar, and Operations of the House met May 21, 1997, at 1:00 p.m. in Room 421 in the Legislative Office Building. Representative Morgan, Committee Chair, called the meeting to order and asked the clerk to call the roll. The following members were present: Representative Bowie, Vice-Chair; and Representatives Culp, Dockham, Esposito, Gulley, Hill, McMahan, Miner, Mitchell and Thompson.

The first order of business was the consideration of House Bill 849 -AN ACT TO APPROPRIATE FUNDS FOR THE PIEDMONT TRIAD CENTER FOR ADVANCED MANUFACTURING. Representative Bowie, bill sponsor, was recognized to explain the bill. She offered a proposed committee substitute for Committee discussion and moved for its adoption. Motion carried. She explained that the $950,000 was split between the fiscal years 1997-98. Mr. Bill Weber, interim Executive Director for the Piedmont Triad Center for Advanced Manufacturing (PT CAM0), in response to a question stated that plans are for PT CAMO to be self-funding. Representative Bowie moved to give the committee substitute a favorable report and an unfavorable report to the original bill and recommend that the committee substitute be re-referred to the Committee on Appropriations. Motion carried.

The next bill before the Committee was House Bill 417 -AN ACT REGARDING MITCHELL COUNTY AND INCORPORATED MUNICIPALITIES LOCATED THEREIN. Representative Thompson, bill sponsor, was recognized to explain the bill. He offered a proposed committee substitute for committee discussion and moved for its adoption. Motion carried. Representative Thompson said the new bill would authorize Mitchell county to impose a charge on the business of providing river rafting in Mitchell County and that it was requested by the County Commissioners. Representative Thompson moved for a favorable report to the committee substitute and an unfavorable report to the original bill and a recommendation that the committee substitute be re-referred to the Committee on Finance. Motion carried. There was a title change in the bill.

House Bill 251 (Identical to Senate Bill 261) - AN ACT TO CREATE THE WELL CONTRACTORS CERTIFICATION COMMISSION, TO REQUIRE THAT WELL CONTRACTORS BE CERTIFIED, AND TO MAKE VARIOUS AMENDMENT TO THE WELL CONSTRUCTION ACT, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION - was next before the Rules Committee. Representative Culp was recognized to explain the bill. Representative Mitchell moved for a favorable report and recommended that the bill be re-referred to the Committee on Finance. Motion carried. The Assessment Report for Well Contractors presented by the Legislative Committee on New Licensing Boards is attached and made a part of the Minutes. (Attachment I).

House Bill 1056 - AN ACT TO PROVIDE FOR THE REGISTRATION OF ESTHETICIANS AND ESTHETICIAN APPRENTICES BY THE STATE BOARD OF COSMETIC ART EXAMINERS and committee substitute for Senate Bill 809 - AN ACT AMENDING THE NORTH CAROLINA APPRAISERS ACT - were displaced.

House Bill 421 -AN ACT TO ESTABLISH THE RESPIRATORY CARE PRACTICE ACT - was explained by Representative Tolson, the bill sponsor. He said there was no cost to the State and that the fees would pay for any implementation cost. Representative Dockham moved to report the bill out without prejudice and recommended that it be re-referred to the Committee on Insurance. Motion carried. The Assessment Report for Respiratory Care which was presented by the Legislative Committee on New Licensing Boards is attached and made a part of the Minutes. (Attachment 2).

Senate Bill 207 (Identical to House Bill 186)- AN ACT TO MODIFY THE CRIMINAL HISTORY RECORD CHECKS LAWS TO MAKE CLARIFYING CHANGES AND TO REQUIRE A CRIMINAL BACKGROUND CHECK ON HOME HEALTH AGENCY APPLICANTS ONLY FOR CERTAIN POSITIONS - was next before the Committee. Senator Foxx, the bill sponsor, was recognized to explain the committee substitute for Senate Bill 207. She explained that Representative Mitchell had an identical bill and had agreed to the only change in the Senate committee substitute which was to limit the criminal history check for employees working with patients and not require the criminal history check for office employees. Representative Mitchell moved for a favorable report to the House committee substitute for Senate Bill 207. Motion carried.

The meeting adjourned at 1:25 p.m.

Representative Richard T. Morgan, Committee Chair

Anne M. Cole, Acting Committee Clerk

Attachments:
Committee Reports
Bills
Visitor's Sheet
Assessment Report for Well Contractors
Assessment Report for Respiratory Care

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House**.

☐ Committee Substitute for
H.B. 849 A BILL TO BE ENTITLED AN ACT TO APPROPRIATE FUNDS FOR THE PIEDMONT TRIAD CENTER FOR ADVANCED MANUFACTURING.

☐ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 849
Proposed Committee Substitute H849-PCS6267

Short Title: PT CAM Funds. (Public)

Sponsors:

Referred to:

April 7, 1997

A BILL TO BE ENTITLED

AN ACT TO APPROPRIATE FUNDS FOR THE PIEDMONT TRIAD CENTER FOR ADVANCED MANUFACTURING.

The General Assembly of North Carolina enacts:

Section 1. There is appropriated from the General Fund to the Board of Governors of The University of North Carolina the sum of five hundred thousand dollars ($500,000) for the 1997-98 fiscal year and the sum of four hundred fifty thousand dollars ($450,000) for the 1998-99 fiscal year for the Piedmont Triad Center for Advanced Manufacturing (PT CAM).

Section 2. This act becomes effective July 1, 1997.

CS

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 849
Proposed Committee Substitute H849-PCS8237

Short Title: PT CAM Funds. (Public)

Sponsors:

Referred to:

April 7, 1997

A BILL TO BE ENTITLED

AN ACT TO APPROPRIATE FUNDS FOR THE PIEDMONT TRIAD CENTER FOR ADVANCED MANUFACTURING.

The General Assembly of North Carolina enacts:

Section 1. There is appropriated from the General Fund the sum of nine hundred fifty thousand dollars ($950,000) for the 1997-98 fiscal year for the Piedmont Triad Center for Advanced Manufacturing (PT CAM).

Section 2. This act becomes effective July 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 849

Short Title: PT CAM Funds. (Public)

Sponsors: Representatives Bowie, Boyd-McIntyre; Adams, McAllister, Jeffus, Jarrell, Sexton, and Goodwin.

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

April 7, 1997

A BILL TO BE ENTITLED

AN ACT TO APPROPRIATE FUNDS FOR THE PIEDMONT TRIAD CENTER FOR ADVANCED MANUFACTURING.

The General Assembly of North Carolina enacts:

Section 1. There is appropriated from the General Fund a sum for the 1997-98 fiscal year for the Piedmont Triad Center for Advanced Manufacturing (PT CAM).

Section 2. This act becomes effective July 1, 1997.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House.**

☐ Committee Substitute for
H.B. 417 A BILL TO BE ENTITLED AN ACT REGARDING MITCHELL COUNTY AND INCORPORATED MUNICIPALITIES LOCATED THEREIN.

☐ 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 Finance.

☐ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 417
Proposed Committee Substitute H417-PCS8239

Short Title: Mitchell River Rafting Charges. (Local)

Sponsors:

Referred to:

March 6, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE MITCHELL COUNTY TO IMPOSE A CHARGE ON THE BUSINESS OF PROVIDING RIVER RAFTING IN MITCHELL COUNTY.

Whereas, a number of businesses operate in both Mitchell County and Tennessee providing river rafting services; and

Whereas, the State of Tennessee imposes a tax on these businesses conducted in Mitchell County as well as in Tennessee; and

Whereas, the operation of river rafting businesses in Mitchell County requires the county to provide emergency medical and rescue services to customers of the businesses; and

Whereas, as a result of the influx of river rafters in Mitchell County, the county must provide services and facilities that create a financial burden to the county; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. This act applies only to Mitchell County.

Section 2. Definitions. -- The following definitions apply in this act:

(1) Net proceeds. -- Gross proceeds less the cost to the county of administering and collecting the charge, as determined by the finance officer, not to exceed seven percent (7%) of the gross proceeds.

(2) Providing river rafting. -- Renting vessels or personal flotation devices for use on a river, providing river tours, or providing any other form of recreation or activity on a river.

(3) Vessel. -- Defined in G.S. 75A-2.

Section 3. County river rafting charge. (a) Levy. -- The board of commissioners of a county may, by resolution, levy a river rafting charge at the rate of one percent (1%), two percent (2%), or three percent (3%) of the gross receipts derived from the business of providing river rafting in the county. River rafting is provided in a county if the customer enters the river in that county. This river rafting charge is in addition to any State or local sales tax.

(b) Effective Date of Levy. -- Collection of the charge, and liability therefor, shall begin and continue only on and after the first day of a calendar month set by the board of commissioners in the resolution levying the charge. The effective date of a charge levied under this act may not be earlier than the first day of the second succeeding calendar month after the date the resolution is adopted.

(c) Use of Charge Proceeds. -- A county shall use at least fifty percent (50%) of the net proceeds of a charge levied under this act only for economic development, promotion of travel and tourism, or tourism-related expenditures. The county may use the remainder of the net proceeds for any lawful purpose.

(d) Repeal or Reduction in Rate. -- A charge levied under this act may be repealed or reduced to a rate of two percent (2%) or one percent (1%) by a resolution adopted by the board of commissioners of the county. Repeal or reduction of a charge levied under this act shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal or reduction resolution was adopted. Repeal or reduction of a charge levied under this act does not affect a liability for a charge that was attached before the effective date of the repeal or reduction, nor does it affect a right to a refund of a charge that accrued before the effective date of the repeal or reduction.

Section 4. Collection and administration of the charge. (a) Collection. -- Every operator of a business subject to the charge levied under this act shall, on and after the effective date of the levy of the charge, collect the charge. This charge shall be collected as part of the price charged for providing river rafting subject to the charge. The charge shall be stated and charged separately from the sales records, and shall be paid by the customer to the operator of the business as trustee for and on account of the county. The charge shall be added to the price of the river rafting and shall be passed on to the customer instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the charge. An operator of a business who collects the river rafting charge levied under this act may deduct from the amount remitted to the county a discount equal to the discount the State allows the operator for State sales and use tax.

(b) Administration. -- The county shall administer a charge levied under this act. A charge levied under this act is due and payable to the county finance officer in monthly installments on or before the 15th day of the month following the month in which the charge accrues. Every person, firm, corporation, or association liable for the charge shall, on or before the 15th day of each month, prepare and

render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from providing river rafting.

A return filed with the county finance officer under this act is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1.

Section 5. Penalties. A person, firm, corporation, or association who fails or refuses to file the return or pay the charge required by this act is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The board of commissioners of the levying county has the same authority to waive the penalties for the river rafting charge that the Secretary of Revenue has to waive the penalties for State sales and use taxes.

Section 6. This act is effective when it becomes law.

CS

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 417
Proposed Committee Substitute H417-PCS8226

Short Title: Mitchell River Rafting Changes. (Local)

Sponsors:

Referred to:

March 6, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE MITCHELL COUNTY TO IMPOSE A CHARGE ON THE BUSINESS OF PROVIDING RIVER RAFTING IN MITCHELL COUNTY.

Whereas, a number of businesses operate in both Mitchell County and Tennessee providing river rafting services; and

Whereas, the State of Tennessee imposes a tax on these businesses conducted in Mitchell County as well as in Tennessee; and

Whereas, the operation of river rafting businesses in Mitchell County requires the county to provide emergency medical and rescue services to customers of the businesses; and

Whereas, as a result of the influx of river rafters in Mitchell County, the county must provide services and facilities that create a financial burden to the county; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. This act applies only to Mitchell County.

Section 2. Definitions. -- The following definitions apply in this act:

(1) Net proceeds. -- Gross proceeds less the cost to the county of administering and collecting the charge, as determined by the finance officer, not to exceed seven percent (7%) of the gross proceeds.

(2) Providing river rafting. -- Renting vessels or personal flotation devices for use on a river, providing river tours, or providing any other form of recreation or activity on a river.

(3) Vessel. -- Defined in G.S. 75A-2.

Section 3. County river rafting charge. (a) Levy. -- The board of commissioners of a county may, by resolution, levy a river rafting charge at the rate of one percent (1%), two percent (2%), or three percent (3%) of the gross receipts derived from the business of providing river rafting in the county. River rafting is provided in a county if the customer enters the river in that county. This river rafting charge is in addition to any State or local sales tax.

(b) Effective Date of Levy. -- Collection of the charge, and liability therefor, shall begin and continue only on and after the first day of a calendar month set by the board of commissioners in the resolution levying the charge. The effective date of a charge levied under this act may not be earlier than the first day of the second succeeding calendar month after the date the resolution is adopted.

(c) Use of Charge Proceeds. -- A county shall use at least fifty percent (50%) of the net proceeds of a charge levied under this act only for economic development, promotion of travel and tourism, or tourism-related expenditures. The county may use the remainder of the net proceeds for any lawful purpose.

(d) Repeal or Reduction in Rate. -- A charge levied under this act may be repealed or reduced to a rate of two percent (2%) or one percent (1%) by a resolution adopted by the board of commissioners of the county. Repeal or reduction of a charge levied under this act shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal or reduction resolution was adopted. Repeal or reduction of a charge levied under this act does not affect a liability for a charge that was attached before the effective date of the repeal or reduction, nor does it affect a right to a refund of a charge that accrued before the effective date of the repeal or reduction.

Section 4. Collection and administration of the charge. (a) Collection. -- Every operator of a business subject to the charge levied under this act shall, on and after the effective date of the levy of the charge, collect the charge. This charge shall be collected as part of the price charged for providing river rafting subject to the charge. The charge shall be stated and charged separately from the sales records, and shall be paid by the customer to the operator of the business as trustee for and on account of the county. The charge shall be added to the price of the river rafting and shall be passed on to the customer instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the charge. An operator of a business who collects the river rafting charge levied under this act may deduct from the amount remitted to the county a discount equal to the discount the State allows the operator for State sales and use tax.

(b) Administration. -- The county shall administer a charge levied under this act. A charge levied under this act is due and payable to the county finance officer in monthly installments on or before the 15th day of the month following the month in which the charge accrues. Every person, firm, corporation, or association liable for the charge shall, on or before the 15th day of each month, prepare and

render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from providing river rafting.

A return filed with the county finance officer under this act is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1.

Section 5. Penalties. A person, firm, corporation, or association who fails or refuses to file the return or pay the charge required by this act is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The board of commissioners of the levying county has the same authority to waive the penalties for the river rafting charge that the Secretary of Revenue has to waive the penalties for State sales and use taxes.

Section 6. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 417

Short Title: Mitchell Local Act. (Local)

Sponsors: Representatives Thompson; and Buchanan.

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

March 6, 1997

A BILL TO BE ENTITLED

AN ACT REGARDING MITCHELL COUNTY AND INCORPORATED MUNICIPALITIES LOCATED THEREIN.

The General Assembly of North Carolina enacts:

Section 1. This act applies only to Mitchell County and incorporated municipalities located therein.

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

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House**.

☐ Committee Substitute for
H.B. 251 A BILL TO BE ENTITLED AN ACT TO CREATE THE WELL CONTRACTORS CERTIFICATION COMMISSION, TO REQUIRE THAT WELL CONTRACTORS BE CERTIFIED, AND TO MAKE VARIOUS AMENDMENTS TO THE WELL CONSTRUCTION ACT, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

☒ With a favorable report. and be re-referred to Finance.

☐ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 251

Short Title: Well Contractors Certification. (Public)

Sponsors: Representative Culp.

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

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO CREATE THE WELL CONTRACTORS CERTIFICATION COMMISSION, TO REQUIRE THAT WELL CONTRACTORS BE CERTIFIED, AND TO MAKE VARIOUS AMENDMENTS TO THE WELL CONSTRUCTION ACT, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Article 7 of Chapter 143B of the General Statutes is amended by adding a new Part to read:

"Part 9A. Well Contractors Certification Commission.

"**§ 143B-301.10. Definitions.**

The definitions in G.S. 87-85 and G.S. 87-98.2 apply in this Part.

"**§ 143B-301.11. Creation, powers, and duties of the Commission.**

(a) Creation and Duties. -- The Well Contractors Certification Commission is created within the Department. The Commission shall:

(1) Adopt rules with respect to the certification of well contractors as provided by Article 7A of Chapter 87 of the General Statutes.

(2) Exercise quasi-judicial powers in accordance with the provisions of Chapter 150B of the General Statutes. The Commission shall make the final agency decision on any matter involving the certification of well contractors pursuant to Article 7A of Chapter 87 of the General Statutes and on civil penalties assessed for violations of that Article or rules adopted pursuant to that Article.

(3) Adopt rules as may be required to secure a federal grant-in-aid for a program concerned with the certification of well contractors. This subdivision is to be liberally construed in order that the State and its citizens may benefit from federal grants-in-aid.

(b) Delegation. -- The Commission may, by rule, delegate to the Secretary any of its powers, other than the power to adopt rules.

"**§ 143B-301.12. Membership of Commission.**

(a) Appointments. -- The Commission shall consist of seven members appointed as follows:

(1) One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who, at the time of appointment, is (i) engaged in well contractor activities, (ii) certified as a well contractor under Article 7A of Chapter 87 of the General Statutes, (iii) engaged primarily in the construction, installation, repair, alteration, or abandonment of domestic water supply wells, and (iv) a resident of a county that is located east of or is traversed by Interstate 95.

(2) One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who, at the time of appointment, is (i) engaged in well contractor activities, (ii) certified as a well contractor under Article 7A of Chapter 87 of the General Statutes, (iii) engaged primarily in the construction, installation, repair, alteration, or abandonment of domestic water supply wells, and (iv) a resident of a county that is located wholly west of Interstate 95.

(3) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who, at the time of appointment, is (i) engaged in well contractor activities, (ii) certified as a well contractor under Article 7A of Chapter 87 of the General Statutes, and (iii) engaged primarily in the construction, installation, repair, alteration, or abandonment of industrial, municipal, or other large capacity water supply wells.

(4) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who, at the time of appointment, is (i) engaged in well contractor activities, (ii) certified as a well contractor under Article 7A of Chapter 87 of the General Statutes, and (iii) engaged primarily in the construction, installation, repair, alteration, or abandonment of nonwater supply wells, such as monitoring or recovery wells.

(5) One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who, at the time of appointment, is (i) employed by a local county health department and (ii) actively engaged in well inspection and permitting.

(6) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who, at the time of appointment, is (i) employed by a local county health department and (ii) actively engaged in well inspection and permitting.

(7) One member appointed by the Governor who is (i) appointed from the public at large, (ii) not engaged in well contractor activities, and (iii) not an employee of a firm or corporation engaged in well contractor activities or a State or county governmental agency.

(b) Additional Qualifications. -- Appointment of members to fill positions (1), (2), (3), and (4) shall be made from among all those persons who are recommended for appointment to the Commission by any person who is engaged in well contractor activities and who is certified as a well contractor under Article 7A of Chapter 87 of the General Statutes. No person shall be appointed to the Commission who is a resident of, or has a principal place of business in, the same county as another member of the Commission.

(c) Terms. -- Appointments to the Commission shall be for terms of three years. The terms of members appointed to fill positions (1), (2), and (7) shall expire on 30 June of years evenly divisible by three. The terms of members appointed to fill positions (3) and (4) shall expire on 30 June of years that follow by one year those years that are evenly divisible by three. The terms of members appointed to fill positions (5) and (6) shall expire on 30 June of years that precede by one year those years that are evenly divisible by three. Members shall serve until their successors are appointed and qualified. No member shall serve more than two consecutive terms.

(d) Officers. -- The Commission shall elect a Chair and a Vice-Chair from among its members. These officers shall serve from the time of their election until 30 June of the following year, or until a successor is elected.

(e) Vacancies. -- An appointment to fill a vacancy on the Commission created by the resignation, dismissal, disability, or death of a member shall be for the balance of the unexpired term. Vacancies in appointments made by the General Assembly shall be filled as provided in G.S. 120-122.

(f) Continuing Education. -- During a member's term on the Commission, the member shall meet the annual continuing education requirements established for certified well contractors. This requirement applies regardless of whether the member is a certified well contractor.

(g) Removal. -- The Governor may remove any member of the Commission from office for misfeasance, malfeasance, or nonfeasance, as provided in G.S. 143-13.

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

(i) Quorum. -- A majority of the membership of the Commission constitutes a quorum for the transaction of business.

(j) Services. -- All clerical and other services required by the Commission shall be supplied by the Secretary."

Section 2. Chapter 87 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 7A.

"Well Contractors Certification.

"**§ 87-98.1. Title.**

This Article may be cited as the North Carolina Well Contractors Certification Act.

"**§ 87-98.2. Definitions.**

The definitions in G.S. 87-85 and the following definitions apply in this Article:

(1) 'Commission' means the Well Contractors Certification Commission.

(2) 'Department' means the Department of Environment, Health, and Natural Resources.

(3) 'Person' means a natural person.

(4) 'Secretary' means the Secretary of Environment, Health, and Natural Resources.

(5) 'Well contractor' means a person in trade or business who undertakes to perform a well contractor activity or who undertakes to personally supervise or personally manage the performance of a well contractor activity on the person's own behalf or for any person, firm, or corporation.

(6) 'Well contractor activity' means the construction, installation, repair, alteration, or abandonment of any well.

"**§ 87-98.3. Purpose.**

It is the purpose of this Article to protect the public health and safety by ensuring the integrity and competence of well contractors, to protect and beneficially develop the groundwater resources of the State, to require the examination of well contractors and the certification of their competency to supervise or conduct well contractor activity, and to establish procedures for the examination and certification of well contractors.

"**§ 87-98.4. Well contractor certification required; applicability.**

(a) No well contractor shall perform any well contractor activity without being certified under this Article.

(b) The Commission may specify the types of general construction activities or geophysical activities that are not directly related to locating, testing, or withdrawing groundwater; evaluating, testing, developing, draining, or recharging any groundwater reservoir or aquifer; or controlling, diverting, or otherwise causing the movement of water from or into any aquifer and are therefore not well construction activities.

(c) This Article does not apply to a person who meets any of the following descriptions:

(1) Is employed by, or performs labor or services for, a certified well contractor in connection with well contractor activity performed under the personal supervision of the certified well contractor.

(2) Constructs, repairs, or abandons a well that is located on land owned or leased by that person.

"§ 87-98.5. Certification without examination.

(a) Unless the applicant is found to have engaged in an act that would constitute grounds for disciplinary action under G.S. 87-98.9, the Commission shall issue a well contractor certificate without examination fee to any person who has been actively and continuously engaged in well contractor activity since 1 July 1986 and who, since 1 July 1992, has been:

(1) Continuously registered with the Department as required by G.S. 143-355(e), or

(2) Employed by a firm or corporation that has been continuously registered with the Department as required by G.S. 143-355(e).

(b) To obtain certification under this section, a person must submit an application to the Commission and pay the annual fee. The Commission shall establish procedures and rules for receipt and approval of these applications.

(c) A well contractor who is certified under this section must continuously maintain the certification in good standing in order to remain certified. A certificate issued under this section that lapses, is suspended, or is revoked may not be renewed or reinstated. A person whose certification under this section lapses, is suspended, or is revoked must apply for certification by examination in order to be recertified.

"§ 87-98.6. Types of certification; sole certification.

The Commission, with the advice and assistance of the Secretary, shall establish the appropriate types of certification for well contractors. Each certification type established by the Commission shall be the sole certification required to engage in well contractor activity in the State.

"§ 87-98.7. Well contractor qualifications and examination.

The Commission, with the advice and assistance of the Secretary, shall establish minimum requirements of education, experience, and knowledge for each type of certification for well contractors and shall establish procedures for receiving applications for certification, conducting examinations, and making investigations of applicants as may be necessary and appropriate so that prompt and fair consideration will be given to each applicant.

"§ 87-98.8. Issuance and renewal of certificates; temporary certification.

(a) Issuance. -- An applicant, upon satisfactorily meeting the appropriate requirements, shall be certified to perform in the capacity of a well contractor and shall be issued a suitable certificate by the Commission designating the level of the person's competency. A certificate shall be valid for one year or until any of the following occurs:

(1) The certificate holder voluntarily surrenders the certificate to the Commission.

(2) The certificate is revoked or suspended by the Commission for cause.

(b) Renewal. -- A certificate shall be renewed annually by payment of the annual fee. A person who fails to renew a certificate within three months of the expiration of the certificate must reapply for certification under this Article.

(c) Temporary Certification. -- A person may receive temporary certification to construct a well upon submission of an application to the Commission and subsequent approval in accordance with the criteria established by the Commission and upon payment of a temporary certification fee. A temporary certification shall be granted to the same person only once per calendar year and may not be valid for a period in excess of 45 consecutive days. To perform additional well contractor activity during that same calendar year, the person shall apply for certification under this Article.

"§ 87-98.9. Disciplinary actions.

The Commission may issue a written reprimand to a well contractor or, in accordance with the provisions of Article 3A of Chapter 150B of the General Statutes, may suspend or revoke the certificate of a well contractor if the Commission finds that the well contractor has:

(1) Engaged in fraud or deception in connection with obtaining certification or in connection with any well contractor activity.

(2) Failed to use reasonable care, judgment, or the application of the person's knowledge or ability in the performance of any well contractor activity.

(3) Been grossly negligent or has demonstrated willful disregard of any applicable laws or rules governing well construction.

(4) Failed to satisfactorily complete continuing education requirements established by the Commission.

"§ 87-98.10. Fees; Well Construction Fund.

(a) Fees. -- The Commission may set a fee for certification by examination, an annual fee for certification renewal, and a fee for temporary certification. The fee for certification by examination may not exceed one hundred fifty dollars ($150.00), the annual fee may not exceed three hundred fifty dollars ($350.00) per year, and the temporary certification fee shall not exceed one hundred dollars ($100.00). A well contractor certificate is void if the well contractor fails to pay the annual fee within 30 days of the date the fee is due.

(b) Fund. -- The Well Construction Fund is created as a nonreverting account within the Department. All fees collected pursuant to this Article shall be credited to the Fund. The Fund shall be used for the costs of administering this Article.

"§ 87-98.11. Promotion of training and other powers.

The Commission and the Secretary may take all necessary and appropriate steps in order to effectively and fairly achieve the purposes of this Article. They may provide training for well contractors and cooperate with educational institutions and private and public associations, persons, or corporations in providing training for well contractors.

"**§ 87-98.12. Responsibilities of well contractors.**

All persons receiving certification under this Article to perform well contractor activities in this State shall be responsible for complying with all statutes, rules, and generally accepted construction practices, including all local rules or ordinances governing well contractor activities.

"**§ 87-98.13. Continuing education requirements.**

In order to continue to be certified under this Article, a well contractor shall satisfactorily complete the number of hours of approved continuing education required by the Commission. The Commission shall establish the minimum number of hours of continuing education that shall be required to maintain certification, shall specify the scope of required continuing education courses, and shall approve continuing education courses.

"**§ 87-98.14. Injunctive relief.**

Upon violation of this Article, a rule adopted under this Article, or an order issued under this Article, the Secretary may, either before or after the institution of proceedings for the collection of any penalty imposed under this Article for the violation, request the Attorney General to institute a civil action in the superior court in the name of the State for injunctive relief to restrain the violation or require corrective action and for any other relief the court finds proper. Initiating an action shall not relieve any party to the proceedings from any penalty prescribed by this Article."

Section 3. G.S. 87-94 reads as rewritten:

"**§ 87-94. Civil penalties.**

(a) Any person who violates any provision of this ~~Article,~~ Article, Article 7A of this Chapter, ~~or~~ any order issued pursuant thereto, or any rule adopted thereunder, shall be subject to a civil penalty of not more than one hundred dollars ($100.00) for each violation, as determined by the Secretary of Environment, Health, and Natural Resources. Each day of a continuing violation shall be considered a separate offense. No person shall be subject to a penalty who did not directly commit the violation or cause it to be committed.

~~(b) No penalty shall be assessed until the person alleged to be in violation has been:~~

~~(1) Notified of the violation in accordance with the notice provisions set out in G.S. 87-91(a),~~

~~(2) Informed by said notice of remedial action, which if taken within 30 days from receipt of the notice, will effect compliance with this Article and the regulations under it, and~~

~~(3) Warned by said notice that a civil penalty can be assessed for failure to comply within the specified time.~~

(c) In determining the amount of the penalty the Secretary shall consider factors set out in G.S. 143B-282.1(b). The procedures set out in ~~G.S. 143-215.6~~ G.S. 143-215.6A and G.S. 143B-282.1 shall apply to civil penalties assessed under this section.

(d) The Secretary shall notify any person assessed a civil penalty of the assessment and the specific reasons therefor by registered or certified mail, or by any means authorized by G.S. 1A-1, Rule 4.

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

Section 4. G.S. 87-85(14) reads as rewritten:

"(14) 'Well' means any excavation that is cored, bored, drilled, jetted, dug or otherwise constructed for the purpose of locating, testing or withdrawing groundwater or for evaluating, testing, developing, draining or recharging any groundwater reservoirs or aquifer, or that may control, divert, or otherwise cause the movement of water from or into any aquifer. ~~Provided, however, this shall not include a well constructed by an individual on land which is owned or leased by him, appurtenant to a single-family dwelling, and intended for domestic use (including household purposes, farm livestock, or gardens).~~"

Section 5. G.S. 143-355(e) reads as rewritten:

"(e) Registration with Department Required; Registration Periods. -- Every person, firm or corporation engaged in the business of drilling, boring, coring or constructing wells in any manner with the use of power machinery in this ~~State,~~ State shall register annually with the Department on forms to be furnished by the said Department. The registration required hereby shall be made during the period from January 1 to January 31 of each year. Registration fees collected under this section shall be credited to the Well Construction Fund created by G.S. 87-98.10."

Section 6. G.S. 143-355(e) is repealed.

Section 7. G.S. 87-91(b) is repealed.

Section 8. (a) To provide for staggered terms, initial appointments to the Well Contractors Certification Commission created in Section 1 of this act shall be as follows:

(1) Initial appointments to positions (1), (2), and (7) shall expire on 30 June 2001.

(2) Initial appointments to positions (3) and (4) shall expire on 30 June 1999.

(3) Initial appointments to positions (5) and (6) shall expire on 30 June 2000.

(b) In the event that the General Assembly fails to appoint one or more initial members to the Well Contractors Certification Commission while the General Assembly is in session during 1997, the failure to make an initial appointment shall be treated as though a vacancy had occurred, and the vacancy may be filled by appointment as provided in G.S. 120-122.

Section 9. This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. The Well Contractors Certification Commission may adopt temporary rules to implement the provisions of this act.

Section 10. Sections 1, 3, 4, and 7 through 10 of this act are effective when they become law. Section 2 of this act is effective when it becomes law except that G.S. 87-98.4(a) and G.S. 87-98.14, as enacted by Section 2 of this act, become effective 1 January 1999. Section 5 of this act becomes effective 1 July 1997. Section 6 of this act becomes effective 1 January 1999.

LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

Assessment Report
for

Well Contractors

Senate Bill 261
House Bill 251

LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

May 19, 1997

The Legislative Committee on New Licensing Boards is pleased to release this assessment report on the licensing of well contractors. This report constitutes both the preliminary and final assessment report.

W. Frank Mitchell

Representative Frank Mitchell, Chairman

Linwood Jones

Prepared by:
Linwood Jones, Counsel

LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

Rep. Frank Mitchell, Chairman

Senator Fletcher Hartsell	Representative Eugene McCombs
Senator Brad Miller	Representative Wilma Sherrill
Senator R.C. Soles, Jr.	Representative Gene Wilson
Senator Allen Wellons	Representative Douglas Yongue

Counsel: Mr. Linwood Jones
Mrs. Linda Attarian

90LLJ-0265H

PREFACE

The Legislative Committee on New Licensing Boards is a 9-member joint committee of the House and Senate created and governed by statute (Article 18A of Chapter 120 of the General Statutes). The primary purpose of the Committee is to evaluate the need for a new licensing board or the proposed licensing of previously unregulated practitioners by an existing board. The Committee has been in existence since 1985.

The Committee solicits written and oral testimony on each licensing proposal in carrying out its duty to determine whether the proposal meets the following criteria:

(1) Whether the unregulated practice of the profession can substantially endanger the public health, safety, or welfare, and whether the potential for such harm is recognizable and not remote or dependent upon tenuous argument.

(2) Whether the profession possesses qualities that distinguish it from ordinary labor.

(3) Whether practice of the profession requires specialized skill or training.

(4) Whether a substantial majority of the public has the knowledge or experience to evaluate the practitioner's competence.

(5) Whether the public can effectively be protected by other means.

(6) Whether licensure would have a substantial adverse economic impact upon consumers of the practitioner's good or services.

The Committee issues an assessment report on its findings and recommendations. The recommendation in the report is not binding on other committees considering the proposal.

WELL CONTRACTORS

Well contracting involves the construction, installation, repair, alteration, or abandonment of a well. A person who undertakes one of these activities is a well contractor. Under Senate Bill 261 and House Bill 251, the well contractor, unless otherwise exempt, must be licensed by the North Carolina Well Contractors Certification Commission. The Commission, a 7-member panel appointed by the General Assembly (6 appointees) and the Governor (1 appointee), would be created within the Department of Environment, Health, and Natural Resources.

Anyone practicing as a well contractor since July 1, 1986 and either (1) registered with DEHNR since July 1, 1992 or (2) an employee of a company registered with DEHNR since July 1, 1992 would be licensed without examination. All others, unless exempt, would be required to meet the educational, experience, and examination requirements imposed by the Commission (*see proposed G.S. §87-98.7).* The existing registration law, which requires well contractors to register with DEHNR, would be repealed.

Improper well construction can lead to groundwater contamination, as pollutants such as pesticides, septic tank waste, and oil can seep through the well into the groundwater. More than one-half of all North Carolinians obtain their drinking water from groundwater. To ensure their safety, it is critical that well contractors demonstrate at least a minimum level of competence in well

construction. Contractors need to be familiar with drilling rigs and related equipment, the uses of different casings, well screens, drilling bits, and specialized tools, geologic formations, disinfection methods, and groundwater contamination. North Carolina law regulates well construction (*Article 7 of Chapter 87* of the General Statutes), but these laws do not ensure the competency of well contractors. During the first half of this decade, DEHNR issued notices of violations covering more than 625 violations at nearly 500 different water supply wells throughout the State. Many of these wells had multiple violations.

The Legislative Committee on New Licensing Boards finds that the sponsors have met the six statutory criteria by which the Committee judges licensure proposals, as follows:

(1) The unregulated practice of the profession can substantially harm or endanger the public health, safety, or welfare, and the potential for such harm is recognizable and not remote nor dependent upon tenuous argument.

(2) The practice of the profession possesses qualities that distinguish it from ordinary labor.

(3) The practice of the profession requires specialized skill and training.

(4) A substantial majority of the public does not have the knowledge or experience to evaluate the practitioner's competence.

(5) The public cannot be effectively protected by other means.

(6) Licensure would not have a substantial adverse economic impact upon consumers.

The Legislative Committee on New Licensing Boards recommends licensure of well contractors. This assessment report constitutes both the preliminary and the final assessment report for the licensing of well contractors. The report is based on the proposed licensing of well contractors, as set out in Senate Bill 261 and House Bill 251, the response to the Committee's questionnaire (attached), and testimony before the Committee on May 12, 1997.

Department of Environment, Health and Natural Resources
Responses to the Committee on New Licensing Boards
House Bill 251, Senate Bill 261
Well Contractors Certification

(1) In what ways has the marketplace failed to regulate adequately the profession or occupation?

Improperly constructed wells will serve as sources or conduits of surface/near surface contaminants into the underground water reservoirs. Additionally, there are a number of specialized skills required to properly construct and repair wells. However, there is no presently existing licensing or certification board with the jurisdiction to ensure that those engaged in well contractor activities have the knowledge, skills and abilities necessary to properly provide these contractor services. In fact, under current state law, it is theoretically possible for any individual, regardless of age or skill level, to become registered as a well contractor in North Carolina.

(2) Have there been any complaints about the regulated profession or occupation? Please give specific examples including (unless confidentiality must be maintained) complainant's names and addresses.

From 1990 through 1995, the state has, as a result of complaints and subsequent inspections, issued notices of violation covering more than 625 violations at almost 500 separate water supply wells. Many wells had multiple violations [e.g. well not grouted; no sanitary well seal; unsafe wellhead completion; well located too close to septic tank/drainfield or other waste sources; etc.] that resulted in a threat to the well owner and family [e.g. the presence of sediments, fecal coliforms, nitrates, pesticides and heating oils in the well]. Specific examples are given in the latter part of item (3) below.

(3) In what ways has the public health, safety or welfare sustained harm, or is in imminent danger of harm, because of the lack of state regulation?

More than 50% of the citizens of North Carolina rely on groundwater as a source of their drinking water supply. Each of these must have a water supply well. Every citizen relying on an improperly constructed water supply well runs the risk of groundwater contamination and the associated health risks each time it rains or when there is a nearby leak or spill of pesticides, septic tank waste, heating oil, etc. As new wells are constructed by uncertified and potentially unqualified people, additional citizens are exposed to potential health risks.

If the contractors who construct wells <u>do not have</u> the necessary training, experience and equipment (and there are no minimum levels for any of the three), then the public <u>will not be able to have:</u>

1) A drinking water supply designed to be protective of human health;
2) A longer-lived and more reliable source of potable drinking water. One of the primary reasons for the loss of use of a well or well

system is groundwater contamination. Contamination is often caused by the percolation of contaminated water, or chemicals, down beside the well casing;

3) Confidence that the well contractor, contracted with to provide a source of drinking water, is capable of delivering a well constructed according to established standards; and
4) Confidence that the well that is constructed will not have to be replaced (or extensively repaired) due to improper installation.

In addition to those instances where well related violations were serious enough to require the state to issue a notice of violation, there have been a number of cases where additional enforcement action was necessary. That additional enforcement action was necessary because the well contractor could not, or would not, repair the well to standards where it was no longer a threat to human health. A sampling of those cases are as follows:

*Types of Violations	Well Owner Name	Address
(1), (2)	John Smith	Gold Hill, NC
(1), (3)	Barbara Carpenter	Crouse, NC
(1)	Louie Jackson	Salisbury, NC
(1)	Paul Eudy	Concord, NC
(1)	Webster Hollar	Lenoir, NC
(1)	Kenneth Carron	Chocowinity, NC
(1)	Mary Freeole	Salisbury, NC
(1)	Sabrina Kincade	Salisbury, NC
(1)	Todd Arrowood	Vale, NC
(1), (2)	Eddie Hughes	Hickory,NC
(1)	Wm. McLaughlin	Concord, NC
(1), (2)	Farrel Houser	Lincolnton, NC
(1), (2)	Richard Harwell	Hickory, NC
(4)	Todd Johnson	Vale, NC
(1), (2)	Rick Crofts	Newton, NC
(1), (2)	Jesse Clark	Maiden, NC

* Type of Well Violation-Key

(1) Missing/insufficient/improper cement casing grout
(2) Improper wellhead completion (no sanitary seal, cracked casing, improper sealing of casing/water-line joints)
(3) High level of solids and/or coliform bacteria in well
(4) Improper well abandonment that threatens drinking water supply.

(4) Is there potential for substantial harm or danger by the profession or occupation to the public health, safety or welfare? How can this potential for substantial harm or danger be recognized?

The potential for substantial harm or danger to the public was summarized in the responses to items (1) and (3). Unfortunately, the public does not have enough technical knowledge in the critical areas (i.e. geology, hydrogeology, proper well construction and development, well disinfection, contamination concerns, and well vulnerability), in order to make a determination regarding contractor competence. Since the final product that is delivered is underground and unavailable for inspection without specialized testing equipment, the public must accept the word of the well contractor that the well has been installed

in a safe and legal fashion.

(5) **Has this potential harm or danger to the public been recognized by other states or the federal government through the licensing or certification process? Please list the other states and any applicable federal law (including citations).**

The federal government has deferred to the states in the matter of well contractor licensing/certification. Approximately 70% of the States have recognized a need to license/certify those who engage in these activities. Those states include the following:

Arizona	Georgia	Maryland	New Jersey
Arkansas	Hawaii	Massachusetts	Mexico
California	Idaho	Minnesota	Oklahoma
Colorado	Illinois	Mississippi	Oregon
Connecticut	Indiana	Missouri	Pennsylvania
Delaware	Iowa	Montana	South Carolina
Florida	Kansas	Nebraska	Texas
Louisiana	Kentucky	Nevada	Virginia
		New Hampshire	Washington

(6) **What will be the economic advantage of certification be to the public?**

Some of the economic benefits (as a result of having a contractor with requisite demonstrable training, experience and equipment) were outlined in the response to item (3). A summarization of benefits would be that:

1) The well owner will benefit in that fewer new wells and pumps will have to be paid for due to contamination resulting from inept well construction, development, and repair.

2) The public will benefit from reduced health concerns, and fewer associated health care costs, as a result of a safer drinking water supply.

(7) **What will be the economic disadvantages of licensing to the public?**

It is anticipated that well drillers will pay a yearly certification fee of $125.00 or less. A well contractor that constructs 50 wells per year would spread the cost among the well owners, thus increasing the cost to each owner of $2.00 - $3.00 per well. It is not unusual for drillers to construct more than 50 wells per year.

(8) **What will be the economic advantages of licensing to the practitioners?**

The well contractors will benefit from increased business as the certification process weeds out those who lack the knowledge and skills required to be adequately performing the work.

(9) **What will be the economic disadvantages of licensing to the practitioners?**

There should be no economic disadvantage to the majority of well contractors who have the requisite knowledge, skills and abilities. However, those who lack those skills will not be allowed to conduct well contractor activities until they have rectified those deficiencies.

(10) **Please give other potential benefits to the public of licensing that outweigh the potential harmful effects of licensure such as a decrease in the availability of practitioners and higher cost to the public.**

The potential benefits versus potential harm are identified in the responses to items (1),(3), and (6).

(11) **Please detail the specific specialized skills or training that distinguish the occupation or profession from ordinary labor. How is each justified?**

A number of specialized skills are required for well and pump contractors. Some of those skills and the adverse effects that can result from a lack of those skills, are as follows:

For Well Contractors:

1) familiarity with the operation and maintenance of drilling rigs and associated equipment;
2) familiarity with the advantages and disadvantages of the various well casings, well screens, drilling bits, specialized tools and circulation/well development fluids;
3) familiarity with the various geologic formations found in the state and the problems associated with drilling in each geologic environment;
4) familiarity with the proper methodologies to be used in the development and disinfection of wells; and
5) familiarity with the causes of contamination and the methodology to be used in order to best protect the well.

Lack of familiarity with these aspects of well drilling can result in the introduction of contamination into the water supply; misuse of well construction materials that are incompatible with the area geology or quality of the groundwater; attempts to use improper equipment, methods or materials to install a well that cannot be properly constructed without different equipment, methods or materials; and an inability to identify and rectify problems that occur due to a deficiency in one of the five items listed above.

(12) What are other qualities of the profession or occupation that distinguish it from ordinary labor?

See the reposes to item (11) and (15).

(13) Will certification requirements cover all practicing members of the occupation or profession? If any practitioners will be exempt, what is the rationale for the exemption?

Certification requirements will apply to anyone in the trade or business of well contracting **except as follows**:

(1) An individual who performs labor or services for, and under the supervision of, a certified contractor; and
(2) An Individual who construct wells on land that is owned or leased by that individual;

14) What is the approximate number of persons who will be regulated and the number of persons who are likely to utilize the services of the occupation or profession?

More than 50% of the citizens of North Carolina rely on groundwater for their drinking water supply. Each of these must have a safe, reliable water supply well. Each citizen relying on an improperly constructed water supply well runs the risk of groundwater contamination and the associated health risks. As new wells are constructed by uncertified and potentially unqualified people, additional citizens are exposed to potential health risk. At the end of the 1996 registration period there were 565 registered well contractors.

Well Contractors are required to notify the DEHNR whenever a new well is drilled. The following shows the number of new wells (and thus the approximate number of persons who have utilized well contractor services for those wells) drilled over the last four years in North Carolina:

1992	7,394 new wells
1993	7,412 new wells
1994	7,289 new wells
1995	7,124 new wells

15) What kind of knowledge or experience does the public need to be able to evaluate the services offered by the occupation or profession?

The proper construction and repair of drinking water supply wells require specialized skills the ordinary homeowner cannot obtain. In addition, some of these activities require specialized equipment and technical expertise to operate that equipment. (NOTE: the capital expense involved with acquiring many drilling rigs and accessory equipment can exceed $100,000. Such an investment is not financially reasonable for most homeowners.) Since the final product (i.e. the well) that is delivered is mostly underground and largely unavailable

for inspection without specialized knowledge and testing equipment, the public must accept the word of the well contractor that the well has been installed in a safe and legal fashion. Given this situation, the public should be able to be confident that the well contractor has been evaluated for, and been certified as having, the requisite training and experience to provide them with a dependable, safe water supply well system that meets applicable industry standards and state rules.

16) **Does the occupational group have an established code of ethics, a voluntary certification program, or other measures to ensure a minimum quality of service?**

Two associations exist for well contractors. These are the North Carolina Groundwater Association (NCGA) and the National Water Well Association (NWWA). Membership in both organizations is voluntary and only a percentage of practicing well contractors join. Approximately 35% of the registered well contractors in North Carolina are members of the North Carolina Groundwater Association. Both the NCGA and the NWWA have a voluntary code of ethics, and the NWWA currently maintains a voluntary but limited certification program.

rbc\1997-cer.bil

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House**.

☐ Committee Substitute for

H.B. 421 A BILL TO BE ENTITLED AN ACT TO ESTABLISH THE RESPIRATORY CARE PRACTICE 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 ☐

☐ 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. and re-referred to Insurance.

☐ With an indefinite postponement report.

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

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

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

HOUSE BILL 421

Short Title: Respiratory Care Practice Act/AB. (Public)

Sponsors: Representatives Tolson, Aldridge (Cosponsors); and Smith.

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

March 6, 1997

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE RESPIRATORY CARE PRACTICE ACT.

The General Assembly of North Carolina enacts:

Section 1. Chapter 90 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 33.

"Respiratory Care Practice Act.

"**§ 90-512. Short title.**

This Article may be cited as the 'Respiratory Care Practice Act'.

"**§ 90-513. Purpose.**

The General Assembly finds that the practice of respiratory care in the State of North Carolina affects the public health, safety, and welfare and that the mandatory licensure of persons who engage in respiratory care is necessary to ensure a minimum standard of competency. It is the purpose and intent of this Article to protect the public from the unqualified practice of respiratory care and from unprofessional conduct by persons licensed pursuant to this Article.

"**§ 90-514. Definitions.**

The following definitions apply in this Article, unless the context otherwise requires:

(1) Board. -- The North Carolina Medical Board as created by Article 1 of this Chapter.

(2) Council. -- The North Carolina Respiratory Care Advisory Council.

(3) Direct supervision. -- The authority and responsibility to direct the performance of activities as established by policies and procedures for safe and appropriate completion of services.

(4) Holder. -- An individual to whom a license has been granted by the Council.

(5) Individual. -- A human being.

(6) License. -- A certificate, permit, or other evidence of a right or privilege granted under this Article to practice respiratory care, which license may contain specific endorsements limiting the holder's right or privilege to practice respiratory care under this Article.

(7) Medical direction. -- The supervision of activities by an appointed physician, licensed under Article 1, Chapter 90 of the General Statutes and a member of the entity's medical staff, and who is granted the authority and responsibility for assuring and establishing policies, procedures, and that the provision of such is provided to the quality, safety, and appropriateness standards as recognized within the defined scope of practice for the entity.

(8) Person. -- An individual human being, corporation, partnership, association, unit of government, or other legal entity.

(9) Physician. -- A doctor of medicine duly licensed by the State of North Carolina in accordance with Article 1 of this Chapter.

(10) Practice of respiratory care. -- The acceptance, transcription, interpretation, and implementation of a physician's written or verbal order pertaining to the practice of respiratory care. The term also means the observing and monitoring of signs and symptoms, general behavior and general physical response to respiratory care treatment and diagnostic testing, including determination of whether such signs, symptoms, reactions, behavior or general response exhibit abnormal characteristics, and the performance of diagnostic testing and therapeutic application of:

a. Medical gases, humidity, and aerosols including the maintenance of associated apparatus, except for the purpose of anesthesia;

b. Pharmacologic agents related to respiratory care procedures, including those agents necessary to perform hemodynamic monitoring;

c. Mechanical or physiological ventilatory support;

d. Cardiopulmonary resuscitation and maintenance of natural airways, the insertion and maintenance of artificial airways under the direct supervision of a recognized medical director in a health care environment which identifies these services within the scope of practice by the facilities governing board;

e. Hyperbaric oxygen therapy; and

f. Extracorporeal membrane oxygenation in appropriately identified environments and under the training and practice guidelines established by the Extracorporeal Life Support Organization.

(11) Practitioner. -- A respiratory care practitioner.

(12) Respiratory care. -- The treatment, management, diagnostic testing, and care of patients with deficiencies and abnormalities associated with the cardiopulmonary system.

(13) Respiratory care practitioner. -- A person who has a license to engage in the practice of respiratory care.

(14) Support activities. -- Procedures that do not require formal academic training, including the delivery, setup, and maintenance of apparatus. Support activities shall not include therapeutic evaluation and assessment.

"§ 90-515. North Carolina Respiratory Care Advisory Council; creation.

(a) The North Carolina Respiratory Care Advisory Council of the Board is created. The Council shall consist of eight members as follows:

(1) Two members shall be respiratory care practitioners.

(2) Three members shall be physicians licensed to practice in North Carolina, and whose primary practice is Pulmonology, Anesthesiology, Critical Care Medicine, or whose specialty is Cardiothoracic Disorders.

(3) One member shall represent the North Carolina Hospital Association.

(4) One member shall represent the North Carolina Association of Medical Equipment Services.

(5) One member shall represent the public at large.

(b) The members of the Council appointed as practitioners shall be citizens of the United States and residents of this State, shall have practiced respiratory care for at least five years, and shall be licensed under this Article.

(c) The member of the Council appointed from the public at large shall be a citizen of the United States and a resident of this State and shall not be: a practitioner; an agent or employee of a person engaged in the profession of respiratory care; a health care professional licensed under this Chapter or a person enrolled in a program to become prepared to be a licensed health care professional; an agent or employee of a health care institution, a health care insurer, or a health care professional school; a member of any allied health profession; a person enrolled in a program to become prepared to be a member of an allied health profession; or a spouse of an individual who may not serve as a public member of the Council.

(d) The members of the Council appointed as physicians shall be citizens of the United States and residents of this State.

"§ 90-516. Appointments and removal of Council members; terms and compensation.

(a) The members of the Council shall be appointed as follows:

(1) The Governor shall appoint the public member described in G.S. 90-515(a)(5).
(2) The General Assembly, upon the recommendation of the Speaker of the House of Representatives, shall appoint one of the respiratory care practitioner members described in G.S. 90-515(a)(1) and one of the physician members described in G.S. 90-515(a)(2) in accordance with G.S. 120-121.
(3) The General Assembly, upon the recommendation of the President Pro Tempore of the Senate, shall appoint one of the respiratory care practitioner members described in G.S. 90-515(a)(1) and one of the physician members described in G.S. 90-515(a)(2) in accordance with G.S. 120-121.
(4) The North Carolina Medical Society shall appoint one of the physician members described in G.S. 90-515(a)(2).
(5) The North Carolina Hospital Association shall appoint one of its members as described in G.S. 90-515(a)(3).
(6) The North Carolina Association of Medical Equipment Services shall appoint one of its members as described in G.S. 90-515(a)(4).

(b) Members of the Council shall take office on the first day of July immediately following the expired term of that office and shall serve for a term of three years and until their successors are appointed and qualified.

(c) No member shall serve on the Council for more than two consecutive terms.

(d) The Governor may remove members of the Council, after notice and an opportunity for hearing, for incompetence, neglect of duty, unprofessional conduct, conviction of any felony, failure to meet the qualifications of this Article, or committing any act prohibited by this Article.

(e) Any vacancy shall be filled by the appointing authority originally filling that position, except that any vacancy in appointments by the General Assembly shall be filled in accordance with G.S. 120-122. Appointees to fill vacancies shall serve the remainder of the unexpired term and until their successors have been duly appointed and qualified.

(f) Members of the Council shall receive no compensation for their services but shall be entitled to travel, per diem, and other expenses authorized by G.S. 93B-5.

(g) Individual members shall be immune from civil liability arising from activities performed within the scope of their official duties.

"**§ 90-517. Election of officers; meetings of the Council.**

(a) The Council shall elect a chair and a vice-chair who shall hold office according to rules adopted pursuant to this Article, except that all officers shall be elected annually by the Council for one-year terms and shall serve until their successors are elected and qualified.

(b) The Council shall hold at least two regular meetings each year as provided by rules adopted pursuant to this Article. The Council may hold additional meetings upon the call of the chair or any two Council members. A majority of the Council membership shall constitute a quorum.

"**§ 90-518. Powers and duties of the Council.**

The Council shall recommend to the North Carolina Medical Board those activities necessary to:

(1) Determine the qualifications and fitness of applicants for licensure, renewal of licensure, and reciprocal licensure.

(2) Establish and recommend for adoption by the Board any rules necessary to conduct its business, carry out its duties, and administer this Article.

(3) Adopt and publish a code of ethics.

(4) Deny, issue, suspend, revoke, and renew licenses in accordance with this Article.

(5) Conduct investigations, subpoena individuals and records, and do all other things necessary and proper to discipline persons licensed under this Article and to enforce this Article.

(6) Employ professional, clerical, investigative, or special personnel necessary to carry out the provisions of this Article and purchase or rent office space, equipment, and supplies.

(7) Adopt a seal by which it shall authenticate its proceedings, official records, and licenses.

(8) Conduct administrative hearings in accordance with Article 3 of Chapter 150B of the General Statutes.

(9) Establish certain reasonable fees as authorized by this Article for applications for examination; initial, provisional, and renewal registration; and other services provided by the Council.

(10) Submit an annual report to the North Carolina Medical Board, the North Carolina Hospital Association, the North Carolina Society of Respiratory Care, the Governor, and the General Assembly of all the Council's official actions during the preceding year, together with any recommendations and findings regarding improvements of the practice of respiratory care.

(11) Publish and make available upon request the licensure standards prescribed under this Article and all rules adopted pursuant to this Article.

(12) Request and receive the assistance of State educational institutions or other State agencies.

(13) Establish and approve continuing education requirements for persons seeking licensure under this Article.

"**§ 90-519. Licensure requirements; examination.**

(a) Each applicant for licensure under this Article shall meet the following requirements:

(1) Submit a completed application as required by the Council;

(2) Submit any fees required by the Council;

(3) Submit to the Council written evidence, verified by oath, that the applicant has successfully completed the minimal requirements of a

respiratory care education program as approved by the Commission for Accreditation of Allied Health Educational Programs;

(4) Submit to the Council written evidence, verified by oath, that the applicant has successfully completed the minimal requirements for Basic Cardiac Life Support as recognized by the American Heart Association; and

(5) Pass the entry-level examination given by the National Board for Respiratory Care, Inc.

(b) At least three times each year, the Council shall cause the examination required in subdivision (5) of subsection (a) of this section to be given to applicants at a time and place to be announced by the Council. Any applicant who fails to pass the first examination may take additional examinations in accordance with rules adopted pursuant to this Article.

"**§ 90-520. Exemption from certain requirements.**

(a) The Council may issue a license to an applicant who has passed the entry-level examination given by the National Board for Respiratory Care, Inc., as of October 1, 1997. An applicant applying for licensure under this subsection must submit his or her application before October 1, 1999.

(b) Temporary License. -- The Council may at any time grant a temporary license to any applicant who, as of October 1, 1997, does not meet the qualifications of G.S. 90-519, but who, as of October 1, 1997, through written evidence, verified by oath, demonstrates that the applicant is performing the duties of a practitioner within the State. This temporary license is valid until October 1, 1998, within which time the applicant shall be required to complete the requirements of G.S. 90-519(a)(5). A license granted under this subsection shall contain an endorsement indicating that the license is temporary and state the date the license was granted and the date it expires.

"**§ 90-521. Licensure by reciprocity.**

The Council may grant, upon application and the payment of proper fees, a license to a person who at the time of application holds a valid license, certificate, or registration as a respiratory care practitioner issued by another state or any political territory or jurisdiction acceptable to the Council if, in the Council's determination, the requirements for that license, certificate, or registration are substantially the same as the requirements for licensure under this Article.

"**§ 90-522. Provisional license.**

The Council may at any time grant a provisional license for a period not exceeding 12 months to any applicant who has successfully completed the education requirements under G.S. 90-519(a)(3) and has made application to take the examination required under G.S. 90-519(a)(5). A provisional license allows the individual to practice respiratory care under the supervision of a practitioner and in accordance with rules adopted pursuant to this Article. A license granted under this section shall contain an endorsement indicating that the license is provisional and stating the terms and conditions of its use by the holder and state the date the license was granted and the date it expires.

"**§ 90-523. Notification of applicant following evaluation of application.**

After evaluation of the application and of any other evidence required from the applicant by the Council, the Council shall notify each applicant that the application and evidence submitted are satisfactory and accepted, or unsatisfactory and rejected. If rejected, the notice shall state the reasons for the rejection.

"**§ 90-524. License as property of the Council; display requirement; renewal; inactive status.**

(a) A license issued by the Council is the property of the Council and must be surrendered by the holder to the Council on demand.

(b) The holder shall display the license in the manner prescribed by the Council.

(c) The holder shall inform the Council of any change of the holder's address.

(d) The license shall be renewed by the Council annually upon the payment of a renewal fee if, at the time of application for renewal, the applicant:

(1) Is not in violation of this Article, and

(2) Has fulfilled the current requirements regarding continuing education as established by rules adopted pursuant to this Article.

(e) The Council shall notify a holder of a pending registration at least 30 days in advance of the expiration of the registration. Each holder is responsible for renewing his or her license before the expiration date. Licenses that are not renewed automatically lapse.

(f) The Council may provide for the late renewal of an automatically lapsed license upon the payment of a late fee. No late fee renewal may be granted more than five years after a license expires.

(g) In accordance with rules adopted pursuant to this Article, a holder may request that his or her license be declared inactive and may thereafter apply for active status.

"**§ 90-525. Suspension, revocation, and refusal to renew a license.**

(a) The Council may recommend to the Board to take the necessary actions to deny or refuse to renew a license, suspend or revoke a license, or to impose probationary conditions on a holder or applicant if the holder or applicant for licensure:

(1) Has engaged in any of the following conduct:

a. Employed fraud, deceit, or misrepresentation in obtaining or attempting to obtain a license, or the renewal of a license;

b. Committed an act of malpractice, gross negligence, or incompetence in the practice of respiratory care;

c. Practiced respiratory care without a license; or

d. Engaged in health care practices that are determined to be hazardous to the health, safety, or welfare of the public.

(2) Was convicted of or entered a plea of guilty or nolo contendere to any crime involving moral turpitude.

(3) Was adjudicated insane or incompetent, until proof of recovery from the condition can be established.

(4) Engaged in any act or practice that violates any of the provisions of this Article or any rule adopted pursuant to this Article, or aided, abetted, or assisted any person in such a violation.

(b) Denial, refusal to renew, suspension, or revocation of a license, or imposition of probationary conditions upon a holder may be ordered by the Council after a hearing held in accordance with Chapter 150B of the General Statutes and rules adopted pursuant to this Article. An application may be made to the Council for reinstatement of a revoked license, if the revocation has been in effect for at least one year.

"**§ 90-526. Expenses; fees; administration.**

(a) All salaries, compensation, and expenses incurred or allowed for the purpose of carrying out the purposes of this Article shall be paid by the Council exclusively out of the fees received by the Council as authorized by this Article, or funds received from other sources. In no case shall any salary, expense, or other obligations of the Council be charged against the State.

(b) All monies received by the Council pursuant to this Article shall be deposited in an account for the Council and shall be used for the administration and implementation of this Article. The Council shall establish fees in amounts to cover the cost of services rendered for the following purposes:

(1) For an initial application, a fee not to exceed twenty-five dollars ($25.00).

(2) For examination or reexamination, a fee not to exceed one hundred fifty dollars ($150.00).

(3) For issuance of any license, a fee not to exceed one hundred dollars ($100.00).

(4) For the renewal of any license, a fee not to exceed fifty dollars ($50.00).

(5) For the late renewal of any license, an additional late fee not to exceed fifty dollars ($50.00).

(6) For a license with a provisional or temporary endorsement, a fee not to exceed thirty-five dollars ($35.00).

(7) For copies of rules adopted pursuant to this Article and licensure standards, charges not exceeding the actual cost of printing and mailing.

(c) The Board shall provide clerical and other staff services required by the Board, and, along with the Council, shall administer and enforce all provisions of this Article and all rules adopted pursuant to this Article, subject to the direction of the Council.

"**§ 90-527. Requirement of license.**

After October 1, 1998, it shall be unlawful for any person who is not currently licensed under this Article to:

(1) Engage in the practice of respiratory care.

(2) Use the title 'respiratory care practitioner'.

(3) Use the letters 'RCP', 'RTT', 'RT', or any facsimile or combination in any words, letters, abbreviations, or insignia.

(4) Imply orally or in writing or indicate in any way that the person is a respiratory care practitioner or is otherwise certified under this Article.

(5) Employ or solicit for employment unlicensed or uncertified persons to practice respiratory care.

"**§ 90-528. Violation a misdemeanor.**

Any person who violates any provision of this Article shall be guilty of a Class 1 misdemeanor.

"**§ 90-529. Injunctions.**

The Council may apply to the superior court for an order enjoining violations of this Article, and upon a showing by the Council that any person has violated or is about to violate this Article, the court may grant an injunction, grant a restraining order, or take other appropriate action.

"**§ 90-530. Persons and practices not affected.**

The requirements of this Article shall not apply to:

(1) A health care professional duly licensed in accordance with this Chapter who is performing services within his or her authorized scope of practice;

(2) A student or trainee, working under the direct supervision of a practitioner while fulfilling an experience requirement or pursuing a course of study to meet requirements for certification, in accordance with rules adopted pursuant to this Article;

(3) A practitioner serving in the armed forces or the Public Health Service of the United States or employed by the Veterans Administration when performing duties associated with that service or employment; and

(4) A person aiding in the practice of respiratory care, in accordance with rules adopted pursuant to this Article, if the person works under the direct supervision of a practitioner or a physician licensed under Article 1 of Chapter 90 of the General Statutes, and performs only support activities that do not require formal academic training.

"**§ 90-531. Third-party reimbursement.**

Nothing in this Article shall be construed to require direct third-party reimbursements to persons licensed under this Article."

Section 2. G.S. 120-123 is amended by adding a new subdivision to read:

"(68) The North Carolina Respiratory Care Advisory Council as created by Article 33 of Chapter 90 of the General Statutes."

Section 3. The initial appointments to the North Carolina Respiratory Care Council, created in G.S. 90-515, as enacted in Section 1 of this act, shall be appointed no later than October 1, 1997. Notwithstanding the provisions of G.S. 90-515(b), as enacted in Section 1 of this act, the initial members of the North Carolina

Respiratory Care Council who are appointed pursuant to G.S. 90-515(a)(1) must be licensed under Article 31 of Chapter 90 of the General Statutes, as enacted in Section 1 of this act, no later than June 30, 1998, and, until October 1, 2002, must have passed the entry-level examination administered by the National Board for Respiratory Care, Inc. Notwithstanding the provisions of G.S. 90-516(b), as enacted in Section 1 of this act, of the initial appointments to the North Carolina Respiratory Care Council, one of the members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives and one of the members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate shall be appointed for three-year terms; one of the members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives and one of the members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate shall be appointed for two-year terms; the public member appointed by the Governor shall be appointed for a one-year term; the physician member appointed by the North Carolina Medical Society shall be appointed for a one-year term; and the member appointed by the North Carolina Hospital Association shall be appointed for a one-year term. Within 30 days after making these initial appointments, the President of the North Carolina Medical Board shall call the first meeting of the North Carolina Respiratory Care Council.

Section 4. This act is effective when it becomes law.

LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

Assessment Report
for

Respiratory Care

House Bill 421

LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

May 19, 1997

The Legislative Committee on New Licensing Boards is pleased to release this assessment report on the licensing of respiratory care practitioners. This report constitutes both the preliminary and final assessment report.

W Frank Mitchell

Representative Frank Mitchell, Chairman

Linwood Jones

Prepared by:
Linwood Jones, Counsel

LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

Rep. Frank Mitchell, Chairman

Senator Fletcher Hartsell	Representative Eugene McCombs
Senator Brad Miller	Representative Wilma Sherrill
Senator R.C. Soles, Jr.	Representative Gene Wilson
Senator Allen Wellons	Representative Douglas Yongue

Counsel: Mr. Linwood Jones
Mrs. Linda Attarian

90LLJ-0265G

PREFACE

The Legislative Committee on New Licensing Boards is a 9-member joint committee of the House and Senate created and governed by statute (Article 18A of Chapter 120 of the General Statutes). The primary purpose of the Committee is to evaluate the need for a new licensing board or the proposed licensing of previously unregulated practitioners by an existing board. The Committee has been in existence since 1985.

The Committee solicits written and oral testimony on each licensing proposal in carrying out its duty to determine whether the proposal meets the following criteria:

(1) Whether the unregulated practice of the profession can substantially endanger the public health, safety, or welfare, and whether the potential for such harm is recognizable and not remote or dependent upon tenuous argument.

(2) Whether the profession possesses qualities that distinguish it from ordinary labor.

(3) Whether practice of the profession requires specialized skill or training.

(4) Whether a substantial majority of the public has the knowledge or experience to evaluate the practitioner's competence.

(5) Whether the public can effectively be protected by other means.

(6) Whether licensure would have a substantial adverse economic impact upon consumers of the practitioner's good or services.

The Committee issues an assessment report on its findings and recommendations. The recommendation in the report is not binding on other committees considering the proposal.

RESPIRATORY CARE THERAPY

Respiratory Care practice involves the treatment, management, diagnostic testing, and care of patients with deficiencies and abnormalities associated with the cardiovascular system, including the observing and monitoring of signs and symptoms and the therapeutic application of medical gases, humidity, and aerosols, pharmacological agents related to respiratory care procedures, mechanical or physiological ventilatory support, CPR and maintenance of natural airways, hyperbaric oxygen therapy, and extracorporeal membrane oxygenation in appropriately identified environments. Respiratory care functions are carried out under the orders of a physician.

Under House Bill 421, respiratory care practitioners would be licensed by a North Carolina Respiratory Care Advisory Council. The Council, comprised of eight members (two of whom would be respiratory care practitioners and three of whom would be physicians), would be created under the North Carolina Medical Board. The North Carolina Medical Board is the licensing board for physicians.

The requirements for licensure would be completion of an approved respiratory care program, completion of the minimal requirements for Basic Cardiac Life Support (AHA), and successful completion of the national board exam. Persons who have already taken and passed the national exam would be grandfathered in under this bill. Others practicing as of October 1, 1997, and who do not meet the licensure requirements could continue to practice for one year while seeking to meet the educational and examination requirements of the bill. At the end of the one-year period, they must either have completed the

requirements or stop practicing. There is also an exemption for persons performing "support" activities in respiratory care, as long as they are performed under the supervision of a practitioner or physician licensed by the Medical Board. The Council can adopt rules governing their activities.

There are an estimated 2,800 respiratory care practitioners in North Carolina. Over two-thirds of these practitioners work in hospitals. It is also estimated that approximately one-third of all patients admitted to a hospital use respiratory care services. Most other states already regulate respiratory care practitioners.

Respiratory care practitioners are trained to care for patients under the supervision of a qualified physician in several clinical settings. These patients are disproportionately sicker than the general patient population. The respiratory care therapists' involvement and role with respect to life support procedures for these patients requires that they be competent to perform their duties, thus ensuring that the public's health and safety is adequately protected.

The Legislative Committee on New Licensing Boards finds that the sponsors have met the six statutory criteria by which the Committee judges licensure proposals, as follows:

(1) The unregulated practice of the profession can substantially harm or endanger the public health, safety, or welfare, and the potential for such harm is recognizable and not remote nor dependent upon tenuous argument.

(2) The practice of the profession possesses qualities that distinguish it from ordinary labor.

(3) The practice of the profession requires specialized skill and training.

(4) A substantial majority of the public does not have the knowledge or experience to evaluate the practitioner's competence.

(5) The public cannot be effectively protected by other means.

(6) Licensure would not have a substantial adverse economic impact upon consumers.

The Legislative Committee on New Licensing Boards recommends licensure of respiratory care therapists. This assessment report constitutes both the preliminary and the final assessment report for the licensing of respiratory care therapists. The report is based on the proposed licensing of respiratory care therapy, as set out in House Bill 421, the response to the Committee's questionnaire (attached), and testimony before the Committee on May 12, 1997.

QUESTIONNAIRE FOR LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

1. **In what ways has the marketplace failed to regulated adequately the profession or occupation?**

North Carolina is but one of four states who fail to regulate respiratory care practitioners. All states bordering North Carolina currently regulate the practice of respiratory care. In the last three years, the states of Florida, Georgia, Tennessee, and Virginia have reported a number of respiratory care practitioners who have lost licenses in these states as residing in North Carolina. The potential for unlicensed and incompetent persons in regulated states to migrate to North Carolina seeking employment is significant. Additionally, the North Carolina Society for Respiratory Care (NCSRC) has reported to its Judicial Committee, three individuals falsely representing themselves as respiratory care practitioners. In each case, falsification of educational experience, and/or a national voluntary credential occurred. Since all three were non-members of its Society, the NCSRC was unable to discipline these individuals.

2. **Have there been any complaints about the unregulated profession or occupation? Please give specific examples.**

As indicated in the previous question, there have been three formal complaints to the NCSRC. Additional concerns arise regarding an inability to seek disciplinary action such similar incidents be encountered.

3. **In what ways has the public health, safety, or welfare sustained harm or is in imminent danger of harm because of the lack of state regulation? Please give specific examples.**

Respiratory care is a highly specialized allied heath profession. Respiratory Care Practitioners are trained to care for patients under the supervision of a qualified physician in multiple clinical settings including home care, sub-acute care, and hospitals. The patients receiving their care frequently include a disportionately sicker population than is the case for most other allied health practitioners and the respiratory care practitioners have responsibility for the control of life support procedures and equipment in critically ill patients. Respiratory care practitioners also play an indispensable role in the coordination, assessment, and utilization of respiratory care services in theses multiple environments. Such assessments and interventions are emergent, and although under the guidance and supervision of a qualified physician, these assessments and interactions may be performed without a physician physically present. These situations require respiratory care practitioners with the minimal training, experience, and competencies required for the public health, safety, and welfare for those patients receiving respiratory care.

4. Is there potential for substantial harm or danger by the profession or occupation to the public health, safety, or welfare? How can this potential for substantial harm or danger be recognized?

As defined in question number three, respiratory care practitioners make assessments and interventions to critically ill patients and those patients in emergency situations. Inappropriate or inadequate responses will result in adverse patient conditions which may be potentially life threatening or significantly alter the quality of life for the patient. Without regulation and definition of minimal competencies, a respiratory care practitioner without appropriate education, training, and competencies may be providing these services in North Carolina.

Additionally, respiratory care practitioners denied license or with suspension of licensed in another state, may practice respiratory care in North Carolina. There is no system to protect the public from practitioners considered unsafe in other states.

5. Has this potential harm or danger to the public been recognized by other states or the federal government through the licensing or certification process?

North Carolina is one of but four states without a licensing or certification process for respiratory care practitioners. In each state regulating the practice of respiratory care, public safety, and welfare is the basis for regulation.

6. What will be the economic advantage of licensing to the public?

The economic advantage of licensing to the public will be respiratory care services provided by a minimally educated, trained, and competent respiratory care practitioner. Currently, such services may be provided by individuals without these minimal competencies. The health care consumer will more than likely pay equivalent cost for these services as for those services provided by a regulated practitioner.

Respiratory care practitioners assess respiratory care efforts and assist the physician, in the utilization control of these services. Minimally educated, trained, competent respiratory care practitioners have been documented to actually decrease health care cost through such utilization control. Examples of respiratory care practitioners reducing health care cost are provided in the attached, "Respiratory Care Licensure and Costs."

7. What will be the economic disadvantages of licensing to the public?

None

8. What will be the economics advantages of licensing to the practitioners?

Economic advantages of licensing respiratory care practitioners are based on supply and demand economics. North Carolina human resources for Respiratory Care Practitioners is as follows:

a.	Total number of RCP's in hospitals	2000
b.	Estimated number of RCP's in home care	200
c.	Estimated number of RCP's in sub-acute	200
d.	Others performing Respiratory Care (eg. EMT, LPN, OJT)	400
e.	Estimated Total, Respiratory Care	2800

North Carolina currently has fourteen respiratory care educational programs in the community college system. Approximately 150 new respiratory care practitioners are graduated from these programs annually. This supply of new graduates exceeds the demand for respiratory care practitioners and will continue to do so as hospitals downsize and implement health care reform strategies.

9. What will be the economic disadvantages of licensing practitioners?

Respiratory care practitioners who are unable to meet the minimal licensing requirements may receive significant income reduction or have their jobs, as currently practiced, eliminated.

10. Please give other potential benefits to the public of licensing that outweigh the potential harmful effects of licensure such as a decrease in the availability of practitioners and higher cost to the public.

As indicated in item number 8, a steady increase in the supply of practitioners over demand is expected. Increased additional cost to the public will be minimal for the services provided by a licensed respiratory care practitioner. Additionally, supportive information, attached, identifies respiratory care control and utilization of services by a competent practitioner is an active means of reducing health care costs.

Health care is experiencing alternative sites for the delivery of health care. As the shift in care from the hospital, to the sub-acute care setting, and home environment occurs, less physician contact with the patient and greater dependency upon alternate care givers will occur. Respiratory care is an integral component of such care and focuses on the ability of the respiratory care practitioner to assess and effectively communicate observations and outcomes of care to the physician. Such a system promotes effective and efficient use of health care personnel in a changing health care system. Success of these changing systems will be dependent upon practitioner competency to perform these services.

I. Please detail the specific specialized skills or training that distinguish the occupation or profession from ordinary labor

A. Respiratory Care Practitioners must successfully complete a Respiratory Care Education Program which is recognized by the American Medical Association and includes the following courses of instruction:

Basic Sciences
Biology
Chemistry
Cardiopulmonary Anatomy and Physiology
Computer Science
Human Anatomy and Physiology
Mathematics
Microbiology
Pharmacology
Physics
Psychology
Cardiopulmonary Diseases
Pathology
Pediatrics and Perinatology
Respiratory Care Content Areas
- Emergency Airway Management
- Cardiopulmonary Resuscitation
- Cardiopulmonary Diagnostics and Interpretation
- Patient Assessment
- Cardiopulmonary Monitoring and Diagnostics
- Management of Mechanical Ventilation
- Ethics of Respiratory Care and Medical Care

B. Specific Skills of Respiratory Care Practitioner include:

- Insertion of Artificial Airways
- Insertion of Indwelling Arterial Lines
- Management of Life Support Devices
- Provision of Cardiopulmonary Resuscitation
- Patient Monitoring and Assessment of Respirator Care Outcome
- Administration of Specific Cardiopulmonary Medications as Prescribed by a Licensed Physician

12. What are other qualities of the profession or occupation that distinguish it from ordinary labor?

Although respiratory care practitioners perform services under the leadership and supervision of a physician, there is a relatively high degree of independent judgement required from the respiratory care practitioner. The practitioner deals with patients on a one-to-one basis and must quickly make decisions if a complication arises. Occasionally, these decisions are life saving or life threatening. This is quite evident in the home care setting or the intensive care setting during the middle of the night, where a respiratory care practitioner may be totally alone with a patient, needing to take quick, decisive action without time for consultation with a physician. Failure to appropriately assess and respond to these identified situations may result in a life threatening complications. Such specialized skills, training, and somewhat independent decisions distinguish the respiratory care practitioner from ordinary labor.

13. Will licensing requirements cover all practicing members of the occupation or profession? If any practitioners are exempt, what is the rationale for the exemption?

Licensing will cover all practicing members of the respiratory care profession excepting 1) those rendering care in the course of assigned duties of persons in the military services or working in federal facilities, 2) a student in a respiratory care educational program, working under direct supervision of a practitioner while fulfilling requirements of the course of study, 3) a health care practitioner duly licensed in accordance with Chapter 90 General Statues and performing services authorized by his or her scope of practice, and 4) persons aiding in the practice of respiratory care who perform support activities which do not require formal academic training, if these persons worked under the supervision of a practitioner or physician licensed under Article of Chapter 90 of the General Statues.

Rationale for these exemptions are 1) to allow cost effective support duties to be performed, such as equipment delivery, 2) facilitate training and experience for students of respiratory care, and 3) to be non-restrictive to licensed personnel currently exhibiting competencies in certain respiratory care services.

14. What is the approximate number of persons who will be regulated and the number of persons who are likely to utilize the services of the occupation or profession?

There are approximately 2800 respiratory care practitioners providing services in North Carolina. Such services are routinely provided to 35% all patients admitted to a hospital, therefore each North Carolina resident is a potential user of respiratory care services. 35% of all patients admitted to a hospital, 60% of all emergency room patients eventually requiring hospital admission. A growing percentage of patients in the subacute care environment, and a major portion of patients in defined home care programs for chronic cardiopulmonary disorders.

15. What kind of knowledge or experience does the public need to evaluate the services offered by the practitioner?

The public will require the equivalent knowledge and experience of a respiratory care practitioner, physician, or other duly licensed and knowledgeable health care provider to effectively evaluate the services offered by a respiratory care practitioner.

16. Does the occupational group have an established code of ethics, a voluntary certification program, or other measures to ensure a minimal quality of service?

The North Carolina Society for Respiratory Care attempts to provide minimal quality of services through an internal communication network and use of an established code of ethics adopted from its national affiliation with the American Association for Respiratory. The NCSRC promotes voluntary Certification and/or Registration of Respiratory Care Practitioners by the National Board for Respiratory Care. Approximately 1300 of the 2800 respiratory care practitioners in North Carolina are recognized by the National Board for Respiratory Care. The NCSRC has approximately 800 members participating in continuing educational programs for respiratory care.

h:\wp\rick.typ\license.bill/gr

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House**.

☒ Committee Substitute for

S.B. 207 A BILL TO BE ENTITLED AN ACT TO MODIFY THE CRIMINAL HISTORY RECORD CHECKS LAW TO MAKE CLARIFYING CHANGES AND TO REQUIRE A CRIMINAL BACKGROUND CHECK ON HOME HEALTH AGENCY APPLICANTS ONLY FOR CERTAIN POSITIONS.

☒ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 207
Children & Human Resources Committee Substitute Adopted 4/1/97

Short Title: Foster Care Criminal Check Amendments. (Public)

Sponsors:

Referred to:

February 20, 1997

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE CRIMINAL HISTORY RECORD CHECKS LAW TO MAKE CLARIFYING CHANGES AND TO REQUIRE A CRIMINAL BACKGROUND CHECK ON HOME HEALTH AGENCY APPLICANTS ONLY FOR CERTAIN POSITIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 131D-10.2 reads as rewritten:

"**§ 131D-10.2. Definitions.**

For purposes of this Article, unless the context clearly implies otherwise:

(1) 'Adoption' means the act of creating a legal relationship between parent and child where it did not exist genetically.

(2) 'Adoptive Home' means a family home approved by a child placing agency to accept a child for adoption.

(3) 'Child' means an individual less than 18 years of age, who has not been emancipated under the provisions of Article 56 of Chapter 7A of the General Statutes.

(4) 'Child Placing Agency' means a person authorized by statute or license under this Article to receive children for purposes of placement in residential group care, family foster homes or adoptive homes.

(5) 'Children's Camp' means a residential child-care facility which provides foster care at either a permanent camp site or in a wilderness setting.

(6) 'Commission' means the Social Services Commission.

(6a) 'Criminal History' means a county, state, or federal criminal history of conviction or a pending indictment of a crime, whether a misdemeanor or a felony, that bears upon an individual's fitness to have responsibility for the safety and well-being of children, including the following North Carolina crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 6, Homicide; Article 7A, Rape and Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 26, Offenses Against Public Morality and Decency; Article 27, Prostitution; Article 39, Protection of Minors; Article 40, Protection of the Family; and Article 59, Public Intoxication. Such crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states.

(7) 'Department' means the Department of Human Resources.

(8) 'Family Foster Home' means the private residence of one or more individuals who permanently reside as members of the household and who provide continuing full-time foster care for a child or children who are placed there by a child placing agency or who provide continuing full-time foster care for two or more children who are unrelated to the adult members of the household by blood, marriage, guardianship or adoption.

(9) 'Foster Care' means the continuing provision of the essentials of daily living on a 24-hour basis for dependent, neglected, abused, abandoned, destitute, orphaned, undisciplined or delinquent children or other children who, due to similar problems of behavior or family conditions, are living apart from their parents, relatives, or guardians in a family foster home or residential child-care facility. The essentials of daily living include but are not limited to shelter, meals, clothing, education, recreation, and individual attention and supervision.

(9a) 'Foster Parent' means any individual who is 18 years of age or older who ~~permanently resides in a family foster home licensed by the State and any such individual applying to provide family foster care.~~ is licensed by the State to provide foster care.

(10) 'Person' means an individual, partnership, joint-stock company, trust, voluntary association, corporation, agency, or other

organization or enterprise doing business in this State, whether or not for profit.

(11) 'Primarily Educational Institution' means any institution which operates one or more scholastic or vocational and technical education programs that can be offered in satisfaction of compulsory school attendance laws, in which the primary purpose of the housing and care of children is to meet their educational needs, provided such institution has complied with Article 39 of Chapter 115C of the General Statutes.

(12) 'Provisional License' means a type of license granted by the Department to a person who is temporarily unable to comply with a rule or rules adopted under this Article.

(13) 'Residential Child-Care Facility' means a staffed premise with paid or volunteer staff where children receive continuing full-time foster care. Residential child-care facility includes child-caring institutions, group homes, and children's camps which provide foster care."

Section 2. G.S. 131D-10.3A reads as rewritten:

"**§ 131D-10.3A. Mandatory criminal ~~checks of foster parents.~~ checks.**

(a) Effective January 1, 1996, in order to ensure the safety and well-being of any child placed for foster care in a home, the Department shall ensure that the criminal histories of all foster ~~parents~~ parents, individuals applying for licensure as foster parents, and individuals 18 years of age or older who reside in a family foster home, are checked ~~and a determination of the foster parent's fitness to have responsibility for the safety and well-being of children based on the criminal history is made.~~ and, based on the criminal history check, a determination is made as to whether the foster parents, and other individuals required to be checked, are fit for a foster child to reside with them in the home. The Department shall ensure that, as of the effective date of this act, all ~~foster parents~~ individuals required to be checked are checked for county, state, and federal criminal histories.

(b) The Department shall ensure that all ~~foster parents~~ individuals who ~~have been~~ are required to be checked pursuant to subsection (a) of this section are checked annually upon relicensure for county and State criminal histories.

(c) The Department may prohibit ~~a foster parent~~ an individual from providing foster care by denying or revoking the license to provide foster care if the Department determines that ~~the foster parent is unfit to have responsibility for the safety and well-being of children based on the criminal history.~~ the safety and well-being of a child placed in the home for foster care would be at risk based on the criminal history of the individuals required to be checked pursuant to subsection (a) of this section.

(d) The Department of Justice shall provide to the Department of Human Resources the criminal history of the ~~foster parent~~ individuals specified in subsection (a) of this section obtained from the State and National Repositories of Criminal Histories as requested by the Department. The Department shall provide to the

Department of Justice, along with the request, the fingerprints of the ~~foster parent~~ individual to be checked, any additional information required by the Department of Justice, and a form consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the State or National Repositories signed by the ~~foster parent~~ individual to be checked. The fingerprints of the ~~foster parent~~ individual to be checked shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check.

(e) At the time of application, the ~~foster parent~~ individual whose criminal history is to be checked shall be furnished with a statement substantially similar to the following:

'NOTICE

~~FOSTER PARENT~~
MANDATORY CRIMINAL HISTORY CHECK

NORTH CAROLINA LAW REQUIRES THAT A CRIMINAL HISTORY CHECK BE CONDUCTED ON ALL PERSONS 18 YEARS OF AGE OR OLDER WHO ~~PROVIDE FOSTER CARE~~ RESIDE IN A LICENSED FAMILY FOSTER HOME.

"Criminal history" includes any county, state, and federal convictions or pending indictments of any crime, of any of the following crimes: the following Articles of Chapter 14 of the General Statutes: Article 6, Homicide; Article 7A, Rape and Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 26, Offenses Against Public Morality and Decency; Article 27, Prostitution; Article 39, Protection of Minors; Article 40, Protection of the Family; and Article 59, Public Intoxication; violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5; or similar crimes under federal law or under the laws of other states. Your fingerprints will be used to check the criminal history records of the State Bureau of Investigation (SBI) and the Federal Bureau of Investigation (FBI).

If it is determined, based on your criminal history, that you are unfit to have ~~responsibility for the safety and well-being of children,~~ a foster child reside with you, you shall have the opportunity to ~~complete,~~ complete or challenge the accuracy ~~of,~~ of the information contained in the SBI or FBI identification records.

If ~~you are denied~~ licensure is denied or ~~your~~ the foster home license is revoked by the Department of Human Resources as a result of the criminal history check, if you are a foster parent, or are applying to become a foster parent, you may

request a hearing pursuant to Article 3 of Chapter 150B of the General Statutes, the Administrative Procedure Act.

Any ~~foster parent~~ person who intentionally falsifies any information required to be furnished to conduct the criminal history is guilty of a Class 2 misdemeanor.'

Refusal to consent to a criminal history check is grounds for the Department to ~~prohibit the foster parent from providing~~ deny or revoke a license to provide foster care. Any ~~foster parent~~ person who intentionally falsifies any information required to be furnished to conduct the criminal history is guilty of a Class 2 misdemeanor.

(f) The Department shall notify in writing the foster parent and any person applying to be licensed as a foster parent, and that individual's supervising agency of the determination by the Department of whether the foster parent is qualified to provide foster care based on the ~~foster parent's~~ criminal ~~history.~~ history of all individuals required to be checked. In accordance with the law regulating the dissemination of the contents of the criminal history file furnished by the Federal Bureau of Investigation, the Department shall not release nor disclose any portion of ~~the foster parent's~~ an individual's criminal history to the foster ~~parent.~~ parent or any other individual required to be checked. The Department shall also notify the ~~foster parent~~ individual of the ~~foster parent's~~ individual's right to review the criminal history information, the procedure for completing or challenging the accuracy of the criminal history, and the foster parent's right to contest the Department's determination.

A foster parent who disagrees with the Department's decision may request a hearing pursuant to Chapter 150B of the General Statutes, the Administrative Procedure Act.

(g) All the information that the Department receives through the checking of the criminal history is privileged information and is not a public record but is for the exclusive use of the Department and those persons authorized under this section to receive the information. The Department may destroy the information after it is used for the purposes authorized by this section after one calendar year.

(h) There is no liability for negligence on the part of a supervising agency, or a State or local agency, or the employees of a State or local agency, arising from any action taken or omission by any of them in carrying out the provisions of this section. The immunity established by this subsection shall not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The immunity established by this subsection shall be deemed to have been waived to the extent of indemnification by insurance, indemnification under Article 31A of Chapter 143 of the General Statutes, and to the extent sovereign immunity is waived under the Torts Claim Act, as set forth in Article 31 of Chapter 143 of the General Statutes.

(i) The Department of Justice shall perform the State and national criminal history checks on ~~foster parents~~ individuals required by this section and shall charge the Department of Human Resources a reasonable fee only for conducting the checks of the national criminal history records authorized by this section. The Division of

Social Services, Department of Human Resources, shall bear the costs of implementing this section."

Section 3. G.S. 114-19.4 reads as rewritten:

"**§ 114-19.4. Criminal record checks ~~of foster parents.~~ for foster care.**

The Department of Justice may provide to the Division of Social Services, Department of Human Resources, the criminal history from the State and National Repositories of Criminal Histories as defined in G.S. 131D-10.2(6a). The Division shall provide to the Department of Justice, along with the request, the fingerprints of the ~~foster parent~~ individual to be checked, any additional information required by the Department of Justice, and a form consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the State or National Repositories signed by the ~~foster parent~~ individual to be checked. The fingerprints of the ~~foster parent~~ individual shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Division shall keep all information pursuant to this section privileged, as provided in G.S. 131D-10.3A(g). The Department of Justice shall charge a reasonable fee only for conducting the checks of the national criminal history records authorized by this section."

Section 4. G.S. 131E-265(a) reads as rewritten:

"(a) Requirement. -- An offer of employment by a nursing home ~~or a home care agency~~ licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned on consent to a criminal history record check of the applicant. An offer of employment by a home care agency licensed under this Chapter to an applicant to fill a position that requires entering the patient's home is conditioned on consent to a criminal history record check of the applicant. In addition, employment status change of a current employee of a home care agency licensed under this Chapter from a position that does not require entering the patient's home to a position that requires entering the patient's home shall be conditioned on consent to a criminal history record check of that current employee. A nursing home or a home care agency shall not employ an applicant who refuses to consent to a criminal history record check required by this section. In addition, a home care agency shall not change a current employee's employment status from a position that does not require entering the patient's home to a position that requires entering the patient's home who refuses to consent to a criminal history record check required by this section. A nursing home or home care agency shall submit a request to the Department of Justice under G.S. 114-19.3 to conduct a criminal history record check within five business days of making the conditional offer of employment. All criminal history information received by the home or agency is confidential and may not be disclosed."

Section 5. This act is effective when it becomes law.

VISITOR REGISTRATION SHEET

RULES, CALENDAR, AND OPERATIONS OF THE HOUSE **May 21, 1997**

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
DONALD F. CREWS	N. C. APPRAISAL BOARD
Linda Sewell	DEHNR/DEH
Henry Jones	Attorney Raleigh
David Simmons	Zebulon, PA
Butch Gunnells	
Greg Bright	Wake County Environmental Health
Bob Cheek	NCDEHNR - Groundwater
Arthur Monberry	DEHNR - DWQ - Groundwater
Evelyn Hawthorne	NCHA
Mac Boxley	ATTY - Raleigh
Doug Howey	NCPMA
Don McDonald	NCRMA
Alan Wilson	Bailey & Dixon, LLP
Susan Valaoras	Nationwide
[illegible]	NCANA
[illegible]	NCHBA
Pam Wilson	NCOSA
[illegible]	Bode Assoc.
[illegible]	NCAFI
[illegible]	NCRMA
Delanne Kinnes	T&T Coalition
Katherine Harris	Electri Cities
Amy Jo Bain	Smith Anderson
[illegible]	NCAR
Bernard Allen	SOS
Rep Aldridge	Legislature
Gary Harris	NC Petroleum Marketers Assoc.

VISITOR REGISTRATION SHEET

RULES, CALENDAR, AND OPERATIONS OF THE HOUSE **May 21, 1997**

Name of Committee Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Shannon Romaine	DSS
Anne Hardison	NC Society fn Resp. Care
A. RAY BRAXTON	NCSRC
BOB RICKER	NCSRC
Brad D. Wilt	NCSRC
Andy Romanet	NCLM.
Linda Deel	NC Medical Society
Penny Mann	
Steve Coleman	NCMS
Suzanne Jones	Executive's Intern
Lloyd P. Hand	JP Associates
John Rusk	NCFPC
William Breeze	NC Medical Board

MINUTES
COMMITTEE ON RULES, CALENDAR, AND OPERATIONS OF THE HOUSE
May 27, 1997

The Committee on Rules, Calendar, and Operations of the House met May 27, 1997, at 2:00 p.m. in Room 421 in the Legislative Office Building. Representative Morgan, Committee Chair, called the meeting to order and asked the clerk to call the roll. The following members were present: Representative Bowie, Vice Chair, and Representatives Culp, Dockham, Gulley, Hill, McMahan, Mitchell, Neely, C. Wilson, and Daughtry, House Majority Leader.

The first bill before the Committee was Senate committee substitute for Senate Bill 993 - A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE COMMISSIONER OF INSURANCE TO ADOPT RULES TO PROTECT THE RIGHTS OF SUBSCRIBERS AND CERTIFICATE HOLDERS IN THE RESERVES AND CAPITAL OF HOSPITAL, MEDICAL AND DENTAL SERVICE CORPORATIONS UPON CONVERSION. Senator Rand, bill sponsor, was recognized to explain the bill and offer a House proposed committee substitute for Senate committee substitute for Senate Bill 993. Representative Neely asked to be excused from voting, citing House Rule 24.1A. Representative Dockham moved for its adoption for committee discussion. Motion carried. Representative Dockham moved for a favorable report for the House committee substitute and an unfavorable report for the Senate committee substitute. Motion carried. There was a title change in the bill.

The next bill before the Committee was Senate Bill 866 - A BILL TO BE ENTITLED AN ACT TO PROMOTE COMPETITION, CHOICE, AND AVAILABILITY IN THE PURCHASE OF PRESCRIPTION DRUGS AND PHARMACEUTICAL SERVICES. Senator Rand, bill sponsor, was recognized to explain the bill. Representative Mitchell moved for a favorable report. Representative Dockham made a substitute motion to report the bill without prejudice with the recommendation that the bill be referred to the Insurance Subcommittee on Health. The substitute motion carried.

House Joint Resolution 1232 - A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF ADOLPH LORENZ DIAL, FORMER MEMBER OF THE GENERAL ASSEMBLY, was the next bill before the Committee. Representative Sutton was recognized to explain the resolution. Representative Hill moved for a favorable report. Motion carried.

Next on the agenda for Committee consideration was House Joint Resolution 1234 - A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF BRADFORD VERDIZE LIGON, FORMER MEMBER OF THE GENERAL ASSEMBLY. Representative Howard was recognized by the Chair to speak on the resolution. Representative Mitchell moved for a favorable report. Motion carried.

House Bill 1110 - A BILL TO BE ENTITLED AN ACT AMENDING THE STATUTES RELATED TO LANDSCAPE ARCHITECTS was the next bill before the Committee. Representative McMahan was recognized to explain the bill. He offered a committee substitute for Committee discussion and moved for its adoption. Motion carried. Representative Culp moved for a favorable report as to the committee substitute; unfavorable as to the original bill and recommended that the bill be re-referred to the Committee on Finance. Motion carried.

The next bill before the Committee was House Bill 794 - A BILL TO BE ENTITLED AN ACT TO MAKE SUBSTANTIVE CHANGES TO THE NORTH CAROLINA ENGINEERING AND LAND SURVEYING ACT. The Chair recognized Representative Ives to explain the bill and offer a committee substitute. Representative Wilson moved for its adoption for Committee discussion. Motion carried. Representative Ives told the Committee that the committee substitute did not change the substance of the bill in any way. Representative Culp moved for a favorable report for the committee substitute; unfavorable report to the original bill, and recommended that it be re-referred to the Committee on Finance. Motion carried.

Representative Morgan displaced House Bill 1166 - A BILL TO BE ENTITLED AN ACT TO AMEND THE EDUCATIONAL REQUIREMENTS FOR AUCTIONEERS, APPRENTICE AUCTIONEERS, AND PRINCIPALS IN AN AUCTION FIRM.

The meeting adjourned at 2:30 p.m..

Representative Richard Morgan, Committee Chair

Anne M. Cole

Anne M. Cole, Acting Committee Clerk

Attachments:
Committee Reports
Bills
Legislative Committee on New Licensing Boards Assessment Report for Landscape Architects for House Bill 1110
Legislative Committee on New Licensing Boards Assessment Report for Photogrammetrists for Senate Bill 787/House Bill 794
Visitor's Sheet

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House.**

☒ Committee Substitute for
S.B. 993 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE COMMISSIONER OF INSURANCE TO ADOPT RULES TO PROTECT THE RIGHTS OF SUBSCRIBERS AND CERTIFICATE HOLDERS IN THE RESERVES AND CAPITAL OF HOSPITAL, MEDICAL, AND DENTAL SERVICE CORPORATIONS UPON CONVERSION.

☐ 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)

4/24/97

cs

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 993
Rules and Operations of the Senate Committee Substitute Adopted 4/29/97
Third Edition Engrossed 4/30/97
Proposed House Committee Substitute S993-PCS1820

Short Title: Medical Service Corp. Charters. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH PROCEDURES FOR CONVERSIONS BY HOSPITAL, MEDICAL, AND DENTAL SERVICE CORPORATIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-65-130(3) reads as rewritten:

"(3) The charter of any corporation subject to the provisions of this Article and Article 66 of this Chapter may be amended to convert that corporation, so amending its charter, into either a mutual nonstock or stock accident and health insurance company or life insurance company subject to the provisions of Articles 1 through 64 of this Chapter provided the rights of the subscribers or certificate holders in the reserves and capital of such corporation are adequately protected. ~~under rules and regulations adopted by the Commissioner of Insurance.~~ A corporation converting to a mutual nonstock or stock accident and health insurance company or life insurance company shall follow the provisions of G.S. 58-65-131 and G.S. 58-65-132."

Section 2. Article 65 of Chapter 58 of the General Statutes is amended by adding the following new sections to read:

"**§ 58-65-131. Conversion; procedure.**

(a) It is the intent of the General Assembly by the enactment of this section and G.S. 58-65-132 to create a procedure for a corporation subject to this Article to convert to a mutual nonstock or stock accident and health insurance company or life insurance company subject to Articles 1 through 64 of this Chapter. The General Assembly recognizes the substantial and recent changes in market and health care conditions that are affecting these corporations and further recognizes the need for equal regulatory treatment and competitive equality for health care insurers. The General Assembly further finds that a procedure for conversion is in the best interest of policyholders because it will provide greater financial stability for the corporations' policyholders and a greater opportunity for the corporations to remain financially independent.

(b) As used in this section and G.S. 58-65-132:

(1) 'Corporation' means a corporation subject to this Article that attempts to convert from a hospital, medical, or dental service corporation to a mutual nonstock or stock accident and health insurance company or life insurance company and that files a plan of conversion with the Commissioner under subsection (e) of this section.

(2) 'New corporation' means a corporation originally subject to this Article that has had its plan of conversion approved by the Commissioner under subsection (e) and that has actually converted to a mutual nonstock or stock accident and health insurance company or life insurance company.

(c) A corporation may amend its charter pursuant to this Article to convert the corporation to a mutual nonstock or stock health and accident insurance company or life insurance company subject to Articles 1 through 64 of this Chapter. The amended charter shall be filed with the Commissioner, together with a plan for conversion setting forth provisions for fulfilling the conditions necessary to effect the conversion and a designated date upon which the conversion shall become effective if these conditions are fulfilled. Upon the designated date set forth in the plan, the corporation shall become subject to the applicable laws as provided in subsection (h) of this section and shall no longer be subject to this Article and Article 66 of this Chapter.

(d) A corporation subject to this Article shall file a plan for conversion with the Commissioner at least 120 days before the proposed date of conversion. The corporation shall reimburse the Department for the actual cost of reviewing, analyzing, and processing the application. The Commissioner may contract with experts or consultants to assist in reviewing the application. Contract costs for these personal professional services shall not exceed an amount which is reasonable and necessary for the review of the application. A personal professional services contract entered into under this subsection is exempt from Article 3C of Chapter 143 of the General Statutes. The corporation filing an application for conversion shall promptly pay, upon request, for all costs of these personal professional services.

(e) A corporation that has amended its charter to convert the corporation to a mutual nonstock or stock accident and health insurance company or life insurance company shall fulfill the conditions necessary to effect the conversion if the plan of conversion sets forth with specificity the following terms and conditions of the proposed conversion:

(1) The purpose of the conversion.

(2) The articles of incorporation of the new corporation, including a description of the classes of policyholders or shareholders.

(3) The bylaws of the new corporation.

(4) A description of any changes in the new corporation's mode of operations after conversion.

(5) A statement describing the manner in which the plan provides for the protection of all existing contractual rights of the corporation's subscribers or certificate holders for medical, hospital, or dental service or claims for reimbursement for those services.

(6) A statement that the new corporation assumes all assets and liabilities of the previous corporation.

(7) Documentation showing that the corporation, its board of directors, trustees or other governing authority and its subscribers or certificate holders have approved the plan in accordance with the corporation's articles of incorporation and bylaws.

(8) The business plan of the new corporation, including, but not limited to, a comparative premium rate analysis of the new corporation's major plans and product offerings, that, among other things, compares actual premium rates for the three-year period before the filing of the application for conversion and forecasted premium rates for a three-year period following the proposed conversion. This rate analysis shall address the forecasted effect, if any, of the proposed conversion on the cost to subscribers or policyholders of the new corporation and on the new corporation's underwriting profit, investment income, and loss and claim reserves, including the effect, if any, of adverse market or risk selection upon these reserves. Any information provided under this subsection shall receive confidential treatment pursuant to G.S. 58-19-40.

(9) The plan provides for definite conditions to be fulfilled by a designated early date upon which the conversion will be deemed effective.

(f) The Commissioner of Insurance shall approve the plan of conversion and issue a certificate of authority to the filing corporation to transact insurance in this State pursuant thereto if the Commissioner finds all of the following:

(1) The plan of conversion meets the requirements of subsection (e) of this section.

(2) Upon conversion, the new corporation will meet the applicable standards and conditions under this Chapter, including applicable minimum surplus requirements.

(3) The plan would not be contrary to law nor to the rights of the subscribers or certificate holders in the reserves and capital of the corporation.

(4) No director, officer, or employee of any hospital, medical and dental service corporation will receive:

a. Any fee, commission, compensation or other valuable consideration for aiding, promoting, or assisting in the conversion of the hospital, medical and dental service corporation to a domestic mutual insurer, other than compensation paid to any director, officer, or employee of the corporation in the ordinary course of business; or

b. Any distribution of the assets, surplus, or capital of the corporation as part of a conversion.

(5) The corporation has complied with all applicable requirements of this Chapter, and disciplinary action is not warranted against the corporation.

(g) A plan of conversion that meets the requirements of subsection (e) of this section and is approved by the Commissioner pursuant to subsection (f) is presumed to protect adequately the rights of the subscribers or certificate holders in the reserves and capital of the corporation and to be fair and equitable and not prejudicial to the subscribers or certificate holders of the corporation and the subscribers or policyholders of the new corporation.

(h) Nothing in this Chapter shall operate to limit the power of the Commissioner or the Attorney General to seek a declaratory judgment regarding whether public rights exist in the reserves and capital of the corporation, and if so, how those rights should be preserved.

(i) Upon completion of the corporation's conversion as provided for in this section and G.S. 58-65-132, the new corporation shall be subject to and comply with all applicable laws and regulations applicable to domestic insurers.

"**§ 58-65-132. Rules and procedures.**

(a) Upon receiving an application to convert, the Commissioner shall publish a notice in one or more newspapers of general circulation in the corporation's service area describing the name of the corporation, the nature of the plan filed under G.S. 58-65-131(d), and the date of receipt of the plan. The notice shall indicate that the Commissioner will solicit public comments and hold a public hearing on the application.

(b) All applications, reports, plans, or other documents under this section are public records unless otherwise provided in this Chapter. The Commissioner shall provide the public with prompt and reasonable access to public records relating to conversion of the corporation. Access to public records covered by this section shall

be made available at least one month before a solicitation for public comments or public hearing scheduled under this section.

(c) Before approving a conversion, the Commissioner shall solicit public comments in written form and shall hold at least one public hearing about the corporation's proposal to comply with the requirements for conversion.

(d) The Commissioner shall approve a conversion if he finds that the corporation has met all requirements contained in G.S. 58-65-130, G.S. 58-65-131, and this section."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 3

SENATE BILL 993
Rules and Operations of the Senate Committee Substitute Adopted 4/29/97
Third Edition Engrossed 4/30/97

Short Title: Medical Service Corp. Charters. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE COMMISSIONER OF INSURANCE TO ADOPT RULES TO PROTECT THE RIGHTS OF SUBSCRIBERS AND CERTIFICATE HOLDERS IN THE RESERVES AND CAPITAL OF HOSPITAL, MEDICAL, AND DENTAL SERVICE CORPORATIONS UPON CONVERSION.

The General Assembly of North Carolina enacts:

Section 1. The Commissioner of Insurance may adopt rules, after consultation with the Joint Legislative Commission on Governmental Operations, to protect adequately the rights of subscribers and certificate holders in the reserves and capital of corporations subject to the provisions of Articles 65 and 66 of Chapter 58 of the General Statutes when those corporations amend their charters to convert into either a mutual nonstock or stock accident and health insurance company or life insurance company, as provided by G.S. 58-65-130(3).

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

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House.**

☒ Committee Substitute for
S.B. 866 A BILL TO BE ENTITLED AN ACT TO PROMOTE COMPETITION, CHOICE, AND AVAILABILITY IN THE PURCHASE OF PRESCRIPTION DRUGS AND PHARMACEUTICAL SERVICES.

☐ 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. and re-refer to Insurance - Sub Committee on Health

☐ With an indefinite postponement report.

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

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

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 3

SENATE BILL 866*
Commerce Committee Substitute Adopted 4/29/97
Third Edition Engrossed 4/30/97

Short Title: Prescription Drugs/Competition. (Public)

Sponsors:

Referred to:

April 15, 1997

A BILL TO BE ENTITLED

AN ACT TO PROMOTE COMPETITION, CHOICE, AND AVAILABILITY IN THE PURCHASE OF PRESCRIPTION DRUGS AND PHARMACEUTICAL SERVICES.

The General Assembly of North Carolina enacts:

Section 1. Article 51 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-51-37A. Prescription drugs and pharmaceutical services benefits.**

(a) This section applies only to health benefit plans that provide benefits for prescription drugs and pharmaceutical services.

(b) The purposes of this section are:

(1) To promote competition among and continued availability of retail pharmacies that redeem benefits for prescription drugs and pharmaceutical services provided to consumers by a health benefit plan or insurance certificate.

(2) To prohibit anticompetitive restrictions in pharmacy provider contracts between a pharmacy and a health benefit plan, insurer, or third-party administrator.

(3) To enable a pharmacy to establish without restriction its prices for both prescription drugs and pharmaceutical services, as well as to control its hours of operation.

(4) To further ensure that consumers may redeem prescription drugs and pharmaceutical services benefits allowed by a health benefit plan or an insurer at the pharmacy of the beneficiary's choice.

(5) To continue to enable a health benefit plan, insurer, or third-party administrator to establish prescription drug and pharmaceutical services benefits it provides to its beneficiaries or insureds, so long as in so doing it does not interfere with the right of the pharmacy to establish its own price or charge for the drug or service.

(c) As used in this section:

(1) 'Benefit' or 'benefits' means a benefit for either prescription drugs or pharmaceutical services, or both, provided by a health benefit plan or an insurer.

(2) 'Drug' or 'prescription drug' means any substance subject to the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301-395, as amended.

(3) 'Health benefit plan' means an accident and health insurance policy or certificate; a nonprofit service corporation contract; a health maintenance organization subscriber contract; a plan provided by a multiple employer welfare arrangement; coverage provided by an employer under G.S. 97-93; or a plan provided by another benefit arrangement, to the extent permitted by the Employee Retirement Income Security Act of 1974, as amended, or by any waiver of or other exception to the act provided under federal law or regulation. 'Health benefit plan' does not mean accident only insurance, or credit insurance, or disability income insurance.

(4) 'Insurer' means any entity that provides or offers a health benefit plan, including, but not limited to, an entity subject to Article 49, Article 65, or Article 67 of this Chapter.

(5) 'Pharmacy' means a pharmacy required by Article 4A of Chapter 90 of the General Statutes to be registered with the North Carolina Board of Pharmacy. Unless otherwise expressly provided in this section, the term 'pharmacy' also means a pharmacy that redeems benefits under a health benefit plan, insurer, or third-party administrator through a pharmacy provider contract or otherwise.

(6) 'Pharmacy provider contract' means a contract or agreement between a pharmacy and a health benefit plan, an insurer, or a third-party administrator under which the pharmacy agrees to redeem prescription drugs and pharmaceutical services benefits provided by a health benefit plan or insurer to the subscribers or beneficiaries of the plan or health insurance certificate.

(7) 'Third-party administrator' means a person who directly or indirectly solicits or effects coverage of, underwrites, collects

charges or premiums, or adjusts or settles claims in connection with a health benefit plan.

(d) Notwithstanding G.S. 58-51-37, a health benefit plan, insurer, third-party administrator, or other entity shall not, directly or indirectly, restrict or prohibit a pharmacy that is not a party to a pharmacy provider contract from establishing its charge or price for prescription drugs and pharmaceutical services, or both, or its hours of operation.

(e) Subject to the provisions of this section, a benefit for prescription drugs or pharmaceutical services or both may be redeemed by the beneficiary at any pharmacy of the beneficiary's choice. The health benefit plan, insurer, third-party administrator, or other person or entity providing benefits shall redeem benefits for prescription drugs or pharmaceutical services provided by a pharmacy that is not a party to a pharmacy provider contract at the same rate and in the same manner as it redeems the benefits for the drugs or services provided by a pharmacy under a pharmacy provider contract.

(f) A health benefit plan, insurer, third-party administrator, or other person or entity providing benefits may not, directly or indirectly, restrict or financially coerce the beneficiary's choice of pharmacy.

(g) Notwithstanding G.S. 58-51-37, if the charge or price established by the pharmacy for a prescription drug or pharmaceutical service, or both, is greater than the benefit allowed by the health benefit plan or insurer for the drug or service, then the beneficiary is responsible for paying the pharmacy the difference between the benefit and the charge or price of the pharmacy for the prescription drug or pharmaceutical service, or both. Prior to filling the prescription, if the beneficiary requests the information and the pharmacist has the information, the pharmacist shall inform the beneficiary what the price difference will be.

(h) A health benefit plan, insurer, or third-party administrator shall not restrict or prohibit, directly or indirectly, a pharmacy that is not a party to a pharmacy provider contract from charging the beneficiary for services rendered by the pharmacy that are in addition to charges for the drug, for dispensing the drug, or for patient counseling.

(i) The health benefit plan or the insurer shall inform all beneficiaries under the plan that benefits may be redeemed at any pharmacy which the beneficiary chooses. This information shall be communicated through reasonable means on a timely basis and at regular intervals. The health benefit plan, insurer, or third party administrator shall not express an opinion or judgment as to what a pharmacy's charge or price should be or what a beneficiary's co-payment difference should be. This information shall also be included in the written summary or description of the health benefit plan or insurance, as well as other written communications furnished to beneficiaries where benefits are mentioned. Nothing in this section shall prevent a health benefit plan or insurer from notifying its enrollees or participants of which pharmacies have agreed to fill prescriptions without any additional charges.

(j) A pharmacy eligible to redeem benefits under a health benefit plan may announce and advertise that eligibility in a commercially reasonable manner.

(k) Penalties:

(1) The Commissioner of Insurance shall not approve any health benefit plan or policy providing prescription drugs or pharmaceutical services benefits that does not conform to the provisions of this section.

(2) Any provision of a health benefit plan that is executed, delivered, or renewed or otherwise contracted for in this State that is in conflict with any provision of this section shall be void, to the extent of the conflict.

(3) Any provision of a pharmacy provider contract between a health benefit plan, or insurer, or third-party administrator, or other person subject to the provisions of this section and a pharmacy, or pharmacist licensed under Article 4A of Chapter 90 of the General Statutes, that is in conflict with this section is void to the extent of the conflict.

(4) The Commissioner of Insurance shall investigate and sanction any person, health benefit plan, insurer, third-party administrator, or other person that violates the provisions of this section, pursuant to Chapter 58 and other applicable law.

(5) A health benefit plan or insurer, or third-party administrator, or other person that violates this section shall be subject to the provisions of G.S. 58-2-70 concerning civil penalties, restitution, and summary suspension of license or certificate; provided, however, if pursuant to G.S. 58-2-70(d), monetary civil penalties are directed by the Commissioner, for the purposes of this section, these penalties shall not be less than one thousand dollars ($1,000) per day, nor more than ten thousand dollars ($10,000) per day.

(6) If the Commissioner has reason to believe that a health benefit plan, insurer, third-party administrator, or other person or entity has failed to comply with this section, the Commissioner shall issue and serve upon the person or entity a statement of the charges in that respect and a notice of hearing to be held at the time and place fixed in the notice, which shall not be less than 10 days after the date of service of the notice. If, after hearing, the Commissioner finds that the person or entity is in violation of this section, the Commissioner shall reduce the finding to writing and issue and serve upon the person or entity an order requiring the person or entity to cease and desist from engaging in the violation. A person or entity required to cease and desist pursuant to this section may obtain a review of the cease and desist order in accordance with the procedures set forth in G.S. 58-63-35. A person or entity found to be in violation of this section shall be subject to civil monetary penalties for violations committed on and after the date the person or entity received the statement of charges and notice of hearing from the Commissioner.

(7) The Commissioner of Insurance shall have the authority granted by this Chapter to enforce violations of this section, including additional authority provided in this section.

(8) The Attorney General shall bring such actions as are necessary to enforce or prevent violations of this section, either through representation of the Commissioner of Insurance or otherwise."

Section 2. If any provision of this act or the application of this act to any person or circumstance is held invalid, the other provisions or applications of this act shall be given effect without the invalid provisions or applications.

Section 3. This act applies to every health benefit plan as defined in Section 1 of this act that is delivered, issued for delivery, or renewed on or after October 1, 1997. For purposes of this act, renewal of a health benefit plan is presumed to occur on each anniversary of the date on which coverage was first effective on the person or persons covered by the health benefit plan.

Section 4. This act becomes effective October 1, 1997.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House**.

☒ Committee Substitute for
H.J.R. 1232 A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF ADOLPH LORENZ DIAL, FORMER MEMBER OF THE GENERAL ASSEMBLY.

☒ 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)

4/24/97

fav rep

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE JOINT RESOLUTION 1232

Sponsors: Representatives Sutton, Yongue, and Bonner.

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

May 19, 1997

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF ADOLPH LORENZ DIAL, FORMER MEMBER OF THE GENERAL ASSEMBLY.

Whereas, Adolph Lorenz Dial was born in the Prospect Community of Robeson County, North Carolina, on December 12, 1922, to Noah Dial and Mary Ellen Moore Dial; and

Whereas, Adolph Lorenz Dial graduated from Prospect High School in 1939 and the University of North Carolina at Pembroke in 1943, and received graduate degrees from Boston University in 1953 and 1956; and

Whereas, Adolph Lorenz Dial served as professor and professor emeritus of history at the University of North Carolina at Pembroke, where he was the founder and chair of the American Indian Studies Department; and

Whereas, Adolph Lorenz Dial worked for the betterment of his community through membership on various boards, including the Board of Trustees of the University of North Carolina at Pembroke; as founder, member, and chair of the Board of Directors of the Robeson County Church and Community Center; as charter member and chair of the Board of Directors of the Lumbee Regional Development Association; as a lifetime member of the Board of Directors of the Robeson Historical Drama, "Strike at the Wind"; and as a member of the Board of Directors of the Lumbee Guaranty Bank; and

Whereas, Adolph Lorenz Dial was a member of the Congressional Committee for Indian Policy Review from 1975 through 1977, and served on the Board of Directors of the American Indian Historical Society; and

Whereas, Adolph Lorenz Dial showed outstanding devotion to public service, having served as a member of the House of Representatives during the 1991 Session of the General Assembly and as a member of the Pembroke Town Council during the 1950s; and

Whereas, Adolph Lorenz Dial served his country in the United States Army during World War II in the European Theater of Operations, and was awarded six battle stars; and

Whereas, Adolph Lorenz Dial rendered distinguished service to the religious life of his community as a lifelong member of the Prospect United Methodist Church; and

Whereas, Adolph Lorenz Dial received numerous awards and recognitions, including the Jefferson Award in 1983, and Doctor of Humane Letters from the University of North Carolina at Greensboro in 1984, and from the University of North Carolina at Pembroke in 1988; and

Whereas, Adolph Lorenz Dial died on December 24, 1995, leaving to mourn his wife, Harriet Caligan Dial; his daughter, Mary Doris Dial Caple and her husband Frank; his sisters, Grace D. Locklear and Rosa B. Woods;

Now, therefore, be it resolved by the House of Representatives, the Senate concurring:

Section 1. The General Assembly honors the memory of Adolph Lorenz Dial and extends the gratitude and appreciation of this State and its citizens for his life and devoted service to this State and his community.

Section 2. The General Assembly expresses its deepest sympathy to the family of Adolph Lorenz Dial for the loss of this distinguished citizen.

Section 3. The Secretary of State shall transmit a certified copy of this resolution to the family of Adolph Lorenz Dial.

Section 4. This resolution is effective upon ratification.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House**.

☐ Committee Substitute for
H.J.R. 1234 A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF BRADFORD VERDIZE LIGON, FORMER MEMBER OF THE GENERAL ASSEMBLY.

☒ 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)

4/24/97

fav report

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE JOINT RESOLUTION 1234

Sponsors: Representatives Howard and Gardner.

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

May 20, 1997

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF BRADFORD VERDIZE LIGON, FORMER MEMBER OF THE GENERAL ASSEMBLY.

Whereas, Bradford Verdize Ligon was born in Buffalo, South Carolina, on January 17, 1922, to William H. Ligon and Lola Collins Ligon; and

Whereas, Bradford Verdize Ligon attended Union High School and graduated from the Medical University of South Carolina's College of Pharmacy, Charleston, South Carolina in 1950; and

Whereas, Bradford Verdize Ligon honorably served his country as a member of the United States Marines Corps during World War II; and

Whereas, Bradford Verdize Ligon was a pharmacist and served his profession proudly as a member of the North Carolina Pharmacy Association and the Piedmont Pharmacy Association; and

Whereas, Bradford Verdize Ligon gave freely of his time, energy, and great talents to virtually all aspects of his community, serving on the Rowan County Board of Commissioners from 1979 to 1980, and as a member of the Andrew Jackson Masonic Lodge, the Harold B. Jarrett Post of the American Legion, and the Veterans of Foreign Wars; and

Whereas, Bradford Verdize Ligon was always dedicated in his service to his church, serving as a member, Sunday School Teacher, and Deacon; and

Whereas, Bradford Verdize Ligon was a loyal and distinguished public servant, serving as a member of the North Carolina House of Representatives from 1981 to 1992; and

Whereas, Bradford Verdize Ligon died on January 17, 1997; and

Whereas, Bradford Verdize Ligon is survived by his wife Jemelle Huckabee Ligon; his sons, Bradford Gene Ligon and Michael Dennis Ligon; his

daughter-in-law, Tammy D. Ligon; his grandchildren, Joshua Braden Ligon and Jordan Rae Ligon; a sister, Martha L. Belue; and several other close relatives and friends;

Now, therefore, be it resolved by the House of Representatives, the Senate concurring:

Section 1. The General Assembly honors the memory of Bradford Verdize Ligon and expresses the gratitude and appreciation of this State and its citizens for his life and devoted service to North Carolina.

Section 2. The General Assembly extends its deep sorrow to the family and friends of Bradford Verdize Ligon for the loss of beloved family member and true friend.

Section 3. The Secretary of State shall transmit a certified copy of this resolution to the family of Bradford Verdize Ligon.

Section 4. This resolution is effective upon ratification.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House**.

☐ Committee Substitute for
H.B. 1110 A BILL TO BE ENTITLED AN ACT AMENDING THE STATUTES RELATED TO LANDSCAPE ARCHITECTS.

☐ 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 Finance

☐ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1110
Proposed Committee Substitute H1110-PCS8243

Short Title: Landscape Architects. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT AMENDING THE STATUTES RELATED TO LANDSCAPE ARCHITECTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 89A-1 reads as rewritten:

"**§ 89A-1. Definitions.**

The following definitions apply in this Chapter:

~~(a)~~ (1) ~~'Board' shall mean the~~ Board. -- The North Carolina Board of Landscape ~~Architects, established by G.S. 89A-3.~~ Architects.

~~(b)~~ (2) ~~'Landscape architect' shall mean a~~ Landscape architect. -- A person who, on the basis of demonstrated knowledge acquired by professional education or practical experience, or both, has been granted, and holds a current certificate entitling him or her to practice 'landscape architecture' and to use the title 'landscape architect' in North Carolina under the authority of this Chapter.

~~(c)~~ (3) ~~'Landscape architecture,' or the 'practice of landscape architecture' shall mean the~~ Landscape architecture or the practice of landscape architecture. -- The preparation of plans and specifications and supervising the execution of projects involving the arranging of land and the elements used thereon for public and private use and enjoyment, embracing drainage, soil conservation, grading and planting plans and erosion control, in accordance with

the accepted professional standards of public health, safety and welfare."

Section 2. G.S. 89A-2 reads as rewritten:

"§ 89A-2. ~~Use~~ Practice of landscape architecture or use of title 'landscape architect' without registration prohibited; use of seal.

(a) ~~On and after January 1, 1970, no~~ No person shall use the designation 'landscape architect,' 'landscape architecture,' or 'landscape architectural,' or advertise any title or description tending to convey the impression that he or she is a landscape architect or shall engage in the practice of landscape architecture unless ~~such~~ the person is registered ~~or has obtained a temporary permit~~ as a landscape architect in the manner hereinafter provided and ~~shall thereafter comply~~ thereafter complies with the provisions of this Chapter. Every holder of a certificate shall display it in a conspicuous place in his or her principal office, place of business or employment.

(a1) No firm, partnership, or corporation shall engage in the practice of landscape architecture unless the firm, partnership, or corporation registered with the Board and has paid the fee required by G.S. 89A-6. All landscape architecture performed by a firm, partnership, or corporation shall be under the direct supervision of an individual who is registered under this Chapter.

(b) Nothing in this Chapter shall be construed ~~as authorizing~~ (i) to authorize a landscape architect to engage in the practice of architecture, ~~engineering~~ engineering, or land surveying, ~~nor~~ (ii) to restrict from the practice of landscape architecture or otherwise affect the rights of any person licensed to practice architecture under Chapter 83A, or engineering or land surveying under Chapter 89C of the General ~~Statutes;~~ Statutes if the person does not use the title landscape architect, landscape architecture, or landscape architectural, ~~or~~ (iii) to restrict any person from engaging in the occupation of grading lands whether by hand tools or machinery, or (iv) to restrict the planting, ~~maintaining~~ maintaining, or marketing of plants or plant ~~materials: Provided, however, that no individual shall use the title 'landscape architect' unless he has complied with the provisions of this Chapter.~~ materials.

(c) Each landscape architect shall, upon registration, obtain a seal of the design authorized by the Board, bearing the name of the registrant, number of certificate and the legend 'N.C. Registered Landscape Architect'. Such seal may be used only while the registrant's certificate is in full force and effect.

Nothing in this Chapter shall be construed as authorizing the use or acceptance of the seal of a landscape architect ~~in lieu~~ instead of or as a substitute for the seal of an architect, ~~engineer~~ engineer, or land surveyor."

Section 3. G.S. 89A-3 reads as rewritten:

"§ 89A-3. North Carolina Board of Landscape Architects; ~~appointments; powers.~~ appointments.

(a) There is created the North Carolina Board of Landscape Architects, consisting of seven members appointed by the Governor for four-year staggered terms. Five members of the Board shall have been engaged in the practice of landscape architecture in North Carolina at least five years at the time of their respective

appointments. Two members of the Board shall not be landscape architects and shall represent the interest of the public at large. Each member shall hold office until the appointment and qualification of his or her successor. Vacancies occurring prior to the expiration of the term shall be filled by appointment for the unexpired term. No member shall serve more than two complete consecutive terms.

~~The Governor shall appoint the two public members not later than July 1, 1979, to serve four-year terms.~~

The Board shall be subject to the provisions of Chapter 93B of the General Statutes.

(b) The Board shall elect annually from its members a ~~chairman~~ chair and a ~~vice-chairman~~ vice-chair and shall hold such meetings during the year as it may determine to be necessary, one of which shall consist of the annual meeting. A quorum of the Board shall consist of not less than three members.

(b1) The members of the Board shall not be compensated. However, members shall be entitled to be reimbursed from Board funds for all proper traveling and incidental expenses incurred in carrying out the provisions of this Chapter.

~~(c) The Board shall have power to compel the attendance of witnesses, to administer oaths, and to take testimony and proofs of all matters within its jurisdiction. The Board shall have the power to make such rules not inconsistent with law as may be necessary in the performance of its duties.~~

~~(d) The Board shall elect a secretary, who may or may not be a member of the Board, and who shall hold office at the pleasure of the Board. The members of the Board shall not be compensated except that the secretary shall receive such salary as is fixed by the Board. The members of the Board shall, however, be entitled to be reimbursed from Board funds for all proper traveling and incidental expenses incurred in carrying out the provisions of this Chapter.~~"

Section 4. Chapter 89A of the General Statutes is amended by adding a new section to read:

"**§ 89A-3A. Board's powers and duties.**

The Board shall have the following powers and duties:

(1) Administer and enforce the provisions of this Chapter.

(2) Adopt rules to administer and enforce the provisions of this Chapter.

(3) Examine and determine the qualifications and fitness of applicants for registration and renewal of registration.

(4) Determine the qualifications of firms, partnerships, or corporations applying for a certificate of registration.

(5) Issue, renew, deny, suspend, or revoke certificates of registration and conduct any disciplinary actions authorized by this Chapter.

(6) Establish and approve continuing education requirements for persons registered under this Chapter.

(7) Receive and investigate complaints from members of the public.

(8) Conduct investigations for the purpose of determining whether violations of this Chapter or grounds for disciplining registrants exist.

(9) Conduct administrative hearings in accordance with Article 3 of Chapter 150B of the General Statutes.

(10) Maintain a record of all proceedings conducted by the Board and make available to registrants and other concerned parties an annual report of all Board action.

(11) Employ and fix the compensation of personnel that the Board determines is necessary to carry out the provisions of this Chapter and incur other expenses necessary to perform the duties of the Board.

(12) Adopt and publish a code of professional conduct for all registrants.

(13) Adopt a seal containing the name of the Board for use on all certificates of registration and official reports issued by the Board."

Section 5. G.S. 89A-4 reads as rewritten:

"**§ 89A-4. Application, examination, certificate.**

(a) Any person hereafter desiring to be registered and licensed to use the title 'landscape architect' and to practice landscape architecture in the State, shall make a written application for examination to the Board, on a form prescribed by the Board, together with such evidence of his or her qualifications as may be prescribed by rules ~~and regulations~~ of the Board. Minimum qualifications under such rules shall require that the ~~applicant~~ applicant:

(1) Shall be at least 18 years of ~~age and~~ age.

(2) Shall be of good moral ~~character; and that the applicant shall~~ character.

(3) Shall be a graduate of ~~an~~ a Landscape Architect's Accreditation Board (LAAB) accredited collegiate curriculum in landscape architecture as approved by the ~~Board and~~ Board.

(4) Shall have at least ~~one year's experience;~~ four years' experience in landscape architecture.

(a1) ~~in lieu of such graduation and experience~~ Notwithstanding the requirements of subdivisions (a)(3) and (4) of this section, any person who has had a minimum of ~~seven~~ 20 years of education and experience in landscape architecture, in any combination deemed suitable by the Board, may make application to the Board for examination.

(b) If ~~said~~ the application is satisfactory to the Board, and is accompanied by the fees required by this Chapter, then the applicant shall be entitled to an examination to determine his or her qualifications. If the result of the examination of any applicant shall be satisfactory to the Board, then the Board shall issue to the applicant a certificate to use the title 'landscape architect' and to practice landscape architecture in North Carolina. Examinations shall be held at least once a year at a time and place to be fixed by the Board which shall determine the subjects and scope

of the examination. The Board may adopt rules for administering the examination in one or more parts at the same time or at different times.

(c) The Board, within its discretion, may issue ~~temporary permits pending examinations, or without examination may grant licenses,~~ licenses without examination and licenses by ~~reciprocity,~~ reciprocity or comity to persons holding a license or certificate in landscape architecture from any legally constituted board of examiners in another state or country whose registration requirements are deemed to be equal or equivalent to those of this State.

~~(d) Provided that his application and application fee be received by the Board prior to the first day of July, 1971, any applicant who presents evidence satisfactory to the Board that he was actively engaged in the practice of landscape architecture as herein defined, on or before July 1, 1968, shall be issued a certificate without the requirement for examination.~~

(e) The Board, within its discretion, may grant an honorific title license to persons who have held for a minimum of 20 years a license or certificate in landscape architecture issued by the Board or a legally constituted board of examiners in another state or country whose registration requirements are equal or equivalent to those of this State. The honorific title license shall allow the person to use the title 'landscape architect emeritus', but the person shall not practice landscape architecture or provide expert testimony as a landscape architect in this State unless the person complies with the provisions of this Chapter. There shall be no fee charged for an honorific title license."

Section 6. G.S. 89A-5 reads as rewritten:

"**§ 89A-5. Annual renewal of certificate.**

Every registrant under this Chapter shall, on or before the first day of July in each year, obtain a renewal of a certificate for the ensuing year, by application, accompanied by the required ~~fee; and upon~~ fee. Upon failure to renew, ~~his~~ the certificate shall be automatically ~~revoked; but such~~ revoked. The certificate may be renewed at any time within one year ~~upon payment of the prescribed renewal fee and penalty for late renewal, as provided by this Chapter, upon evidence satisfactory to the Board~~ after its expiration if the applicant pays the required renewal fee and late renewal penalty, and the Board finds that the applicant has not used his or her certificate or title or engaged in the practice of landscape architecture after notice of revocation and is otherwise eligible for registration under the provisions of this Chapter. When necessary to protect the public health, safety, or welfare, the Board shall require such evidence as it deems necessary to establish the continuing competency of licensees as a condition of license renewal."

Section 7. G.S. 89A-7 reads as rewritten:

"**§ 89A-7. ~~Refusal, revocation or suspension of certificate.~~ Disciplinary actions.**

~~The Board may, in accordance with the provisions of Chapter 150B of the General Statutes: (i) deny permission to take an examination duly applied for; (ii) deny license after examination for any cause other than failure to pass; (iii) withhold renewal of a license for cause; and (iv) suspend or revoke a license. Grounds for such action or actions shall be dishonest practice, unprofessional conduct, incompetence,~~

~~conviction of a felony or addiction to habits of such character as to render him unfit to continue professional practice. The procedure for all such actions shall be in accordance with the provisions of Chapter 150B of the General Statutes.~~

(a) The Board may deny or refuse to renew a certificate of registration, suspend, or revoke a certificate of registration if the registrant or applicant:

(1) Obtains a certificate of registration by fraudulent misrepresentation.

(2) Uses or attempts to use another's certificate of registration to practice landscape architecture.

(3) Uses or attempts to use another's name for purposes of obtaining a certificate of registration or practicing landscape architecture.

(4) Has demonstrated gross malpractice or gross incompetency as determined by the Board.

(5) Has been convicted of or pled guilty or no contest to a crime that indicates that the person is unfit or incompetent to practice landscape architecture or that indicates the person has deceived or defrauded the public.

(6) Has been declared mentally incompetent by a court of competent jurisdiction.

(7) Has willfully violated any of the provisions of this Chapter or the Board's rules.

(b) The Board may require a registrant to take a written or oral examination if the Board finds evidence that the person is not competent to practice landscape architecture as defined in this Chapter.

(c) The Board may take any of the actions authorized in subsection (a) of this section against any firm, partnership, or corporation registered with the Board.

(d) In addition to taking any of the actions authorized in subsection (a) of this section, the Board may assess a civil penalty not in excess of two thousand dollars ($2,000) for the violation of any section of this Chapter or the violation of any rules adopted by the Board. All civil penalties collected by the Board shall be remitted to the school fund of the county in which the violation occurred. Before imposing and assessing a civil penalty and fixing the amount thereof, the Board shall, as a part of its deliberations, take into consideration the following factors:

(1) The nature, gravity, and persistence of the particular violation.

(2) The appropriateness of the imposition of a civil penalty when considered alone or in combination with other punishment.

(3) Whether the violation was willful.

(4) Any other factors that would tend to mitigate or aggravate the violations found to exist."

Section 8. G.S. 89A-8 reads as rewritten:

"**§ 89A-8. Violation a misdemeanor; injunction to prevent violation.**

(a) It shall be a ~~Class 1~~ Class 2 misdemeanor for any person to use, or to hold himself or herself out as entitled to practice ~~under,~~ under the title of landscape

architect or landscape architecture or to practice landscape architecture unless he or she is duly registered under the provisions of this Chapter.

(b) The Board may appear in its own name in the courts of the State and apply for injunctions to prevent violations of this Chapter."

Section 9. Article 1 of Chapter 114 of the General Statutes is amended by adding a new section to read:

"**§ 114-4.2G. Employment of attorney for the North Carolina Board of Landscape Architects.**

The Attorney General shall assign an attorney on the Attorney General's staff to serve as advisor to the North Carolina Board of Landscape Architects. The attorney shall be subject to all provisions of Chapter 126 of the General Statutes relating to the State Personnel System. The attorney shall also perform additional duties that may be assigned by the Attorney General."

Section 10. This act is effective when it becomes law.

com ref
Jud-re-refer
to Finance

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1110
Proposed Committee Substitute H1110-CSLM-1
WARNING: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Landscape Architects. (Public)

Sponsors:

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

April 21, 1997

A BILL TO BE ENTITLED

AN ACT AMENDING THE STATUTES RELATED TO LANDSCAPE ARCHITECTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 89A-1 reads as rewritten:

"**§ 89A-1. Definitions.**

The following definitions apply in this Chapter:

~~(a)~~ (1) ~~'Board' shall mean the~~ Board. -- The North Carolina Board of Landscape ~~Architects, established by G.S. 89A-3.~~ Architects.

~~(b)~~ (2) ~~'Landscape architect' shall mean a~~ Landscape architect. -- A person who, on the basis of demonstrated knowledge acquired by professional education or practical experience, or both, has been granted, and holds a current certificate entitling him or her to practice 'landscape architecture' and to use the title 'landscape architect' in North Carolina under the authority of this Chapter.

~~(c)~~ (3) ~~'Landscape architecture,' or the 'practice of landscape architecture' shall mean the~~ Landscape architecture or the practice of landscape architecture. -- The preparation of plans and

specifications and supervising the execution of projects involving the arranging of land and the elements used thereon for public and private use and enjoyment, embracing drainage, soil conservation, grading and planting plans and erosion control, in accordance with the accepted professional standards of public health, safety and welfare."

Section 2. G.S. 89A-2 reads as rewritten:

"§ 89A-2. ~~Use~~ Practice of landscape architecture or use of title 'landscape architect' without registration prohibited; use of seal.

(a) ~~On and after January 1, 1970, no~~ No person shall use the designation 'landscape architect,' 'landscape architecture,' or 'landscape architectural,' or advertise any title or description tending to convey the impression that he or she is a landscape architect or shall engage in the practice of landscape architecture unless ~~such~~ the person is registered ~~or has obtained a temporary permit~~ as a landscape architect in the manner hereinafter provided and ~~shall thereafter comply~~ thereafter complies with the provisions of this Chapter. Every holder of a certificate shall display it in a conspicuous place in his or her principal office, place of business or employment.

(a1) No firm, partnership, or corporation shall engage in the practice of landscape architecture unless the firm, partnership, or corporation registered with the Board and has paid the fee required by G.S. 89A-6. All landscape architecture performed by a firm, partnership, or corporation shall be under the direct supervision of an individual who is registered under this Chapter.

(b) Nothing in this Chapter shall be construed ~~as authorizing~~ (i) to authorize a landscape architect to engage in the practice of architecture, ~~engineering~~ engineering, or land surveying, ~~nor~~ (ii) to restrict from the practice of landscape architecture or otherwise affect the rights of any person licensed to practice architecture under Chapter 83A, or engineering or land surveying under Chapter 89C of the General ~~Statutes;~~ Statutes if the person does not use the title landscape architect, landscape architecture, or landscape architectural, ~~or~~ (iii) to restrict any person from engaging in the occupation of grading lands whether by hand tools or machinery, or (iv) to restrict the planting, ~~maintaining~~ maintaining, or marketing of plants or plant ~~materials: Provided, however, that no individual shall use~~

~~the title 'landscape architect' unless he has complied with the provisions of this Chapter.~~ materials.

(c) Each landscape architect shall, upon registration, obtain a seal of the design authorized by the Board, bearing the name of the registrant, number of certificate and the legend 'N.C. Registered Landscape Architect'. Such seal may be used only while the registrant's certificate is in full force and effect.

Nothing in this Chapter shall be construed as authorizing the use or acceptance of the seal of a landscape architect ~~in lieu~~ instead of or as a substitute for the seal of an architect, ~~engineer~~ engineer, or land surveyor."

Section 3. G.S. 89A-3 reads as rewritten:

"**§ 89A-3. North Carolina Board of Landscape Architects; ~~appointments; powers.~~ appointments.**

(a) There is created the North Carolina Board of Landscape Architects, consisting of seven members appointed by the Governor for four-year staggered terms. Five members of the Board shall have been engaged in the practice of landscape architecture in North Carolina at least five years at the time of their respective appointments. Two members of the Board shall not be landscape architects and shall represent the interest of the public at large. Each member shall hold office until the appointment and qualification of his or her successor. Vacancies occurring prior to the expiration of the term shall be filled by appointment for the unexpired term. No member shall serve more than two complete consecutive terms.

~~The Governor shall appoint the two public members not later than July 1, 1979, to serve four-year terms.~~

The Board shall be subject to the provisions of Chapter 93B of the General Statutes.

(b) The Board shall elect annually from its members a ~~chairman~~ chair and a ~~vice-chairman~~ vice-chair and shall hold such meetings during the year as it may determine to be necessary, one of which shall consist of the annual meeting. A quorum of the Board shall consist of not less than three members.

(b1) The members of the Board shall not be compensated. However, members shall be entitled to be reimbursed from Board funds for all proper traveling and incidental expenses incurred in carrying out the provisions of this Chapter.

~~(c) The Board shall have power to compel the attendance of witnesses, to administer oaths, and to take testimony and proofs of all matters within its jurisdiction. The Board shall have the power to make such rules not inconsistent with law as may be necessary in the performance of its duties.~~

~~(d) The Board shall elect a secretary, who may or may not be a member of the Board, and who shall hold office at the pleasure of the Board. The members of the Board shall not be compensated except that the secretary shall receive such salary as is fixed by the Board. The members of the Board shall, however, be entitled to be reimbursed from Board funds for all proper traveling and incidental expenses incurred in carrying out the provisions of this Chapter.~~"

Section 4. Chapter 89A of the General Statutes is amended by adding a new section to read:

"§ 89A-3A. Board's powers and duties.

The Board shall have the following powers and duties:

(1) Administer and enforce the provisions of this Chapter.

(2) Adopt rules to administer and enforce the provisions of this Chapter.

(3) Examine and determine the qualifications and fitness of applicants for registration and renewal of registration.

(4) Determine the qualifications of firms, partnerships, or corporations applying for a certificate of registration.

(5) Issue, renew, deny, suspend, or revoke certificates of registration and conduct any disciplinary actions authorized by this Chapter.

(6) Establish and approve continuing education requirements for persons registered under this Chapter.

(7) Receive and investigate complaints from members of the public.

(8) Conduct investigations for the purpose of determining whether violations of this Chapter or grounds for disciplining registrants exist.

(9) Conduct administrative hearings in accordance with Article 3 of Chapter 150B of the General Statutes.

(10) Maintain a record of all proceedings conducted by the Board and make available to registrants and other concerned parties an annual report of all Board action.

(11) Employ and fix the compensation of personnel that the Board determines is necessary to carry out the provisions of this Chapter and incur other expenses necessary to perform the duties of the Board.

(12) Adopt and publish a code of professional conduct for all registrants.

(13) Adopt a seal containing the name of the Board for use on all certificates of registration and official reports issued by the Board."

Section 5. G.S. 89A-4 reads as rewritten:

"§ 89A-4. Application, examination, certificate.

(a) Any person hereafter desiring to be registered and licensed to use the title 'landscape architect' and to practice landscape architecture in the State, shall make a written application for examination to the Board, on a form prescribed by the Board, together with such evidence of his or her qualifications as may be prescribed by rules ~~and regulations~~ of the Board. Minimum qualifications under such rules shall require that the ~~applicant~~ applicant:

(1) Shall be at least 18 years of ~~age and~~ age.

(2) Shall be of good moral ~~character; and that the applicant shall~~ character.

(3) Shall be a graduate of ~~an~~ a Landscape Architect's Accreditation Board (LAAB) accredited collegiate curriculum in landscape architecture as approved by the ~~Board and~~ Board.

(4) Shall have at least ~~one year's experience;~~ four years' experience in landscape architecture.

(a1) ~~in lieu of such graduation and experience~~ Notwithstanding the requirements of subdivisions (a)(3) and (4) of this section, any person who has had a minimum of ~~seven~~ 20 years of education and experience in landscape architecture, in any combination deemed suitable by the Board, may make application to the Board for examination.

(b) If ~~said~~ the application is satisfactory to the Board, and is accompanied by the fees required by this Chapter, then the applicant shall be entitled to an examination to determine his or her qualifications. If the result of the examination of any applicant shall be satisfactory to the Board, then the Board shall issue to the applicant a certificate to use the title 'landscape architect' and to practice landscape architecture in North Carolina. Examinations shall be held at least once a year at a time and place to be fixed by the Board which shall determine the subjects and scope of the examination. The Board may adopt rules for administering the examination in one or more parts at the same time or at different times.

(c) The Board, within its discretion, may issue ~~temporary permits pending examinations, or without examination may grant~~

~~licenses,~~ licenses without examination and licenses by ~~reciprocity,~~ reciprocity or comity to persons holding a license or certificate in landscape architecture from any legally constituted board of examiners in another state or country whose registration requirements are deemed to be equal or equivalent to those of this State.

~~(d) Provided that his application and application fee be received by the Board prior to the first day of July, 1971, any applicant who presents evidence satisfactory to the Board that he was actively engaged in the practice of landscape architecture as herein defined, on or before July 1, 1968, shall be issued a certificate without the requirement for examination.~~

(e) The Board, within its discretion, may grant an honorific title license to persons who have held for a minimum of 20 years a license or certificate in landscape architecture issued by the Board or a legally constituted board of examiners in another state or country whose registration requirements are equal or equivalent to those of this State. The honorific title license shall allow the person to use the title 'landscape architect emeritus', but the person shall not practice landscape architecture or provide expert testimony as a landscape architect in this State unless the person complies with the provisions of this Chapter. There shall be no fee charged for an honorific title license."

Section 6. G.S. 89A-5 reads as rewritten:

"**§ 89A-5. Annual renewal of certificate.**

Every registrant under this Chapter shall, on or before the first day of July in each year, obtain a renewal of a certificate for the ensuing year, by application, accompanied by the required ~~fee; and upon~~ fee. Upon failure to renew, ~~his~~ the certificate shall be automatically ~~revoked; but such~~ revoked. The certificate may be renewed at any time within one year ~~upon payment of the prescribed renewal fee and penalty for late renewal, as provided by this Chapter, upon evidence satisfactory to the Board~~ after its expiration if the applicant pays the required renewal fee and late renewal penalty, and the Board finds that the applicant has not used his or her certificate or title or engaged in the practice of landscape architecture after notice of revocation and is otherwise eligible for registration under the provisions of this Chapter. When necessary to protect the public health, safety, or welfare, the Board shall require such evidence as it deems necessary to establish the continuing competency of licensees as a condition of license renewal."

Section 7. G.S. 89A-7 reads as rewritten:

"§ 89A-7. ~~Refusal, revocation or suspension of certificate.~~ Disciplinary actions.

~~The Board may, in accordance with the provisions of Chapter 150B of the General Statutes: (i) deny permission to take an examination duly applied for; (ii) deny license after examination for any cause other than failure to pass; (iii) withhold renewal of a license for cause; and (iv) suspend or revoke a license. Grounds for such action or actions shall be dishonest practice, unprofessional conduct, incompetence, conviction of a felony or addiction to habits of such character as to render him unfit to continue professional practice. The procedure for all such actions shall be in accordance with the provisions of Chapter 150B of the General Statutes.~~

(a) The Board may deny or refuse to renew a certificate of registration, suspend, or revoke a certificate of registration if the registrant or applicant:

(1) Obtains a certificate of registration by fraudulent misrepresentation.

(2) Uses or attempts to use another's certificate of registration to practice landscape architecture.

(3) Uses or attempts to use another's name for purposes of obtaining a certificate of registration or practicing landscape architecture.

(4) Has demonstrated gross malpractice or gross incompetency as determined by the Board.

(5) Has been convicted of or pled guilty or no contest to a crime that indicates that the person is unfit or incompetent to practice landscape architecture or that indicates the person has deceived or defrauded the public.

(6) Has been declared mentally incompetent by a court of competent jurisdiction.

(7) Has willfully violated any of the provisions of this Chapter or the Board's rules.

(b) The Board may require a registrant to take a written or oral examination if the Board finds evidence that the person is not competent to practice landscape architecture as defined in this Chapter.

(c) The Board may take any of the actions authorized in subsection (a) of this section against any firm, partnership, or corporation registered with the Board.

(d) In addition to taking any of the actions authorized in subsection (a) of this section, the Board may assess a civil penalty not in excess of two thousand dollars ($2,000) for the

violation of any section of this Chapter or the violation of any rules adopted by the Board. All civil penalties collected by the Board shall be remitted to the school fund of the county in which the violation occurred. Before imposing and assessing a civil penalty and fixing the amount thereof, the Board shall, as a part of its deliberations, take into consideration the following factors:

(1) The nature, gravity, and persistence of the particular violation.

(2) The appropriateness of the imposition of a civil penalty when considered alone or in combination with other punishment.

(3) Whether the violation was wilful.

(4) Any other factors that would tend to mitigate or aggravate the violations found to exist."

Section 8. G.S. 89A-8 reads as rewritten:

"**§ 89A-8. Violation a misdemeanor; injunction to prevent violation.**

(a) It shall be a ~~Class 1~~ Class 2 misdemeanor for any person to use, or to hold himself or herself out as entitled to practice ~~under,~~ under the title of landscape architect or landscape architecture or to practice landscape architecture unless he or she is duly registered under the provisions of this Chapter.

(b) The Board may appear in its own name in the courts of the State and apply for injunctions to prevent violations of this Chapter."

Section 9. Article 1 of Chapter 114 of the General Statutes is amended by adding a new section to read:

"**§ 114-4.2G. Employment of attorney for the North Carolina Board of Landscape Architects.**

The Attorney General shall assign an attorney on the Attorney General's staff to serve as advisor to the North Carolina Board of Landscape Architects. The attorney shall be subject to all provisions of Chapter 126 of the General Statutes relating to the State Personnel System. The attorney shall also perform additional duties that may be assigned by the Attorney General."

Section 10. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

HOUSE BILL 1110

Short Title: Landscape Architects. (Public)

Sponsors: Representatives McMahan; Berry, Buchanan, Culp, Dockham, Gulley, Starnes, Tallent, and Weatherly.

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

April 21, 1997

A BILL TO BE ENTITLED

AN ACT AMENDING THE STATUTES RELATED TO LANDSCAPE ARCHITECTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 89A-1 reads as rewritten:

"**§ 89A-1. Definitions.**

The following definitions apply in this Chapter:

~~(a)~~ (1) ~~'Board' shall mean the~~ Board. -- The North Carolina Board of Landscape ~~Architects, established by G.S. 89A-3.~~ Architects.

~~(b)~~ (2) ~~'Landscape architect' shall mean a~~ Landscape architect. -- A person who, on the basis of demonstrated knowledge acquired by professional education or practical experience, or both, has been granted, and holds a current certificate entitling him or her to practice 'landscape architecture' and to use the title 'landscape architect' in North Carolina under the authority of this Chapter.

~~(c)~~ (3) ~~'Landscape architecture,' or the 'practice of landscape architecture' shall mean the preparation of plans and specifications and supervising the execution of projects involving the arranging of land and the elements used thereon for public and private use and enjoyment, embracing drainage, soil conservation, grading and planting plans and erosion control, in accordance with the accepted professional standards of public health, safety and welfare.~~ Landscape architecture or the practice of landscape

architecture. -- Planning and designing the use, allocation, and arrangement of land and water resources, through the creative application of biological, physical, mathematical, and social processes. To the extent that these services involve safeguarding life, health, and property, and include other professional services that may be necessary to the planning, progress, and completion of any landscape architectural services, such services may include:

a. Consultation, research, analysis and assessment, selection, and allocation of land and water resources.

b. Formulation of graphic and written criteria to govern the planning and design of land construction development programs including:

1. The preparation, review, and analysis of master and site plans.

2. Reconnaissance, planning, design, preparation of drawings, construction documents and specifications, and responsible construction observation.

c. Design coordination and review of technical submissions plans and construction documents prepared by other professionals working under the direction of the landscape architect.

d. Land preservation, restoration, conservation, reclamation, rehabilitation, management and development.

e. Feasibility studies and site selection for developments.

f. Integration, site analysis and determination of settings, grounds and location of buildings, structures, transportation systems, and environmental systems.

g. Analysis and design of any of the following: grading and drainage, stormwater management, irrigation, systems for erosion and sediment controls, planting plans, lighting, and ground cover.

h. Wetland construction and management.

i. Feasibility studies, cost approximations, and reports for development."

Section 2. G.S. 89A-2 reads as rewritten:

"§ 89A-2. ~~Use~~ Practice of landscape architecture or use of title 'landscape architect' without registration prohibited; use of seal.

(a) ~~On and after January 1, 1970, no~~ No person shall use the designation 'landscape architect,' 'landscape architecture,' or 'landscape architectural,' or advertise any title or description tending to convey the impression that he or she is a landscape architect or shall engage in the practice of landscape architecture unless ~~such~~ the person is registered ~~or has obtained a temporary permit~~ as a landscape architect in the manner hereinafter provided and ~~shall thereafter comply~~ thereafter complies with the provisions of this Chapter. Every holder of a certificate shall

display it in a conspicuous place in his or her principal office, place of business or employment.

(b) Nothing in this Chapter shall be construed ~~as authorizing~~ (i) to authorize a landscape architect to engage in the practice of architecture, ~~engineering~~ engineering, or land surveying, ~~nor~~ (ii) to restrict or otherwise affect the rights of any person licensed to practice architecture under Chapter 83A, or engineering or land surveying under Chapter 89C of the General ~~Statutes;~~ Statutes, ~~or~~ (iii) to restrict any person from engaging in the occupation of grading lands whether by hand tools or machinery, or (iv) to restrict the planting, ~~maintaining~~ maintaining, or marketing of plants or plant ~~materials. Provided, however, that no individual shall use the title 'landscape architect' unless he has complied with the provisions of this Chapter.~~ materials.

(c) Each landscape architect shall, upon registration, obtain a seal of the design authorized by the Board, bearing the name of the registrant, number of certificate and the legend 'N.C. Registered Landscape Architect'. Such seal may be used only while the registrant's certificate is in full force and effect.

Nothing in this Chapter shall be construed as authorizing the use or acceptance of the seal of a landscape architect ~~in lieu~~ instead of or as a substitute for the seal of an architect, ~~engineer~~ engineer, or land surveyor."

Section 3. G.S. 89A-3 reads as rewritten:

"**§ 89A-3. North Carolina Board of Landscape Architects; appointments; powers.**

(a) There is created the North Carolina Board of Landscape Architects, consisting of seven members appointed by the Governor for four-year staggered terms. Five members of the Board shall have been engaged in the practice of landscape architecture in North Carolina at least five years at the time of their respective appointments. Two members of the Board shall not be landscape architects and shall represent the interest of the public at large. Each member shall hold office until the appointment and qualification of his or her successor. Vacancies occurring prior to the expiration of the term shall be filled by appointment for the unexpired term. No member shall serve more than two complete consecutive terms.

~~The Governor shall appoint the two public members not later than July 1, 1979, to serve four-year terms.~~

The Board shall be subject to the provisions of Chapter 93B of the General Statutes.

(b) The Board shall elect annually from its members a ~~chairman~~ chair and a ~~vice-chairman~~ vice-chair and shall hold such meetings during the year as it may determine to be necessary, one of which shall consist of the annual meeting. A quorum of the Board shall consist of not less than three members.

(c) The Board shall have power to compel the attendance of witnesses, to administer oaths, and to take testimony and proofs of all matters within its jurisdiction. The Board shall have the power to make such rules not inconsistent with law as may be necessary in the performance of its duties.

(d) The Board shall elect a secretary, who may or may not be a member of the Board, and who shall hold office at the pleasure of the Board. The members of the

Board shall not be compensated except that the secretary shall receive such salary as is fixed by the Board. The members of the Board shall, however, be entitled to be reimbursed from Board funds for all proper traveling and incidental expenses incurred in carrying out the provisions of this Chapter."

Section 4. G.S. 89A-4 reads as rewritten:

"**§ 89A-4. Application, examination, certificate.**

(a) Any person hereafter desiring to be registered and licensed to use the title 'landscape architect' and to practice landscape architecture in the State, shall make a written application for examination to the Board, on a form prescribed by the Board, together with such evidence of his or her qualifications as may be prescribed by rules ~~and regulations~~ of the Board. Minimum qualifications under such rules shall require that the ~~applicant~~ applicant:

(1) Shall be at least 18 years of ~~age and~~ age.

(2) Shall be of good moral ~~character; and that the applicant shall~~ character.

(3) Shall be a graduate of an accredited collegiate curriculum in landscape architecture as approved by the ~~Board and~~ Board.

(4) Shall have at least ~~one year's experience;~~ three years' experience in landscape architecture.

(a1) ~~in lieu of such graduation and experience~~ Notwithstanding the requirements of subdivisions (a)(3) and (4) of this section, any person who has had a minimum of seven years of education and experience in landscape architecture, in any combination deemed suitable by the Board, may make application to the Board for examination.

(b) If ~~said~~ the application is satisfactory to the Board, and is accompanied by the fees required by this Chapter, then the applicant shall be entitled to an examination to determine his or her qualifications. If the result of the examination of any applicant shall be satisfactory to the Board, then the Board shall issue to the applicant a certificate to use the title 'landscape architect' and to practice landscape architecture in North Carolina. Examinations shall be held at least once a year at a time and place to be fixed by the Board which shall determine the subjects and scope of the examination. The Board may adopt rules for administering the examination in one or more parts at the same time or at different times.

(c) The Board, within its discretion, may issue ~~temporary permits pending examinations, or without examination may grant licenses,~~ licenses without examination and licenses by ~~reciprocity,~~ reciprocity or comity to persons holding a license or certificate in landscape architecture from any legally constituted board of examiners in another state or country whose registration requirements are deemed to be equal or equivalent to those of this State.

~~(d) Provided that his application and application fee be received by the Board prior to the first day of July, 1971, any applicant who presents evidence satisfactory to the Board that he was actively engaged in the practice of landscape architecture as herein defined, on or before July 1, 1968, shall be issued a certificate without the requirement for examination.~~

(e) The Board, within its discretion, may grant a title only license to persons who have held for a minimum of 20 years a license or certificate in landscape architecture issued by the Board or a legally constituted board of examiners in another state or country whose registration requirements are equal or equivalent to those of this State. The title only license shall allow the person to use the title 'landscape architect emeritus', but the person shall not practice landscape architecture in this State unless the person complies with the provisions of this Chapter. There shall be no fee charged for a title only license."

Section 5. G.S. 89A-5 reads as rewritten:

"**§ 89A-5. Annual renewal of certificate.**

Every registrant under this Chapter shall, on or before the first day of July in each year, obtain a renewal of a certificate for the ensuing year, by application, accompanied by the required ~~fee; and upon~~ fee. Upon failure to renew, ~~his~~ the certificate shall be automatically ~~revoked; but such~~ revoked. The certificate may be renewed at any time within one year ~~upon payment of the prescribed renewal fee and penalty for late renewal, as provided by this Chapter, upon evidence satisfactory to the Board~~ after its expiration if the applicant pays the required renewal fee and late renewal penalty, and the Board finds that the applicant has not used his or her certificate or title or engaged in the practice of landscape architecture after notice of revocation and is otherwise eligible for registration under the provisions of this Chapter. When necessary to protect the public health, safety, or welfare, the Board shall require such evidence as it deems necessary to establish the continuing competency of licensees as a condition of license renewal."

Section 6. G.S. 89A-8 reads as rewritten:

"**§ 89A-8. Violation a misdemeanor; injunction to prevent violation.**

(a) It shall be a ~~Class 1~~ Class 2 misdemeanor for any person to use, or to hold himself or herself out as entitled to practice ~~under,~~ under the title of landscape architect or landscape architecture or to practice landscape architecture unless he or she is duly registered under the provisions of this Chapter.

(b) The Board may appear in its own name in the courts of the State and apply for injunctions to prevent violations of this Chapter."

Section 7. This act is effective when it becomes law.

LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

Assessment Report
for

Landscape Architects

House Bill 1110

LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

May 27, 1997

The Legislative Committee on New Licensing Boards is pleased to release this assessment report on the licensing of landscape architects. This report constitutes both the preliminary and final assessment reports.

W. Frank Mitchell

Representative Frank Mitchell

Linwood Jones

Prepared by:

Linwood Jones, Counsel

LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

Rep. Frank Mitchell, Chairman

Senator Fletcher Hartsell	Representative Eugene McCombs
Senator Brad Miller	Representative Wilma Sherrill
Senator R.C. Soles, Jr.	Representative Gene Wilson
Senator Allen Wellons	Representative Douglas Yongue

Counsel: Mr. Linwood Jones
Mrs. Linda Attarian

90LLJ-0265J

PREFACE

The Legislative Committee on New Licensing Boards is a 9-member joint committee of the House and Senate created and governed by statute (Article 18A of Chapter 120 of the General Statutes). The primary purpose of the Committee is to evaluate the need for a new licensing board or the proposed licensing of previously unregulated practitioners by an existing board. The Committee has been in existence since 1985.

The Committee solicits written and oral testimony on each licensing proposal in carrying out its duty to determine whether the proposal meets the following criteria:

(1) Whether the unregulated practice of the profession can substantially endanger the public health, safety, or welfare, and whether the potential for such harm is recognizable and not remote or dependent upon tenuous argument.

(2) Whether the profession possesses qualities that distinguish it from ordinary labor.

(3) Whether practice of the profession requires specialized skill or training.

(4) Whether a substantial majority of the public has the knowledge or experience to evaluate the practitioner's competence.

(5) Whether the public can effectively be protected by other means.

(6) Whether licensure would have a substantial adverse economic impact upon consumers of the practitioner's good or services.

The Committee issues an assessment report on its findings and recommendations. The recommendation in the report is not binding on other committees considering the proposal.

Landscape Architects

Landscape architects are involved in the planning and design of and supervision of projects involving the arranging of land and the elements used thereon. Since 1969, the State has had a landscape architecture "title" act – i.e., a law reserving to qualified individuals the right to use the title "landscape architect." However, the existing law does not regulate the practice of landscape architecture. A person without any qualifications can currently engage in the practice of landscape architecture as long as he or she does not call himself or herself a landscape architect.

The sponsor notes in its submission that decisions made by and work performed by landscape architecture affect not only the clients for whom the work is done but the public as well. The potential for permanent damage to the land and other natural resources is significant. For example, decisions to remove trees in an area or to excavate in certain areas are often irreversible decisions that can lead to environmental problems and the destruction of natural resources.

Nearly one-half of the states require landscape architects to be licensed. The proposed requirements for licensure under House Bill 1110 would be similar to the certification requirements currently in existence for those who voluntarily become certified under the landscape architecture title act – graduation from a collegiate curriculum in landscape architecture and three years experience (now one year) or a combined seven years of education and experience found acceptable to the Board that regulates the industry. The bill also provides for an

"emeritus" title for long-standing practitioners, but those practitioners must be licensed to actually practice in this State.

There are currently 356 licensed landscape architects who are North Carolina residents and nearly 150 nonresident landscape architects who work in North Carolina.

The Legislative Committee on New Licensing Boards finds that the sponsor has met the six statutory criteria by which the Committee judges licensure proposals, as follows:

(1) The unregulated practice of the profession can substantially harm or endanger the public health, safety, or welfare, and the potential for such harm is recognizable and not remote nor dependent upon tenuous argument.

(2) The practice of the profession possesses qualities that distinguish it from ordinary labor.

(3) The practice of the profession requires specialized skill and training.

(4) A substantial majority of the public does not have the knowledge or experience to evaluate the practitioner's competence.

(5) The public cannot be effectively protected by other means.

(6) Licensure would not have a substantial adverse economic impact upon consumers.

The Legislative Committee on New Licensing Boards recommends the licensing of landscape architects. This assessment report constitutes both the

preliminary and the final assessment report for the licensing of landscape architects. The report is based on the proposed licensing of landscape architects as set out in House Bill 1110, the response to the Committee's questionnaire (attached), and testimony before the Committee on May 19, 1997.

1997 Session: HB 1110 - Landscape Architects

Answers to questions from Committee on New Licensing Boards

(1) In what ways has the marketplace failed to regulate adequately the profession or occupation?

Landscape Architecture has been regulated in North Carolina since 1969 under a Title Act (NCGS 89A). The market place has not been a regulating factor in protecting the public during this time because Landscape Architecture was regulated under a title act and not a practice act. Those who elect not to use the title Landscape architect do not have to meet any minimal competence requirements to practice many aspects of landscape architecture. This legislation is simply to convert from an existing title statute to a title and practice statute to prevent the public from being subjected to incompetent landscape architectural services being offered under other names.

(2) Have there been any complaints about the unregulated profession or occupation? Please give specific examples including (unless confidentiality must be maintained) complainant's names and addresses.

No. All complaints concerning Landscape Architects have been handled in the regulated environment, with the North Carolina Board of Landscape Architects immediately responding to any allegations of dishonest practice, incompetence, or unprofessional conduct. Complaints about incompetence of non Landscape Architect practitioners would not be directed to the Landscape Architect's Board. Evidence of incompetent practice by non licensed individuals does exist in the completed works around us, such as "Sugar Top" in the Appalachian mountains and destroyed wetlands along our coast. This is a striking contrast to the completed works by Landscape Architects, such as the Blue Ridge Parkway and the Biltmore Estate.

(3) In what ways has the public health, safety, or welfare sustained harm or is in imminent danger of harm because of the lack of state regulation? Please give specific examples.

The land and other natural resources of North Carolina must be handled by qualified professionals whose education and experience allow them to apply user needs for these resources in a manner that respects our stewardship of these resources. Errors made by the unqualified would have consequences that may last for generations. The Landscape Architect is uniquely trained and educated to mediate our desired use of the land with the natural systems so vital to our good health. Decisions to remove certain trees, excavate in certain areas, or drain storm water in a specific way are all decisions that cannot be undone or corrected later.

Landscape Architects have done much in the past 28 years to protect North Carolina's resources. Without a mandatory practice act, Landscape Architects cannot prevent much of the abuse of our natural resources that occurs today with poor land planning.

(4) Is there potential for substantial harm or danger by the profession or occupation to the public health, safety, or welfare? How can this potential for substantial harm or danger be recognized?

Yes. The potential for permanent damage to our land and other natural resources by an incompetent or unprofessional individual is great. To see one of North Carolina's majestic mountain tops graded flat, or to see a delicate coastal ecosystem destroyed by crude and insensitive design are examples enough to recognize the harm caused by unqualified land planning and design services.

(5) Has this potential harm or danger to the public been recognized by other states or the federal government through the licensing or certification process? Please list the other states and any applicable federal law (including citations).

Yes. At this time, 45 states have licensure for landscape architects. Of the 45, 25 have practice statutes and 20 have title only statutes. The states which license landscape architects are: Alabama, Arizona, Arkansas, California, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. The Federal government includes landscape architecture in the new North American Industrial Classification System Codes (formally S.I.C.) used for procuring consulting services by the government. In addition, several provinces of Canada now subscribe to the same national Landscape Architect's Registration Exam as is used by North Carolina and the other states with licensure. China and Australia are currently seeking assistance on establishing a landscape architect licensure system in their jurisdictions.

(6) What will be the economic advantage of licensing to the public?

The preservation of limited natural resources has economic benefit to all land owners and the general public. Most often, proper landscape architectural design services save direct costs of construction because of

the manner in which landscape architects design to "fit the land". There are direct economic benefits from any competent advice and good design that leads to increases in the value of your real estate.

(7) What will be the economic disadvantage of licensing to the public?

Highly competent and experienced individuals who have pursued the necessary education and training to become a qualified professional most often increase their market value. Landscape architects are currently valued by the development community at a rate comparable to Architects and Engineers. This cost for quality professional services is passed on to the end user and consumer.

(8) What will be the economic advantages of licensing to the practitioners?

Licensure qualifies the practitioner for state and federal contracts in the design services arena. Without licensure, Federal projects in North Carolina may have to be done by out of state Landscape Architects who have licensure. Those who pursue the education and experience requirements will also see their personal market value increase.

(9) What will be the economic disadvantages of licensing to the practitioners?

The necessary education and subsequent examination costs are direct expenses to any candidate for licensure. Continuing education requirements for continued competence in the profession have direct costs to the practitioner.

(10) Please give other potential benefits to the public of licensing that outweigh the potential harmful effects of licensure such as a decrease in the availability of practitioners and higher cost to the public.

The practice of landscape architecture affects not only the specific client who interacts with the landscape architect but also the public who uses the facility and the environment in and around the facility. Licensure not only protects the client, the end users, and the environment by ensuring the competency of practitioners, but it also creates legal professional liability and responsibility. This liability and responsibility is personal to the professional and cannot be transferred to a corporation or other entity. It also extends beyond contractual responsibilities. This means that a licensed professional must always act in a manner which protects the health and welfare of the public. Such legal professional liability

does not occur outside of licensure.

In addition, in the case of landscape architecture, licensure actually increases the number of professionals available to provide services to the public. Licensed landscape architectural services primarily involve the preparation of documents for the development of land and/or the construction of facilities. Prior to issuing a development or building permit, virtually all jurisdictions require submission of technical documents containing the seal of the responsible licensed professional. Through licensure, landscape architects are able to produce or seal such construction documents which thereby allows the public to employ landscape architects to provide these services. Without licensure, the public would have no choice other than to hire other professionals, such as engineers or architects, who may be less able than landscape architects in site and environmental design and who are often more expensive to employ. Obviously, the more competent registrants available to the public the greater the competition.

(11) Please detail the specific specialized skills or training that distinguish the occupation or profession from ordinary labor.

The licensing process for the profession of landscape architecture relies on three elements: education, examination, and experience.

Education: The applicant must be a graduate of a Landscape Architectural Accreditation Board (LAAB) approved curriculum. LAAB is recognized by the Commission on Recognition of Post secondary Accreditation (COPRA) as the accrediting agency for first-professional baccalaureate and master's degree programs in landscape architecture. LAAB accreditation evaluates each program on the basis of its stated objectives and compliance to mandated minimum standards. The normal baccalaureate degree program lasts between four (4) and five (5) years and includes a rigorous course of study focused around design studios. In design studios, students apply technical knowledge in solving real world problems through the design process. Currently there are 73 LAAB accredited programs in the united states. There are three LAAB accredited programs in North Carolina.

Examination: The second leg of competency assurance is based on the passage of a written exam. For landscape architects this test is the Landscape Architect Registration Examination (LARE). The LARE is developed and administered by the Council of Landscape Architectural Registration Boards (CLARB). CLARB is comprised of the licensing boards from the 45 US States and 2 Canadian Provinces which license landscape architects. The LARE is the most rigorously proven examination used by any of the major design professions. According to an independent audit conducted by the Educational Testing Service, the largest and most respected testing consultant in the world, the LARE

meets or exceeds virtually all nationally recognized testing standards. The content of the LARE is based on the results of a thorough Job/Task Analysis, which determines what tasks landscape architects use as part of their normal practice, and the knowledge, skills and abilities (KSAs) required to accomplish those tasks in a manner that protects public safety. Psychometricians then use a factor analysis to determine the best method for testing the KSAs. In the LARE, performance problems requiring design and technical solutions are included for the candidate to solve, and only two of the six sections of the exam are multiple choice format. The result is an exam which tests those KSAs which have the most impact on public safety, using the most appropriate testing methodologies. In addition to passing the ETS audit and regular reviews, the LARE has been successfully defended against legal challenges. The scientific study (task analysis) of the profession of landscape architecture identified the knowledge, skill and abilities required to provide those landscape architectural services which affect the health, safety and welfare of the public. The complete list of specific skills (KSAs) identified are attached to this response, however they can be summarized as follows: Knowledge of regulations, contracts, construction administration processes, inventory and analysis, construction processes and supporting systems, materials and methods of construction, and construction documents. Ability in the areas of written communication, conceptual design, schematic design, design development, detail design and materials and methods of construction, grading and drainage.

Experience: CLARB statistical studies of the performance of past LARE candidates have shown that a minimum of 3 to 4 years of practical experience after a degree is necessary to master the skills needed to be a landscape architect and pass the exam. This experience must be a progressive series of learning activities under the scrutiny of a seasoned veteran practitioner.

(12) What are other qualities of the profession or occupation that distinguish it from ordinary labor?

Landscape architecture affects large areas of land for generations. The impact of their services extend beyond the individuals with whom the landscape architect establishes a contractual relationship and includes the end users of the facility and the environment. This is a professional responsibility that is different from ordinary labor.

(13) Will licensing requirements cover all practicing members of the occupation or profession? If any practitioners will be exempt, what is the rationale for the exemption?

Licensure will cover all aspects of the profession of landscape architecture and all practitioners. It will not affect other related

professions already being regulated, such as architecture, engineering, and land surveying. Other exclusions in the existing law allow nurserymen and others to continue to do activities that do not affect the health, safety or welfare of the public.

(14) What is the approximate number of persons who be regulated and the number of persons who are likely to utilize the services of the occupation or profession?

There are currently 356 licensed landscape architects who are residents of North Carolina. An additional 147 licensees reside out of state and provide services in North Carolina. Since landscape architects provide design services for schools, parks, subdivisions, recreational facilities, apartment complexes, government planning departments, and commercial centers, there is probably not a single North Carolina citizen who has not used a facility designed by a landscape architect or been affected by decisions made by Landscape Architects.

(15) What kind of knowledge or experience does the public need to evaluate the services offered by the practitioner?

Members of the general public are unable to evaluate the quality of services being provided by the landscape architect. Specialized knowledge of the analysis, design and construction of public and private facilities is required to adequately determine level of services required. Licensure is needed to make sure the public is receiving the services they need to solve their land use problems in today's complex regulatory systems.

(16) Does the occupational group have an established code of ethics, a voluntary certification program, or other measures to ensure a minimum quality of service?

No. The American Society of Landscape Architects (ASLA) has a code of professional ethics for its members, but membership in the society does not regulate the offering of landscape architectural services or the use of the title "Landscape Architect". The existing North Carolina Board of Landscape Architects does have a code of professional conduct within its rules, along with definitions of dishonest practice, unprofessional conduct, and incompetence. This existing Board has taken disciplinary action in the past against licensees guilty of infractions, but it is very limited in its punitive powers under the current statute.

Knowledge, Skills and Abilities Required of Landscape Architects

Section 1.1 — Regulations

- Knowledge of development restrictions and their sources, such as zoning, codes, etc.
  - Documents that restrict various aspects of a development and its uses
- Knowledge of government policies that affect the use and/or development of land
  - Environmental regulations that affect land use development
- Knowledge of basic construction law
  - Different types of liens and their purposes
  - Owner and landscape architect liabilities
  - Various bond types posted prior to construction of a project
- Knowledge of planning and land use law
  - Laws and government agencies that establish planning policies for a community

Section 1.2 — Contracts (22%)

- Knowledge of professional service and construction contracts; their organization and the responsibilities of the various parties under the construction contract
  - Responsibilities of the landscape architect, the owner and the contractor
  - The proper role of the parties involved in a construction contract when a conflict arises
- Knowledge of insurance and bonding principles related to professional services and construction
  - Professional liability insurance
  - Worker's compensation insurance
- Ability to interpret contract documents and evaluate construction for conformance
- Knowledge of appropriate level of information to provide a consultant team, including management and administration of the design team
  - The responsibilities of each member of a design team
  - Information that should be included in a contract when entering into a joint venture on a project

Section 1.3 — Construction Administration Processes (48%)

- Knowledge of legal procedures for change orders
  - The purpose of a change order and the proper legal steps to submit a change order
- Knowledge of sequencing of design, approval, permitting and construction activities
  - The construction process and the responsibility of different parties for obtaining necessary permits for a project
- Knowledge of legal aspects of the bidding and bid evaluation process, including alternates,

unit prices, bidder qualifications, bonds, etc.

- Knowledge of specification types, such as material, workmanship, performance
  - The general specification sections and what type of information would be located in each section

- Ability to evaluate construction progress for payment requests
  - Assessing the condition of a project and recommending payment be made to the contractor
  - The procedures to authorize payment at any point in a project's completion

Section 2.1 — Inventory (19%)

- Knowledge of base mapping information and its sources, such as existing documentation, land surveys, land use plans, aerial surveys, zoning
  - Locating information on various resources such as maps, surveys and photographs, and understanding their respective symbols
  - Obtaining information relative to land-use and planning

- Knowledge of sources of information on specific site uses, such as sports fields, amphitheater seating, picnic areas, loading docks, etc.
  - Resources for obtaining information on site specific uses, such as government agencies, associations and graphic standards

- Knowledge of hydrology
  - Watershed areas and computing water discharge for a given area
  - Stream characteristics relating to water flow

- Knowledge of geology
  - The determinants for soil genesis

- Knowledge of wildlife habitats and plant associations

- Knowledge of water management
  - Characteristics of storm water runoff and practices used to control or eliminate storm water discharge from a development site
  - Existing watershed systems and how to protect them

- Knowledge of micro and macro climatic conditions and systems (wind, rain, sun orientation)
  - Identifying micro and macro climatic conditions that affect human comfort and location of elements on a site

- Knowledge of soil
  - The makeup and properties of various soil types
  - Soil structure and most desirable types for construction

- Knowledge of surveying practices
  - Appropriate survey practices and terms including bench mark, point of beginning, bearing, baseline, traverse point, etc.

Section 2.2 — Analysis (20%)

- Knowledge of sociological influence on design
- Knowledge of behavioral factors relating to site design including program needs and evaluation
  - Identifying human behavioral factors that affect site design
  - Design elements and theory that serve to direct human behavior
- Knowledge of mathematics (statistics, reading charts, demographic data, F.A.R., % lot coverage)
- Knowledge of how previous, existing or potential uses surrounding a site affect land use and development
  - How environmental factors, views, noise, zoning, access, etc., surrounding a site affect potential land use and development
- Knowledge of visual analysis methods and techniques
- Knowledge of hydraulics, irrigation types and systems, and their design requirements
  - Basic principles of irrigation design
- Knowledge of elements of circulation systems (such as turning radius, walk widths, clearances, slopes, etc.) and their design requirements
  - Correct standards for size, layout, intersection distance, setbacks, etc.
  - Purpose for establishing minimum standards for circulation systems
  - The influence of transportation systems on land use and development
- Ability to read and interpret drawings, maps, aerial photos and related symbols
  - Standard symbols used on drawings, maps, aerial photos, etc.
  - Features distinguished on a particular resource and why one resource would be superior to another for obtaining information
- Ability to assess condition of built elements such as buildings, roads, walks, etc.
  - Recognizing and understanding the cause of existing problems associated with construction

Section 2.3 — Construction Processes and Supporting Systems (34%)

- Knowledge of mitigating techniques in engineering such as noise, wetlands and impacts on natural environments
  - Methods to mitigate effects of the construction process
- Knowledge of littoral effects on design and construction
  - Effects of the seashore and surrounding region on design and construction
- Knowledge of utility systems and their design requirements (closed drainage systems)
  - Calculating storm water run-off volumes given certain site conditions
  - Utility systems and their installations

- Knowledge of code requirements and design principles for universal accessibility
  - Accepted standards for slopes, dimensions, etc. for universal accessibility
- Knowledge of materials and techniques to stabilize soils and control sedimentation
- Knowledge of structural considerations below grade, such as soil bearing, footing foundation systems, etc.
- Knowledge of structural considerations above grade, such as reinforcing, hand rails, spans, decking, slabs on grade, retaining walls, etc.
- Knowledge of construction equipment
- Knowledge of quality control procedures for construction, such as delivery, storage, testing, etc.
- Knowledge of land and water reclamation procedures, such as wetland creation, quarry, mines and landfill reclamation, etc.
- Knowledge of landscape maintenance techniques, materials, equipment and practices
- Ability to estimate costs and quantities
  - Determining the cost of materials and construction methods
  - Estimating quantities of materials for a construction project
- Ability to estimate the development time frame, including the design, approval and construction periods
- Ability to coordinate specifications and consultant's drawings with each other and with contract documents
- Ability to evaluate the quality of plant materials

Section 2.4 — Materials and Methods of Construction (18%)

- Knowledge of plant types and applications
  - Plant materials with desirable aesthetic characteristics
- Knowledge of plant materials to include hardiness, moisture requirements, soil requirements, etc.
  - Plant materials which fulfill hardiness requirements for a particular climate
- Knowledge of factors influencing selection of plant materials, such as availability, cost, maintenance, location, survivability, dependability, etc.
- Knowledge of elements of lighting systems, including light sources and their design properties
  - Recommended light types and intensity for particular situations

- Knowledge of elements of miscellaneous site improvements (pools, fountains, walls, site furniture, play equipment, signs, etc.) and their design implications
- Knowledge of installation techniques of construction materials
- Knowledge of typical construction details and material assemblies, including fasteners, finishes, etc.
- Knowledge of site construction materials, including availability, costs, basic characteristics and applications

Section 2.5 – Construction Documents (9%)

- Knowledge of coordinate systems and layout techniques and conventions
- Knowledge of common graphic symbols
  - Standard graphic symbols used in the construction document package
- Knowledge of components of specifications for a project including preparation
- Ability to determine appropriate scale, level of detail and organization of information for contract drawings

Section 3.1 — Written Communication (21%)

- Ability to communicate in written form
  - Conveying information and/or expressing ideas in a written format using proper organization and grammar
- Ability to prepare and communicate information in a manner understandable to the recipient(s)
  - Conveying design ideas in written form clearly and effectively

Section 3.2 – Conceptual Design (79%)

- Knowledge of topography
  - Organizing elements to fit the topographic characteristics of a site
- Knowledge of the influence of internal and external views on land use/development
  - Relationships of design elements based on internal and external views from a site
  - Organizing elements to enhance or filter internal and external views
- Knowledge of functions of program elements and desired relationships among elements
  - Organizing program elements into an appropriate concept given design guidelines
  - Design relationships given certain uses and contextual information
- Ability to organize and synthesize data
  - Developing concepts and organizational structures from a given program
  - Interpreting site analysis data and making proper decisions based on this information
- Ability to translate a program into a relationship diagram

- Ability to evaluate the capability of a site to support program requirements
- Ability to distinguish the primary components that comprise the design concepts
  - Evaluating a design and recognizing the relationships that exist between the elements
- Ability to create alternate solutions to a problem
- Ability to communicate graphically
- Ability to identify and select best alternatives from multiple solutions

Section 4.1 — Schematic Design (57%)

- Knowledge and ability to implement basic design principles
  - Application of the organizing concepts and methods of design elements
- Knowledge of roadway alignment design principles
  - Road layout concepts and principles
  - Properly fitting roads into existing site conditions such as topography, vegetation, soils, etc.
- Knowledge of design requirements of elements of plant types
  - Using plant materials to fulfill fundamental functional uses (define space, affect microclimate, engineering uses, and aesthetic uses) for major plant types such as trees, shrubs and ground covers
- Ability to organize and synthesize data
  - Collecting all information together in a logical organization
  - Developing concepts and organizational structures from a given program
  - Interpretation of site analysis data as a basis for decision-making
- Ability to organize elements to scale on the site
  - Organizing (not drawing) elements to scale on a site
  - Developing correct proportional scale relationships appropriate to the concept and use of a design
- Ability to organize elements with the consideration of 3-dimensional spatial relationships
  - Developing spatial compositions based on the knowledge of scale, proportion, enclosure, etc.
  - Formulating single spaces and sequence of spaces
  - Relationship between hard and soft elements
- Ability to translate design concepts into physical form
  - Developing a 3-dimensional design form from a given written or graphic concept
  - Developing a physical design form from given design guidelines

- Ability to design and implement circulation systems to meet requirements
  - Designing vehicular systems (roads and parking) including access and service requirements
  - Designing pedestrian systems
  - Designing combination systems
  - Correct standards for size, layout, intersection distances, setbacks, etc.

- Ability to interpret, visualize and manipulate landforms through contours and spot elevations
  - Using landform as a design element (as opposed to a technical element)
  - Fitting program elements into existing site topography
  - Moving or regrading landform on a site to meet program requirements

- Ability to communicate graphically
  - Communicating in all potential graphic views including plan, section and elevation

Section 4.2 — Design Development (43%)

- Knowledge of design requirements of elements of plant types
  - Using and identifying plant materials according to their characteristics of size, form, color and texture at the scale of design development (does **NOT** include identifying plant species)

- Knowledge of characteristics (such as size, shape, texture, color, etc.) of classes of site elements
  - Selecting and composing materials appropriate to the program requirements, design theme, site characteristics, etc.
  - Proper interconnections among different elements and materials

- Knowledge of code requirements and design principles for universal accessibility
  - Designing for proper accessibility in terms of handicap, fire, safety, etc.
  - Designing access elements that are properly integrated into design (not "add-ons")
  - Selecting materials (hard and soft) for proper durability and safety

- Knowledge of landscape maintenance techniques, materials, equipment and practices
  - Designing elements with regard to maintenance techniques
  - Landscape maintenance materials and equipment that could affect potential design forms and elements

- Ability to design and implement plantings to meet requirements
  - Proper use of plant materials based on fundamental functional uses (define space, affect microclimate, engineering uses, and aesthetic uses)

- Ability to design and implement site lighting systems to meet requirements
  - Selecting and locating generic lighting types for public safety and welfare

- Ability to design and implement miscellaneous site improvements (pools, fountains, walls, site furniture, play equipment, signs) to meet requirements
  - Selecting and locating miscellaneous site improvements for public safety and welfare

Section 5.1 — Detail Design and Materials and Methods of Construction (100%)

- Ability to design and implement miscellaneous site improvements (pools, fountains, walls, site furniture, play equipment, signs, etc.) to meet requirements
  - Detail (in a design development manner) of site improvements relating to physiological and aesthetic stimuli
  - Implementation of design intent through design development details

- Knowledge of methods of installation of construction materials
  - Construction sequencing
  - Construction material installation techniques

- Knowledge of typical construction details and material assemblies, including fasteners, finishes, etc.
  - Connecting materials using standard construction practices in an economical and safe manner
  - Developing a design development detail using specified materials and finishes

- Knowledge of site construction materials, including availability, costs, basis characteristics and applications
  - Designing with cost effective materials
  - Material characteristics and applications to protect public safety and welfare
  - Material characteristics and applications to meet existing site and physiological factors

Section 6.1 — Grading (63%)

- Knowledge of mathematics
  - Calculating slopes, grades and volumes of material

- Knowledge of elements of grading and drainage and their design requirements
  - Grading principles and techniques to accommodate design improvements and facilitate the removal of storm water

- Knowledge of code requirements and design principles for universal accessibility
  - Grading circulation systems for proper accessibility in terms of handicap, fire, safety, etc.
  - Codes that establish maximum slopes for universal accessibility

- Ability to translate design concepts into physical form
  - Manipulating contours to achieve design intent in a 3-dimensional aspect
  - Manipulating landforms for use as a design element

- Ability to design and implement grading and drainage to meet requirements
  - Changing the elevations of the existing landscape to accommodate structures, parking and circulation, and to facilitate the removal of storm water

- Ability to interpret. visualize and manipulate landforms through contours and spot elevations
  - Moving or regrading landform on a site to meet program requirements

Section 6.2 — Drainage (37%)

- Ability to design surface and subsurface storm drainage systems
  - Hydraulic characteristics of storm drainage systems
  - Storm drain connections and requirements
  - Design of storm drainage systems to effectively and safely remove storm water from a site

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House**.

☐ Committee Substitute for
H.B. 794 A BILL TO BE ENTITLED AN ACT TO MAKE SUBSTANTIVE CHANGES TO THE NORTH CAROLINA ENGINEERING AND LAND SURVEYING 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 ☐

☒ 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 Finance

☐ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 794*
Proposed Committee Substitute H794-PCS1386

Short Title: Engineering and Land Surveying Changes. (Public)

Sponsors:

Referred to:

April 3, 1997

A BILL TO BE ENTITLED

AN ACT TO MAKE SUBSTANTIVE CHANGES TO THE NORTH CAROLINA ENGINEERING AND LAND SURVEYING ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 89C-2 reads as rewritten:

"**§ 89C-2. Declarations; prohibitions.**

In order to safeguard life, health, and property, and to promote the public welfare, the practice of engineering and the practice of land surveying in this State are hereby declared to be subject to regulation in the public interest. It shall be unlawful for any person to practice or to offer to practice engineering or land surveying in this State, as defined in the provisions of this Chapter, or to use in connection with ~~his~~ the person's name or otherwise assume or advertise any title or description tending to convey the impression that ~~he~~ the person is either a professional engineer or a ~~registered~~ professional land surveyor, unless ~~such~~ the person has been duly ~~registered as such.~~ licensed. The right to engage in the practice of engineering or land surveying ~~shall be deemed~~ is a personal right, based on the qualifications of the ~~individual~~ person as evidenced by ~~his~~ the person's certificate of ~~registration,~~ licensure, which shall not be transferable."

Section 2. G.S. 89C-3 reads as rewritten:

"**§ 89C-3. Definitions.**

The following definitions apply in this Chapter:

(1) Board. -- The North Carolina State Board of ~~Registration~~ Examiners for ~~Professional~~ Engineers and ~~Land~~ Surveyors provided for by this Chapter.

(1a) Business firm. -- A partnership, firm, association, or another organization or group that is not a corporation and is acting as a unit.

(2) Engineer. -- A person who, by reason of ~~his~~ special knowledge and use of the mathematical, physical and engineering sciences and the principles and methods of engineering analysis and design, acquired by engineering education and engineering experience, is qualified to practice engineering.

(3) ~~Engineer-in-training.~~ Engineering intern. -- A person who complies with the requirements for education, experience and character, and has passed an examination in the fundamental engineering subjects, as provided in this Chapter.

(3.1) Inactive licensee. -- Licensees who are not engaged in the practice of engineering or land surveying in this State.

(4) ~~Land surveyor-in-training.~~ Land surveyor intern. -- A person who has qualified for, taken, and passed an examination on the basic disciplines of land surveying as provided in this Chapter.

(5) Person. -- Any natural person, firm, partnership, corporation or other legal entity.

(6) Practice of engineering. --

a. Any service or creative work, the adequate performance of which requires engineering education, training, and experience, in the application of special knowledge of the mathematical, physical, and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning, and design of engineering works and systems, planning the use of land and water, engineering surveys, and the observation of construction for the purposes of assuring compliance with drawings and specifications, including the consultation, investigation, evaluation, planning, and design for either private or public use, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects, and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, pneumatic or thermal nature, insofar as they involve safeguarding life, health or property, and including such other professional services as may be necessary to the planning, progress and completion of any engineering services.

A person shall be construed to practice or offer to practice engineering, within the meaning and intent of this

Chapter, who practices any branch of the profession of engineering; or who, by verbal claim, sign, advertisement, letterhead, card, or in any other way represents ~~himself~~ the person to be a professional engineer, or through the use of some other title implies that ~~he~~ the person is a professional engineer or that ~~he~~ the person is ~~registered~~ licensed under this Chapter; or who holds ~~himself~~ the person out as able to perform, or who does perform any engineering service or work not exempted by this Chapter, or any other service designated by the practitioner which is recognized as engineering.

b. The term 'practice of engineering' shall not be construed to permit the location, description, establishment or reestablishment of property lines or descriptions of land boundaries for conveyance. The term does not include the assessment of an underground storage tank required by applicable rules at closure or change in service unless there has been a discharge or release of the product from the tank.

(7) Practice of land ~~surveying by registered land surveyors.~~ surveying. --

a. ~~Any service or work, the adequate performance of which involves the application of special knowledge of the principles of mathematics, the related physical and applied sciences, and the relevant requirements of law for adequate evidence to the act of measuring and locating lines, angles, elevations, natural and man-made features in the air, on the surface of the earth, within underground workings, and on the beds of bodies of water for the purpose of determining areas and volumes, for the monumenting of property boundaries, and for the platting and layout of lands and subdivisions thereof, including the topography, alignment and grades of street and incidental drainage within the subdivision, and for the preparation and perpetuation of maps, record plats, field note records, and property descriptions that represent these surveys.~~ Providing professional services such as consultation, investigation, testimony, evaluation, planning, mapping, assembling, and interpreting reliable scientific measurements and information relative to the location, size, shape, or physical features of the earth, improvements on the earth, the space above the earth, or any part of the earth, whether the gathering of information for the providing of these services is accomplished by conventional ground measurements, by

aerial photography, by global positioning via satellites, or by a combination of any of these methods, and the utilization and development of these facts and interpretations into an orderly survey map, plan, report, description, or project. The practice of land surveying includes the following:

1. Locating, relocating, establishing, laying out, or retracing any property line, easement, or boundary of any tract of land;
2. Locating, relocating, establishing, or laying out the alignment or elevation of any of the fixed works embraced within the practice of professional engineering;
3. Making any survey for the subdivision of any tract of land, including the topography, alignment and grades of streets and incidental drainage within the subdivision, and the preparation and perpetuation of maps, record plats, field note records, and property descriptions that represent these surveys;
4. Determining, by the use of the principles of land surveying, the position for any survey monument or reference point, or setting, resetting, or replacing any survey monument or reference point;
5. Determining the configuration or contour of the earth's surface or the position of fixed objects on the earth's surface by measuring lines and angles and applying the principles of mathematics or photogrammetry;
6. Providing geodetic surveying which includes surveying for determination of the size and shape of the earth both horizontally and vertically and the precise positioning of points on the earth utilizing angular and linear measurements through spatially oriented spherical geometry; and
7. Creating, preparing, or modifying electronic or computerized data, including land information systems and geographic information systems relative to the performance of the practice of land surveying.

b. The term 'practice of land surveying' shall not be construed to permit the design or preparation of specifications for (i) major highways; (ii) wastewater systems; (iii) wastewater or industrial waste treatment works; (iv) pumping or lift stations; (v) water supply, treatment, or distribution systems; (vi) streets or storm sewer systems except as incidental to a subdivision.

(8) Professional engineer. -- A person who has been duly ~~registered and~~ licensed as a professional engineer by the Board established by this Chapter.

(8.1) Professional engineer, retired. -- A person who has been duly licensed as a professional engineer by the Board and who chooses to relinquish or not to renew a license and who applies to and is approved by the Board to be granted the use of the honorific title 'Professional Engineer, Retired'.

(9) ~~Registered~~ Professional land surveyor. -- A person who, by reason of ~~his~~ special knowledge of mathematics, surveying principles and methods, and legal requirements which are acquired by education and/or practical experience, is qualified to engage in the practice of land surveying, ~~as herein defined,~~ as attested by ~~his registration~~ the person's licensure as a ~~registered~~ professional land surveyor by the Board.

(9.1) Professional land surveyor, retired. -- A person who has been duly licensed as a professional land surveyor by the Board and who chooses to relinquish or not to renew a license and who applies to and is approved by the Board to be granted the use of the honorific title 'Professional Land Surveyor, Retired'.

(10) Responsible charge. -- Direct control and personal supervision, either of engineering work or of land surveying, as the case may be."

Section 3. G.S. 89C-4 reads as rewritten:

"§ 89C-4. State Board of ~~Registration;~~ Examiners for Engineers and Surveyors; appointment; terms.

A State Board of ~~Registration~~ Examiners for ~~Professional~~ Engineers and ~~Land~~ Surveyors, whose duty it is to administer the provisions of this Chapter, is created. The Board shall consist of four ~~registered~~ licensed professional engineers, three ~~registered~~ licensed professional land surveyors and two public members, who are neither professional engineers nor professional land surveyors. Of the land surveyor members, one and only one may hold dual ~~registration~~ licenses as a professional land surveyor and professional engineer. All of the members shall be appointed by the Governor. Appointments of the engineer and land surveyor members shall preferably, but not necessarily, be made from a list of nominees submitted by the professional societies for engineers and land surveyors in this State. Each member of the Board shall receive a certificate of appointment from the Governor and shall file with the Secretary of State ~~his~~ a written oath or affirmation for the faithful discharge of ~~his~~ the duties.

Members of the Board serve for staggered five-year terms, and no member may be appointed for more than two full terms. Members serve until the expiration of their respective terms and until their respective successors are appointed. If a vacancy occurs during a term, the Governor shall appoint a successor from the same classification as the person causing the vacancy to serve for the remainder of the

unexpired term. If the vacancy is not filled within 90 days after it occurs, the Board may appoint a provisional member to serve until the appointment by the Governor becomes effective. The provisional member during his tenure has all the powers and duties of a regular member."

Section 4. G.S. 89C-5 reads as rewritten:

"§ 89C-5. Board members; qualifications.

Each engineer member of the Board shall be a resident of North Carolina and shall be a ~~registered~~ licensed professional engineer engaged in the lawful practice of engineering in North Carolina for at least six years.

Each land surveyor member of the Board shall be a resident of North Carolina and shall be a ~~registered~~ licensed professional land surveyor engaged in the lawful practice of land surveying in North Carolina for at least six years.

Each public member of the Board shall be a resident of North Carolina."

Section 5. G.S. 89C-6 reads as rewritten:

"§ 89C-6. Compensation and expenses of Board members.

Each member of the Board, when attending to the work of the Board or any of its committees, shall receive as compensation for ~~his service~~ services the per diem and, in ~~addition thereto,~~ addition, shall be reimbursed for travel expenses and incidentals not exceeding the maximum set forth by law. In addition to per diem allowances, travel and incidentals, the secretary of the Board may, with the approval of the Board, receive such reasonable additional compensation as is compatible with the actual hours of work required by the duties of ~~his~~ the office."

Section 6. G.S. 89C-8 reads as rewritten:

"§ 89C-8. Organization of the Board; meetings; election of officers.

The Board shall hold at least two regular meetings each year. Special meetings may be held at such times and upon such notice as the rules and regulations of the Board may provide. The Board shall elect annually from its members a ~~chairman,~~ chair, a ~~vice-chairman,~~ vice-chair, and a secretary. A quorum of the Board shall consist of not less than five members. The Board shall operate under its rules and regulations supplemented by Robert's Rules of Order."

Section 7. G.S. 89C-9 reads as rewritten:

"§ 89C-9. Executive ~~secretary;~~ director; duties and liabilities.

The Board shall employ an executive ~~secretary~~ director who is not a member of the Board. The executive ~~secretary~~ director shall be a full-time employee of the Board and perform ~~such~~ the duties assigned to ~~him~~ the director by the secretary subject to the approval of the Board. The executive ~~secretary~~ director shall receive a salary and compensation fixed by the Board. The executive ~~secretary~~ director shall give a surety bond satisfactory to the Board conditioned upon the faithful performance of ~~his~~ the director's ~~duties.~~ duties assigned. The premium on ~~said~~ the bond shall be a necessary and proper expense of the Board."

Section 8. G.S. 89C-10 reads as rewritten:

"§ 89C-10. Board powers.

(a) The Board ~~shall have the power to~~ may adopt and amend all ~~rules and regulations. Additionally, the Board shall have the power to adopt such rules,~~ rules

and rules of ~~procedure, and regulations,~~ procedure as may be reasonably necessary for the proper performance of its duties, the regulation of its procedures, meetings, records, the ~~giving of~~ administration of ~~examinations and the conduct thereof,~~ examinations, and the ~~power~~ authority to enforce ~~such~~ the rules of professional conduct as ~~may, from time to time,~~ may be adopted by the Board pursuant to G.S. 89C-20.

The action by the Board in carrying out any of the powers specified ~~above~~ in this section shall be binding upon all persons ~~registered~~ licensed under this Chapter, including corporations and business firms holding certificates of authorization.

(b) The Board shall adopt and have an official seal, which shall be affixed to each certificate issued.

(c) The Board ~~is hereby authorized~~ may in the name of the State ~~to~~ apply for relief, by injunction, in the established manner provided in cases of civil procedure, without bond, to enforce the provisions of this Chapter, or to restrain any violation ~~thereof.~~ of the provisions of this Chapter. In ~~such proceedings,~~ proceedings for injunctive relief, it shall not be necessary to allege or prove either that an adequate remedy at law does not exist, or that substantial or irreparable damage would result from the continued violation ~~thereof.~~ of the provisions of this Chapter. The members of the Board shall not be personally liable under this proceeding.

(d) The Board may subject an applicant for ~~registration~~ licensure to ~~such~~ any examination ~~as it deems~~ necessary to determine ~~his~~ the applicant's qualifications.

(e) The Board ~~shall have the power to~~ may issue an appropriate certificate of ~~registration~~ licensure to any applicant who, in the opinion of the Board, has met the requirements of this Chapter.

(f) It shall be the responsibility and duty of the Board to conduct a regular program of investigation concerning all matters within its jurisdiction under the provisions of this Chapter. The investigation of a ~~registrant~~ licensee is confidential until the Board issues a citation to the ~~registrant.~~ licensee. The Board may expend its funds for salaries, fees, and per diem expenses, in connection with its investigations, provided that no ~~such~~ funds other than per diem expenses shall be paid to any member of the Board in connection with its investigations, nor may any member of the Board give testimony and ~~thereafter~~ later sit in deciding on any matter which may directly involve punitive action ~~under such~~ for the testimony.

(g) The Board ~~is authorized and empowered to~~ may use its funds to establish and conduct instructional programs for persons who are currently ~~registered~~ licensed to practice engineering or land surveying, as well as refresher courses for persons interested in obtaining adequate instruction or programs of study to qualify them for ~~registration~~ licensure to practice engineering or land surveying. The Board may expend its funds for these purposes and ~~is authorized and empowered~~ may not only ~~to~~ conduct, sponsor, and arrange for instructional programs, but also ~~to~~ may carry out ~~such~~ instructional programs through extension courses or other ~~media, and the~~ media. The Board may enter into plans or agreements with community colleges, public or private institutions of higher learning, ~~both public and private,~~ State and county boards of education, or with the governing authority of any industrial education

center for the purpose of planning, scheduling or arranging ~~such~~ courses, instruction, extension courses, or in assisting in obtaining courses of study or programs in the field of engineering and land surveying. The Board shall ~~make every effort practical to~~ encourage the educational institutions in this State to offer courses necessary to complete the educational requirements of this Chapter. For the purpose of carrying out these objectives, the Board ~~is authorized to make and promulgate such~~ may adopt rules ~~and regulations~~ as may be necessary for ~~such~~ the educational programs, instruction, extension services, or for entering into plans or contracts with persons or educational and industrial institutions.

(h) The Board may license sponsors of continuing professional competency activities who agree to conduct programs in accordance with standards adopted by the Board. Sponsors shall pay a license fee established by the Board, not to exceed two hundred fifty dollars ($250.00) for licensure under this subsection. The license fee shall accompany the application. Sponsors shall renew their licenses annually on a form provided by the Board."

Section 9. G.S. 89C-11 reads as rewritten:

"**§ 89C-11. Secretary; duties and liabilities; expenditures.**

The secretary of the Board shall receive and account for all moneys derived from the operation of the Board as provided in this Chapter, and shall deposit them in one or more special funds in banks or other financial institutions carrying deposit insurance and authorized to do business in North Carolina. The fund or funds shall be designated as 'Fund of the Board of ~~Registration~~ Examiners for ~~Professional~~ Engineers and ~~Land~~ Surveyors' and shall be drawn against only for the purpose of implementing provisions of this Chapter as herein provided. All expenses certified by the Board as properly and necessarily incurred in the discharge of its duties, including authorized compensation, shall be paid out of ~~said~~ this fund on the warrant signed by the secretary of the ~~Board; provided, however, that at~~ Board. At no time shall the total of warrants issued exceed the total amount of funds accumulated under this Chapter. The secretary of the Board shall give a surety bond satisfactory to the State Board of ~~Registration~~ Examiners for ~~Professional~~ Engineers and ~~Land~~ Surveyors, conditioned upon the faithful performance of ~~his duties.~~ the duties assigned. The premium on ~~said~~ the bond ~~shall be regarded as~~ is a proper and necessary expense of the Board. The secretary of the Board may delegate to the executive ~~secretary~~ director certain routine duties, such as receipt and disbursement of funds in stated amounts by a written authorization, which has the unanimous approval of the Board."

Section 10. G.S. 89C-12 reads as rewritten:

"**§ 89C-12. Records and reports of Board; evidence.**

The Board shall keep a record of its proceedings and a register of all applicants for ~~registration,~~ licensure, showing for each the date of application, name, age, education, and other qualifications, place of business and place of residence, whether the applicant was rejected or a certificate of ~~registration~~ licensure granted, and the date ~~of such action.~~ licensure was rejected or granted. The books and register of the Board shall be prima facie evidence of all matters recorded ~~therein,~~ by the Board,

and a copy duly certified by the secretary of the Board under seal shall be admissible in evidence as if the original were produced. A roster showing the names and places of business and of residence of all ~~registered~~ licensed professional engineers and all ~~registered~~ licensed professional land surveyors shall be prepared by the secretary of the Board current to the month of January of each ~~year; such~~ year. The roster shall be printed by the Board out of the Board's fund ~~of said Board~~ and distributed as ~~set forth~~ described in the Board's ~~rules and regulations.~~ rules. On or before the first day of May of each year, the Board shall submit to the Governor a report on its transactions for the preceding year, and shall file with the Secretary of State a copy of ~~such~~ the report, together with a complete statement of the receipts and expenditures of the ~~Board,~~ Board attested by the ~~affidavits of the chairman~~ chair and the ~~secretary,~~ secretary and a copy of the ~~said~~ the roster of ~~registered~~ licensed professional engineers and ~~registered~~ professional land surveyors."

Section 11. G.S. 89C-13 reads as rewritten:

"**§ 89C-13. General requirements for ~~registration.~~ licensure.**

(a) Engineer Applicant. -- To be eligible for ~~admission to examination for~~ licensure as a professional ~~engineer~~ engineer, an applicant must be of good character and reputation. An applicant desiring to take the examination in the fundamentals of engineering ~~only~~ must submit three character ~~references.~~ references, one of whom shall be a professional engineer. An applicant desiring to take the examination in the principles and practice of engineering must submit five references, two of whom shall be professional engineers having personal knowledge of ~~his~~ the applicant's engineering experiences.

The following shall be considered as minimum evidence satisfactory to the Board that the applicant is qualified for ~~registration:~~ licensure:

(1) As a professional engineer (shall meet one):

a. ~~Registration~~ Licensure by Comity or Endorsement. -- A person holding a certificate of ~~registration~~ licensure to engage in the practice of engineering, on the basis of comparable qualifications, issued to ~~him~~ the person by a proper authority of a state, territory, or possession of the United States, the District of Columbia, or of Canada, who completes an application for licensure and submits five references, two of which shall be from professional engineers having personal knowledge of the applicant's engineering experience, and ~~who~~ who, in the opinion of the Board, meets the requirements of this Chapter, based on verified evidence may, upon application, be ~~registered~~ licensed without further examination.

A person holding a certificate of qualification issued by the Committee on National Engineering Certification of the National Council of ~~Engineering Examiners,~~ Examiners for Engineering and Surveying whose qualifications meet the

requirements of this Chapter, may upon application, be ~~registered~~ licensed without further examination.

b. ~~E.I.T.~~ E.I. Certificate, Experience, and Examination. -- A holder of a certificate of ~~engineer-in-training~~ engineering intern issued by the Board, and with a specific record of an additional four years or more of progressive experience on engineering projects of a grade and character which indicates to the Board that the applicant may be competent to practice engineering, shall be admitted to ~~an eight-hour examination in~~ the principles and practice of ~~engineering.~~ engineering examination. Upon passing ~~such~~ the examination, the applicant shall be granted a certificate of ~~registration~~ licensure to practice professional engineering in this State, provided ~~he~~ the applicant is otherwise qualified.

c. Graduation, Experience, and Examination. -- A graduate of an engineering curriculum of four years or more approved by the Board as being of satisfactory standing, and with a specific record of an additional four years or more of progressive experience on engineering projects of a grade and character which indicates to the Board that the applicant may be competent to practice engineering, shall be admitted to ~~an eight-hour written examination in~~ the fundamentals of ~~engineering;~~ engineering examination, and ~~an eight-hour written examination in~~ the principles and practice of ~~engineering.~~ engineering examination. Upon passing ~~such~~ the examinations, the applicant shall be granted a certificate of ~~registration~~ licensure to practice professional engineering in this State, provided ~~he~~ the applicant is otherwise qualified.

d. Graduation, Experience, and Examination. -- A graduate of an engineering or related science curriculum of four years or more, other than the ones approved by the Board as being of satisfactory standing or with an equivalent education and engineering experience satisfactory to the Board and with a specific record of eight years or more of progressive experience on engineering projects of a grade and character which indicates to the Board that the applicant may be competent in the fundamentals of engineering, shall be admitted to ~~an eight-hour written examination in~~ the fundamentals of ~~engineering;~~ engineering examination and ~~an eight-hour written examination in~~ the principles and practice of ~~engineering.~~ engineering examination. Upon passing ~~such~~ the examinations, the applicant shall be granted a certificate of ~~registration~~ licensure to practice professional

engineering in this State, provided ~~he~~ the applicant is otherwise qualified.

e. Long-Established Practice. -- ~~An individual~~ A person with a specific record of 20 years or more of progressive experience on engineering projects of a grade and character which indicates to the Board that the applicant may be competent to practice engineering shall be admitted to ~~an eight-hour written examination in~~ the principles and practice of ~~engineering.~~ engineering examination. Upon passing ~~such~~ the examination, the applicant shall be granted a certificate of ~~registration~~ licensure to practice professional engineering in this State, provided ~~he~~ the applicant is otherwise qualified.

At its discretion the Board may require an applicant to submit exhibits, drawings, designs, or other tangible evidence of engineering work ~~executed by him and~~ which ~~he~~ the applicant personally accomplished or supervised.

The following shall be considered as minimum evidence that the applicant is qualified for certification:

(2) As an ~~engineer-in-training~~ engineering intern (shall meet one):

a. Graduation and Examination. -- A graduate of an engineering curriculum or related science curriculum of four years or more, approved by the Board as being of satisfactory standing, or a student who has attained senior status in an accredited engineering program, shall be admitted to ~~an eight-hour written examination in~~ the fundamentals of ~~engineering.~~ engineering examination. The applicant shall be notified if the examination was passed or not passed and if passed he shall be certified as an ~~engineer-in-training,~~ engineering intern if ~~he~~ the applicant is otherwise qualified.

b. Graduation, Experience, and Examination. -- A graduate of an engineering or related science curriculum of four years or more, other than the ones approved by the Board as being of satisfactory standing, or with equivalent education and engineering experience satisfactory to the Board and with a specific record of four or more years of progressive experience on engineering projects of a grade and character satisfactory to the Board, shall be admitted to ~~an eight-hour written examination in~~ the fundamentals of ~~engineering.~~ engineering examination. The applicant shall be notified if the examination was passed or not passed and if ~~passed he~~ passed, the applicant shall be certified as an ~~engineer-in-training~~ engineering intern if ~~he~~ the applicant is otherwise qualified.

(b) Land Surveyor Applicant. -- To be eligible for admission to examination for land ~~surveyor-in-training,~~ surveyor intern or ~~registered~~ professional land surveyor, an applicant must be of good character and reputation and shall submit five references with ~~his~~ the application for ~~registration~~ licensure as a land surveyor, two of which references shall be ~~registered~~ professional land surveyors having personal knowledge of ~~his~~ the applicant's land surveying experience, or in the case of an application for certification as a land ~~surveyor-in-training~~ surveyor intern by three references, one of which shall be a ~~registered~~ licensed land surveyor having personal knowledge of the applicant's land surveying experience.

The evaluation of a land surveyor applicant's qualifications shall involve a consideration of ~~his~~ the applicant's education, technical and land surveying experience, exhibits of land surveying projects with which ~~he~~ the applicant has been associated, and recommendations by ~~references, and reviewing of these categories during an oral examination.~~ references. The land surveyor applicant's qualifications may be reviewed at an interview if the Board ~~deems~~ determines it necessary. Educational credit for institute courses, correspondence courses, ~~etc.,~~ or other courses shall be determined by the Board.

The following shall be considered a minimum evidence satisfactory to the Board that the applicant is qualified for ~~registration~~ licensure as a professional land surveyor or for certification as a land ~~surveyor-in-training,~~ surveyor intern respectively:

(1) As a ~~registered~~ professional land surveyor (shall meet one):

a. Rightful possession of a ~~B.S.~~ bachelor of science degree in surveying or other equivalent curricula, all approved by the Board and a record satisfactory to the Board of ~~one year~~ two years or more of progressive practical ~~experience~~ experience, one year of which shall have been under a practicing ~~registered~~ professional land surveyor and satisfactorily passing ~~such~~ any oral and written ~~examination, taken in the presence of and~~ examination required by the Board, all of which shall determine and indicate that the ~~candidate~~ applicant is competent to practice land surveying. The applicant may ~~elect~~ be qualified by the Board to take the first examination (Surveying Fundamentals) immediately after obtaining the ~~B.S.~~ bachelor of science degree at the first regularly scheduled examination thereafter. Upon passing the first examination and successful completion of the experience required by this subdivision, the applicant may apply to take the second examination (Principles and Practice of Land Surveying). An applicant who passes both examinations and completes the educational and experience requirements of this subdivision shall be granted ~~registration~~ licensure as a professional land surveyor.

b. Rightful possession of an associate degree in surveying technology approved by the Board and a record satisfactory

to the Board of ~~three~~ four years of progressive practical experience, ~~two~~ three years of which shall have been under a practicing ~~registered~~ licensed land surveyor, and satisfactorily passing ~~such~~ any written and oral examination ~~taken in the presence of and as~~ required by the Board, all of which shall determine and indicate that the ~~candidate~~ applicant is competent to practice land surveying. The applicant may ~~elect~~ apply to the Board to take the first examination (Surveying Fundamentals) immediately after obtaining the associate degree at the first regularly scheduled examination thereafter. Upon passing the first examination and successfully completing ~~years of progressive practical experience under a practicing registered land surveyor,~~ the practical experience required under this subdivision, the applicant may ~~elect~~ apply to the Board to take the second examination ~~(Principles and Practice of Land Surveying) prior to, during, or after completion of the additional experience required by this subdivision.~~ (Principles and Practice of Land Surveying). An applicant who passes both examinations and successfully completes the educational and experience requirements of this subdivision shall be granted ~~registration~~ licensure as a professional land surveyor.

~~e. Land Surveyor in Training Certificate, Experience, and Examination. — A holder of a certificate of land surveyor in training issued by the Board, and with a specific record of an additional two years or more of progressive surveying experience, one year of which shall have been under a practicing registered land surveyor, of a grade and character which indicates to the Board that the applicant may be competent to practice land surveying, shall be admitted to two four-hour examinations. Upon passing such examinations, the applicant shall be granted a certificate of registration to practice land surveying in this State, provided he is otherwise qualified.~~

d. Graduation from a high school or the completion of a high school equivalency certificate and a record satisfactory to the Board of ~~seven~~ 10 years of progressive practical experience, ~~six~~ seven years of which shall have been under a practicing ~~registered~~ licensed land surveyor, and satisfactorily passing ~~such~~ any oral and written ~~examination written in the presence of and~~ examinations required by the Board, all of which shall determine and indicate that the candidate is competent to practice land surveying. The

applicant may be qualified by the Board to take the first examination (Surveying Fundamentals) upon graduation from high school or the completion of a high school equivalency certificate and successfully completing six years of progressive practice experience, five of which shall have been under a practicing licensed land surveyor. The applicant may apply to take the second examination (Principles and Practice of Land Surveying) upon passing the first examination and successfully completing four years of progressive practical experience, two of which shall have been under a practicing licensed land surveyor.

e. Repealed by Session Laws 1985 (Regular Session, 1986), c. 977, s. 7.

f. ~~Registration~~ Licensure by Comity or Endorsement. -- A person holding a certificate of ~~registration~~ licensure to engage in the practice of land surveying issued on comparable qualifications from a state, territory, or possession of the United States will be given comity considerations. However, ~~he~~ the applicant may be asked to take ~~such~~ any examinations as the Board ~~deems necessary~~ requires to determine ~~his~~ the applicant's qualifications, but in any event, ~~he~~ the applicant shall be required to pass ~~a written~~ an examination which shall include questions on laws, procedures, and practices pertaining to the practice of land surveying in North Carolina.

g. A licensed professional engineer who can satisfactorily demonstrate to the Board that ~~his~~ the professional engineer's formal academic training in acquiring a degree and field experience in engineering includes land surveying, to the extent necessary to reasonably qualify the applicant in the practice of land surveying, may apply for and may be granted permission to take the ~~two four-hour examinations on the~~ principles and practice of land surveying examination and the ~~two four-hour examinations on the~~ fundamentals of land ~~surveying.~~ surveying examination. Upon satisfactorily passing the examinations, the applicant ~~will~~ shall be granted a license to practice land surveying in the State of North Carolina.

h. Professional Engineers in Land Surveying. -- Any person presently licensed to practice professional engineering under this Chapter shall upon ~~his~~ application be licensed to practice land surveying, providing ~~his~~ a written application is filed with the Board within one year next after June 19, 1975.

i. Photogrammetrists. -- Any person presently practicing photogrammetry with at least seven years of experience in the profession, two or more of which shall have been in responsible charge of photogrammetric mapping projects meeting National Map Accuracy Standards shall, upon application, be licensed to practice land surveying, provided:

1. The applicant submit certified proof of graduation from high school, high school equivalency, or higher degree;
2. The applicant submit proof of employment in responsible charge as a photogrammetrist practicing within the State of North Carolina to include itemized reports detailing methods, procedures, amount of applicant's personal involvement and the name, address, and telephone numbers of the client for five projects completed by the applicant with the State. A final map for one of the five projects shall also be submitted;
3. Five references to the applicant's character and quality of work, three of which shall be from professional land surveyors, are submitted to the Board; and
4. The application is submitted to the Board by July 1, 1998. After July 1, 1998, no photogrammetrist shall be licensed without meeting the same requirements as to education, length of experience, and testing required of all land surveying applicants.

The Board shall require an applicant to submit exhibits, drawings, plats or other tangible evidence of land surveying work executed by ~~him~~ the applicant under proper supervision and which ~~he~~ the applicant has personally accomplished or supervised.

Land surveying encompasses a number of disciplines including geodetic surveying, hydrographic surveying, cadastral surveying, engineering surveying, route surveying, photogrammetric (aerial) surveying, and topographic surveying. A professional land surveyor shall practice only within the surveyor's area of expertise.

(2) As a land ~~surveyor-in-training~~ surveyor intern (shall meet one):

a. Rightful possession of an associate degree in surveying technology approved by the Board and satisfactorily passing a written ~~or~~ and oral examination ~~taken in the presence of and~~ as required by the Board.

b. Rightful possession of a ~~B.S.~~ bachelors degree in surveying or other equivalent curricula in surveying all approved by the Board and satisfactorily passing ~~such~~ any oral and

written examinations ~~written in the presence of and~~ required by the Board.

c. Graduation from high school or the completion of a high school equivalency certificate and a record satisfactory to the Board of ~~five~~ six years of progressive, practical experience, ~~four~~ five years of which shall have been under a practicing ~~registered~~ licensed land surveyor and satisfactorily passing any oral and written examinations ~~taken in the presence of and as~~ required by the Board.

The Board shall require an applicant to submit exhibits, drawings, plats, or other tangible ~~evidence of land surveying work executed by him under proper supervision and~~ which ~~he~~ the applicant has personally accomplished or supervised."

Section 12. G.S. 89C-14 reads as rewritten:

"**§ 89C-14. Application for ~~registration; registration~~ licensure; license fees.**

(a) Application for ~~registration~~ licensure as a professional engineer or ~~registered~~ professional land surveyor shall be on a form prescribed and furnished by the Board. It shall contain statements made under oath, showing the applicant's education and a detailed summary of ~~his~~ the applicant's technical and engineering or land surveying experience, and shall include the names and complete mailing addresses of the references, none of whom ~~should~~ may be immediate members of the applicant's family or members of the Board.

The Board may accept the certified information on the copy of a current formal certificate of qualifications issued by the National Council of ~~Engineering Examiners Committee or National Engineering Certification for Professional Engineer applicants~~ Examiners for Engineering and Surveying in lieu of the same information that is required for the form prescribed and furnished by the Board.

(b) An applicant for ~~registration~~ licensure who is required to take the written examination shall pay a fee equal to the cost of the examination to the Board plus an additional amount not to exceed one hundred dollars ($100.00). The Board may charge any fee necessary to defray the cost of any required examinations. The fee shall accompany the application. The fee for comity ~~registration~~ licensure of engineers and land surveyors who hold unexpired certificates in another state or a territory of the United States or in Canada shall be the total current fee as fixed by the Board.

(c) The certification fee for a corporation is the amount set by the Board ~~in accordance with G.S. 55B-10.~~ but shall not exceed two hundred fifty dollars ($250.00). The fee shall accompany the application. The certification fee for a business firm is the same as the fee for a corporation. The fee for renewal of a certificate of ~~registration~~ licensure of a corporation is the amount set by the Board ~~in accordance with G.S. 55B-11.~~ but shall not exceed one hundred dollars ($100.00). The fee for renewal of a certificate of ~~registration~~ licensure for a business firm is the same as the renewal fee for a corporation.

(d) Should the Board deny the issuance of a certificate of ~~registration~~ licensure to any applicant, the unobligated portion of fees paid shall be returned by the Board to the applicant.

(e) A candidate failing an examination may apply, and be considered by the Board, for reexamination at the end of six months. The Board shall make such reexamination charge as is necessary to defray the cost of the examination.

A candidate ~~failing an examination three times will not be permitted to take a reexamination until he has made a written appeal to the Board and his tentative qualifications for the examination are reviewed and reaffirmed by the Board.~~ with a combination of three failures or unexcused absences on an examination shall only be eligible after submitting a new application with appropriate application fee, and be considered by the Board for reexamination at the end of 12 months. After the end of the 12-month period, the applicant may take the examination no more than once every calendar year."

Section 13. G.S. 89C-15 reads as rewritten:

"**§ 89C-15. Examinations.**

(a) The examinations will be held at ~~such~~ the times and places as the Board directs. The Board shall determine the passing grade on examinations. All examinations shall be approved by the entire Board.

(b) Written examinations will be given in sections and may be taken only after the applicant has met the other minimum requirements as given in ~~G.S. 89C-13,~~ G.S. 89C-13 and has been approved by the Board for admission to the examination as follows:

(1) Engineering Fundamentals. -- Consists of an eight-hour examination on the fundamentals of engineering. Passing this examination qualifies the ~~examinee~~ applicant for an ~~engineer-in-training~~ engineering intern certificate, provided ~~he~~ the applicant has met all other requirements for ~~certification~~ licensure required by this Chapter.

(2) Principles and Practice of Engineering. -- Consists of an eight-hour examination on applied engineering. Passing this examination qualifies the ~~examinee~~ applicant for ~~registration~~ licensure as a professional engineer, provided ~~he~~ the applicant has met the other requirements for registration required by this Chapter.

(3) Surveying Fundamentals. -- Consists of ~~two four-hour examinations~~ an eight-hour examination on the elementary disciplines of land surveying. Passing ~~both of these examinations~~ this examination qualifies the ~~examinee~~ applicant for a land ~~surveyor-in-training~~ surveyor intern certificate provided ~~he~~ the applicant has met all other requirements for certification required by this Chapter.

(4) Principles and Practices of Land Surveying. -- Consists of ~~two four-hour examinations~~ a six-hour examination on the basic and applied disciplines of land ~~surveying, one examination on basic disciplines and the other examination covering applied disciplines.~~

surveying and a two-hour examination on requirements specific to the practice of land surveying in North Carolina. Passing each of these examinations qualifies the ~~examinee~~ applicant for a ~~registered~~ professional land surveyor certificate provided ~~he~~ the applicant has met all other requirements for certification required by this Chapter."

Section 14. G.S. 89C-16 reads as rewritten:

"**§ 89C-16. Certificates of ~~registration;~~ licensure; effect; seals.**

(a) The Board shall issue to any applicant, who, in the opinion of the Board, has met the requirements of this Chapter, a certificate of ~~registration~~ licensure giving the ~~registrant~~ licensee proper authority to practice ~~his~~ the profession in this State. The certificate of ~~registration~~ licensure for a professional engineer shall carry the designation 'professional engineer,' and for a land surveyor, ~~'registered~~ 'professional land surveyor,' shall give the full name of the ~~registrant~~ licensee with ~~his serial~~ the Board designated licensure number and shall be signed by the ~~chairman~~ chair and the secretary under the seal of the Board.

(b) This certificate shall be prima facie evidence that the person named ~~thereon~~ on the certificate is entitled to all rights, privileges and responsibilities of a professional engineer or a ~~registered~~ professional land surveyor, while the ~~said~~ certificate of ~~registration~~ licensure remains unrevoked or unexpired.

(c) Each ~~registrant hereunder~~ licensee shall upon ~~registration~~ licensure obtain a seal of a design authorized by the Board bearing the ~~registrant's~~ licensee's name, ~~serial~~ license number, and the legend, 'professional engineer,' or ~~'registered~~ 'professional land surveyor.' Final drawings, specifications, plans and reports prepared by a ~~registrant~~ licensee shall, when issued, be certified and stamped with the ~~said~~ seal or facsimile ~~thereof~~ of the seal unless the ~~registrant~~ licensee is exempt under the provisions of G.S. 89C-25(7). It shall be unlawful for a ~~registrant~~ licensee to affix, or permit ~~his~~ the licensee's seal and signature or facsimile ~~thereof~~ of the seal and signature to be affixed to any drawings, specifications, plans or reports after the expiration of a certificate or for the purpose of aiding or abetting any other person to evade or attempt to evade any provision of this Chapter. A professional engineer practicing land surveying shall use ~~his registered~~ the licensee's land surveyor seal."

Section 15. G.S. 89C-17 reads as rewritten:

"**§ 89C-17. Expirations and renewals of certificates.**

Certificates for ~~registration~~ licensure shall expire on the last day of the month of December next following their issuance or renewal, and shall become invalid on that date unless renewed. When necessary to protect the public health, safety, or welfare, the Board shall require ~~such~~ any evidence ~~as it deems~~ necessary to establish the continuing competency of engineers and land surveyors as a condition of renewal of licenses. When the Board is satisfied as to the continuing competency of an applicant, it shall issue a renewal of the certificate upon payment by the applicant of a fee fixed by the Board but not to exceed ~~fifty dollars ($50.00).~~ one hundred dollars ($100.00). The secretary of the Board shall notify by mail every person ~~registered~~ licensed under this Chapter of the date of expiration of ~~his~~ the certificate, the amount of the fee

required for its renewal for one year, and any requirement as to evidence of continued competency. The notice shall be mailed at least one month in advance of the expiration date of the certificate. Renewal shall be effected at any time during the month of January immediately following, by payment to the secretary of the Board of a renewal fee, as determined by the Board, which shall not exceed ~~fifty dollars ($50.00).~~ one hundred dollars ($100.00). Failure on the part of any registrant to renew ~~his~~ the certificate annually in the month of January, as required above, shall deprive the registrant of the right to practice until renewal has been effected. Renewal may be effected at any time during the first ~~36~~ 12 months immediately following its invalidation ~~of payment of the renewal fee increased ten percent (10%) for each month or fraction of a month that payment for renewal is delayed.~~ by payment of the established renewal fee and a late penalty of one hundred dollars ($100.00). Failure of a ~~registrant~~ licensee to renew ~~his registration~~ the license for a period of ~~36~~ 12 months shall require the individual, prior to resuming practice in North Carolina, to submit an application ~~therefor~~ on the prescribed form, and to meet all other requirements for ~~registration~~ licensure as set forth in Chapter 89C. The secretary of the Board is instructed to remove from the official roster of engineers and land surveyors the names of all ~~registrants~~ licensees who have not effected their renewal by the first day of February immediately following the date of their expiration. The Board may ~~enact~~ adopt rules to provide for renewals in distress or hardship cases due to military service, prolonged illness, or prolonged absence from the State, where the applicant for renewal demonstrates to the Board that ~~he~~ the applicant has maintained ~~his~~ active knowledge and professional status as an engineer or land surveyor, as the case may be. It shall be the responsibility of each ~~registrant~~ licensee to inform the Board promptly concerning change in address. A licensee may request and be granted inactive status. No inactive licensee may practice in this State unless otherwise exempted in this Chapter. A licensee granted inactive status shall pay annual renewal fees but shall not be subject to annual continuing professional competency requirements. A licensee granted inactive status may return to active status by meeting all requirements of the Board, including demonstration of continuing professional competency as a condition of reinstatement."

Section 16. G.S. 89C-18 reads as rewritten:

"§ 89C-18. Duplicate certificates.

The Board may issue a duplicate certificate of ~~registration~~ licensure or certificate of authorization to replace any certificate that has been lost, destroyed, or mutilated and may charge a fee of up to twenty-five dollars ($25.00) for issuing the certificate."

Section 17. G.S. 89C-19 reads as rewritten:

"§ 89C-19. Public works; requirements where public safety involved.

This State and its political subdivisions such as counties, cities, towns, or other political entities or legally constituted boards, commissions, public utility companies, or authorities, or officials, or employees ~~thereof~~ of these entities shall not engage in the practice of engineering or land surveying involving either public or private property where the safety of the public is directly involved without the project being under the supervision of a professional engineer for the preparations of plans and

specifications for engineering projects, or a ~~registered~~ professional land surveyor for land surveying projects, as provided for the practice of the respective professions by this Chapter.

An official or employee of the State or any political subdivision specified in this section, holding the positions set out in this section as of June 19, 1975, shall be exempt from the provisions of this section so long as such official or employee is engaged in substantially the same type of work as is involved in ~~his~~ the present position.

Nothing in this section shall be construed to prohibit inspection, maintenance and service work done by employees of the State of North Carolina, any political subdivision ~~thereof,~~ of the State, or any municipality ~~therein~~ including construction, installation, servicing, and maintenance by regular full-time employees of, secondary roads and drawings incidental ~~thereto,~~ to work on secondary roads, streets, street lighting, traffic-control signals, police and fire alarm systems, waterworks, steam, electric and sewage treatment and disposal plants, the services of superintendents, inspectors or foremen regularly employed by the State of North Carolina or any political subdivision ~~thereof,~~ of the State, or municipal ~~corporation therein.~~ corporation.

The provisions in this section shall not be construed to alter or modify the requirements of Article 1 of Chapter 133 of the General Statutes."

Section 18. G.S. 89C-20 reads as rewritten:

"**§ 89C-20. Rules of professional conduct.**

In the interest of protecting the safety, health, and welfare of the public, the Board shall ~~promulgate and~~ adopt rules of professional conduct applicable to the practice of engineering and land surveying. These rules, when adopted, shall be construed to be a reasonable exercise of the police power vested in the Board of ~~Registration~~ Examiners for ~~Professional~~ Engineers and Land Surveyors. Every person ~~registered~~ licensed by the Board shall subscribe to and observe the adopted rules as the standard of professional conduct for the practice of engineering and land ~~surveying.~~ surveying and shall cooperate fully with the Board in the course of any investigation. In the case of violation of the rules of professional conduct, the Board shall ~~have the responsibility and duty to~~ proceed in accordance with G.S. 89C-22."

Section 19. G.S. 89C-21 reads as rewritten:

"**§ 89C-21. Disciplinary action -- Reexamination, revocation, suspension, reprimand, or civil penalty.**

(a) The Board may reprimand the licensee, suspend, refuse to renew, or revoke the certificate of ~~registration,~~ licensure, or, as appropriate, require reexamination, for any engineer or land surveyor, who is found:

(1) Guilty of the practice of any fraud or deceit in obtaining a certificate of ~~registration~~ licensure or certificate of authorization.

(2) Guilty of any gross negligence or misconduct in the practice of ~~his~~ the profession.

(3) Guilty of any felony or any crime involving moral turpitude.

(4) Guilty of violation of the Rules of Professional Conduct, as adopted by the Board.

(5) To have been declared insane or incompetent by a court of competent jurisdiction and has not ~~thereafter~~ later been lawfully declared sane or competent.

(6) Guilty of professional incompetence. In the event the Board finds that a certificate holder is incompetent the Board may, in its discretion, require oral or written examinations, or other indication of the certificate holder's fitness to practice ~~his profession~~ engineering or land surveying and suspend ~~his~~ the license during any such period.

(b) The Board ~~shall have the power to~~ may (i) revoke a certificate of authorization, or (ii) to suspend a certificate of authorization for a period of time not exceeding two years, of any corporation or business firm where one or more of its officers or directors have committed any act or have been guilty of any conduct which would authorize a revocation or suspension of their certificates of ~~registration~~ licensure under the provision of this section.

(c) The Board may levy a civil penalty not in excess of two thousand dollars ($2,000) for any engineer or land surveyor who violates any of the provisions of subdivisions (1). through (4) of subsection (a) of this section. All civil penalties collected by the Board shall be deposited in the General Fund of North Carolina.

(d) Before imposing and assessing a civil penalty and fixing the ~~amount thereof,~~ amount, the Board shall, as a part of its deliberation, take into consideration the following factors:

(1) The nature, gravity, and persistence of the particular violations;

(2) The appropriateness of the imposition of a civil penalty when considered alone or in combination with other punishment;

(3) Whether the violation(s) were done willfully and maliciously; and

(4) Any other factors which would tend to either mitigate or aggravate the violation(s) found to exist."

Section 20. G.S. 89C-22 reads as rewritten:

"§ 89C-22. Disciplinary action -- Charges; procedure.

(a) Any person may prefer charges of fraud, deceit, gross negligence, incompetence, misconduct, or violation of the rules of professional conduct, against any Board registrant. The charges shall be in writing and shall be sworn to by the person or persons making them and shall be filed with ~~the secretary of~~ the Board.

(b) All charges, unless dismissed by the Board as unfounded or trivial, shall be heard by the Board as provided under the requirements of Chapter 150B of the General Statutes.

(c) If, after ~~such~~ a hearing, a majority of the Board votes in favor of sustaining the charges, the Board shall reprimand, levy a civil penalty, suspend, refuse to renew, or revoke the ~~registrant's certificate of registration.~~ licensee's certificate.

(d) A ~~registrant~~ licensee who is aggrieved by a final decision of the Board may appeal for judicial review as provided by Article 4 of Chapter 150B.

(e) The Board may, upon petition of an individual or an entity whose certificate has been revoked, for sufficient ~~reasons it may deem sufficient,~~ reasons as it may determine, reissue a certificate of ~~registration~~ licensure or authorization, provided that a majority of the members of the Board vote in favor of such issuance."

Section 21. G.S. 89C-23 reads as rewritten:

"**§ 89C-23. Unlawful to practice engineering or land surveying without ~~registration;~~ licensure; unlawful use of title or terms; penalties; Attorney General to be legal adviser.**

Any person who shall practice, or offer to practice, engineering or land surveying in this State without first being ~~registered~~ licensed in accordance with the provisions of this Chapter, or any person, firm, partnership, organization, association, corporation, or other entity using or employing the words 'engineer' or 'engineering' or 'professional engineer' or 'professional engineering' or 'land surveyor' or 'land surveying,' or any modification or derivative ~~thereof~~ of those words in its name or form of business or activity except as ~~registered~~ licensed under this Chapter or in pursuit of activities exempted by this Chapter, or any person presenting or attempting to use the certificate of ~~registration~~ licensure or the seal of another, or any person who shall give any false or forged evidence of any kind to the Board or to any member ~~thereof~~ of the Board in obtaining or attempting to obtain a certificate of ~~registration,~~ licensure, or any person who shall falsely impersonate any other ~~registrant~~ licensee of like or different name, or any person who shall attempt to use an expired or revoked or nonexistent certificate of ~~registration,~~ licensure, or who shall practice or offer to practice when not qualified, or any person who falsely claims that ~~he~~ the person is registered under this Chapter, or any person who shall violate any of the provisions of this Chapter, in addition to injunctive procedures set out hereinbefore, shall be guilty of a Class 2 misdemeanor. In no event shall there be representation of or holding out to the public of any engineering expertise by ~~unregistered~~ unlicensed persons. It shall be the duty of all duly constituted officers of the State and all political subdivisions ~~thereof~~ of the State to enforce the provisions of this Chapter and to prosecute any persons violating ~~same.~~ them.

The Attorney General of the State or ~~his~~ an assistant shall act as legal adviser to the Board and render ~~such~~ any legal assistance ~~as may be~~ necessary ~~in carrying~~ to carry out the provisions of this Chapter. The Board may employ counsel and necessary assistance to aid in the enforcement of this Chapter, and the compensation and expenses ~~therefor~~ for the assistance shall be paid from funds of the Board."

Section 22. G.S. 89C-24 reads as rewritten:

"**§ 89C-24. ~~Registration~~ Licensure of corporations and business firms that engage in the practice of engineering or land surveying.**

A corporation or business firm may not engage in the practice of engineering or land surveying in this State unless it is ~~registered with~~ licensed by the Board and has paid ~~the required registration fee.~~ an application fee established by the Board in an amount not to exceed two hundred fifty dollars ($250.00). A corporation or business firm is subject to the same duties and responsibilities as an individual ~~registrant. Registration~~ licensee. Licensure of a corporation or business firm does not affect the

requirement that all engineering or land surveying work done by the corporation or business firm be performed by or under the responsible charge of individual registrants, nor does it relieve the individual registrants within a corporation or business firm of their design and supervision responsibilities.

This section applies to every corporation that is engaged in the practice of engineering or land surveying, regardless of when it was incorporated. A corporation that is not exempt from Chapter 55B of the General Statutes by application of G.S. 55B-15 must be incorporated under that Chapter."

Section 23. G.S. 89C-25 reads as rewritten:

"**§ 89C-25. Limitations on application of Chapter.**

This Chapter shall not be construed to prevent or affect:

(1) The practice of architecture, landscape architecture, or contracting or any other legally recognized profession or trade; or

(2) The practice of professional engineering or land surveying in this State or by any person not a resident of this State and having no established place of business in this State when this practice does not aggregate more than 90 days in any calendar year, whether performed in this State or elsewhere, or involve more than one specific project; provided, however, that ~~such~~ the person is ~~legally qualified by registration~~ licensed to practice the ~~said~~ profession in ~~his~~ the person's own state or country, in which the requirements and qualifications for obtaining a certificate of ~~registration~~ licensure are satisfactory to the Board; in which case the person shall apply for and the Board will issue a temporary permit; or

(3) The practice of professional engineering or land surveying in this State not to aggregate more than 90 days by any person residing in this State, but whose residence has not been of sufficient duration for the Board to grant or deny ~~registration;~~ licensure; provided, however, ~~such~~ the person shall have filed an application for ~~registration~~ licensure as a professional engineer or ~~registered~~ professional land surveyor and shall have paid the fee provided for in G.S. 89C-14, and provided that ~~such a~~ the person is ~~legally qualified by registration~~ licensed to practice professional engineering or professional land surveying in ~~his~~ the person's own state or country in which the requirements and qualifications for obtaining a certificate of ~~registration~~ licensure are satisfactory to the Board, in which case the person shall apply for and the Board will issue a temporary permit; or

(4) Engaging in engineering or land surveying as an employee or assistant under the responsible charge of a professional engineer or ~~registered~~ professional land surveyor or as an employee or assistant of a nonresident professional engineer or a nonresident ~~registered~~ professional land surveyor provided for in subdivisions (2) and (3)

of this section, provided that ~~said~~ the work as an employee may not include responsible charge of design or supervision; or

(5) The practice of professional engineering or land surveying by any person not a resident of, and having no established place of business in this State, as a consulting associate of a professional engineer or ~~registered~~ professional land surveyor ~~registered~~ licensed under the provisions of this Chapter; provided, the nonresident is qualified for ~~such~~ performing the professional service in ~~his~~ the person's own state or country; or

(6) Practice by members of the armed forces or employees of the government of the United States while engaged in the practice of engineering or land surveying solely for ~~said~~ the government on government-owned works and projects; or

(7) The internal engineering or surveying activities of a person, firm or corporation engaged in manufacturing, processing, or producing a product, including the activities of public service corporations, public utility companies, authorities, State agencies, railroads, or membership cooperatives, or the installation and servicing of their product in the field; or research and development in connection with the manufacture of that product or their service; or of their research affiliates; or their employees in the course of their employment in connection with the manufacture, installation, or servicing of their product or service in the field, or on-the-premises maintenance of machinery, equipment, or apparatus incidental to the manufacture or installation of the product or service of a firm by the employees of the firm upon property owned, leased or used by the firm; inspection, maintenance and service work done by employees of the State of North Carolina, any political subdivision ~~thereof,~~ of the State, or any municipality ~~therein~~ including construction, installation, servicing, maintenance by regular full-time employees of streets, street lighting, traffic-control signals, police and fire alarm systems, waterworks, steam, electric and sewage treatment and disposal plants; the services of superintendents, inspectors or foremen regularly employed by the State of North Carolina or any political subdivision ~~thereof,~~ of the State or a municipal ~~corporation therein;~~ corporation; provided, however, that the internal engineering or surveying activity is not a holding out to or an offer to the public of engineering or any service thereof as prohibited by this Chapter. Engineering work, not related to the foregoing exemptions, where the safety of the public is directly involved shall be under the responsible charge of a ~~registered~~ licensed professional engineer, or in accordance with standards prepared or approved by a ~~registered~~ licensed professional engineer.

(8) The (i) preparation of fire sprinkler planning and design drawings by a fire sprinkler contractor licensed under Article 2 of Chapter 87 of the General Statutes, or (ii) the performance of internal engineering or survey work by a manufacturing or communications common carrier company, or by a research and development company, or by employees of ~~such~~ those corporations provided that ~~such~~ the work is in connection with, or incidental to products of, or nonengineering services rendered by ~~such~~ those corporations or their affiliates.

(9) The routine maintenance or servicing of machinery, equipment, facilities or structures, the work of mechanics in the performance of their established functions, or the inspection or supervision of construction by a foreman, superintendent, or agent of the architect or professional engineer, or services of an operational nature performed by an employee of a laboratory, a manufacturing plant, a public service corporation, or governmental operation."

Section 24. G.S. 89C-25.1 reads as rewritten:

"**§ 89C-25.1. Supervision of ~~unregistered~~ unlicensed individuals by ~~registered~~ licensed person.**

In all circumstances in which ~~unregistered~~ unlicensed individuals are permitted under this Chapter to perform engineering or land surveying work, or both, under the supervision of a ~~registered~~ licensed engineer, land surveyor, or both, the Board may by regulation establish a reasonable limit on the number of ~~unregistered~~ unlicensed individuals which a ~~registrant~~ licensee of the Board may directly or personally supervise at one time."

Section 25. G.S. 89C-26 reads as rewritten:

"**§ 89C-26. Duties of register of deeds.**

The register of deeds or any other county or proper public authority may not file or record any map, plat, survey, or other documents, within the definition of land surveying, which do not contain an original personal signature and original seal of a ~~registered~~ licensed land surveyor by whom, or under whose responsible charge, the map, plat, survey, or other documents were prepared, except as provided in G.S. 47-30(m) and (n)."

Section 26. G.S. 89C-28 reads as rewritten:

"**§ 89C-28. Existing ~~registration~~ licensure not affected.**

Nothing in this Chapter shall be construed as affecting the status of ~~registration~~ licensure of any professional engineer or ~~registered~~ land surveyor who is rightfully in possession of a certificate of ~~registration~~ licensure duly issued by the Board and valid as of July 1, 1975."

Section 27. This act becomes effective July 1, 1997, and applies to persons applying for licenses on or after that date and to persons practicing engineering and land surveying on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 794*
Proposed Committee Substitute H794-PCSA312

Short Title: Engineering and Land Surveying Changes. (Public)

Sponsors:

Referred to:

April 3, 1997

A BILL TO BE ENTITLED

AN ACT TO MAKE SUBSTANTIVE CHANGES TO THE NORTH CAROLINA ENGINEERING AND LAND SURVEYING ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 89C-2 reads as rewritten:

"**§ 89C-2. Declarations; prohibitions.**

In order to safeguard life, health, and property, and to promote the public welfare, the practice of engineering and the practice of land surveying in this State are hereby declared to be subject to regulation in the public interest. It shall be unlawful for any person to practice or to offer to practice engineering or land surveying in this State, as defined in the provisions of this Chapter, or to use in connection with ~~his~~ the person's name or otherwise assume or advertise any title or description tending to convey the impression that ~~he~~ the person is either a professional engineer or a ~~registered~~ professional land surveyor, unless ~~such~~ the person has been duly ~~registered as such.~~ licensed. The right to engage in the practice of engineering or land surveying ~~shall be deemed~~ is a personal right, based on the qualifications of the ~~individual~~ person as evidenced by ~~his~~ the person's certificate of ~~registration,~~ licensure, which shall not be transferable."

Section 2. G.S. 89C-3 reads as rewritten:

"**§ 89C-3. Definitions.**

The following definitions apply in this Chapter:

(1) Board. -- The North Carolina State Board of ~~Registration~~ Examiners for ~~Professional~~ Engineers and ~~Land~~ Surveyors provided for by this Chapter.

(1a) Business firm. -- A partnership, firm, association, or another organization or group that is not a corporation and is acting as a unit.

(2) Engineer. -- A person who, by reason of ~~his~~ special knowledge and use of the mathematical, physical and engineering sciences and the principles and methods of engineering analysis and design, acquired by engineering education and engineering experience, is qualified to practice engineering.

(3) ~~Engineer-in-training.~~ Engineering intern. -- A person who complies with the requirements for education, experience and character, and has passed an examination in the fundamental engineering subjects, as provided in this Chapter.

(3.1) Inactive licensee. -- Licensees who are not engaged in the practice of engineering or land surveying in this State.

(4) ~~Land surveyor-in-training.~~ Land surveyor intern. -- A person who has qualified for, taken, and passed an examination on the basic disciplines of land surveying as provided in this Chapter.

(5) Person. -- Any natural person, firm, partnership, corporation or other legal entity.

(6) Practice of engineering. --

a. Any service or creative work, the adequate performance of which requires engineering education, training, and experience, in the application of special knowledge of the mathematical, physical, and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning, and design of engineering works and systems, planning the use of land and water, engineering surveys, and the observation of construction for the purposes of assuring compliance with drawings and specifications, including the consultation, investigation, evaluation, planning, and design for either private or public use, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects, and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, pneumatic or thermal nature, insofar as they involve safeguarding life, health or property, and including such other professional services as may be necessary to the planning, progress and completion of any engineering services.

A person shall be construed to practice or offer to practice engineering, within the meaning and intent of this

Chapter, who practices any branch of the profession of engineering; or who, by verbal claim, sign, advertisement, letterhead, card, or in any other way represents ~~himself~~ the person to be a professional engineer, or through the use of some other title implies that ~~he~~ the person is a professional engineer or that ~~he~~ the person is ~~registered~~ licensed under this Chapter; or who holds ~~himself~~ the person out as able to perform, or who does perform any engineering service or work not exempted by this Chapter, or any other service designated by the practitioner which is recognized as engineering.

b. The term 'practice of engineering' shall not be construed to permit the location, description, establishment or reestablishment of property lines or descriptions of land boundaries for conveyance. The term does not include the assessment of an underground storage tank required by applicable rules at closure or change in service unless there has been a discharge or release of the product from the tank.

(7) Practice of land ~~surveying by registered land surveyors.~~ surveying. --

a. ~~Any service or work, the adequate performance of which involves the application of special knowledge of the principles of mathematics, the related physical and applied sciences, and the relevant requirements of law for adequate evidence to the act of measuring and locating lines, angles, elevations, natural and man-made features in the air, on the surface of the earth, within underground workings, and on the beds of bodies of water for the purpose of determining areas and volumes, for the monumenting of property boundaries, and for the platting and layout of lands and subdivisions thereof, including the topography, alignment and grades of street and incidental drainage within the subdivision, and for the preparation and perpetuation of maps, record plats, field note records, and property descriptions that represent these surveys.~~ Providing professional services such as consultation, investigation, testimony, evaluation, planning, mapping, assembling, and interpreting reliable scientific measurements and information relative to the location, size, shape, or physical features of the earth, improvements on the earth, the space above the earth, or any part of the earth, whether the gathering of information for the providing of these services is accomplished by conventional ground measurements, by

aerial photography, by global positioning via satellites, or by a combination of any of these methods, and the utilization and development of these facts and interpretations into an orderly survey map, plan, report, description, or project. The practice of land surveying includes the following:

1. Locating, relocating, establishing, laying out, or retracing any property line, easement, or boundary of any tract of land;
2. Locating, relocating, establishing, or laying out the alignment or elevation of any of the fixed works embraced within the practice of professional engineering;
3. Making any survey for the subdivision of any tract of land, including the topography, alignment and grades of streets and incidental drainage within the subdivision, and the preparation and perpetuation of maps, record plats, field note records, and property descriptions that represent these surveys;
4. Determining, by the use of the principles of land surveying, the position for any survey monument or reference point, or setting, resetting, or replacing any survey monument or reference point;
5. Determining the configuration or contour of the earth's surface or the position of fixed objects on the earth's surface by measuring lines and angles and applying the principles of mathematics or photogrammetry;
6. Providing geodetic surveying which includes surveying for determination of the size and shape of the earth both horizontally and vertically and the precise positioning of points on the earth utilizing angular and linear measurements through spatially oriented spherical geometry; and
7. Creating, preparing, or modifying electronic or computerized data, including land information systems and geographic information systems relative to the performance of the practice of land surveying.

b. The term 'practice of land surveying' shall not be construed to permit the design or preparation of specifications for (i) major highways; (ii) wastewater systems; (iii) wastewater or industrial waste treatment works; (iv) pumping or lift stations; (v) water supply, treatment, or distribution systems; (vi) streets or storm sewer systems except as incidental to a subdivision.

(8) Professional engineer. -- A person who has been duly ~~registered and~~ licensed as a professional engineer by the Board established by this Chapter.

(8.1) Professional engineer, retired. -- A person who has been duly licensed as a professional engineer by the Board and who chooses to relinquish or not to renew a license and who applies to and is approved by the Board to be granted the use of the honorific title 'Professional Engineer, Retired'.

(9) ~~Registered~~ Professional land surveyor. -- A person who, by reason of ~~his~~ special knowledge of mathematics, surveying principles and methods, and legal requirements which are acquired by education and/or practical experience, is qualified to engage in the practice of land surveying, ~~as herein defined,~~ as attested by ~~his registration~~ the person's licensure as a ~~registered~~ professional land surveyor by the Board.

(9.1) Professional land surveyor, retired. -- A person who has been duly licensed as a professional land surveyor by the Board and who chooses to relinquish or not to renew a license and who applies to and is approved by the Board to be granted the use of the honorific title 'Professional Land Surveyor, Retired'.

(10) Responsible charge. -- Direct control and personal supervision, either of engineering work or of land surveying, as the case may be."

Section 3. G.S. 89C-4 reads as rewritten:

"**§ 89C-4. State Board of ~~Registration;~~ Examiners for Engineers and Surveyors; appointment; terms.**

A State Board of ~~Registration~~ Examiners for ~~Professional~~ Engineers and ~~Land~~ Surveyors, whose duty it is to administer the provisions of this Chapter, is created. The Board shall consist of four ~~registered~~ licensed professional engineers, three ~~registered~~ licensed professional land surveyors and two public members, who are neither professional engineers nor professional land surveyors. Of the land surveyor members, one and only one may hold dual ~~registration~~ licenses as a professional land surveyor and professional engineer. All of the members shall be appointed by the Governor. Appointments of the engineer and land surveyor members shall preferably, but not necessarily, be made from a list of nominees submitted by the professional societies for engineers and land surveyors in this State. Each member of the Board shall receive a certificate of appointment from the Governor and shall file with the Secretary of State ~~his~~ a written oath or affirmation for the faithful discharge of ~~his~~ the duties.

Members of the Board serve for staggered five-year terms, and no member may be appointed for more than two full terms. Members serve until the expiration of their respective terms and until their respective successors are appointed. If a vacancy occurs during a term, the Governor shall appoint a successor from the same classification as the person causing the vacancy to serve for the remainder of the

unexpired term. If the vacancy is not filled within 90 days after it occurs, the Board may appoint a provisional member to serve until the appointment by the Governor becomes effective. The provisional member during his tenure has all the powers and duties of a regular member."

Section 4. G.S. 89C-5 reads as rewritten:

"**§ 89C-5. Board members; qualifications.**

Each engineer member of the Board shall be a resident of North Carolina and shall be a ~~registered~~ licensed professional engineer engaged in the lawful practice of engineering in North Carolina for at least six years.

Each land surveyor member of the Board shall be a resident of North Carolina and shall be a ~~registered~~ licensed professional land surveyor engaged in the lawful practice of land surveying in North Carolina for at least six years.

Each public member of the Board shall be a resident of North Carolina."

Section 5. G.S. 89C-6 reads as rewritten:

"**§ 89C-6. Compensation and expenses of Board members.**

Each member of the Board, when attending to the work of the Board or any of its committees, shall receive as compensation for ~~his service~~ services the per diem and, in ~~addition thereto,~~ addition, shall be reimbursed for travel expenses and incidentals not exceeding the maximum set forth by law. In addition to per diem allowances, travel and incidentals, the secretary of the Board may, with the approval of the Board, receive such reasonable additional compensation as is compatible with the actual hours of work required by the duties of ~~his~~ the office."

Section 6. G.S. 89C-8 reads as rewritten:

"**§ 89C-8. Organization of the Board; meetings; election of officers.**

The Board shall hold at least two regular meetings each year. Special meetings may be held at such times and upon such notice as the rules and regulations of the Board may provide. The Board shall elect annually from its members a ~~chairman,~~ chair, a ~~vice-chairman,~~ vice-chair, and a secretary. A quorum of the Board shall consist of not less than five members. The Board shall operate under its rules and regulations supplemented by Robert's Rules of Order."

Section 7. G.S. 89C-9 reads as rewritten:

"**§ 89C-9. Executive ~~secretary;~~ director; duties and liabilities.**

The Board shall employ an executive ~~secretary~~ director who is not a member of the Board. The executive ~~secretary~~ director shall be a full-time employee of the Board and perform ~~such~~ the duties assigned to ~~him~~ the director by the secretary subject to the approval of the Board. The executive ~~secretary~~ director shall receive a salary and compensation fixed by the Board. The executive ~~secretary~~ director shall give a surety bond satisfactory to the Board conditioned upon the faithful performance of ~~his~~ the director's ~~duties.~~ duties assigned. The premium on ~~said~~ the bond shall be a necessary and proper expense of the Board."

Section 8. G.S. 89C-10 reads as rewritten:

"**§ 89C-10. Board powers.**

(a) The Board ~~shall have the power to~~ may adopt and amend all ~~rules and regulations. Additionally, the Board shall have the power to adopt such rules,~~ rules

and rules of ~~procedure, and regulations,~~ procedure as may be reasonably necessary for the proper performance of its duties, the regulation of its procedures, meetings, records, the ~~giving of~~ administration of ~~examinations and the conduct thereof,~~ examinations, and the ~~power~~ authority to enforce ~~such~~ the rules of professional conduct as ~~may, from time to time,~~ may be adopted by the Board pursuant to G.S. 89C-20.

The action by the Board in carrying out any of the powers specified ~~above~~ in this section shall be binding upon all persons ~~registered~~ licensed under this Chapter, including corporations and business firms holding certificates of authorization.

(b) The Board shall adopt and have an official seal, which shall be affixed to each certificate issued.

(c) The Board ~~is hereby authorized~~ may in the name of the State ~~to~~ apply for relief, by injunction, in the established manner provided in cases of civil procedure, without bond, to enforce the provisions of this Chapter, or to restrain any violation ~~thereof.~~ of the provisions of this Chapter. In ~~such proceedings,~~ proceedings for injunctive relief, it shall not be necessary to allege or prove either that an adequate remedy at law does not exist, or that substantial or irreparable damage would result from the continued violation ~~thereof.~~ of the provisions of this Chapter. The members of the Board shall not be personally liable under this proceeding.

(d) The Board may subject an applicant for ~~registration~~ licensure to ~~such~~ any examination ~~as it deems~~ necessary to determine ~~his~~ the applicant's qualifications.

(e) The Board ~~shall have the power to~~ may issue an appropriate certificate of ~~registration~~ licensure to any applicant who, in the opinion of the Board, has met the requirements of this Chapter.

(f) It shall be the responsibility and duty of the Board to conduct a regular program of investigation concerning all matters within its jurisdiction under the provisions of this Chapter. The investigation of a ~~registrant~~ licensee is confidential until the Board issues a citation to the ~~registrant.~~ licensee. The Board may expend its funds for salaries, fees, and per diem expenses, in connection with its investigations, provided that no ~~such~~ funds other than per diem expenses shall be paid to any member of the Board in connection with its investigations, nor may any member of the Board give testimony and ~~thereafter~~ later sit in deciding on any matter which may directly involve punitive action ~~under such~~ for the testimony.

(g) The Board ~~is authorized and empowered to~~ may use its funds to establish and conduct instructional programs for persons who are currently ~~registered~~ licensed to practice engineering or land surveying, as well as refresher courses for persons interested in obtaining adequate instruction or programs of study to qualify them for ~~registration~~ licensure to practice engineering or land surveying. The Board may expend its funds for these purposes and ~~is authorized and empowered~~ may not only ~~to~~ conduct, sponsor, and arrange for instructional programs, but also ~~to~~ may carry out ~~such~~ instructional programs through extension courses or other ~~media, and the~~ media. The Board may enter into plans or agreements with community colleges, public or private institutions of higher learning, ~~both public and private,~~ State and county boards of education, or with the governing authority of any industrial education

center for the purpose of planning, scheduling or arranging ~~such~~ courses, instruction, extension courses, or in assisting in obtaining courses of study or programs in the field of engineering and land surveying. The Board shall ~~make every effort practical to~~ encourage the educational institutions in this State to offer courses necessary to complete the educational requirements of this Chapter. For the purpose of carrying out these objectives, the Board ~~is authorized to make and promulgate such~~ may adopt rules ~~and regulations~~ as may be necessary for ~~such~~ the educational programs, instruction, extension services, or for entering into plans or contracts with persons or educational and industrial institutions.

(h) The Board may license sponsors of continuing professional competency activities who agree to conduct programs in accordance with standards adopted by the Board. Sponsors shall pay a license fee established by the Board, not to exceed two hundred fifty dollars ($250.00) for licensure under this subsection. The license fee shall accompany the application. Sponsors shall renew their licenses annually on a form provided by the Board."

Section 9. G.S. 89C-11 reads as rewritten:

"**§ 89C-11. Secretary; duties and liabilities; expenditures.**

The secretary of the Board shall receive and account for all moneys derived from the operation of the Board as provided in this Chapter, and shall deposit them in one or more special funds in banks or other financial institutions carrying deposit insurance and authorized to do business in North Carolina. The fund or funds shall be designated as 'Fund of the Board of ~~Registration~~ Examiners for ~~Professional~~ Engineers and ~~Land~~ Surveyors' and shall be drawn against only for the purpose of implementing provisions of this Chapter as herein provided. All expenses certified by the Board as properly and necessarily incurred in the discharge of its duties, including authorized compensation, shall be paid out of ~~said~~ this fund on the warrant signed by the secretary of the ~~Board; provided, however, that at~~ Board. At no time shall the total of warrants issued exceed the total amount of funds accumulated under this Chapter. The secretary of the Board shall give a surety bond satisfactory to the State Board of ~~Registration~~ Examiners for ~~Professional~~ Engineers and ~~Land~~ Surveyors, conditioned upon the faithful performance of ~~his duties.~~ the duties assigned. The premium on ~~said~~ the bond ~~shall be regarded as~~ is a proper and necessary expense of the Board. The secretary of the Board may delegate to the executive ~~secretary~~ director certain routine duties, such as receipt and disbursement of funds in stated amounts by a written authorization, which has the unanimous approval of the Board."

Section 10. G.S. 89C-12 reads as rewritten:

"**§ 89C-12. Records and reports of Board; evidence.**

The Board shall keep a record of its proceedings and a register of all applicants for ~~registration,~~ licensure, showing for each the date of application, name, age, education, and other qualifications, place of business and place of residence, whether the applicant was rejected or a certificate of ~~registration~~ licensure granted, and the date ~~of such action.~~ licensure was rejected or granted. The books and register of the Board shall be prima facie evidence of all matters recorded ~~therein,~~ by the Board,

and a copy duly certified by the secretary of the Board under seal shall be admissible in evidence as if the original were produced. A roster showing the names and places of business and of residence of all ~~registered~~ licensed professional engineers and all ~~registered~~ licensed professional land surveyors shall be prepared by the secretary of the Board current to the month of January of each ~~year; such~~ year. The roster shall be printed by the Board out of the Board's fund ~~of said Board~~ and distributed as ~~set forth~~ described in the Board's ~~rules and regulations.~~ rules. On or before the first day of May of each year, the Board shall submit to the Governor a report on its transactions for the preceding year, and shall file with the Secretary of State a copy of ~~such~~ the report, together with a complete statement of the receipts and expenditures of the ~~Board,~~ Board attested by the ~~affidavits of the chairman~~ chair and the ~~secretary,~~ secretary and a copy of the ~~said~~ the roster of ~~registered~~ licensed professional engineers and ~~registered~~ professional land surveyors."

Section 11. G.S. 89C-13 reads as rewritten:

"**§ 89C-13. General requirements for ~~registration.~~ licensure.**

(a) Engineer Applicant. -- To be eligible for ~~admission to examination for~~ licensure as a professional ~~engineer~~ engineer, an applicant must be of good character and reputation. An applicant desiring to take the examination in the fundamentals of engineering ~~only~~ must submit three character ~~references.~~ references, one of whom shall be a professional engineer. An applicant desiring to take the examination in the principles and practice of engineering must submit five references, two of whom shall be professional engineers having personal knowledge of ~~his~~ the applicant's engineering experiences.

The following shall be considered as minimum evidence satisfactory to the Board that the applicant is qualified for ~~registration:~~ licensure:

(1) As a professional engineer (shall meet one):

a. ~~Registration~~ Licensure by Comity or Endorsement. -- A person holding a certificate of ~~registration~~ licensure to engage in the practice of engineering, on the basis of comparable qualifications, issued to ~~him~~ the person by a proper authority of a state, territory, or possession of the United States, the District of Columbia, or of Canada, who completes an application for licensure and submits five references, two of which shall be from professional engineers having personal knowledge of the applicant's engineering experience, and ~~who~~ who, in the opinion of the Board, meets the requirements of this Chapter, based on verified evidence may, upon application, be ~~registered~~ licensed without further examination.

A person holding a certificate of qualification issued by the Committee on National Engineering Certification of the National Council of ~~Engineering Examiners,~~ Examiners for Engineering and Surveying whose qualifications meet the

requirements of this Chapter, may upon application, be ~~registered~~ licensed without further examination.

b. ~~E.I.T.~~ E.I. Certificate, Experience, and Examination. -- A holder of a certificate of ~~engineer-in-training~~ engineering intern issued by the Board, and with a specific record of an additional four years or more of progressive experience on engineering projects of a grade and character which indicates to the Board that the applicant may be competent to practice engineering, shall be admitted to ~~an eight-hour examination in~~ the principles and practice of ~~engineering.~~ engineering examination. Upon passing ~~such~~ the examination, the applicant shall be granted a certificate of ~~registration~~ licensure to practice professional engineering in this State, provided ~~he~~ the applicant is otherwise qualified.

c. Graduation, Experience, and Examination. -- A graduate of an engineering curriculum of four years or more approved by the Board as being of satisfactory standing, and with a specific record of an additional four years or more of progressive experience on engineering projects of a grade and character which indicates to the Board that the applicant may be competent to practice engineering, shall be admitted to ~~an eight-hour written examination in~~ the fundamentals of ~~engineering,~~ engineering examination, and ~~an eight-hour written examination in~~ the principles and practice of ~~engineering.~~ engineering examination. Upon passing ~~such~~ the examinations, the applicant shall be granted a certificate of ~~registration~~ licensure to practice professional engineering in this State, provided ~~he~~ the applicant is otherwise qualified.

d. Graduation, Experience, and Examination. -- A graduate of an engineering or related science curriculum of four years or more, other than the ones approved by the Board as being of satisfactory standing or with an equivalent education and engineering experience satisfactory to the Board and with a specific record of eight years or more of progressive experience on engineering projects of a grade and character which indicates to the Board that the applicant may be competent in the fundamentals of engineering, shall be admitted to ~~an eight-hour written examination in~~ the fundamentals of ~~engineering,~~ engineering examination and ~~an eight-hour written examination in~~ the principles and practice of ~~engineering.~~ engineering examination. Upon passing ~~such~~ the examinations, the applicant shall be granted a certificate of ~~registration~~ licensure to practice professional

engineering in this State, provided ~~he~~ the applicant is otherwise qualified.

e. Long-Established Practice. -- ~~An individual~~ A person with a specific record of 20 years or more of progressive experience on engineering projects of a grade and character which indicates to the Board that the applicant may be competent to practice engineering shall be admitted to ~~an eight-hour written examination in~~ the principles and practice of ~~engineering.~~ engineering examination. Upon passing ~~such~~ the examination, the applicant shall be granted a certificate of ~~registration~~ licensure to practice professional engineering in this State, provided ~~he~~ the applicant is otherwise qualified.

At its discretion the Board may require an applicant to submit exhibits, drawings, designs, or other tangible evidence of engineering work ~~executed by him and~~ which ~~he~~ the applicant personally accomplished or supervised.

The following shall be considered as minimum evidence that the applicant is qualified for certification:

(2) As an ~~engineer-in-training~~ engineering intern (shall meet one):

a. Graduation and Examination. -- A graduate of an engineering curriculum or related science curriculum of four years or more, approved by the Board as being of satisfactory standing, or a student who has attained senior status in an accredited engineering program, shall be admitted to ~~an eight-hour written examination in~~ the fundamentals of ~~engineering.~~ engineering examination. The applicant shall be notified if the examination was passed or not passed and if passed he shall be certified as an ~~engineer-in-training,~~ engineering intern if ~~he~~ the applicant is otherwise qualified.

b. Graduation, Experience, and Examination. -- A graduate of an engineering or related science curriculum of four years or more, other than the ones approved by the Board as being of satisfactory standing, or with equivalent education and engineering experience satisfactory to the Board and with a specific record of four or more years of progressive experience on engineering projects of a grade and character satisfactory to the Board, shall be admitted to ~~an eight-hour written examination in~~ the fundamentals of ~~engineering.~~ engineering examination. The applicant shall be notified if the examination was passed or not passed and if ~~passed he~~ passed, the applicant shall be certified as an ~~engineer-in-training~~ engineering intern if ~~he~~ the applicant is otherwise qualified.

(b) Land Surveyor Applicant. -- To be eligible for admission to examination for land ~~surveyor-in-training,~~ surveyor intern or ~~registered~~ professional land surveyor, an applicant must be of good character and reputation and shall submit five references with ~~his~~ the application for ~~registration~~ licensure as a land surveyor, two of which references shall be ~~registered~~ professional land surveyors having personal knowledge of ~~his~~ the applicant's land surveying experience, or in the case of an application for certification as a land ~~surveyor-in-training~~ surveyor intern by three references, one of which shall be a ~~registered~~ licensed land surveyor having personal knowledge of the applicant's land surveying experience.

The evaluation of a land surveyor applicant's qualifications shall involve a consideration of ~~his~~ the applicant's education, technical and land surveying experience, exhibits of land surveying projects with which ~~he~~ the applicant has been associated, and recommendations by ~~references, and reviewing of these categories during an oral examination.~~ references. The land surveyor applicant's qualifications may be reviewed at an interview if the Board ~~deems~~ determines it necessary. Educational credit for institute courses, correspondence courses, ~~etc.,~~ or other courses shall be determined by the Board.

The following shall be considered a minimum evidence satisfactory to the Board that the applicant is qualified for ~~registration~~ licensure as a professional land surveyor or for certification as a land ~~surveyor-in-training,~~ surveyor intern respectively:

(1) As a ~~registered~~ professional land surveyor (shall meet one):

a. Rightful possession of a ~~B.S.~~ bachelor of science degree in surveying or other equivalent curricula, all approved by the Board and a record satisfactory to the Board of ~~one year~~ two years or more of progressive practical ~~experience~~ experience, one year of which shall have been under a practicing ~~registered~~ professional land surveyor and satisfactorily passing ~~such~~ any oral and written ~~examination, taken in the presence of and~~ examination required by the Board, all of which shall determine and indicate that the ~~candidate~~ applicant is competent to practice land surveying. The applicant may ~~elect~~ be qualified by the Board to take the first examination (Surveying Fundamentals) immediately after obtaining the ~~B.S.~~ bachelor of science degree at the first regularly scheduled examination thereafter. Upon passing the first examination and successful completion of the experience required by this subdivision, the applicant may apply to take the second examination (Principles and Practice of Land Surveying). An applicant who passes both examinations and completes the educational and experience requirements of this subdivision shall be granted ~~registration~~ licensure as a professional land surveyor.

b. Rightful possession of an associate degree in surveying technology approved by the Board and a record satisfactory

to the Board of ~~three~~ four years of progressive practical experience, ~~two~~ three years of which shall have been under a practicing ~~registered~~ licensed land surveyor, and satisfactorily passing ~~such~~ any written and oral examination ~~taken in the presence of and as~~ required by the Board, all of which shall determine and indicate that the ~~candidate~~ applicant is competent to practice land surveying. The applicant may ~~elect~~ apply to the Board to take the first examination (Surveying Fundamentals) immediately after obtaining the associate degree at the first regularly scheduled examination thereafter. Upon passing the first examination and successfully completing ~~years of progressive practical experience under a practicing registered land surveyor,~~ the practical experience required under this subdivision, the applicant may ~~elect~~ apply to the Board to take the second examination ~~(Principles and Practice of Land Surveying) prior to, during, or after completion of the additional experience required by this subdivision.~~ (Principles and Practice of Land Surveying). An applicant who passes both examinations and successfully completes the educational and experience requirements of this subdivision shall be granted ~~registration~~ licensure as a professional land surveyor.

~~e. Land Surveyor-in-Training Certificate, Experience, and Examination. — A holder of a certificate of land surveyor-in-training issued by the Board, and with a specific record of an additional two years or more of progressive surveying experience, one year of which shall have been under a practicing registered land surveyor, of a grade and character which indicates to the Board that the applicant may be competent to practice land surveying, shall be admitted to two four-hour examinations. Upon passing such examinations, the applicant shall be granted a certificate of registration to practice land surveying in this State, provided he is otherwise qualified.~~

d. Graduation from a high school or the completion of a high school equivalency certificate and a record satisfactory to the Board of ~~seven~~ 10 years of progressive practical experience, ~~six~~ seven years of which shall have been under a practicing ~~registered~~ licensed land surveyor, and satisfactorily passing ~~such~~ any oral and written ~~examination written in the presence of and~~ examinations required by the Board, all of which shall determine and indicate that the candidate is competent to practice land surveying. The

applicant may be qualified by the Board to take the first examination (Surveying Fundamentals) upon graduation from high school or the completion of a high school equivalency certificate and successfully completing six years of progressive practice experience, five of which shall have been under a practicing licensed land surveyor. The applicant may apply to take the second examination (Principles and Practice of Land Surveying) upon passing the first examination and successfully completing four years of progressive practical experience, two of which shall have been under a practicing licensed land surveyor.

e. Repealed by Session Laws 1985 (Regular Session, 1986), c. 977, s. 7.

f. ~~Registration~~ Licensure by Comity or Endorsement. -- A person holding a certificate of ~~registration~~ licensure to engage in the practice of land surveying issued on comparable qualifications from a state, territory, or possession of the United States will be given comity considerations. However, ~~he~~ the applicant may be asked to take ~~such~~ any examinations as the Board ~~deems necessary~~ requires to determine ~~his~~ the applicant's qualifications, but in any event, ~~he~~ the applicant shall be required to pass ~~a written~~ an examination which shall include questions on laws, procedures, and practices pertaining to the practice of land surveying in North Carolina.

g. A licensed professional engineer who can satisfactorily demonstrate to the Board that ~~his~~ the professional engineer's formal academic training in acquiring a degree and field experience in engineering includes land surveying, to the extent necessary to reasonably qualify the applicant in the practice of land surveying, may apply for and may be granted permission to take the ~~two four-hour examinations on the~~ principles and practice of land surveying examination and the ~~two four-hour examinations on the~~ fundamentals of land ~~surveying.~~ surveying examination. Upon satisfactorily passing the examinations, the applicant ~~will~~ shall be granted a license to practice land surveying in the State of North Carolina.

h. Professional Engineers in Land Surveying. -- Any person presently licensed to practice professional engineering under this Chapter shall upon ~~his~~ application be licensed to practice land surveying, providing ~~his~~ a written application is filed with the Board within one year next after June 19, 1975.

i. Photogrammetrists. -- Any person presently practicing photogrammetry with at least seven years of experience in the profession, two or more of which shall have been in responsible charge of photogrammetric mapping projects meeting National Map Accuracy Standards shall, upon application, be licensed to practice land surveying, provided:

1. The applicant submit certified proof of graduation from high school, high school equivalency, or higher degree;
2. The applicant submit proof of employment in responsible charge as a photogrammetrist practicing within the State of North Carolina to include itemized reports detailing methods, procedures, amount of applicant's personal involvement and the name, address, and telephone numbers of the client for five projects completed by the applicant with the State. A final map for one of the five projects shall also be submitted;
3. Five references to the applicant's character and quality of work, three of which shall be from professional land surveyors, are submitted to the Board; and
4. The application is submitted to the Board by July 1, 1998. After July 1, 1998, no photogrammetrist shall be licensed without meeting the same requirements as to education, length of experience, and testing required of all land surveying applicants.

The Board shall require an applicant to submit exhibits, drawings, plats or other tangible evidence of land surveying work executed by ~~him~~ the applicant under proper supervision and which ~~he~~ the applicant has personally accomplished or supervised.

Land surveying encompasses a number of disciplines including geodetic surveying, hydrographic surveying, cadastral surveying, engineering surveying, route surveying, photogrammetric (aerial) surveying, and topographic surveying. A professional land surveyor shall practice only within the surveyor's area of expertise.

(2) As a land ~~surveyor-in-training~~ surveyor intern (shall meet one):

a. Rightful possession of an associate degree in surveying technology approved by the Board and satisfactorily passing a written ~~or~~ and oral examination ~~taken in the presence of and~~ as required by the Board.

b. Rightful possession of a ~~B.S.~~ bachelors degree in surveying or other equivalent curricula in surveying all approved by the Board and satisfactorily passing ~~such~~ any oral and

written examinations ~~written in the presence of and~~ required by the Board.

c. Graduation from high school or the completion of a high school equivalency certificate and a record satisfactory to the Board of ~~five~~ six years of progressive, practical experience, ~~four~~ five years of which shall have been under a practicing ~~registered~~ licensed land surveyor and satisfactorily passing any oral and written examinations ~~taken in the presence of and as~~ required by the Board.

The Board shall require an applicant to submit exhibits, drawings, plats, or other tangible ~~evidence of land surveying work executed by him under proper supervision and~~ which ~~he~~ the applicant has personally accomplished or supervised."

Section 12. G.S. 89C-14 reads as rewritten:

"**§ 89C-14. Application for ~~registration; registration~~ licensure; license fees.**

(a) Application for ~~registration~~ licensure as a professional engineer or ~~registered~~ professional land surveyor shall be on a form prescribed and furnished by the Board. It shall contain statements made under oath, showing the applicant's education and a detailed summary of ~~his~~ the applicant's technical and engineering or land surveying experience, and shall include the names and complete mailing addresses of the references, none of whom ~~should~~ may be immediate members of the applicant's family or members of the Board.

The Board may accept the certified information on the copy of a current formal certificate of qualifications issued by the National Council of ~~Engineering Examiners Committee or National Engineering Certification for Professional Engineer applicants~~ Examiners for Engineering and Surveying in lieu of the same information that is required for the form prescribed and furnished by the Board.

(b) An applicant for ~~registration~~ licensure who is required to take the written examination shall pay a fee equal to the cost of the examination to the Board plus an additional amount not to exceed one hundred dollars ($100.00). The Board may charge any fee necessary to defray the cost of any required examinations. The fee shall accompany the application. The fee for comity ~~registration~~ licensure of engineers and land surveyors who hold unexpired certificates in another state or a territory of the United States or in Canada shall be the total current fee as fixed by the Board.

(c) The certification fee for a corporation is the amount set by the Board ~~in accordance with G.S. 55B-10.~~ but shall not exceed two hundred fifty dollars ($250.00). The fee shall accompany the application. The certification fee for a business firm is the same as the fee for a corporation. The fee for renewal of a certificate of ~~registration~~ licensure of a corporation is the amount set by the Board ~~in accordance with G.S. 55B-11.~~ but shall not exceed one hundred dollars ($100.00). The fee for renewal of a certificate of ~~registration~~ licensure for a business firm is the same as the renewal fee for a corporation.

(d) Should the Board deny the issuance of a certificate of ~~registration~~ licensure to any applicant, the unobligated portion of fees paid shall be returned by the Board to the applicant.

(e) A candidate failing an examination may apply, and be considered by the Board, for reexamination at the end of six months. The Board shall make such reexamination charge as is necessary to defray the cost of the examination.

A candidate ~~failing an examination three times will not be permitted to take a reexamination until he has made a written appeal to the Board and his tentative qualifications for the examination are reviewed and reaffirmed by the Board.~~ with a combination of three failures or unexcused absences on an examination shall only be eligible after submitting a new application with appropriate application fee, and be considered by the Board for reexamination at the end of 12 months. After the end of the 12-month period, the applicant may take the examination no more than once every calendar year."

Section 13. G.S. 89C-15 reads as rewritten:

"**§ 89C-15. Examinations.**

(a) The examinations will be held at ~~such~~ the times and places as the Board directs. The Board shall determine the passing grade on examinations. All examinations shall be approved by the entire Board.

(b) Written examinations will be given in sections and may be taken only after the applicant has met the other minimum requirements as given in ~~G.S. 89C-13,~~ G.S. 89C-13 and has been approved by the Board for admission to the examination as follows:

(1) Engineering Fundamentals. -- Consists of an eight-hour examination on the fundamentals of engineering. Passing this examination qualifies the ~~examinee~~ applicant for an ~~engineer-in-training~~ engineering intern certificate, provided ~~he~~ the applicant has met all other requirements for ~~certification~~ licensure required by this Chapter.

(2) Principles and Practice of Engineering. -- Consists of an eight-hour examination on applied engineering. Passing this examination qualifies the ~~examinee~~ applicant for ~~registration~~ licensure as a professional engineer, provided ~~he~~ the applicant has met the other requirements for registration required by this Chapter.

(3) Surveying Fundamentals. -- Consists of ~~two four-hour examinations~~ an eight-hour examination on the elementary disciplines of land surveying. Passing ~~both of these examinations~~ this examination qualifies the ~~examinee~~ applicant for a land ~~surveyor-in-training~~ surveyor intern certificate provided ~~he~~ the applicant has met all other requirements for certification required by this Chapter.

(4) Principles and Practices of Land Surveying. -- Consists of ~~two four-hour examinations~~ a six-hour examination on the basic and applied disciplines of land ~~surveying, one examination on basic disciplines and the other examination covering applied disciplines.~~

surveying and a two-hour examination on requirements specific to the practice of land surveying in North Carolina. Passing each of these examinations qualifies the ~~examinee~~ applicant for a ~~registered~~ professional land surveyor certificate provided ~~he~~ the applicant has met all other requirements for certification required by this Chapter."

Section 14. G.S. 89C-16 reads as rewritten:

"**§ 89C-16. Certificates of ~~registration;~~ licensure; effect; seals.**

(a) The Board shall issue to any applicant, who, in the opinion of the Board, has met the requirements of this Chapter, a certificate of ~~registration~~ licensure giving the ~~registrant~~ licensee proper authority to practice ~~his~~ the profession in this State. The certificate of ~~registration~~ licensure for a professional engineer shall carry the designation 'professional engineer,' and for a land surveyor, '~~registered~~ 'professional land surveyor,' shall give the full name of the ~~registrant~~ licensee with ~~his serial~~ the Board designated licensure number and shall be signed by the ~~chairman~~ chair and the secretary under the seal of the Board.

(b) This certificate shall be prima facie evidence that the person named ~~thereon~~ on the certificate is entitled to all rights, privileges and responsibilities of a professional engineer or a ~~registered~~ professional land surveyor, while the ~~said~~ certificate of ~~registration~~ licensure remains unrevoked or unexpired.

(c) Each ~~registrant hereunder~~ licensee shall upon ~~registration~~ licensure obtain a seal of a design authorized by the Board bearing the ~~registrant's~~ licensee's name, ~~serial~~ license number, and the legend, 'professional engineer,' or '~~registered~~ 'professional land surveyor.' Final drawings, specifications, plans and reports prepared by a ~~registrant~~ licensee shall, when issued, be certified and stamped with the ~~said~~ seal or facsimile ~~thereof~~ of the seal unless the ~~registrant~~ licensee is exempt under the provisions of G.S. 89C-25(7). It shall be unlawful for a ~~registrant~~ licensee to affix, or permit ~~his~~ the licensee's seal and signature or facsimile ~~thereof~~ of the seal and signature to be affixed to any drawings, specifications, plans or reports after the expiration of a certificate or for the purpose of aiding or abetting any other person to evade or attempt to evade any provision of this Chapter. A professional engineer practicing land surveying shall use ~~his registered~~ the licensee's land surveyor seal."

Section 15. G.S. 89C-17 reads as rewritten:

"**§ 89C-17. Expirations and renewals of certificates.**

Certificates for ~~registration~~ licensure shall expire on the last day of the month of December next following their issuance or renewal, and shall become invalid on that date unless renewed. When necessary to protect the public health, safety, or welfare, the Board shall require ~~such~~ any evidence ~~as it deems~~ necessary to establish the continuing competency of engineers and land surveyors as a condition of renewal of licenses. When the Board is satisfied as to the continuing competency of an applicant, it shall issue a renewal of the certificate upon payment by the applicant of a fee fixed by the Board but not to exceed ~~fifty dollars ($50.00).~~ one hundred dollars ($100.00). The secretary of the Board shall notify by mail every person ~~registered~~ licensed under this Chapter of the date of expiration of ~~his~~ the certificate, the amount of the fee

required for its renewal for one year, and any requirement as to evidence of continued competency. The notice shall be mailed at least one month in advance of the expiration date of the certificate. Renewal shall be effected at any time during the month of January immediately following, by payment to the secretary of the Board of a renewal fee, as determined by the Board, which shall not exceed ~~fifty dollars ($50.00).~~ one hundred dollars ($100.00). Failure on the part of any registrant to renew ~~his~~ the certificate annually in the month of January, as required above, shall deprive the registrant of the right to practice until renewal has been effected. Renewal may be effected at any time during the first ~~36~~ 12 months immediately following its invalidation ~~of payment of the renewal fee increased ten percent (10%) for each month or fraction of a month that payment for renewal is delayed.~~ by payment of the established renewal fee and a late penalty of one hundred dollars ($100.00). Failure of a ~~registrant~~ licensee to renew ~~his registration~~ the license for a period of ~~36~~ 12 months shall require the individual, prior to resuming practice in North Carolina, to submit an application ~~therefor~~ on the prescribed form, and to meet all other requirements for ~~registration~~ licensure as set forth in Chapter 89C. The secretary of the Board is instructed to remove from the official roster of engineers and land surveyors the names of all ~~registrants~~ licensees who have not effected their renewal by the first day of February immediately following the date of their expiration. The Board may ~~enact~~ adopt rules to provide for renewals in distress or hardship cases due to military service, prolonged illness, or prolonged absence from the State, where the applicant for renewal demonstrates to the Board that ~~he~~ the applicant has maintained ~~his~~ active knowledge and professional status as an engineer or land surveyor, as the case may be. It shall be the responsibility of each ~~registrant~~ licensee to inform the Board promptly concerning change in address. A licensee may request and be granted inactive status. No inactive licensee may practice in this State unless otherwise exempted in this Chapter. A licensee granted inactive status shall pay annual renewal fees but shall not be subject to annual continuing professional competency requirements. A licensee granted inactive status may return to active status by meeting all requirements of the Board, including demonstration of continuing professional competency as a condition of reinstatement."

Section 16. G.S. 89C-18 reads as rewritten:

"**§ 89C-18. Duplicate certificates.**

The Board may issue a duplicate certificate of ~~registration~~ licensure or certificate of authorization to replace any certificate that has been lost, destroyed, or mutilated and may charge a fee of up to twenty-five dollars ($25.00) for issuing the certificate."

Section 17. G.S. 89C-19 reads as rewritten:

"**§ 89C-19. Public works; requirements where public safety involved.**

This State and its political subdivisions such as counties, cities, towns, or other political entities or legally constituted boards, commissions, public utility companies, or authorities, or officials, or employees ~~thereof~~ of these entities shall not engage in the practice of engineering or land surveying involving either public or private property where the safety of the public is directly involved without the project being under the supervision of a professional engineer for the preparations of plans and

specifications for engineering projects, or a ~~registered~~ professional land surveyor for land surveying projects, as provided for the practice of the respective professions by this Chapter.

An official or employee of the State or any political subdivision specified in this section, holding the positions set out in this section as of June 19, 1975, shall be exempt from the provisions of this section so long as such official or employee is engaged in substantially the same type of work as is involved in ~~his~~ the present position.

Nothing in this section shall be construed to prohibit inspection, maintenance and service work done by employees of the State of North Carolina, any political subdivision ~~thereof,~~ of the State, or any municipality ~~therein~~ including construction, installation, servicing, and maintenance by regular full-time employees of, secondary roads and drawings incidental ~~thereto,~~ to work on secondary roads, streets, street lighting, traffic-control signals, police and fire alarm systems, waterworks, steam, electric and sewage treatment and disposal plants, the services of superintendents, inspectors or foremen regularly employed by the State of North Carolina or any political subdivision ~~thereof,~~ of the State, or municipal ~~corporation therein.~~ corporation.

The provisions in this section shall not be construed to alter or modify the requirements of Article 1 of Chapter 133 of the General Statutes."

Section 18. G.S. 89C-20 reads as rewritten:

"§ 89C-20. Rules of professional conduct.

In the interest of protecting the safety, health, and welfare of the public, the Board shall ~~promulgate and~~ adopt rules of professional conduct applicable to the practice of engineering and land surveying. These rules, when adopted, shall be construed to be a reasonable exercise of the police power vested in the Board of ~~Registration~~ Examiners for ~~Professional~~ Engineers and Land Surveyors. Every person ~~registered~~ licensed by the Board shall subscribe to and observe the adopted rules as the standard of professional conduct for the practice of engineering and land ~~surveying.~~ surveying and shall cooperate fully with the Board in the course of any investigation. In the case of violation of the rules of professional conduct, the Board shall ~~have the responsibility and duty to~~ proceed in accordance with G.S. 89C-22."

Section 19. G.S. 89C-21 reads as rewritten:

"§ 89C-21. Disciplinary action -- Reexamination, revocation, suspension, reprimand, or civil penalty.

(a) The Board may reprimand the licensee, suspend, refuse to renew, or revoke the certificate of ~~registration,~~ licensure, or, as appropriate, require reexamination, for any engineer or land surveyor, who is found:

(1) Guilty of the practice of any fraud or deceit in obtaining a certificate of ~~registration~~ licensure or certificate of authorization.

(2) Guilty of any gross negligence or misconduct in the practice of ~~his~~ the profession.

(3) Guilty of any felony or any crime involving moral turpitude.

(4) Guilty of violation of the Rules of Professional Conduct, as adopted by the Board.

(5) To have been declared insane or incompetent by a court of competent jurisdiction and has not ~~thereafter~~ later been lawfully declared sane or competent.

(6) Guilty of professional incompetence. In the event the Board finds that a certificate holder is incompetent the Board may, in its discretion, require oral or written examinations, or other indication of the certificate holder's fitness to practice ~~his profession~~ engineering or land surveying and suspend ~~his~~ the license during any such period.

(b) The Board ~~shall have the power to~~ may (i) revoke a certificate of authorization, or (ii) to suspend a certificate of authorization for a period of time not exceeding two years, of any corporation or business firm where one or more of its officers or directors have committed any act or have been guilty of any conduct which would authorize a revocation or suspension of their certificates of ~~registration~~ licensure under the provision of this section.

(c) The Board may levy a civil penalty not in excess of two thousand dollars ($2,000) for any engineer or land surveyor who violates any of the provisions of subdivisions (1) through (4) of subsection (a) of this section. All civil penalties collected by the Board shall be deposited in the General Fund of North Carolina.

(d) Before imposing and assessing a civil penalty and fixing the ~~amount thereof,~~ amount, the Board shall, as a part of its deliberation, take into consideration the following factors:

(1) The nature, gravity, and persistence of the particular violations;

(2) The appropriateness of the imposition of a civil penalty when considered alone or in combination with other punishment;

(3) Whether the violation(s) were done willfully and maliciously; and

(4) Any other factors which would tend to either mitigate or aggravate the violation(s) found to exist."

Section 20. G.S. 89C-22 reads as rewritten:

"**§ 89C-22. Disciplinary action -- Charges; procedure.**

(a) Any person may prefer charges of fraud, deceit, gross negligence, incompetence, misconduct, or violation of the rules of professional conduct, against any Board registrant. The charges shall be in writing and shall be sworn to by the person or persons making them and shall be filed with ~~the secretary of~~ the Board.

(b) All charges, unless dismissed by the Board as unfounded or trivial, shall be heard by the Board as provided under the requirements of Chapter 150B of the General Statutes.

(c) If, after ~~such~~ a hearing, a majority of the Board votes in favor of sustaining the charges, the Board shall reprimand, levy a civil penalty, suspend, refuse to renew, or revoke the ~~registrant's certificate of registration.~~ licensee's certificate.

(d) A ~~registrant~~ licensee who is aggrieved by a final decision of the Board may appeal for judicial review as provided by Article 4 of Chapter 150B.

(e) The Board may, upon petition of an individual or an entity whose certificate has been revoked, for sufficient ~~reasons it may deem sufficient,~~ reasons as it may determine, reissue a certificate of ~~registration~~ licensure or authorization, provided that a majority of the members of the Board vote in favor of such issuance."

Section 21. G.S. 89C-23 reads as rewritten:

"**§ 89C-23. Unlawful to practice engineering or land surveying without ~~registration;~~ licensure; unlawful use of title or terms; penalties; Attorney General to be legal adviser.**

Any person who shall practice, or offer to practice, engineering or land surveying in this State without first being ~~registered~~ licensed in accordance with the provisions of this Chapter, or any person, firm, partnership, organization, association, corporation, or other entity using or employing the words 'engineer' or 'engineering' or 'professional engineer' or 'professional engineering' or 'land surveyor' or 'land surveying,' or any modification or derivative ~~thereof~~ of those words in its name or form of business or activity except as ~~registered~~ licensed under this Chapter or in pursuit of activities exempted by this Chapter, or any person presenting or attempting to use the certificate of ~~registration~~ licensure or the seal of another, or any person who shall give any false or forged evidence of any kind to the Board or to any member ~~thereof~~ of the Board in obtaining or attempting to obtain a certificate of ~~registration,~~ licensure, or any person who shall falsely impersonate any other ~~registrant~~ licensee of like or different name, or any person who shall attempt to use an expired or revoked or nonexistent certificate of ~~registration,~~ licensure, or who shall practice or offer to practice when not qualified, or any person who falsely claims that ~~he~~ the person is registered under this Chapter, or any person who shall violate any of the provisions of this Chapter, in addition to injunctive procedures set out hereinbefore, shall be guilty of a Class 2 misdemeanor. In no event shall there be representation of or holding out to the public of any engineering expertise by ~~unregistered~~ unlicensed persons. It shall be the duty of all duly constituted officers of the State and all political subdivisions ~~thereof~~ of the State to enforce the provisions of this Chapter and to prosecute any persons violating ~~same.~~ them.

The Attorney General of the State or ~~his~~ an assistant shall act as legal adviser to the Board and render ~~such~~ any legal assistance ~~as may be~~ necessary ~~in carrying~~ to carry out the provisions of this Chapter. The Board may employ counsel and necessary assistance to aid in the enforcement of this Chapter, and the compensation and expenses ~~therefor~~ for the assistance shall be paid from funds of the Board."

Section 22. G.S. 89C-24 reads as rewritten:

"**§ 89C-24. ~~Registration~~ Licensure of corporations and business firms that engage in the practice of engineering or land surveying.**

A corporation or business firm may not engage in the practice of engineering or land surveying in this State unless it is ~~registered with~~ licensed by the Board and has paid ~~the required registration fee.~~ an application fee established by the Board in an amount not to exceed two hundred fifty dollars ($250.00). A corporation or business firm is subject to the same duties and responsibilities as an individual ~~registrant. Registration~~ licensee. Licensure of a corporation or business firm does not affect the

requirement that all engineering or land surveying work done by the corporation or business firm be performed by or under the responsible charge of individual registrants, nor does it relieve the individual registrants within a corporation or business firm of their design and supervision responsibilities.

This section applies to every corporation that is engaged in the practice of engineering or land surveying, regardless of when it was incorporated. A corporation that is not exempt from Chapter 55B of the General Statutes by application of G.S. 55B-15 must be incorporated under that Chapter."

Section 23. G.S. 89C-25 reads as rewritten:

"**§ 89C-25. Limitations on application of Chapter.**

This Chapter shall not be construed to prevent or affect:

(1) The practice of architecture, landscape architecture, or contracting or any other legally recognized profession or trade; or

(2) The practice of professional engineering or land surveying in this State or by any person not a resident of this State and having no established place of business in this State when this practice does not aggregate more than 90 days in any calendar year, whether performed in this State or elsewhere, or involve more than one specific project; provided, however, that ~~such~~ the person is ~~legally qualified by registration~~ licensed to practice the ~~said~~ profession in ~~his~~ the person's own state or country, in which the requirements and qualifications for obtaining a certificate of ~~registration~~ licensure are satisfactory to the Board; in which case the person shall apply for and the Board will issue a temporary permit; or

(3) The practice of professional engineering or land surveying in this State not to aggregate more than 90 days by any person residing in this State, but whose residence has not been of sufficient duration for the Board to grant or deny ~~registration;~~ licensure; provided, however, ~~such~~ the person shall have filed an application for ~~registration~~ licensure as a professional engineer or ~~registered~~ professional land surveyor and shall have paid the fee provided for in G.S. 89C-14, and provided that ~~such a~~ the person is ~~legally qualified by registration~~ licensed to practice professional engineering or professional land surveying in ~~his~~ the person's own state or country in which the requirements and qualifications for obtaining a certificate of ~~registration~~ licensure are satisfactory to the Board, in which case the person shall apply for and the Board will issue a temporary permit; or

(4) Engaging in engineering or land surveying as an employee or assistant under the responsible charge of a professional engineer or ~~registered~~ professional land surveyor or as an employee or assistant of a nonresident professional engineer or a nonresident ~~registered~~ professional land surveyor provided for in subdivisions (2) and (3)

of this section, provided that ~~said~~ the work as an employee may not include responsible charge of design or supervision; or

(5) The practice of professional engineering or land surveying by any person not a resident of, and having no established place of business in this State, as a consulting associate of a professional engineer or ~~registered~~ professional land surveyor ~~registered~~ licensed under the provisions of this Chapter; provided, the nonresident is qualified for ~~such~~ performing the professional service in ~~his~~ the person's own state or country; or

(6) Practice by members of the armed forces or employees of the government of the United States while engaged in the practice of engineering or land surveying solely for ~~said~~ the government on government-owned works and projects; or

(7) The internal engineering or surveying activities of a person, firm or corporation engaged in manufacturing, processing, or producing a product, including the activities of public service corporations, public utility companies, authorities, State agencies, railroads, or membership cooperatives, or the installation and servicing of their product in the field; or research and development in connection with the manufacture of that product or their service; or of their research affiliates; or their employees in the course of their employment in connection with the manufacture, installation, or servicing of their product or service in the field, or on-the-premises maintenance of machinery, equipment, or apparatus incidental to the manufacture or installation of the product or service of a firm by the employees of the firm upon property owned, leased or used by the firm; inspection, maintenance and service work done by employees of the State of North Carolina, any political subdivision ~~thereof,~~ of the State, or any municipality ~~therein~~ including construction, installation, servicing, maintenance by regular full-time employees of streets, street lighting, traffic-control signals, police and fire alarm systems, waterworks, steam, electric and sewage treatment and disposal plants; the services of superintendents, inspectors or foremen regularly employed by the State of North Carolina or any political subdivision ~~thereof,~~ of the State or a municipal ~~corporation therein;~~ corporation; provided, however, that the internal engineering or surveying activity is not a holding out to or an offer to the public of engineering or any service thereof as prohibited by this Chapter. Engineering work, not related to the foregoing exemptions, where the safety of the public is directly involved shall be under the responsible charge of a ~~registered~~ licensed professional engineer, or in accordance with standards prepared or approved by a ~~registered~~ licensed professional engineer.

(8) The (i) preparation of fire sprinkler planning and design drawings by a fire sprinkler contractor licensed under Article 2 of Chapter 87 of the General Statutes, or (ii) the performance of internal engineering or survey work by a manufacturing or communications common carrier company, or by a research and development company, or by employees of ~~such~~ those corporations provided that ~~such~~ the work is in connection with, or incidental to products of, or nonengineering services rendered by ~~such~~ those corporations or their affiliates.

(9) The routine maintenance or servicing of machinery, equipment, facilities or structures, the work of mechanics in the performance of their established functions, or the inspection or supervision of construction by a foreman, superintendent, or agent of the architect or professional engineer, or services of an operational nature performed by an employee of a laboratory, a manufacturing plant, a public service corporation, or governmental operation."

Section 24. G.S. 89C-25.1 reads as rewritten:

"**§ 89C-25.1. Supervision of ~~unregistered~~ unlicensed individuals by ~~registered~~ licensed person.**

In all circumstances in which ~~unregistered~~ unlicensed individuals are permitted under this Chapter to perform engineering or land surveying work, or both, under the supervision of a ~~registered~~ licensed engineer, land surveyor, or both, the Board may by regulation establish a reasonable limit on the number of ~~unregistered~~ unlicensed individuals which a ~~registrant~~ licensee of the Board may directly or personally supervise at one time."

Section 25. G.S. 89C-26 reads as rewritten:

"**§ 89C-26. Duties of register of deeds.**

The register of deeds or any other county or proper public authority may not file or record any map, plat, survey, or other documents, within the definition of land surveying, which do not contain an original personal signature and original seal of a ~~registered~~ licensed land surveyor by whom, or under whose responsible charge, the map, plat, survey, or other documents were prepared, except as provided in G.S. 47-30(m) and (n)."

Section 26. G.S. 89C-28 reads as rewritten:

"**§ 89C-28. Existing ~~registration~~ licensure not affected.**

Nothing in this Chapter shall be construed as affecting the status of ~~registration~~ licensure of any professional engineer or ~~registered~~ land surveyor who is rightfully in possession of a certificate of ~~registration~~ licensure duly issued by the Board and valid as of July 1, 1975."

Section 27. This act becomes effective July 1, 1997, and applies to persons applying for licenses on or after that date and to persons practicing engineering and land surveying on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 794*

Short Title: Engineering and Land Surveying Changes. (Public)

Sponsors: Representatives Ives and Sherrill.

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

April 3, 1997

A BILL TO BE ENTITLED

AN ACT TO MAKE SUBSTANTIVE CHANGES TO THE NORTH CAROLINA ENGINEERING AND LAND SURVEYING ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 89C-2 reads as rewritten:

"**§ 89C-2. Declarations; prohibitions.**

In order to safeguard life, health, and property, and to promote the public welfare, the practice of engineering and the practice of land surveying in this State are hereby declared to be subject to regulation in the public interest. It shall be unlawful for any person to practice or to offer to practice engineering or land surveying in this State, as defined in the provisions of this Chapter, or to use in connection with ~~his~~ the person's name or otherwise assume or advertise any title or description tending to convey the impression that ~~he~~ the person is either a professional engineer or a ~~registered~~ professional land surveyor, unless ~~such~~ the person has been duly ~~registered as such.~~ licensed. The right to engage in the practice of engineering or land surveying ~~shall be deemed~~ is a personal right, based on the qualifications of the ~~individual~~ person as evidenced by ~~his~~ the person's certificate of ~~registration,~~ licensure, which shall not be transferable."

Section 2. G.S. 89C-3 reads as rewritten:

"**§ 89C-3. Definitions.**

The following definitions apply in this Chapter:

(1) Board. -- The North Carolina State Board of ~~Registration~~ Examiners for ~~Professional~~ Engineers and ~~Land~~ Surveyors provided for by this Chapter.

(1a) Business firm. -- A partnership, firm, association, or another organization or group that is not a corporation and is acting as a unit.

(2) Engineer. -- A person who, by reason of ~~his~~ special knowledge and use of the mathematical, physical and engineering sciences and the principles and methods of engineering analysis and design, acquired by engineering education and engineering experience, is qualified to practice engineering.

(3) ~~Engineer-in-training.~~ Engineering intern. -- A person who complies with the requirements for education, experience and character, and has passed an examination in the fundamental engineering subjects, as provided in this Chapter.

(3.1) Inactive licensee. -- Licensees who are not engaged in the practice of engineering.

(4) ~~Land surveyor-in-training.~~ Land surveyor intern. -- A person who has qualified for, taken, and passed an examination on the basic disciplines of land surveying as provided in this Chapter.

(5) Person. -- Any natural person, firm, partnership, corporation or other legal entity.

(6) Practice of engineering. --

a. Any service or creative work, the adequate performance of which requires engineering education, training, and experience, in the application of special knowledge of the mathematical, physical, and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning, and design of engineering works and systems, planning the use of land and water, engineering surveys, and the observation of construction for the purposes of assuring compliance with drawings and specifications, including the consultation, investigation, evaluation, planning, and design for either private or public use, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects, and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, pneumatic or thermal nature, insofar as they involve safeguarding life, health or property, and including such other professional services as may be necessary to the planning, progress and completion of any engineering services.

A person shall be construed to practice or offer to practice engineering, within the meaning and intent of this Chapter, who practices any branch of the profession of engineering; or who, by verbal claim, sign, advertisement, letterhead, card, or in any other way represents ~~himself~~ the

person to be a professional engineer, or through the use of some other title implies that ~~he~~ the person is a professional engineer or that ~~he~~ the person is registered under this Chapter; or who holds ~~himself~~ the person out as able to perform, or who does perform any engineering service or work not exempted by this Chapter, or any other service designated by the practitioner which is recognized as engineering.

b. The term 'practice of engineering' shall not be construed to permit the location, description, establishment or reestablishment of property lines or descriptions of land boundaries for conveyance. The term does not include the assessment of an underground storage tank required by applicable rules at closure or change in service unless there has been a discharge or release of the product from the tank.

(7) Practice of land surveying by ~~registered~~ professional land surveyors. --

a. Any service or work, the adequate performance of which involves the application of special knowledge of the principles of mathematics, the related physical and applied sciences, and the relevant requirements of law for adequate evidence to the act of measuring and locating lines, angles, elevations, natural and man-made features in the air, on the surface of the earth, within underground workings, and on the beds of bodies of water for the purpose of determining areas and volumes, for the monumenting of property boundaries, and for the platting and layout of lands and subdivisions thereof, including the topography, alignment and grades of street and incidental drainage within the subdivision, and for the preparation and perpetuation of maps, record plats, field note records, and property descriptions that represent these surveys.

b. The term 'practice of land surveying' shall not be construed to permit the design or preparation of specifications for (i) major highways; (ii) wastewater systems; (iii) wastewater or industrial waste treatment works; (iv) pumping or lift stations; (v) water supply, treatment, or distribution systems; (vi) streets or storm sewer systems except as incidental to a subdivision.

(8) Professional engineer. -- A person who has been duly ~~registered and~~ licensed as a professional engineer by the Board established by this Chapter.

(9) ~~Registered~~ Professional land surveyor. -- A person who, by reason of ~~his~~ special knowledge of mathematics, surveying principles and methods, and legal requirements which are acquired by education and/or practical experience, is qualified to engage in the practice of land surveying, ~~as herein defined,~~ as attested by ~~his registration~~ the person's licensure as a ~~registered~~ professional land surveyor by the Board.

(10) Responsible charge. -- Direct control and personal supervision, either of engineering work or of land surveying, as the case may be."

Section 3. G.S. 89C-4 reads as rewritten:

"**§ 89C-4. State Board of ~~Registration;~~ Examiners for Engineers and Surveyors; appointment; terms.**

A State Board of ~~Registration~~ Examiners for ~~Professional~~ Engineers and ~~Land~~ Surveyors, whose duty it is to administer the provisions of this Chapter, is created. The Board shall consist of four ~~registered~~ licensed professional engineers, three ~~registered~~ licensed professional land surveyors and two public members, who are neither professional engineers nor professional land surveyors. Of the land surveyor members, one and only one may hold dual ~~registration~~ licenses as a professional land surveyor and professional engineer. All of the members shall be appointed by the Governor. Appointments of the engineer and land surveyor members shall preferably, but not necessarily, be made from a list of nominees submitted by the professional societies for engineers and land surveyors in this State. Each member of the Board shall receive a certificate of appointment from the Governor and shall file with the Secretary of State ~~his~~ a written oath or affirmation for the faithful discharge of ~~his~~ the duties.

Members of the Board serve for staggered five-year terms, and no member may be appointed for more than two full terms. Members serve until the expiration of their respective terms and until their respective successors are appointed. If a vacancy occurs during a term, the Governor shall appoint a successor from the same classification as the person causing the vacancy to serve for the remainder of the unexpired term. If the vacancy is not filled within 90 days after it occurs, the Board may appoint a provisional member to serve until the appointment by the Governor becomes effective. The provisional member during his tenure has all the powers and duties of a regular member."

Section 4. G.S. 89C-5 reads as rewritten:

"**§ 89C-5. Board members; qualifications.**

Each engineer member of the Board shall be a resident of North Carolina and shall be a ~~registered~~ licensed professional engineer engaged in the lawful practice of engineering in North Carolina for at least six years.

Each land surveyor member of the Board shall be a resident of North Carolina and shall be a ~~registered~~ licensed professional land surveyor engaged in the lawful practice of land surveying in North Carolina for at least six years.

Each public member of the Board shall be a resident of North Carolina."

Section 5. G.S. 89C-6 reads as rewritten:

"**§ 89C-6. Compensation and expenses of Board members.**

Each member of the Board, when attending to the work of the Board or any of its committees, shall receive as compensation for ~~his service~~ services the per diem and, in ~~addition thereto,~~ addition, shall be reimbursed for travel expenses and incidentals not exceeding the maximum set forth by law. In addition to per diem allowances, travel and incidentals, the secretary of the Board may, with the approval of the Board, receive such reasonable additional compensation as is compatible with the actual hours of work required by the duties of ~~his~~ the office."

Section 6. G.S. 89C-8 reads as rewritten:

"**§ 89C-8. Organization of the Board; meetings; election of officers.**

The Board shall hold at least two regular meetings each year. Special meetings may be held at such times and upon such notice as the rules and regulations of the Board may provide. The Board shall elect annually from its members a ~~chairman,~~ chair, a ~~vice-chairman,~~ vice-chair, and a secretary. A quorum of the Board shall consist of not less than five members. The Board shall operate under its rules and regulations supplemented by Robert's Rules of Order."

Section 7. G.S. 89C-9 reads as rewritten:

"**§ 89C-9. Executive ~~secretary;~~ director; duties and liabilities.**

The Board shall employ an executive ~~secretary~~ director who is not a member of the Board. The executive ~~secretary~~ director shall be a full-time employee of the Board and perform ~~such~~ the duties assigned to ~~him~~ the director by the secretary subject to the approval of the Board. The executive ~~secretary~~ director shall receive a salary and compensation fixed by the Board. The executive ~~secretary~~ director shall give a surety bond satisfactory to the Board conditioned upon the faithful performance of ~~his~~ the director's ~~duties.~~ duties assigned. The premium on ~~said~~ the bond shall be a necessary and proper expense of the Board."

Section 8. G.S. 89C-10 reads as rewritten:

"**§ 89C-10. Board powers.**

(a) The Board ~~shall have the power to~~ may adopt and amend all ~~rules and regulations. Additionally, the Board shall have the power to adopt such rules,~~ rules and rules of ~~procedure, and regulations,~~ procedure as may be reasonably necessary for the proper performance of its duties, the regulation of its procedures, meetings, records, the ~~giving of~~ administration of ~~examinations and the conduct thereof,~~ examinations, and the ~~power~~ authority to enforce ~~such~~ the rules of professional conduct as ~~may, from time to time,~~ may be adopted by the Board pursuant to G.S. 89C-20.

The action by the Board in carrying out any of the powers specified ~~above~~ in this section shall be binding upon all persons ~~registered~~ licensed under this Chapter, including corporations and business firms holding certificates of authorization.

(b) The Board shall adopt and have an official seal, which shall be affixed to each certificate issued.

(c) The Board ~~is hereby authorized~~ may in the name of the State ~~to~~ apply for relief, by injunction, in the established manner provided in cases of civil procedure,

without bond, to enforce the provisions of this Chapter, or to restrain any violation ~~thereof.~~ of the provisions of this Chapter. In ~~such proceedings,~~ proceedings for injunctive relief, it shall not be necessary to allege or prove either that an adequate remedy at law does not exist, or that substantial or irreparable damage would result from the continued violation ~~thereof.~~ of the provisions of this Chapter. The members of the Board shall not be personally liable under this proceeding.

(d) The Board may subject an applicant for ~~registration~~ licensure to ~~such~~ any examination ~~as it deems~~ necessary to determine ~~his~~ the applicant's qualifications.

(e) The Board ~~shall have the power to~~ may issue an appropriate certificate of ~~registration~~ licensure to any applicant who, in the opinion of the Board, has met the requirements of this Chapter.

(f) It shall be the responsibility and duty of the Board to conduct a regular program of investigation concerning all matters within its jurisdiction under the provisions of this Chapter. The investigation of a ~~registrant~~ licensee is confidential until the Board issues a citation to the ~~registrant.~~ licensee. The Board may expend its funds for salaries, fees, and per diem expenses, in connection with its investigations, provided that no ~~such~~ funds other than per diem expenses shall be paid to any member of the Board in connection with its investigations, nor may any member of the Board give testimony and ~~thereafter~~ later sit in deciding on any matter which may directly involve punitive action ~~under such~~ for the testimony.

(g) The Board ~~is authorized and empowered to~~ may use its funds to establish and conduct instructional programs for persons who are currently ~~registered~~ licensed to practice engineering or land surveying, as well as refresher courses for persons interested in obtaining adequate instruction or programs of study to qualify them for ~~registration~~ licensure to practice engineering or land surveying. The Board may expend its funds for these purposes and ~~is authorized and empowered~~ may not only ~~to~~ conduct, sponsor, and arrange for instructional programs, but also ~~to~~ may carry out ~~such~~ instructional programs through extension courses or other ~~media, and the~~ media. The Board may enter into plans or agreements with community colleges, public or private institutions of higher learning, ~~both public and private,~~ State and county boards of education, or with the governing authority of any industrial education center for the purpose of planning, scheduling or arranging ~~such~~ courses, instruction, extension courses, or in assisting in obtaining courses of study or programs in the field of engineering and land surveying. The Board shall ~~make every effort practical to~~ encourage the educational institutions in this State to offer courses necessary to complete the educational requirements of this Chapter. For the purpose of carrying out these objectives, the Board ~~is authorized to make and promulgate such~~ may adopt rules ~~and regulations~~ as may be necessary for ~~such~~ the educational programs, instruction, extension services, or for entering into plans or contracts with persons or educational and industrial institutions.

(h) The Board may license sponsors of continuing professional competency activities who agree to conduct programs in accordance with standards adopted by the Board. Sponsors shall pay a license fee established by the Board, not to exceed two hundred fifty dollars ($250.00) for licensure under this subsection. The license

fee shall accompany the application. Sponsors shall renew their licenses annually on a form provided by the Board."

Section 9. G.S. 89C-11 reads as rewritten:

"**§ 89C-11. Secretary; duties and liabilities; expenditures.**

The secretary of the Board shall receive and account for all moneys derived from the operation of the Board as provided in this Chapter, and shall deposit them in one or more special funds in banks or other financial institutions carrying deposit insurance and authorized to do business in North Carolina. The fund or funds shall be designated as 'Fund of the Board of ~~Registration~~ Examiners for ~~Professional~~ Engineers and ~~Land~~ Surveyors' and shall be drawn against only for the purpose of implementing provisions of this Chapter as herein provided. All expenses certified by the Board as properly and necessarily incurred in the discharge of its duties, including authorized compensation, shall be paid out of ~~said~~ this fund on the warrant signed by the secretary of the ~~Board; provided, however, that at~~ Board. At no time shall the total of warrants issued exceed the total amount of funds accumulated under this Chapter. The secretary of the Board shall give a surety bond satisfactory to the State Board of ~~Registration~~ Examiners for ~~Professional~~ Engineers and ~~Land~~ Surveyors, conditioned upon the faithful performance of ~~his duties.~~ the duties assigned. The premium on ~~said~~ the bond ~~shall be regarded as~~ is a proper and necessary expense of the Board. The secretary of the Board may delegate to the executive ~~secretary~~ director certain routine duties, such as receipt and disbursement of funds in stated amounts by a written authorization, which has the unanimous approval of the Board."

Section 10. G.S. 89C-12 reads as rewritten:

"**§ 89C-12. Records and reports of Board; evidence.**

The Board shall keep a record of its proceedings and a register of all applicants for ~~registration,~~ licensure, showing for each the date of application, name, age, education, and other qualifications, place of business and place of residence, whether the applicant was rejected or a certificate of ~~registration~~ licensure granted, and the date ~~of such action.~~ licensure was rejected or granted. The books and register of the Board shall be prima facie evidence of all matters recorded ~~therein,~~ by the Board, and a copy duly certified by the secretary of the Board under seal shall be admissible in evidence as if the original were produced. A roster showing the names and places of business and of residence of all ~~registered~~ licensed professional engineers and all ~~registered~~ licensed professional land surveyors shall be prepared by the secretary of the Board current to the month of January of each ~~year; such~~ year. The roster shall be printed by the Board out of the Board's fund ~~of said Board~~ and distributed as ~~set forth~~ described in the Board's ~~rules and regulations.~~ rules. On or before the first day of May of each year, the Board shall submit to the Governor a report on its transactions for the preceding year, and shall file with the Secretary of State a copy of ~~such~~ the report, together with a complete statement of the receipts and expenditures of the ~~Board,~~ Board attested by the ~~affidavits of the chairman~~ chair and the ~~secretary,~~ secretary and a copy of the ~~said~~ the roster of ~~registered~~ licensed professional engineers and ~~registered~~ professional land surveyors."

Section 11. G.S. 89C-13 reads as rewritten:

"**§ 89C-13. General requirements for ~~registration.~~ licensure.**

(a) Engineer Applicant. -- To be eligible for ~~admission to examination for~~ licensure as a professional ~~engineer~~ engineer, an applicant must be of good character and reputation. An applicant desiring to take the examination in the fundamentals of engineering ~~only~~ must submit three character ~~references.~~ references, one of whom shall be a professional engineer. An applicant desiring to take the examination in the principles and practice of engineering must submit five references, two of whom shall be professional engineers having personal knowledge of ~~his~~ the applicant's engineering experiences.

The following shall be considered as minimum evidence satisfactory to the Board that the applicant is qualified for ~~registration:~~ licensure:

(1) As a professional engineer (shall meet one):

a. ~~Registration~~ Licensure by Comity or Endorsement. -- A person holding a certificate of ~~registration~~ licensure to engage in the practice of engineering, on the basis of comparable qualifications, issued to ~~him~~ the person by a proper authority of a state, territory, or possession of the United States, the District of Columbia, or of Canada, who completes an application for licensure and submits five references, two of which shall be from professional engineers having personal knowledge of the applicant's engineering experience, and ~~who~~ who, in the opinion of the Board, meets the requirements of this Chapter, based on verified evidence may, upon application, be ~~registered~~ licensed without further examination.

A person holding a certificate of qualification issued by the Committee on National Engineering Certification of the National Council of ~~Engineering Examiners,~~ Examiners for Engineering and Surveying whose qualifications meet the requirements of this Chapter, may upon application, be ~~registered~~ licensed without further examination.

b. ~~E.I.T.~~ E.I. Certificate, Experience, and Examination. -- A holder of a certificate of ~~engineer-in-training~~ engineering intern issued by the Board, and with a specific record of an additional four years or more of progressive experience on engineering projects of a grade and character which indicates to the Board that the applicant may be competent to practice engineering, shall be admitted to ~~an eight-hour examination in~~ the principles and practice of ~~engineering.~~ engineering examination. Upon passing ~~such~~ the examination, the applicant shall be granted a certificate of ~~registration~~ licensure to practice professional engineering in this State, provided ~~he~~ the applicant is otherwise qualified.

c. Graduation, Experience, and Examination. -- A graduate of an engineering curriculum of four years or more approved by the Board as being of satisfactory standing, and with a specific record of an additional four years or more of progressive experience on engineering projects of a grade and character which indicates to the Board that the applicant may be competent to practice engineering, shall be admitted to ~~an eight-hour written examination in~~ the fundamentals of ~~engineering,~~ engineering examination, and ~~an eight-hour written examination in~~ the principles and practice of ~~engineering.~~ engineering examination. Upon passing ~~such~~ the examinations, the applicant shall be granted a certificate of ~~registration~~ licensure to practice professional engineering in this State, provided ~~he~~ the applicant is otherwise qualified.

d. Graduation, Experience, and Examination. -- A graduate of an engineering or related science curriculum of four years or more, other than the ones approved by the Board as being of satisfactory standing or with an equivalent education and engineering experience satisfactory to the Board and with a specific record of eight years or more of progressive experience on engineering projects of a grade and character which indicates to the Board that the applicant may be competent in the fundamentals of engineering, shall be admitted to ~~an eight-hour written examination in~~ the fundamentals of ~~engineering,~~ engineering examination and ~~an eight-hour written examination in~~ the principles and practice of ~~engineering.~~ engineering examination. Upon passing ~~such~~ the examinations, the applicant shall be granted a certificate of ~~registration~~ licensure to practice professional engineering in this State, provided ~~he~~ the applicant is otherwise qualified.

e. Long-Established Practice. -- ~~An individual~~ A person with a specific record of 20 years or more of progressive experience on engineering projects of a grade and character which indicates to the Board that the applicant may be competent to practice engineering shall be admitted to ~~an eight-hour written examination in~~ the principles and practice of ~~engineering.~~ engineering examination. Upon passing ~~such~~ the examination, the applicant shall be granted a certificate of ~~registration~~ licensure to practice professional engineering in this State, provided ~~he~~ the applicant is otherwise qualified.

At its discretion the Board may require an applicant to submit exhibits, drawings, designs, or other tangible evidence of engineering work ~~executed by him and~~ which ~~he~~ the applicant personally accomplished or supervised.

The following shall be considered as minimum evidence that the applicant is qualified for certification:

(2) As an ~~engineer-in-training~~ engineering intern (shall meet one):

a. Graduation and Examination. -- A graduate of an engineering curriculum or related science curriculum of four years or more, approved by the Board as being of satisfactory standing, or a student who has attained senior status in an engineering program, shall be admitted to ~~an eight-hour written examination in~~ the fundamentals of ~~engineering.~~ engineering examination. The applicant shall be notified if the examination was passed or not passed and if passed he shall be certified as an ~~engineer-in-training,~~ engineering intern if ~~he~~ the applicant is otherwise qualified.

b. Graduation, Experience, and Examination. -- A graduate of an engineering or related science curriculum of four years or more, other than the ones approved by the Board as being of satisfactory standing, or with equivalent education and engineering experience satisfactory to the Board and with a specific record of four or more years of progressive experience on engineering projects of a grade and character satisfactory to the Board, shall be admitted to ~~an eight-hour written examination in~~ the fundamentals of ~~engineering.~~ engineering examination. The applicant shall be notified if the examination was passed or not passed and if ~~passed he~~ passed, the applicant shall be certified as an ~~engineer-in-training~~ engineering intern if ~~he~~ the applicant is otherwise qualified.

(b) Land Surveyor Applicant. -- To be eligible for admission to examination for land ~~surveyor-in-training,~~ surveyor intern or ~~registered~~ professional land surveyor, an applicant must be of good character and reputation and shall submit five references with ~~his~~ the application for ~~registration~~ licensure as a land surveyor, two of which references shall be ~~registered~~ professional land surveyors having personal knowledge of ~~his~~ the applicant's land surveying experience, or in the case of an application for certification as a land ~~surveyor-in-training~~ surveyor intern by three references, one of which shall be a ~~registered~~ licensed land surveyor having personal knowledge of the applicant's land surveying experience.

The evaluation of a land surveyor applicant's qualifications shall involve a consideration of ~~his~~ the applicant's education, technical and land surveying experience, exhibits of land surveying projects with which ~~he~~ the applicant has been associated, and recommendations by ~~references, and reviewing of these categories during an oral examination.~~ references. The land surveyor applicant's qualifications

may be reviewed at an interview if the Board ~~deems~~ determines it necessary. Educational credit for institute courses, correspondence courses, ~~etc.,~~ or other courses shall be determined by the Board.

The following shall be considered a minimum evidence satisfactory to the Board that the applicant is qualified for ~~registration~~ licensure as a professional land surveyor or for certification as a land ~~surveyor-in-training,~~ surveyor intern respectively:

(1) As a ~~registered~~ professional land surveyor (shall meet one):

a. Rightful possession of a ~~B.S.~~ bachelors degree in surveying or other equivalent curricula, all approved by the Board and a record satisfactory to the Board of ~~one year~~ two years or more of progressive practical ~~experience~~ experience, one year of which shall have been under a practicing ~~registered~~ professional land surveyor and satisfactorily passing ~~such~~ any oral and written ~~examination, taken in the presence of and~~ examination required by the Board, all of which shall determine and indicate that the ~~candidate~~ applicant is competent to practice land surveying. The applicant may ~~elect~~ may be qualified by the Board to take the first examination (Surveying Fundamentals) immediately after obtaining the ~~B.S.~~ bachelors degree at the first regularly scheduled examination thereafter. Upon passing the first examination and successful completion of the experience required by this subdivision, the applicant may apply to take the second examination (Principles and Practice of Land Surveying). An applicant who passes both examinations and completes the educational and experience requirements of this subdivision shall be granted ~~registration~~ licensure as a professional land surveyor.

b. Rightful possession of an associate degree in surveying technology approved by the Board and a record satisfactory to the Board of ~~three~~ four years of progressive practical experience, ~~two~~ three years of which shall have been under a practicing ~~registered~~ licensed land surveyor, and satisfactorily passing ~~such~~ any written and oral examination ~~taken in the presence of and as~~ required by the Board, all of which shall determine and indicate that the ~~candidate~~ applicant is competent to practice land surveying. The applicant may ~~elect~~ apply to the Board to take the first examination (Surveying Fundamentals) immediately after obtaining the associate degree at the first regularly scheduled examination thereafter. Upon passing the first examination and successfully completing ~~years of progressive practical experience under a practicing registered land surveyor,~~ the practical experience required under this

subdivision, the applicant may ~~elect~~ apply to the Board to take the second examination ~~(Principles and Practice of Land Surveying) prior to, during, or after completion of the additional experience required by this subdivision.~~ (Principles and Practice of Land Surveying). An applicant who passes both examinations and successfully completes the educational and experience requirements of this subdivision shall be granted ~~registration~~ licensure as a professional land surveyor.

~~e. Land Surveyor-in-Training Certificate, Experience, and Examination. — A holder of a certificate of land surveyor-in-training issued by the Board, and with a specific record of an additional two years or more of progressive surveying experience, one year of which shall have been under a practicing registered land surveyor, of a grade and character which indicates to the Board that the applicant may be competent to practice land surveying, shall be admitted to two four-hour examinations. Upon passing such examinations, the applicant shall be granted a certificate of registration to practice land surveying in this State, provided he is otherwise qualified.~~

d. Graduation from a high school or the completion of a high school equivalency certificate and a record satisfactory to the Board of ~~seven~~ 10 years of progressive practical experience, ~~six~~ seven years of which shall have been under a practicing ~~registered~~ licensed land surveyor, and satisfactorily passing ~~such~~ any oral and written ~~examination written in the presence of and~~ examinations required by the Board, all of which shall determine and indicate that the candidate is competent to practice land surveying. The applicant may be qualified by the Board to take the first examination (Surveying Fundamentals) upon graduation from high school or the completion of a high school equivalency certificate and successfully completing six years of progressive practice experience, five of which shall have been under a practicing licensed land surveyor. The applicant may apply to take the second examination (Principles and Practice of Land Surveying) upon passing the first examination and successfully completing four years of progressive practical experience, two of which shall have been under a practicing licensed land surveyor.

e. Repealed by Session Laws 1985 (Regular Session, 1986), c. 977, s. 7.

f. ~~Registration~~ Licensure by Comity or Endorsement. -- A person holding a certificate of ~~registration~~ licensure to engage in the practice of land surveying issued on comparable qualifications from a state, territory, or possession of the United States will be given comity considerations. However, ~~he~~ the applicant may be asked to take ~~such~~ any examinations as the Board ~~deems necessary~~ requires to determine ~~his~~ the applicant's qualifications, but in any event, ~~he~~ the applicant shall be required to pass ~~a written~~ an examination which shall include questions on laws, procedures, and practices pertaining to the practice of land surveying in North Carolina.

g. A licensed professional engineer who can satisfactorily demonstrate to the Board that ~~his~~ the professional engineer's formal academic training in acquiring a degree and field experience in engineering includes land surveying, to the extent necessary to reasonably qualify the applicant in the practice of land surveying, may apply for and may be granted permission to take the ~~two four-hour examinations on the~~ principles and practice of land surveying examination and the ~~two four-hour examinations on the~~ fundamentals of land ~~surveying.~~ surveying examination. Upon satisfactorily passing the examinations, the applicant ~~will~~ shall be granted a license to practice land surveying in the State of North Carolina.

h. Professional Engineers in Land Surveying. -- Any person presently licensed to practice professional engineering under this Chapter shall upon ~~his~~ application be licensed to practice land surveying, providing ~~his~~ a written application is filed with the Board within one year next after June 19, 1975.

i. Photogrammetrists. -- Any person presently practicing photogrammetry with at least seven years of experience in the profession, two or more of which shall have been in responsible charge of photogrammetric mapping projects meeting National Map Accuracy Standards shall, upon application be licensed to practice land surveying, provided:

1. The applicant submit certified proof of graduation from high school, high school equivalency or higher degree;
2. The applicant submit proof of employment in responsible charge as a photogrammetrist practicing within the State of North Carolina to include itemized reports detailing methods, procedures,

amount of applicant's personal involvement and the name, address, and telephone numbers of the client for five projects completed by the applicant with the State. A final map for one of the five projects shall also be submitted;

3. Five references to the applicant's character and quality of work, three of which shall be from professional land surveyors, are submitted to the Board; and

4. The application is submitted to the Board by July 1, 1998. After July 1, 1998, no photogrammetrist shall be licensed without meeting the same requirements as to education, length of experience, and testing required of all land surveying applicants.

The Board shall require an applicant to submit exhibits, drawings, plats or other tangible evidence of land surveying work executed by ~~him~~ the applicant under proper supervision and which ~~he~~ the applicant has personally accomplished or supervised.

Land surveying encompasses a number of disciplines including geodetic surveying, hydrographic surveying, cadastral surveying, engineering surveying, route surveying, photogrammetric (aerial) surveying, and topographic surveying. A professional land surveyor shall practice only with the surveyor's area of expertise.

(2) As a land ~~surveyor-in-training~~ surveyor intern (shall meet one):

a. Rightful possession of an associate degree in surveying technology approved by the Board and satisfactorily passing a written ~~or~~ and oral examination ~~taken in the presence of and~~ as required by the Board.

b. Rightful possession of a ~~B.S.~~ bachelors degree in surveying or other equivalent curricula in surveying all approved by the Board and satisfactorily passing ~~such~~ any oral and written examinations ~~written in the presence of and~~ required by the Board.

c. Graduation from high school or the completion of a high school equivalency certificate and a record satisfactory to the Board of ~~five~~ six years of progressive, practical experience, ~~four~~ five years of which shall have been under a practicing ~~registered~~ licensed land surveyor and satisfactorily passing any oral and written examinations ~~taken in the presence of and as~~ required by the Board.

The Board shall require an applicant to submit exhibits, drawings, plats, or other tangible ~~evidence of land surveying work executed by him under proper supervision and~~ which ~~he~~ the applicant has personally accomplished or supervised."

Section 12. G.S. 89C-14 reads as rewritten:

"§ 89C-14. Application for ~~registration; registration~~ licensure; license fees.

(a) Application for ~~registration~~ licensure as a professional engineer or ~~registered~~ professional land surveyor shall be on a form prescribed and furnished by the Board. It shall contain statements made under oath, showing the applicant's education and a detailed summary of ~~his~~ the applicant's technical and engineering or land surveying experience, and shall include the names and complete mailing addresses of the references, none of whom ~~should~~ may be immediate members of the applicant's family or members of the Board.

The Board may accept the certified information on the copy of a current formal certificate of qualifications issued by the National Council of ~~Engineering Examiners Committee or National Engineering Certification for Professional Engineer applicants~~ Examiners for Engineering and Surveying in lieu of the same information that is required for the form prescribed and furnished by the Board.

(b) An applicant for ~~registration~~ licensure who is required to take the written examination shall pay a fee equal to the cost of the examination to the Board plus an additional amount not to exceed one hundred dollars ($100.00). The Board may charge any fee necessary to defray the cost of any required examinations. The fee shall accompany the application. The fee for comity ~~registration~~ licensure of engineers and land surveyors who hold unexpired certificates in another state or a territory of the United States or in Canada shall be the total current fee as fixed by the Board.

(c) The certification fee for a corporation is the amount set by the Board ~~in accordance with G.S. 55B-10.~~ but shall not exceed two hundred fifty dollars ($250.00). The fee shall accompany the application. The certification fee for a business firm is the same as the fee for a corporation. The fee for renewal of a certificate of ~~registration~~ licensure of a corporation is the amount set by the Board ~~in accordance with G.S. 55B-11.~~ but shall not exceed one hundred dollars ($100.00). The fee for renewal of a certificate of ~~registration~~ licensure for a business firm is the same as the renewal fee for a corporation.

(d) Should the Board deny the issuance of a certificate of ~~registration~~ licensure to any applicant, the unobligated portion of fees paid shall be returned by the Board to the applicant.

(e) A candidate failing an examination may apply, and be considered by the Board, for reexamination at the end of six months. The Board shall make such reexamination charge as is necessary to defray the cost of the examination.

A candidate ~~failing an examination three times will not be permitted to take a reexamination until he has made a written appeal to the Board and his tentative qualifications for the examination are reviewed and reaffirmed by the Board.~~ with a combination of three failures or unexcused absences on an examination shall only be eligible after submitting a new application with appropriate application fee, and be considered by the Board for reexamination at the end of 12 months. After the end of the 12-month period, the applicant may take the examination no more than once every calendar year."

Section 13. G.S. 89C-15 reads as rewritten:

"**§ 89C-15. Examinations.**

(a) The examinations will be held at ~~such~~ the times and places as the Board directs. The Board shall determine the passing grade on examinations. All examinations shall be approved by the entire Board.

(b) Written examinations will be given in sections and may be taken only after the applicant has met the other minimum requirements as given in ~~G.S. 89C-13,~~ G.S. 89C-13 and has been approved by the Board for admission to the examination as follows:

(1) Engineering Fundamentals. -- Consists of an eight-hour examination on the fundamentals of engineering. Passing this examination qualifies the ~~examinee~~ applicant for an ~~engineer-in-training~~ engineering intern certificate, provided ~~he~~ the applicant has met all other requirements for ~~certification~~ licensure required by this Chapter.

(2) Principles and Practice of Engineering. -- Consists of an eight-hour examination on applied engineering. Passing this examination qualifies the ~~examinee~~ applicant for ~~registration~~ licensure as a professional engineer, provided ~~he~~ the applicant has met the other requirements for registration required by this Chapter.

(3) Surveying Fundamentals. -- Consists of ~~two four-hour examinations~~ an eight-hour examination on the elementary disciplines of land surveying. Passing ~~both of these examinations~~ this examination qualifies the ~~examinee~~ applicant for a land ~~surveyor-in-training~~ surveyor intern certificate provided ~~he~~ the applicant has met all other requirements for certification required by this Chapter.

(4) Principles and Practices of Land Surveying. -- Consists of ~~two four-hour examinations~~ a six-hour examination on the basic and applied disciplines of land ~~surveying, one examination on basic disciplines and the other examination covering applied disciplines.~~ surveying and a two-hour examination on requirements specific to the practice of land surveying in North Carolina. Passing each of these examinations qualifies the ~~examinee~~ applicant for a ~~registered~~ professional land surveyor certificate provided ~~he~~ the applicant has met all other requirements for certification required by this Chapter."

Section 14. G.S. 89C-16 reads as rewritten:

"**§ 89C-16. Certificates of ~~registration;~~ licensure; effect; seals.**

(a) The Board shall issue to any applicant, who, in the opinion of the Board, has met the requirements of this Chapter, a certificate of ~~registration~~ licensure giving the ~~registrant~~ licensee proper authority to practice ~~his~~ the profession in this State. The certificate of ~~registration~~ licensure for a professional engineer shall carry the designation 'professional engineer,' and for a land surveyor, '~~registered~~ 'professional land surveyor,' shall give the full name of the ~~registrant~~ licensee with ~~his serial~~ the

Board designated licensure number and shall be signed by the ~~chairman~~ chair and the secretary under the seal of the Board.

(b) This certificate shall be prima facie evidence that the person named ~~thereon~~ on the certificate is entitled to all rights, privileges and responsibilities of a professional engineer or a ~~registered~~ professional land surveyor, while the ~~said~~ certificate of ~~registration~~ licensure remains unrevoked or unexpired.

(c) Each ~~registrant hereunder~~ licensee shall upon ~~registration~~ licensure obtain a seal of a design authorized by the Board bearing the ~~registrant's~~ licensee's name, ~~serial~~ license number, and the legend, 'professional engineer,' or ~~'registered~~ 'professional land surveyor.' Final drawings, specifications, plans and reports prepared by a ~~registrant~~ licensee shall, when issued, be certified and stamped with the ~~said~~ seal or facsimile ~~thereof~~ of the seal unless the ~~registrant~~ licensee is exempt under the provisions of G.S. 89C-25(7). It shall be unlawful for a ~~registrant~~ licensee to affix, or permit ~~his~~ the licensee's seal and signature or facsimile ~~thereof~~ of the seal and signature to be affixed to any drawings, specifications, plans or reports after the expiration of a certificate or for the purpose of aiding or abetting any other person to evade or attempt to evade any provision of this Chapter. A professional engineer practicing land surveying shall use ~~his registered~~ the licensee's land surveyor seal."

Section 15. G.S. 89C-17 reads as rewritten:

"**§ 89C-17. Expirations and renewals of certificates.**

Certificates for ~~registration~~ licensure shall expire on the last day of the month of December next following their issuance or renewal, and shall become invalid on that date unless renewed. When necessary to protect the public health, safety, or welfare, the Board shall require ~~such~~ any evidence ~~as it deems~~ necessary to establish the continuing competency of engineers and land surveyors as a condition of renewal of licenses. When the Board is satisfied as to the continuing competency of an applicant, it shall issue a renewal of the certificate upon payment by the applicant of a fee fixed by the Board but not to exceed ~~fifty dollars ($50.00).~~ one hundred dollars ($100.00). The secretary of the Board shall notify by mail every person ~~registered~~ licensed under this Chapter of the date of expiration of ~~his~~ the certificate, the amount of the fee required for its renewal for one year, and any requirement as to evidence of continued competency. The notice shall be mailed at least one month in advance of the expiration date of the certificate. Renewal shall be effected at any time during the month of January immediately following, by payment to the secretary of the Board of a renewal fee, as determined by the Board, which shall not exceed ~~fifty dollars ($50.00).~~ one hundred dollars ($100.00). Failure on the part of any registrant to renew ~~his~~ the certificate annually in the month of January, as required above, shall deprive the registrant of the right to practice until renewal has been effected. Renewal may be effected at any time during the first ~~36~~ 12 months immediately following its invalidation ~~of payment of the renewal fee increased ten percent (10%) for each month or fraction of a month that payment for renewal is delayed.~~ by payment of the established renewal fee and a late penalty of one hundred dollars ($100.00). Failure of a ~~registrant~~ licensee to renew ~~his registration~~ the license for a period of ~~36~~ 12 months shall require the individual, prior to resuming practice in

North Carolina, to submit an application ~~therefor~~ on the prescribed form, and to meet all other requirements for ~~registration~~ licensure as set forth in Chapter 89C. The secretary of the Board is instructed to remove from the official roster of engineers and land surveyors the names of all ~~registrants~~ licensees who have not effected their renewal by the first day of February immediately following the date of their expiration. The Board may ~~enact~~ adopt rules to provide for renewals in distress or hardship cases due to military service, prolonged illness, or prolonged absence from the State, where the applicant for renewal demonstrates to the Board that ~~he~~ the applicant has maintained ~~his~~ active knowledge and professional status as an engineer or land surveyor, as the case may be. It shall be the responsibility of each ~~registrant~~ licensee to inform the Board promptly concerning change in address. A licensee may request and be granted inactive status. A licensee granted inactive status shall pay annual renewal fees but shall not be subject to annual continuing professional competency requirements. A licensee granted inactive status may return to active status by meeting all requirements of the Board, including demonstration of continuing professional competency as a condition of reinstatement."

Section 16. G.S. 89C-18 reads as rewritten:

"**§ 89C-18. Duplicate certificates.**

The Board may issue a duplicate certificate of ~~registration~~ licensure or certificate of authorization to replace any certificate that has been lost, destroyed, or mutilated and may charge a fee of up to twenty-five dollars ($25.00) for issuing the certificate."

Section 17. G.S. 89C-19 reads as rewritten:

"**§ 89C-19. Public works; requirements where public safety involved.**

This State and its political subdivisions such as counties, cities, towns, or other political entities or legally constituted boards, commissions, public utility companies, or authorities, or officials, or employees ~~thereof~~ of these entities shall not engage in the practice of engineering or land surveying involving either public or private property where the safety of the public is directly involved without the project being under the supervision of a professional engineer for the preparations of plans and specifications for engineering projects, or a ~~registered~~ professional land surveyor for land surveying projects, as provided for the practice of the respective professions by this Chapter.

An official or employee of the State or any political subdivision specified in this section, holding the positions set out in this section as of June 19, 1975, shall be exempt from the provisions of this section so long as such official or employee is engaged in substantially the same type of work as is involved in ~~his~~ the present position.

Nothing in this section shall be construed to prohibit inspection, maintenance and service work done by employees of the State of North Carolina, any political subdivision ~~thereof,~~ of the State, or any municipality ~~therein~~ including construction, installation, servicing, and maintenance by regular full-time employees of, secondary roads and drawings incidental ~~thereto,~~ to work on secondary roads, streets, street lighting, traffic-control signals, police and fire alarm systems, waterworks, steam, electric and sewage treatment and disposal plants, the services of superintendents,

inspectors or foremen regularly employed by the State of North Carolina or any political subdivision ~~thereof,~~ of the State, or municipal ~~corporation therein.~~ corporation.

The provisions in this section shall not be construed to alter or modify the requirements of Article 1 of Chapter 133 of the General Statutes."

Section 18. G.S. 89C-20 reads as rewritten:

"**§ 89C-20. Rules of professional conduct.**

In the interest of protecting the safety, health, and welfare of the public, the Board shall ~~promulgate and~~ adopt rules of professional conduct applicable to the practice of engineering and land surveying. These rules, when adopted, shall be construed to be a reasonable exercise of the police power vested in the Board of ~~Registration~~ Examiners for ~~Professional~~ Engineers and Land Surveyors. Every person ~~registered~~ licensed by the Board shall subscribe to and observe the adopted rules as the standard of professional conduct for the practice of engineering and land ~~surveying.~~ surveying and shall cooperate fully with the Board in the course of any investigation. In the case of violation of the rules of professional conduct, the Board shall ~~have the responsibility and duty to~~ proceed in accordance with G.S. 89C-22."

Section 19. G.S. 89C-21 reads as rewritten:

"**§ 89C-21. Disciplinary action -- Reexamination, revocation, suspension, reprimand, or civil penalty.**

(a) The Board may reprimand the licensee, suspend, refuse to renew, or revoke the certificate of ~~registration,~~ licensure, or, as appropriate, require reexamination, for any engineer or land surveyor, who is found:

(1) Guilty of the practice of any fraud or deceit in obtaining a certificate of ~~registration~~ licensure or certificate of authorization.

(2) Guilty of any gross negligence or misconduct in the practice of ~~his~~ the profession.

(3) Guilty of any felony or any crime involving moral turpitude.

(4) Guilty of violation of the Rules of Professional Conduct, as adopted by the Board.

(5) To have been declared insane or incompetent by a court of competent jurisdiction and has not ~~thereafter~~ later been lawfully declared sane or competent.

(6) Guilty of professional incompetence. In the event the Board finds that a certificate holder is incompetent the Board may, in its discretion, require oral or written examinations, or other indication of the certificate holder's fitness to practice ~~his profession~~ engineering or land surveying and suspend ~~his~~ the license during any such period.

(b) The Board ~~shall have the power to~~ may (i) revoke a certificate of authorization, or (ii) to suspend a certificate of authorization for a period of time not exceeding two years, of any corporation or business firm where one or more of its officers or directors have committed any act or have been guilty of any conduct

which would authorize a revocation or suspension of their certificates of ~~registration~~ licensure under the provision of this section.

(c) The Board may levy a civil penalty not in excess of two thousand dollars ($2,000) for any engineer or land surveyor who violates any of the provisions of subdivisions (1) through (4) of subsection (a) of this section. All civil penalties collected by the Board shall be deposited in the General Fund of North Carolina.

(d) Before imposing and assessing a civil penalty and fixing the ~~amount thereof,~~ amount, the Board shall, as a part of its deliberation, take into consideration the following factors:

(1) The nature, gravity, and persistence of the particular violations;
(2) The appropriateness of the imposition of a civil penalty when considered alone or in combination with other punishment;
(3) Whether the violation(s) were done willfully and maliciously; and
(4) Any other factors which would tend to either mitigate or aggravate the violation(s) found to exist."

Section 20. G.S. 89C-22 reads as rewritten:

"**§ 89C-22. Disciplinary action -- Charges; procedure.**

(a) Any person may prefer charges of fraud, deceit, gross negligence, incompetence, misconduct, or violation of the rules of professional conduct, against any Board registrant. The charges shall be in writing and shall be sworn to by the person or persons making them and shall be filed with ~~the secretary of~~ the Board.

(b) All charges, unless dismissed by the Board as unfounded or trivial, shall be heard by the Board as provided under the requirements of Chapter 150B of the General Statutes.

(c) If, after ~~such~~ a hearing, a majority of the Board votes in favor of sustaining the charges, the Board shall reprimand, levy a civil penalty, suspend, refuse to renew, or revoke the ~~registrant's certificate of registration.~~ licensee's certificate.

(d) A ~~registrant~~ licensee who is aggrieved by a final decision of the Board may appeal for judicial review as provided by Article 4 of Chapter 150B.

(e) The Board may, upon petition of an individual or an entity whose certificate has been revoked, for sufficient ~~reasons it may deem sufficient,~~ reasons as it may determine, reissue a certificate of ~~registration~~ licensure or authorization, provided that a majority of the members of the Board vote in favor of such issuance."

Section 21. G.S. 89C-23 reads as rewritten:

"**§ 89C-23. Unlawful to practice engineering or land surveying without ~~registration;~~ licensure; unlawful use of title or terms; penalties; Attorney General to be legal adviser.**

Any person who shall practice, or offer to practice, engineering or land surveying in this State without first being ~~registered~~ licensed in accordance with the provisions of this Chapter, or any person, firm, partnership, organization, association, corporation, or other entity using or employing the words 'engineer' or 'engineering' or 'professional engineer' or 'professional engineering' or 'land surveyor' or 'land surveying,' or any modification or derivative ~~thereof~~ of those words in its name or form of business or activity except as ~~registered~~ licensed under this Chapter or in

pursuit of activities exempted by this Chapter, or any person presenting or attempting to use the certificate of ~~registration~~ licensure or the seal of another, or any person who shall give any false or forged evidence of any kind to the Board or to any member ~~thereof~~ of the Board in obtaining or attempting to obtain a certificate of ~~registration,~~ licensure, or any person who shall falsely impersonate any other ~~registrant~~ licensee of like or different name, or any person who shall attempt to use an expired or revoked or nonexistent certificate of ~~registration,~~ licensure, or who shall practice or offer to practice when not qualified, or any person who falsely claims that ~~he~~ the person is registered under this Chapter, or any person who shall violate any of the provisions of this Chapter, in addition to injunctive procedures set out hereinbefore, shall be guilty of a Class 2 misdemeanor. In no event shall there be representation of or holding out to the public of any engineering expertise by ~~unregistered~~ unlicensed persons. It shall be the duty of all duly constituted officers of the State and all political subdivisions ~~thereof~~ of the State to enforce the provisions of this Chapter and to prosecute any persons violating ~~same.~~ them.

The Attorney General of the State or ~~his~~ an assistant shall act as legal adviser to the Board and render ~~such~~ any legal assistance ~~as may be~~ necessary ~~in carrying~~ to carry out the provisions of this Chapter. The Board may employ counsel and necessary assistance to aid in the enforcement of this Chapter, and the compensation and expenses ~~therefor~~ for the assistance shall be paid from funds of the Board."

Section 22. G.S. 89C-24 reads as rewritten:

"**§ 89C-24. ~~Registration~~ Licensure of corporations and business firms that engage in the practice of engineering or land surveying.**

A corporation or business firm may not engage in the practice of engineering or land surveying in this State unless it is ~~registered with~~ licensed by the Board and has paid ~~the required registration fee.~~ an application fee established by the Board in an amount not to exceed two hundred fifty dollars ($250.00). A corporation or business firm is subject to the same duties and responsibilities as an individual ~~registrant. Registration~~ licensee. Licensure of a corporation or business firm does not affect the requirement that all engineering or land surveying work done by the corporation or business firm be performed by or under the responsible charge of individual registrants, nor does it relieve the individual registrants within a corporation or business firm of their design and supervision responsibilities.

This section applies to every corporation that is engaged in the practice of engineering or land surveying, regardless of when it was incorporated. A corporation that is not exempt from Chapter 55B of the General Statutes by application of G.S. 55B-15 must be incorporated under that Chapter."

Section 23. G.S. 89C-25 reads as rewritten:

"**§ 89C-25. Limitations on application of Chapter.**

This Chapter shall not be construed to prevent or affect:

(1) The practice of architecture, landscape architecture, or contracting or any other legally recognized profession or trade; or

(2) The practice of professional engineering or land surveying in this State or by any person not a resident of this State and having no

established place of business in this State when this practice does not aggregate more than 90 days in any calendar year, whether performed in this State or elsewhere, or involve more than one specific project; provided, however, that ~~such~~ the person is ~~legally qualified by registration~~ licensed to practice the ~~said~~ profession in ~~his~~ the person's own state or country, in which the requirements and qualifications for obtaining a certificate of ~~registration~~ licensure are satisfactory to the Board; in which case the person shall apply for and the Board will issue a temporary permit; or

(3) The practice of professional engineering or land surveying in this State not to aggregate more than 90 days by any person residing in this State, but whose residence has not been of sufficient duration for the Board to grant or deny ~~registration;~~ licensure; provided, however, ~~such~~ the person shall have filed an application for ~~registration~~ licensure as a professional engineer or ~~registered~~ professional land surveyor and shall have paid the fee provided for in G.S. 89C-14, and provided that ~~such a~~ the person is ~~legally qualified by registration~~ licensed to practice professional engineering or professional land surveying in ~~his~~ the person's own state or country in which the requirements and qualifications for obtaining a certificate of ~~registration~~ licensure are satisfactory to the Board, in which case the person shall apply for and the Board will issue a temporary permit; or

(4) Engaging in engineering or land surveying as an employee or assistant under the responsible charge of a professional engineer or ~~registered~~ professional land surveyor or as an employee or assistant of a nonresident professional engineer or a nonresident ~~registered~~ professional land surveyor provided for in subdivisions (2) and (3) of this section, provided that ~~said~~ the work as an employee may not include responsible charge of design or supervision; or

(5) The practice of professional engineering or land surveying by any person not a resident of, and having no established place of business in this State, as a consulting associate of a professional engineer or ~~registered~~ professional land surveyor ~~registered~~ licensed under the provisions of this Chapter; provided, the nonresident is qualified for ~~such~~ performing the professional service in ~~his~~ the person's own state or country; or

(6) Practice by members of the armed forces or employees of the government of the United States while engaged in the practice of engineering or land surveying solely for ~~said~~ the government on government-owned works and projects; or

(7) The internal engineering or surveying activities of a person, firm or corporation engaged in manufacturing, processing, or producing a product, including the activities of public service corporations,

public utility companies, authorities, State agencies, railroads, or membership cooperatives, or the installation and servicing of their product in the field; or research and development in connection with the manufacture of that product or their service; or of their research affiliates; or their employees in the course of their employment in connection with the manufacture, installation, or servicing of their product or service in the field, or on-the-premises maintenance of machinery, equipment, or apparatus incidental to the manufacture or installation of the product or service of a firm by the employees of the firm upon property owned, leased or used by the firm; inspection, maintenance and service work done by employees of the State of North Carolina, any political subdivision ~~thereof,~~ of the State, or any municipality ~~therein~~ including construction, installation, servicing, maintenance by regular full-time employees of streets, street lighting, traffic-control signals, police and fire alarm systems, waterworks, steam, electric and sewage treatment and disposal plants; the services of superintendents, inspectors or foremen regularly employed by the State of North Carolina or any political subdivision ~~thereof,~~ of the State or a municipal ~~corporation therein;~~ corporation; provided, however, that the internal engineering or surveying activity is not a holding out to or an offer to the public of engineering or any service thereof as prohibited by this Chapter. Engineering work, not related to the foregoing exemptions, where the safety of the public is directly involved shall be under the responsible charge of a ~~registered~~ licensed professional engineer, or in accordance with standards prepared or approved by a ~~registered~~ licensed professional engineer.

(8) The (i) preparation of fire sprinkler planning and design drawings by a fire sprinkler contractor licensed under Article 2 of Chapter 87 of the General Statutes, or (ii) the performance of internal engineering or survey work by a manufacturing or communications common carrier company, or by a research and development company, or by employees of ~~such~~ those corporations provided that ~~such~~ the work is in connection with, or incidental to products of, or nonengineering services rendered by ~~such~~ those corporations or their affiliates.

(9) The routine maintenance or servicing of machinery, equipment, facilities or structures, the work of mechanics in the performance of their established functions, or the inspection or supervision of construction by a foreman, superintendent, or agent of the architect or professional engineer, or services of an operational nature performed by an employee of a laboratory, a manufacturing plant, a public service corporation, or governmental operation."

Section 24. G.S. 89C-25.1 reads as rewritten:

"**§ 89C-25.1. Supervision of ~~unregistered~~ unlicensed individuals by ~~registered~~ licensed person.**

In all circumstances in which ~~unregistered~~ unlicensed individuals are permitted under this Chapter to perform engineering or land surveying work, or both, under the supervision of a ~~registered~~ licensed engineer, land surveyor, or both, the Board may by regulation establish a reasonable limit on the number of ~~unregistered~~ unlicensed individuals which a ~~registrant~~ licensee of the Board may directly or personally supervise at one time."

Section 25. G.S. 89C-26 reads as rewritten:

"**§ 89C-26. Duties of register of deeds.**

The register of deeds or any other county or proper public authority may not file or record any map, plat, survey, or other documents, within the definition of land surveying, which do not contain an original personal signature and original seal of a ~~registered~~ licensed land surveyor by whom, or under whose responsible charge, the map, plat, survey, or other documents were prepared, except as provided in G.S. 47-30(m) and (n)."

Section 26. G.S. 89C-28 reads as rewritten:

"**§ 89C-28. Existing ~~registration~~ licensure not affected.**

Nothing in this Chapter shall be construed as affecting the status of ~~registration~~ licensure of any professional engineer or ~~registered~~ land surveyor who is rightfully in possession of a certificate of ~~registration~~ licensure duly issued by the Board and valid as of July 1, 1975."

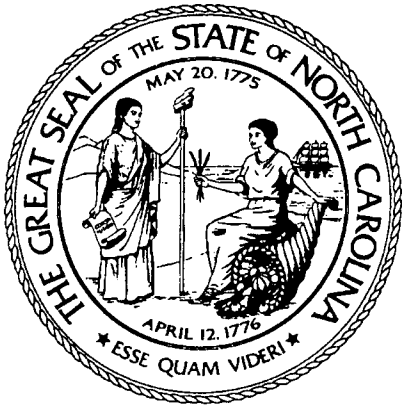
Section 27. This act becomes effective July 1, 1997, and applies to persons applying for licenses on or after that date and to persons practicing engineering and land surveying on or after that date.

LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

Assessment Report
for

Photogrammetrists

Senate Bill 787
House Bill 794



LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

May 19, 1997

The Legislative Committee on New Licensing Boards is pleased to release this assessment report on the licensing of photogrammetrists. This report constitutes both the preliminary and final assessment report.

W. Frank Mitchell

Representative Frank Mitchell, Chairman

Linwood Jones

Prepared by:
Linwood Jones, Counsel

LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

Rep. Frank Mitchell, Chairman

Senator Fletcher Hartsell	Representative Eugene McCombs
Senator Brad Miller	Representative Wilma Sherrill
Senator R.C. Soles, Jr.	Representative Gene Wilson
Senator Allen Wellons	Representative Douglas Yongue

Counsel: Mr. Linwood Jones
Mrs. Linda Attarian

90LLJ-0265I

PREFACE

The Legislative Committee on New Licensing Boards is a 9-member joint committee of the House and Senate created and governed by statute (Article 18A of Chapter 120 of the General Statutes). The primary purpose of the Committee is to evaluate the need for a new licensing board or the proposed licensing of previously unregulated practitioners by an existing board. The Committee has been in existence since 1985.

The Committee solicits written and oral testimony on each licensing proposal in carrying out its duty to determine whether the proposal meets the following criteria:

(1) Whether the unregulated practice of the profession can substantially endanger the public health, safety, or welfare, and whether the potential for such harm is recognizable and not remote or dependent upon tenuous argument.

(2) Whether the profession possesses qualities that distinguish it from ordinary labor.

(3) Whether practice of the profession requires specialized skill or training.

(4) Whether a substantial majority of the public has the knowledge or experience to evaluate the practitioner's competence.

(5) Whether the public can effectively be protected by other means.

(6) Whether licensure would have a substantial adverse economic impact upon consumers of the practitioner's good or services.

The Committee issues an assessment report on its findings and recommendations. The recommendation in the report is not binding on other committees considering the proposal.

PHOTOGRAMMETRISTS

Photogrammetry is a branch of land surveying that involves aerial photography. Currently, photogrammetrists must have a registered land surveyor to provide "ground control in order to tie their work to the earth's surface." This ensures that a licensed professional has reviewed the surveying aspects of the work and approves it. Photogrammetrists, like land surveyors, use sophisticated state-of-the-art equipment to map land tracts. These professionals also rely on the same types of technical background and mathematical aptitude as land surveyors. The map data interpreted and reported from imagery by photogrammetrists is used for highway design, landfill and sewage systems, infrastructure maintenance, emergency response, and GIS base maps, among other things.

Senate Bill 787 and House Bill 794 would require photogrammetrists seeking licensure after July 1, 1998 to meet the same educational, experience, and examination requirements as a land surveyor. A person already practicing photogrammetry and who has been practicing for at least seven years (at least two of which were in responsible charge of photogrammetric mapping projects meeting National Map Accuracy Standards) may apply for a license before July 1, 1998, without having to meet these requirements.

The Board that regulates land surveyors and engineers estimates that there are approximately 150 persons who would be affected by this licensure

inappropriate image resolutions and the use of "non-rigorous photgrammetric restitutions."

The Legislative Committee on New Licensing Boards finds that the sponsors have met the six statutory criteria by which the Committee judges licensure proposals, as follows:

(1) The unregulated practice of the profession can substantially harm or endanger the public health, safety, or welfare, and the potential for such harm is recognizable and not remote nor dependent upon tenuous argument.

(2) The practice of the profession possesses qualities that distinguish it from ordinary labor.

(3) The practice of the profession requires specialized skill and training.

(4) A substantial majority of the public does not have the knowledge or experience to evaluate the practitioner's competence.

(5) The public cannot be effectively protected by other means.

(6) Licensure would not have a substantial adverse economic impact upon consumers.

The Legislative Committee on New Licensing Boards recommends licensure of photogrammetrists. This assessment report constitutes both the preliminary and the final assessment report for the licensing of photogrammetrists. The report is based on the proposed licensing of photogrammetrists, as set out in Senate Bill 787 and House Bill 794, the

response to the Committee's questionnaire (attached), and testimony before the Committee on May 12, 1997.

MEMORANDUM

TO: **Representative Bill Ives**

FROM: **Jerry T. Carter**
Executive Secretary

RE: **Questionnaire - Legislative Committee on New Licensing Boards**
(Proposed Amendments to G.S. 89C)

(1) In what way has the marketplace failed to regulate adequately the profession or occupation?

The marketplace has not failed to regulate the occupation of photogrammetry; changes in technology and history dictate the proposal to bring photogrammetrists under the authority of G.S. 89C. Photogrammetrists employ many of the same techniques and equipment as Registered Land Surveyors in providing aerial mapping of property. Under existing regulations, a photogrammetrist must employ a Registered Land Surveyor to provide ground control in order to tie the property to the face of the earth. This action to modify G.S. 89C was not initiated by the Board of Registration but by the North Carolina Chapter of The American Society for Photogrammetry and Remote Sensing whose president stated "It is the opinion of our organization and those we have contacted that photogrammetrists are engaged in providing a professional service that directly impacts the health, safety and welfare of the public. As such, we feel that photogrammetrists would require licensing and request that the Board consider this issue."

(2) Have there been any complaints about the unregulated profession or occupation? Please give specific examples including (unless confidentiality must be maintained) complainants' names and addresses.

The Board of Registration has received no formal complaints concerning photogrammetrist offering or providing photogrammetrical work. The Board has received complaints about photogrammetrists offering and providing land surveying services while not properly licensed. In each instance, the Board has been able to obtain voluntary compliance.

(3) In what ways has the public health, safety, or welfare sustained harm or is in imminent danger of harm because of the lack of state regulation? Please give specific examples.

Photogrammetrists do not currently operate under a code of professional conduct nor are they subject to any specific standards in performing work. The general welfare of the public would be served by making photogrammetrists accountable for their work with the potential of disciplinary action for substandard work.

(4) *Is there potential for substantial harm or danger by the profession or occupation to the public health, safety, or welfare? How can this potential for substantial harm or danger be recognized?*

There is potential for harm to the welfare of the general public by practitioners that do not employ standard procedures and applications in completing their work. This could impact the consuming public by increased fees to correct errors, legal fees, time invested in Court, etc.

(5) *Has this potential harm or danger to the public been recognized by other states or the federal government through the licensing or certification process? Please list the other states and any applicable federal law (including citations).*

The State of Florida amended its land surveying statutes in 1995 to extend the definition of land surveying to include "mappers" and "photogrammetric mappers".

(6) *What will be the economic advantage of licensing to the public?*

Consistency in the performance of services; professionals are required stay abreast of changes in the field through mandatory continuing competency requirements; a regulatory authority the public can turn to in cases of gross negligence, incompetence or misconduct.

(7) *What will be the economic disadvantage of licensing to the public?*

There is no evidence that the licensure of photogrammetrists as Registered Land Surveyors will provide any economic disadvantage to the general public.

(8) *What will be the economic advantages of licensing to the practitioners?*

Ability to form Professional Corporations; resources of the Board of Registration for matters of interpretation and application; services elevated from that of a trade to a professional service.

(9) *What will be the economic disadvantages of licensing to the practitioners?*

Annual renewal; moneys expended (if any) to comply with continuing education requirements.

(10) *Please give other potential benefits to the public of licensing that outweigh the potential harmful effects of licensure such as a decrease in the availability of practitioners and higher costs to the public.*

Because of regulation, a practitioner is accountable for his actions to the Board which can remove the privilege for noncompliance. The consuming public also has a resource other than the Courts for acts of unprofessional conduct.

(11) *Please detail the specific specialized skills or training that distinguish the occupation or profession from ordinary labor.*

Both photogrammetrists and Registered Land Surveyors utilize state-of-the-art equipment to properly map tracts of land. Both require a high degree of aptitude for math and require years of progressive experience in order to offer their services in a competent manner.

(12) *What are other qualities of the profession or occupation that distinguish it from ordinary labor?*

The effects from the work performed can have an influence that is widely felt. This can include the boundaries of individual tracts of land, large industrial tracts, and county maps. A high level of skill is required along with appropriate experience.

(13) *Will licensing requirements cover all practicing members of the occupation or profession? If any practitioners will be exempt, what is the rationale for the exemption?*

All practitioners will be governed under the modified provisions of G.S. 89C, without exception.

(14) *What is the approximate number of persons who will be regulated and the number of persons who are likely to utilize the services of the occupation or profession?*

The approximate number of practicing photogrammetrists who would be subject to regulation would be less than 150 individuals. There is no method by which the number of persons who are likely to utilize the services of the profession can be determined. The need that currently exists for photogrammetrical services will continue regardless of any action taken to modify G.S. 89C.

(15) *What kind of knowledge or experience does the public need to evaluate the services offered by the practitioner?*

The public needs to have some limited understanding of the processes used to obtain the information and to understand how the final product will be provided. Questioning various practitioners will generally provide enough base information to guide the consumer on who to select and what services are needed.

(16) *Does the occupational group have an established code of ethics, a voluntary certification program, or other measures to ensure a minimum quality of service?*

The NC Photogrammetric Society is a voluntary organization and has no code of professional conduct that is enforceable and that would prevent an incompetent practitioner from continuing to offer services to the public. There currently exists no measures to ensure the quality of service provided to the general public at any level.

RECEIVED
FEB 1 1995
N. C. STATE BOARD OF REGISTRATION
FOR PROFESSIONAL ENGINEERS
AND LAND SURVEYORS

NORTH CAROLINA CHAPTER

OF

THE AMERICAN SOCIETY FOR PHOTOGRAMMETRY AND REMOTE SENSING

P.O. Box 18404, Greensboro, NC 27419

PRESIDENT:
JEFF LEONARD

SECRETARY-TREASURER:
DARRELL MILLER

January 31, 1995

Mr. J. Richard Cottingham, P.E., R.L.S., Chairman
NC STATE BOARD OF REGISTRATION FOR
PROFESSIONAL ENGINEERS AND LAND SURVEYORS
3620 Six Forks Road, Suite 300
Raleigh, NC 27609

RE: Licensing of Photogrammetrists

Dear Mr. Cottingham:

I am writing to you as a representative of the North Carolina Chapter of the American Society for Photogrammetry and Remote Sensing (NCASPRS). As you are aware, discussions have been taking place within this organization and in conjunction with various engineering and surveying organizations within the state regarding the licensing of photogrammetrists under the NC State Board of Registration for Professional Engineers and Land Surveyors (Board). Since the topic was first broached at the July 15, 1994, meeting of the Board, representatives from the NC Society of Surveyors (NCSS), Professional Engineers of NC (PENC), NCASPRS, and the Board have met to consider this issue.

At each of these meetings it was the consensus of the attendees that photogrammetrists should be licensed. The map data interpreted and reported from imagery by photogrammetrists is utilized for such purposes as the design of highways, landfills and sewage systems, infrastructure maintenance, emergency response and the base maps for geographic information systems. As such, the work performed by photogrammetrists directly impacts the health, safety and welfare of the public.

The development of this information to currently accepted accuracy and precision standards requires skilled, professional planning and execution of each phase of the photogrammetric processes. Unfortunately, in this climate of restrictive budgets and fierce competition, corner cutting approaches are sometimes being taken in the development of geographic information that include inappropriate image resolutions for the nominal map scale of the landbase being developed, and the use of non-rigorous photogrammetric restitutions. This type of short-term thinking results in dissemination of disinformation that jeopardizes the public welfare.

It is the opinion of our organization and those we have contacted that photogrammetrists are engaged in providing a professional service that directly impacts the health, safety and welfare of the public. As such, we feel that photogrammetrists should require licensing and request that the Board consider this issue. We will be pleased to provide any information or assistance you require to make an informed decision regarding this matter.

Sincerely,

Jeff J. Leonard, C.P.
President

VISITOR REGISTRATION SHEET

RULES, CALENDAR, AND OPERATIONS OF THE HOUSE **May 27, 1997**

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ken Eudy	Capital Strategies
[illegible]	Morris Van Allen
[illegible]	Smith Anderson
Steve Keene	NC Med Soc.
Butch Gunnells	NC Soft Drink Assoc.
[illegible]	ZDA, PA
[illegible]	Boxley Assoc
David Simmons	Zeb Alley, PA
[illegible]	
TIMOTHY MALONEY	N.C. LEAGUE OF LANDSCAPE ARCHITECTS
LARRY V. RAGLAND	"
[illegible]	
Ken Wright	BCBSNC
[illegible]	"
[illegible]	BCBSNC
STUART DIXON	N.C. Natural Gas Corp
[illegible]	Zeb Alley P.A.
Adam Searing	NCHAC
[illegible]	NC DOI
[illegible]	NC DOI
[illegible]	NCAPP
[illegible]	Carolina Healthcare Syst
[illegible]	Carolinas HealthCare System
[illegible]	NC Farm Bureau
[illegible]	NCFB
[illegible]	Commissioner of Insurance
[illegible]	NCSR

VISITOR REGISTRATION SHEET

RULES, CALENDAR, AND OPERATIONS OF THE HOUSE **May 27, 1997**

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sandy Sands	WCSR
Tommy Hensley	NCRPA
Peter Kober	NationsBank
Mike Carpenter	NCHBA
Leanne E. Winner	E. Gr. HBA
Nancy Bradley	NCCPAD
Kenneth P. Langhorne	NS
Doris Hall Johnson	DHR
Roz Sawicki	Lobbyist
Laura Hartsell	MCIC

MINUTES
RULES, CALENDAR AND OPERATIONS OF THE HOUSE
May 28, 1997

The Committee on Rules, Calendar, and Operations of the House met in the House Conference Room in the Legislative Building at 3:45 p.m. on Wednesday, May 28, 1997. Representative Morgan, Committee Chair, called the meeting to order and asked the clerk to call the roll. The following members were present: Representative Bowie, Vice Chair; and Representatives Crawford, Culp, Esposito, McMahan, Miner, Mitchell and Thompson.

H.R. 1202, A HOUSE RESOLUTION HONORING THE LIFE AND MEMORY OF J. HAYWOOD ALLEN, SR., SHERIFF OF CLEVELAND COUNTY was brought before the Committee and Staff Council Linwood Jones explained that the bill honors J. Haywood Allen, Sr., former sheriff of Cleveland County. Representative Mitchell moved for adoption of the House Resolution and the vote was unanimous.

There being no further business, the meeting adjourned at 3:37.

Richard T. Morgan
Committee Chair

Dixie Epps
Committee Clerk

Attachments:
Committee Report
Resolution

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House**.

☐ Committee Substitute for
H.R. 1202 A HOUSE RESOLUTION HONORING THE LIFE AND MEMORY OF J. HAYWOOD ALLEN, SR., FORMER SHERIFF OF CLEVELAND COUNTY.

☐ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE RESOLUTION 1202

Sponsors: Representatives Weatherly; Clary and Dedmon.

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

May 5, 1997

A HOUSE RESOLUTION HONORING THE LIFE AND MEMORY OF J. HAYWOOD ALLEN, SR., FORMER SHERIFF OF CLEVELAND COUNTY.

Whereas, J. Haywood Allen, Sr. was born in Rutherford County to Irwin M. Allen and Maude Weathers Allen; and

Whereas, J. Haywood Allen, Sr. lived most of his life in the Town of Shelby in Cleveland County; and

Whereas, in 1951, J. Haywood Allen, Sr. became sheriff of Cleveland County, following in the footsteps of his father who had also been sheriff of Cleveland County; and

Whereas, Sheriff Haywood Allen was elected as sheriff for eight terms, winning his last election with 62% of the vote; and

Whereas, over a span of almost 30 years, Sheriff Allen saw his office expand from one deputy to 80 deputies; and

Whereas, Sheriff Allen was known for his honesty, fairness, and professionalism; and

Whereas, Sheriff Allen served as president of the North Carolina Sheriffs' Association, Inc., and received national recognition for his service to law enforcement; and

Whereas, Sheriff Allen retired from his position on December 15, 1980; and

Whereas, J. Haywood Allen, Sr. was active in community affairs, serving as a faithful member of the First Baptist Church in Shelby and as a charter member of both the Kings Mountain Lions Club and the Shelby Optimist Club; and

Whereas, J. Haywood Allen, Sr., after a life of distinction and public service, died on December 25, 1996, at the age of 80; and

Whereas, J. Haywood Allen, Sr. is survived by his wife, Majel Stewart Allen; a son, John Haywood Allen, Jr.; two daughters, Kathryn Monroe and Jonanna Robbs; two grandchildren; and several other relatives and friends; and

Whereas, J. Haywood Allen, Sr.'s service to his profession and community was exemplary and deserves recognition; and

Whereas, the House of Representatives wishes to honor the memory of J. Haywood Allen, Sr. and recognize his many years of public service to the citizens of Cleveland County;

Now, therefore, be it resolved by the House of Representatives:

Section 1. The House of Representatives honors the memory of J. Haywood Allen, Sr. and expresses the gratitude and appreciation of this State and its citizens for his life and devoted service.

Section 2. The House of Representatives extends its deepest sympathy to the family of J. Haywood Allen, Sr. for their loss.

Section 3. The Principal Clerk shall transmit a certified copy of this resolution to the family of J. Haywood Allen, Sr.

Section 4. This resolution is effective upon adoption.

MINUTES
COMMITTEE ON RULES, CALENDAR, AND OPERATIONS OF THE HOUSE
June 3, 1997

The Committee on Rules, Calendar, and Operations of the House met June 3, 1997, at 6:40 p.m. in Room 421 in the Legislative Office Building. Representative Morgan, Committee Chair, called the meeting to order and asked the clerk to call the roll. The following members were present: Representative Bowie, Vice Chair; and Representatives Culp, Dockham, Esposito, Gulley, McMahan, Mitchell, and Thompson.

The first bill before the Committee was House Bill 1166 - A BILL TO BE ENTITLED AN ACT TO AMEND THE EDUCATIONAL REQUIREMENTS FOR AUCTIONEERS, APPRENTICE AUCTIONEERS, AND PRINCIPALS IN AN AUCTION FIRM. Representative Black, bill sponsor, was recognized to explain the bill. Representative Mitchell moved for a favorable report and that the bill be re-referred to the Committee on Finance. Motion carried.

The next bill before the Committee was House Joint Resolution 1191 -A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF LOYD EDWARD AUMAN. Representative Warner, bill sponsor, was recognized to explain the resolution. Representative Thompson moved for a favorable report. Motion carried.

House Joint Resolution 1235- A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF EDGAR M. "LONESOME ED" MCKNIGHT, FORMER MEMBER OF THE GENERAL ASSEMBLY was the next bill before the Committee. Representative Gray was recognized to explain the resolution. Representative Esposito moved for a favorable report. Motion carried.

Next on the agenda for Committee consideration was Senate Bill 500 - A BILL TO BE ENTITLED AN ACT TO ESTABLISH THE MOUNTAIN ISLAND LAKE MARINE COMMISSION. Representative Dickson was recognized to speak on the bill on behalf of Senator Odom, the bill sponsor. Representative Dickson presented a committee substitute and Representative McMahan moved for its adoption for Committee discussion. Motion carried. Representative McMahan then moved to amend the bill on page 1, line 22 Legal counsel explained the amendment. The words "mean high waterline" were deleted and the words "full-time elevation contour" were inserted. Representative Dickson explained that it was a technical substitute to meet the federal definition. The amendment was adopted. Representative Morgan, Chair, recognized Representative Dickson to explain the bill as amended. Representative McMahan moved for the amendment to be rolled into the House committee substitute for Senate Bill 500 and that this committee substitute be given a favorable report and unfavorable to original bill. Motion carried.

The next bill before the Committee was Senate Bill 698 - A BILL TO BE ENTITLED AN ACT ALLOWING WAYNE COUNTY TO CONVEY CERTAIN REAL PROPERTY TO THE NAHUNTA VOLUNTEER FIRE DEPARTMENT BY PRIVATE SALE. Senator Kerr was recognized to explain the bill. Representative Dockham moved for a favorable report. Motion carried.

Representative Morgan, Chair, displaced Senate Joint Resolution 707 -A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF ROYCE PHELPS "BO" THOMAS, FORMER MEMBER OF THE GENERAL ASSEMBLY at the request of the bill sponsor.

The next bill before the Committee was Senate Bill 764 - A BILL TO BE ENTITLED AN ACT TO AMEND THE WORKERS' COMPENSATION ACT REGARDING EMPLOYER ACCESS TO MEDICAL INFORMATION. Senator Kerr, bill sponsor, was recognized to explain the bill. Representative Morgan, Chair, explained this bill was before the Committee because Representative Mitchell had an identical bill and in the crossover, Senate Bill 764 made it over first. The House bill had already been deliberated by the House and there were no changes. Senator Kerr said that he and Representative Mitchell worked out a compromise of all interested parties. Representative Mitchell moved for a favorable report and the motion carried.

Senate Bill 809 - A BILL TO BE ENTITLED AN ACT AMENDING THE NORTH CAROLINA APPRAISERS ACT, was the next bill before the Committee. Senator Ledbetter was recognized to explain the bill. Representative Dockham moved for the adoption of the proposed House Committee Substitute for Senate Bill 809. Motion carried to properly put the committee substitute before the Committee. Representative Thompson was recognized to send forward an amendment. The amendment would amend the bill on Page 1, Line 13, by adding the word "brokerage" after the word "a" and by adding the word "brokerage" after the word "prospective". Senator Ledbetter agreed with Representative Thompson's explanation that the amendment changes were intended to be in the original Senate bill but had been omitted .Representative Thompson moved for the adoption of the amendment. Amendment was adopted. Senator Ledbetter stated that the appraisers reluctantly supported the bill and that this bill would apply to any real estate. Representative Thompson moved that the amendment be rolled into a new House committee substitute and that the committee substitute be given a favorable report and an unfavorable report to the Senate Bill 194. Motion carried.

Senate Joint Resolution 1078 - A JOINT RESOLUTION PROVIDING FOR THE CONFIRMATION OF THE APPOINTMENT OF RICHARD CONDER

MADE BY THE GOVERNOR TO MEMBERSHIP ON THE NORTH CAROLINA UTILITIES COMMISSION was presented to the Committee. Representative McMahan moved to adopt the proposed House Committee Substitute to the Senate Joint Resolution 1078. Counsel was recognized to explain the change. The committee substitute provided only for the appointment of Richard Condor and not R. V. Owens, Jr. Representative McMahan moved to give a favorable report to the House Committee Substitute for Senate Joint Resolution 1078 and unfavorable to the original bill The motion carried.

House Joint Resolution - A JOINT RESOLUTION PROVIDING FOR THE CONFIRMATION OF THE APPOINTMENT OF ROBERT V. OWENS, JR. MADE BY THE GOVERNOR TO MEMBERSHIP ON THE NORTH CAROLINA UTILITIES COMMISSION was next before the Committee. Representative Thompson moved that the committee adopt the draft bill and the motion carried. The Chair explained that this was a committee bill. Linwood Jones, Committee Staff Counsel, was recognized to explain the draft committee bill. Representative Bowie moved for a favorable report. Motion carried.

Next on the agenda for Committee consideration was Senate Bill 194 -A BILL TO BE ENTITLED AN ACT TO AMEND VARIOUS ENVIRONMENTAL LAWS. Representative Mitchell moved to adopt the proposed House Committee Substitute for Senate Bill 194- for the purpose of Committee discussion. Motion carried. Linwood Jones, Committee Staff Counsel, was recognized to explain the substitute bill. The bill had no major changes except the substitute no longer included the civil penalties change that was included in Senate Bill 194. The rest of the changes were technical and clarifying. Counsel stated that the approved House Bill 515, which pertained to regulation of hog farms, began on page 9 of the bill. Representative Bowie moved for a favorable report to the House Committee Substitute for Senate bill 194, and an unfavorable report to original bill. Motion carried.

The meeting adjourned at 7:10 p.m..

Representative Richard T. Morgan
Committee Chair

Anne Cole
Acting Committee Clerk

Attachments:
Committee Reports
Bills
Visitor's Sheet

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House**.

☐ Committee Substitute for
H.B. 1166 A BILL TO BE ENTITLED AN ACT TO AMEND THE EDUCATIONAL REQUIREMENTS FOR AUCTIONEERS, APPRENTICE AUCTIONEERS, AND PRINCIPALS IN AN AUCTION FIRM.

☒ With a favorable report. and re-refer to Finance.

☐ 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)

4/24/97

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House**.

☐ Committee Substitute for
H.J.R. 1191 A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF LOYD EDWARD AUMAN.

☒ 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)

4/24/97

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House.**

☐ Committee Substitute for
H.J.R. 1235 A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF EDGAR M. "LONESOME ED" MCKNIGHT, FORMER MEMBER OF THE GENERAL ASSEMBLY.

☒ 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)

4/24/97

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House**.

☐ Committee Substitute for
S.B. 500 A BILL TO BE ENTITLED AN ACT TO ESTABLISH THE MOUNTAIN ISLAND LAKE MARINE 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 House 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)

4/24/97

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House.**

☐ Committee Substitute for
S.B. 698 A BILL TO BE ENTITLED AN ACT ALLOWING WAYNE COUNTY TO CONVEY CERTAIN REAL PROPERTY TO THE NAHUNTA VOLUNTEER FIRE DEPARTMENT BY PRIVATE SALE.

☒ 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)

4/24/97

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House.**

☒ Committee Substitute for
S.B. 764 A BILL TO BE ENTITLED AN ACT TO AMEND THE WORKERS' COMPENSATION ACT REGARDING EMPLOYER ACCESS TO MEDICAL INFORMATION.

☒ 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)

4/24/97

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House.**

☒ Committee Substitute for
S.B. 809 A BILL TO BE ENTITLED AN ACT AMENDING THE NORTH CAROLINA APPRAISERS 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 ☐

☐ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

HOUSE BILL 1166

Short Title: Auctioneer Education Requirements. (Public)

Sponsors: Representative Black.

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

April 28, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE EDUCATIONAL REQUIREMENTS FOR AUCTIONEERS, APPRENTICE AUCTIONEERS, AND PRINCIPALS IN AN AUCTION FIRM.

The General Assembly of North Carolina enacts:

Section 1. G.S. 85B-4 reads as rewritten:

"**§ 85B-4. Licenses required.**

(a) No person who is not exempt under G.S. 85B-2, shall sell, or offer to sell, goods or real estate at auction in this State or perform any act for which an auction firm license is required unless the person holds a currently valid license issued under this Chapter.

(b) No person shall be licensed as an apprentice auctioneer, auctioneer, or receive an auction firm license if the person:

(1) Is under 18 years of ~~age;~~ age.

(1a) Is not a high school graduate or the equivalent.

(2) Repealed by Session Laws 1983, c. 751, s. 6.

(3) Has within the preceding five years pleaded guilty to, entered a plea of nolo contendere or been convicted of any felony, or committed or been convicted of any act involving fraud or moral ~~turpitude;~~ turpitude.

(4) Has had an auctioneer or apprentice auctioneer or auction firm license ~~revoked; or~~ revoked.

(5) Has, within the preceding five years, committed any act ~~which~~ that constitutes grounds for license suspension or revocation under this Chapter or a Commission rule.

(c) Each applicant for an apprentice auctioneer license shall submit a written application in a form approved by the Commission and containing at least two statements by residents of the community in which the applicant resides attesting to the applicant's good moral character.

(c1) Each apprentice auctioneer application and license shall name a licensed auctioneer to serve as the supervisor of the apprentice. No apprentice auctioneer may enter into an agreement to conduct an auction, or conduct an auction, without the express approval of his supervisor. The supervisor shall review all contracts before approving them and shall regularly review the records his apprentice is required to maintain under G.S. 85B-7 to see that they are accurate and current, and shall perform such other supervisory duties as may be required by the Commission.

(d) No person shall be licensed as an auctioneer unless the person has held an apprentice auctioneer license and served as an apprentice auctioneer for the two preceding years, accumulated sufficient knowledge and experience in such areas of the auctioneer profession as the Commission may deem appropriate, and has taken an examination approved by the Commission and performed on it to the satisfaction of the Commission. The examination shall test the applicant's understanding of the law relating to auctioneers and auctions, ethical practices for auctioneers, the mathematics applicable to the auctioneer business, and such other matters relating to auctions as the Commission considers appropriate. The examination shall be given at least twice each year in Raleigh, and at other times and places the Commission designates, but no person shall be allowed to take the examination within six months after having failed it a second time.

~~Any person who has been in the auctioneer business in this State for at least two years prior to the effective date of this act [July 1, 1973], and who makes proper application to the Commission within one year after July 1, 1973, may be licensed as an auctioneer without holding an apprentice license and serving as an apprentice of two years, and without taking the examination required by this subsection.~~ Any person who has successfully completed the equivalent of at least 80 hours of classroom instruction in a course in auctioneering at an institution ~~approved by the Commission~~ whose curriculum and instructors meet the qualifications approved or established by the Commission may be licensed as an auctioneer without holding an apprentice license and serving as an apprentice for two years, but must take the examination required by this subsection and perform on it to the satisfaction of the Commission.

Each applicant for an auctioneer license shall submit a written application in a form approved by the Commission. If the applicant has been previously licensed as an apprentice auctioneer, the application shall contain an evaluation by the applicant's supervisor of the applicant's performance as an apprentice auctioneer and the applicant's performance in specific areas as required by the Commission. If the applicant is exempted from apprenticeship after completion of the equivalent of at

least 80 hours of classroom instruction in auctioneering, the application shall contain a transcript of the applicant's course work in auctioneering. Each application shall be accompanied by statements of at least two residents of the community in which the applicant resides attesting to the applicant's good moral character. The Commission may require verification of any information included in an application for an auctioneer license and may request other information or verification of information provided to determine whether the applicant possesses the good moral character or other qualifications for licensure.

(e) Each license issued under this Chapter shall be valid from July 1 of the year issued, or from the date issued, whichever is later, to the following June 30 unless sooner revoked or suspended pursuant to this Chapter or a rule of the Commission. A license may be renewed for one year at a time, except an apprentice auctioneer license may not be renewed for more than three times. No examination shall be required for renewal of an auctioneer license if the application for renewal is made within 24 months of the expiration of the previous license.

(e1) The Commission may require licensees to complete annually not more than six hours of Commission approved continuing education courses prior to license renewal. The Commission may impose different continuing education requirements, including no such requirements, upon the classes of licensees under this Chapter. The Commission may waive any or all continuing education requirements in cases of hardship, disability, or illness or under other circumstances as the Commission deems appropriate.

(f) No person shall be issued an auctioneer or apprentice auctioneer license until the person has made the contribution to the Fund as required by G.S. 85B-4.1.

(g) An auction firm must be licensed by the Board even though no owner or officer of the firm acts as an auctioneer. To be licensed an auction firm must make the contribution to the Fund as required by G.S. 85B-4.1 and must pay the proper fees as set out in G.S. 85B-6. Auction firms are covered by the provisions of G.S. 85B-8.

An auction firm license issued by the Commission is restricted to the persons named in the license and does not inure to the benefit of any other person. Where a license is issued to an auction firm, authority to transact business under the license is limited to the person or persons designated in the application and named in the license.

The designated person or persons, prior to being licensed, shall be required to take a written examination, approved by the Commission, and demonstrate to the satisfaction of the Commission a thorough understanding of the law relating to the conduct of the auction business and other matters the Commission deems appropriate. An individual who is licensed as an auctioneer and who is the designated person applying for an auction firm license is not required to take the auction firm examination. Licensed real estate brokers and real estate firms may be exempt from the auction firm examination provided they employ or associate themselves with a licensed auctioneer to handle those aspects of the transactions peculiar to the auctioneer profession. Any person or entity, on the effective date of

this Chapter, duly licensed as an auction firm in good standing is not required to take any examination in order to maintain or to renew an auction firm license provided that the license does not otherwise expire or lapse and is not suspended or revoked by the Commission.

(h) The Commission shall publish at least once a year a list of names and addresses of all persons, sole proprietorships, partnerships and corporations holding valid apprentice auctioneer, auctioneer, or auction firm licenses.

(i) The Commission may investigate as it deems necessary the ethical background of any applicant for licensure under this Chapter."

Section 2. G.S. 85B-4.1 reads as rewritten:

"**§ 85B-4.1. Auctioneer Recovery Fund.**

(a) In addition to license fees, upon application for a license or renewal of a license, the Commission may charge the applicant or licensee up to fifty dollars ($50.00) per year to be included in the Fund.

(b) The Commission shall maintain at least ~~one~~ two hundred thousand dollars ~~($100,000)~~ ($200,000) in the Fund for use as provided in this Chapter. The Fund may be invested by the State Treasurer in interest bearing accounts, and any interest accrued shall be added to the Fund. Sufficient liquidity shall be maintained to insure that funds will be available to satisfy claims processed through the Board. The Fund may be disbursed by a warrant drawn against the State Treasurer or by other method at the discretion of the State Treasurer.

(c) The Commission, in its discretion, may use contents of the Fund in excess of ~~one~~ two hundred thousand dollars ~~($100,000)~~ ($200,000) for the following purposes:

(1) To promote education and research in the auctioneer profession, in order to benefit persons licensed under this Chapter and to improve the efficiency of the ~~profession;~~ profession.

(2) To underwrite educational seminars, training centers, and other forms of educational projects for the use and benefit of ~~licensees;~~ licensees.

(3) To sponsor, contract for, or underwrite education and research projects in order to advance the auctioneer profession in ~~North Carolina; and~~ North Carolina.

(4) To cooperate with associations of auctioneers, or other groups, in order to promote the enlightenment and advancement of the auctioneer profession in North Carolina."

Section 3. G.S. 85B-6(a) reads as rewritten:

"**§ 85B-6. Fees; local governments not to charge fees or require licenses.**

(a) The Commission shall collect and remit to the State Treasurer fees in an amount not to exceed the following:

Item	Maximum Fee
Apprentice Auctioneers:	
Application for license	~~$50.00~~ $125.00
Issuance or renewal of license	~~50.00~~ 125.00
Auctioneers:	

Application for license	~~50.00~~	125.00
Examination	~~25.00~~	75.00
Issuance or renewal of license	~~100.00~~	250.00
Auction Firms:		
Application for license	~~50.00~~	125.00
Examination	~~25.00~~	75.00
Issuance or renewal of license	~~100.00~~	250.00
Reinstatement of License	~~25.00.~~	75.00.

An application fee for a license and an examination fee are nonrefundable. The amount payable by a nonresident under G.S. 85B-5 to obtain a nonresident reciprocal auctioneer license is the greater of the amount set in the above table for an examination for and the issuance of an auctioneer's license and the amount the nonresident's state would charge a resident auctioneer of this State to obtain a comparable license from that state.

A reinstatement fee is payable when a person applies for renewal of a license after the license has lapsed for failure to renew it before it expired. The reinstatement of a lapsed license is not retroactive in effect and does not limit the authority of the courts or of the Commission to take disciplinary action against a person who engages in the auctioneer profession with a lapsed license."

Section 4. G.S. 85B-9 reads as rewritten:

"**§ 85B-9. Penalties and enforcement.**

(a) Any person, corporation or association of persons violating the provisions of G.S. 85B-4(a) shall be guilty of a Class 1 misdemeanor. The Attorney General of North Carolina, or the Attorney General's designee, shall have concurrent jurisdiction with the district attorneys of this State to prosecute violations of this Chapter.

(b) The Commission may in its own name seek injunctive relief in the General Court of Justice to restrain any violation or anticipated violation of the provisions of G.S. 85B-4(a) or any violation of this Chapter.

(c) The Commission shall be entitled to the services of the Attorney General of North Carolina in enforcing the provisions of this Chapter or may employ an attorney to assist and represent it in enforcement of specific matters."

Section 5. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE JOINT RESOLUTION 1191

Sponsors: Representatives Warner, McAllister, Morris, Hurley, Kinney, Yongue; Church, Cole, Fox, Hill, and Oldham.

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

May 1, 1997

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF LOYD EDWARD AUMAN.

Whereas, Loyd Edward Auman, a lifelong resident of Cumberland County, was born on September 23, 1916; and

Whereas, Loyd Edward Auman received a bachelors degree in agricultural education from North Carolina State University in 1937, and a principal's certificate from the University of North Carolina at Chapel Hill in 1946; and

Whereas, Loyd Edward Auman began his 23-year career in public education as a teacher at 71st High School, where he taught from 1937 to 1942; and

Whereas, Loyd Edward Auman proudly served his country during World War II as a member of the United States Army Air Corps; and

Whereas, after his military service, Loyd Edward Auman returned to Cumberland County, where he served as principal of 71st High School from December of 1945 to June of 1968, and as principal of J.W. Coon Elementary School from July of 1968 to June of 1977; and

Whereas, Loyd Edward Auman's interest in education was evident by his memberships on the Cumberland County Library Board and the Cumberland County Unit of the North Carolina Association of Educators, of which he also served as president; and

Whereas, Loyd Edward Auman served as coach for both boys and girls sports from 1946 to 1948, and continued to coach girls basketball until 1955; and

Whereas, Loyd Edward Auman was a member of the 71st Athletic Council and initiated a fund drive to build an athletic field at 71st High School; and

Whereas, as a tribute to Loyd Edward Auman's service to education, an elementary school and the 71st High School Athletic Field bear his name; and

Whereas, Loyd Edward Auman greatly contributed to his community serving as a member and past president of the 71st Ruritan Club and as a member of the Board of Directors of the Lake Rim Fire Department; and

Whereas, Loyd Edward Auman was a devoted member of the MacPherson Presbyterian Church, serving as a deacon, elder, superintendent, and Sunday School teacher; and

Whereas, Loyd Edward Auman was a member of the Auman family basketball team from 1940 to 1941, which placed first runner-up in the National Family Basketball Tournament during that time, and was the leading softball home run hitter in Cumberland County from 1940 to 1941; and

Whereas, Loyd Edward Auman was a master gardener and upon his retirement from the public school system turned his hobby of growing muscadine grapes into a vocation, growing 40 varieties of grapes and raising over 400 vines; and

Whereas, today, the 71st Ruritan Club operates the vineyard; and

Whereas, with the death of Loyd Edward Auman on February 8, 1994, Cumberland County and the State of North Carolina lost a most able, outstanding, devoted, and loyal citizen; and

Whereas, Loyd Edward Auman is survived by his wife, Louise Lindsay Auman; his daughters, Mary Auman McLean and Elizabeth Auman Visser; and his son, Edward Auman;

Now, therefore, be it resolved by the House of Representatives, the Senate concurring:

Section 1. The General Assembly honors the life and memory of Loyd Edward Auman and expresses the appreciation of this State for the service he rendered.

Section 2. The General Assembly extends its deepest sympathy to the family and friends of Loyd Edward Auman for their loss.

Section 3. The Secretary of State shall transmit a certified copy of this resolution to the family of Loyd Edward Auman.

Section 4. This resolution is effective upon ratification.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

HOUSE JOINT RESOLUTION 1235

Sponsors: Representatives Gray, Womble, Esposito, Oldham, Sexton, Decker, and Brown.

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

May 29, 1997

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF EDGAR M. "LONESOME ED" MCKNIGHT, FORMER MEMBER OF THE GENERAL ASSEMBLY.

Whereas, Edgar M. McKnight was born on June 21, 1908, in Dallas, North Carolina, to Samuel W. McKnight and Bessie White McKnight; and

Whereas, "Lonesome Ed" McKnight served his country as a sergeant in the United States Marine Corps from 1924 to 1932; and

Whereas, Edgar M. McKnight was married to the former Dorothy Essex on November 26, 1952, and the father of four children; and

Whereas, Edgar M. McKnight was a successful businessman in Winston-Salem, where he owned and served as President of his company, Edmac, Inc., a welding supply and air compressor business; and

Whereas, Edgar M. McKnight was active in his community serving as a member of the Winston-Salem Twin City Club, the Elks Club, and the Clemmons Civic Club; and

Whereas, Edgar M. McKnight was a member of the Calvary Moravian Church in Winston-Salem, where he held numerous offices and served in various capacities; and

Whereas, Edgar M. McKnight ran for a seat in the North Carolina House of Representatives from Forsyth County in 1964, and won the election becoming the first Republican elected countywide in Forsyth County in the twentieth century; and

Whereas, Edgar M. McKnight was labeled by the local newspaper, the Twin City Sentinel early in his term as "Lonesome Ed" because the other members of his local House delegation didn't tell him about the meeting times of the local caucus; and

Whereas, Edgar M. McKnight wore his new name as a badge of honor and campaigned during the next election as "Lonesome Ed" putting the new nickname on the ballot; and

Whereas, "Lonesome Ed" McKnight was not lonesome after the 1966 election winning reelection while helping elect all of his fellow Republican candidates in Forsyth County to the State House and Senate; and

Whereas, "Lonesome Ed" McKnight won reelection to the State House again in 1968, and helped the Republicans capture all five House seats and both State Senate seats in Forsyth County for the first time ever; and

Whereas, "Lonesome Ed" McKnight won reelection to the State House again in 1970 and 1972; and

Whereas, on October 4, 1974, Governor James Holshouser appointed "Lonesome Ed" McKnight to fill a vacancy in the State Senate; and

Whereas, "Lonesome Ed" McKnight served with great distinction during his five terms in the North Carolina General Assembly helping to create a more open and deliberative atmosphere in the legislative body; and

Whereas, "Lonesome Ed" McKnight was a strong supporter of improved education, an expanded parks system, better highways and transportation systems, and better environmental controls; and

Whereas, the Winston-Salem Journal and Twin City Sentinel both recognized "Lonesome Ed" McKnight's great political talents and abilities and continually endorsed him in election after election; and

Whereas, "Lonesome Ed" McKnight eagerly and willingly mentored many other young office seekers and officeholders throughout his entire political career and added immeasurably to their chances for success; and

Whereas, "Lonesome Ed" McKnight died on November 4, 1994, just a few days before he could have seen his lifelong dream of seeing a Republican Speaker of the North Carolina House of Representatives; and

Whereas, "Lonesome Ed" McKnight was preceded in death by a daughter, Doris M. Matthews, and is survived by his wife, Dorothy E. McKnight; his sons, Don B. McKnight and Keith J. McKnight; his daughter, Gayle M. Dion; and five grandchildren and three great-grandchildren; and

Whereas, with the death of "Lonesome Ed" McKnight, the State of North Carolina has lost a most able, outstanding, devoted, and loyal citizen;

Now, therefore, be it resolved by the House of Representatives, the Senate concurring:

Section 1. The General Assembly honors the life and memory of Edgar M. "Lonesome Ed" McKnight and expresses the appreciation of this State for the service he rendered.

Section 2. The General Assembly extends its deepest sympathy to the family and friends of Edgar M. "Lonesome Ed" McKnight for their loss.

Section 3. The Secretary of State shall transmit a certified copy of this resolution to the family of Edgar M. "Lonesome Ed" McKnight.

Section 4. This resolution is effective upon ratification.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 500*
Second Edition Engrossed 4/9/97
Proposed House Committee Substitute S500-PCSA755

Short Title: Mtn. Island Lake Marine Commission. (Local)

Sponsors:

Referred to:

March 25, 1997

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE MOUNTAIN ISLAND LAKE MARINE COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. For purposes of this act:

(1) "Board" means the board of commissioners of one of the three counties.

(2) "Commission" means the Mountain Island Lake Marine Commission or its governing board, as the case may be.

(3) "Commissioner" means a member of the governing board of the Mountain Island Lake Marine Commission.

(4) "Three counties" means Gaston, Lincoln, and Mecklenburg Counties.

(5) "Joint resolution" means a resolution or ordinance substantially identical in content adopted separately by the governing boards in each of the three counties.

(6) "Mountain Island Lake" means the impounded body of water along the Catawba River in the three counties extending from the Cowans Ford Dam downstream to the Mountain Island Dam.

(7) "Shoreline area" means, except as modified by a joint resolution, the area within the three counties lying within 1,000 feet of the full pond elevation contour on Mountain Island Lake. In addition, the

shoreline area includes all islands within Mountain Island Lake and all peninsulas extending into the waters of Mountain Island Lake.

(8) "Wildlife Commission" means the North Carolina Wildlife Resources Commission.

Section 2. The three counties may by joint resolution create the Mountain Island Lake Marine Commission. Upon its creation the Commission has the powers, duties, and responsibilities conferred upon it by joint resolution, subject to the provisions of this act. The provisions of any joint resolution may be modified, amended, or rescinded by a subsequent joint resolution. A county may unilaterally withdraw from participation as provided by any joint resolution or the provisions of this act, once the Commission has been created, and any county may unilaterally withdraw from the Commission at the end of any budget period upon 90 days prior written notice. Upon the effectuation of the withdrawal, the Commission is dissolved, and all property of the Commission must be distributed to or divided among the three counties and any other public agency or agencies serving the Mountain Island Lake area in a manner considered equitable by the Commission by resolution adopted by it prior to dissolution.

Section 3. Upon its creation, the Commission shall have a governing board of seven. Except as otherwise provided for the initial appointees, each commissioner shall serve a three-year term. Upon creation of the Commission, the Boards of Commissioners of Gaston County and Mecklenburg County shall appoint three commissioners each, and the Board of Commissioners of Lincoln County shall appoint one commissioner. Of the initial appointees:

(1) One commissioner appointed by Gaston County and one member appointed by Mecklenburg County shall serve one-year terms;

(2) One commissioner appointed by Gaston County and one member appointed by Mecklenburg County shall serve two-year terms; and

(3) One member appointed by Gaston County, one member appointed by Mecklenburg County, and the member appointed by Lincoln County shall serve three-year terms.

Any commissioner who has served two consecutive terms, including any initial term of less than three years, may not be reappointed to a third consecutive term. Such a member may, however, be appointed to serve again after the expiration of the term of the member's successor.

On the death of a commissioner, resignation, incapacity, or inability to serve, as determined by the board appointing that commissioner, or removal of the commissioner for cause, as determined by the board appointing that commissioner, the board affected may appoint another commissioner to fill the unexpired term.

Section 4. The joint resolution of the three counties shall state the terms relating to compensation to commissioners, if any, compensation of consultants and staff members employed by the Commission, and reimbursement of expenses incurred by commissioners, consultants, and employees. The Commission shall be governed by those budgetary and accounting procedures specified by joint resolution.

Section 5. Upon creation of the Commission, its governing board shall meet at a time and place agreed upon by the boards of the three counties concerned. The commissioners shall elect a chairman and officers as they choose. All officers shall serve one-year terms. The governing board shall adopt rules and regulations as it deems necessary, not inconsistent with the provisions of this act or of any joint resolution, for the proper discharge of its duties and for the governance of the Commission. In order to conduct business, a quorum must be present. The chairman may adopt those committees as authorized by those rules and regulations. The Commission shall meet regularly at times and places as specified in its rules and regulations or in any joint resolution. However, meetings of the Commission must be held in all three counties on a rotating basis so that an equal number of meetings is held in each county. Special meetings may be called as specified in the rules and regulations. The provisions of the Open Meetings Law, Article 33C of Chapter 143 of the General Statutes, shall apply.

Section 6. (a) Within the limits of funds available to it and subject to the provisions of this act and of any joint resolution, the Commission may:

(1) Hire and fix the compensation of permanent and temporary employees and staff as it may deem necessary in carrying out its duties;

(2) Contract with consultants for services it requires;

(3) Contract with the State of North Carolina or the federal government, or any agency or department, or subdivision of them, for property or services as may be provided to or by these agencies and carry out the provisions of these contracts;

(4) Contract with persons, firms, and corporations generally as to all matters over which it has a proper concern, and carry out the provisions of contracts;

(5) Lease, rent, purchase, or otherwise obtain suitable quarters and office space for its employees and staff, and lease, rent, purchase, or otherwise obtain furniture, fixtures, vessels, vehicles, firearms, uniforms, and other supplies and equipment necessary or desirable for carrying out the duties imposed in or under the authority of this act; and

(6) Lease, rent, purchase, construct, otherwise obtain, maintain, operate, repair, and replace, either on its own or in cooperation with other public or private agencies or individuals, any of the following: boat docks, navigation aids, waterway markers, public information signs and notices, and other items of real and personal property designed to enhance public safety in Mountain Island Lake and its shoreline area, or protection of property in the shoreline area subject however to Chapter 113 of the General Statutes and rules promulgated under that Chapter.

(b) The Commission may accept, receive, and disburse in furtherance of its functions any funds, grants, services, or property made available by the federal

government or its agencies or subdivisions, by the State of North Carolina or its agencies or subdivisions, or by private and civic sources.

(c) The governing boards of the three counties may appropriate funds to the Commission out of surplus funds or funds derived from nontax sources. They may appropriate funds out of tax revenues and may also levy annually property taxes for the payments of such appropriation as a special purpose, in addition to any allowed by the Constitution, or as provided by G.S. 153A-149.

(d) The Commission shall be subject to those audit requirements as may be specified in any joint resolution.

(e) In carrying out its duties and either in addition to or in lieu of exercising various provisions of the above authorization, the Commission may, with the agreement of the governing board of the county concerned, utilize personnel and property of or assign responsibilities to any officer or employee of any of the three counties. Such contribution in kind, if substantial, may with the agreement of the other two counties be deemed to substitute in whole or in part for the financial contribution required of that county in support of the Commission.

(f) Unless otherwise specified by joint resolution, each of the three counties shall annually contribute an equal financial contribution to the Commission in an amount appropriate to support the activities of the Commission in carrying out its duties.

Section 7. (a) A copy of the joint resolution creating the Commission and of any joint resolution amending or repealing the joint resolution creating the Commission shall be filed with the Executive Director of the Wildlife Commission. When the Executive Director receives resolutions that are in substance identical from all three counties concerned, the Executive Director shall within 10 days so certify and distribute a certified single resolution text to the following:

(1) The Secretary of State;

(2) The clerk to the governing board of each of the three counties;

(3) The clerks of superior court of Lincoln, Mecklenburg, and Gaston Counties. Upon request, the Executive Director also shall send a certified single copy of any and all applicable joint resolutions to the chairman of the Commission; and

(4) A newspaper of general circulation in the three counties.

(b) Unless a joint resolution specifies a later date, it shall take effect when the Executive Director's certified text has been submitted to the Secretary of State for filing. Certifications of the Executive Director under the seal of the Commission as to the text or amended text of any joint resolution and of the date or dates of submission to the Secretary of State shall be admissible in evidence in any court. Certifications by any clerk of superior court of the text of any certified resolution filed with him by the Executive Director is admissible in evidence and the Executive Director's submission of the resolution for filing to the clerk shall constitute prima facie evidence that that resolution was on the date of submission also submitted for filing with the Secretary of State. Except for the certificate of a clerk as to receipt and date of submission, no evidence may be admitted in court

concerning the submission of the certified text of any resolution by the Executive Director to any person other than the Secretary of State.

Section 8. (a) Except as limited in subsection (b) of this section, by restrictions in any joint resolution, and by other supervening provisions of law, the Commission may make regulations applicable to Mountain Island Lake and its shoreline area concerning all matters relating to or affecting the use of Mountain Island Lake. These regulations may not conflict with or supersede provisions of general or special acts or of regulations of State agencies promulgated under the authority of general law. No regulations adopted under this section may be adopted by the Commission except after public hearing, with publication of notice of the hearing being given in a newspaper of general circulation in the three counties at least 10 days before the hearing. In lieu of or in addition to passing regulations supplementary to State law and regulations concerning the operation of vessels on Mountain Island Lake, the Commission may, after public notice, request that the Wildlife Commission pass local regulations on this subject in accordance with the procedure established by appropriate State law.

(b) Violation of any regulation of the Commission commanding or prohibiting an act shall be a Class 3 misdemeanor.

(c) The regulations promulgated under this section take effect upon passage or upon dates as stipulated in the regulations, except that no regulation may be enforced unless adequate notice of the regulation has been posted in or on Mountain Island Lake or its shoreline area. Adequate notice as to a regulation affecting only a particular location may be by a sign, uniform waterway marker, posted notice, or other effective method of communicating the essential provisions of the regulation in the immediate vicinity of the location in question. Where a regulation applies generally as to Mountain Island Lake or its shoreline area, or both, there must be a posting of notices, signs, or markers communicating the essential provisions in at least three different places throughout the area, and it must be printed in a newspaper of general circulation in the three counties.

(d) A copy of each regulation promulgated under this section must be filed by the Commission with the following persons:

(1) The Secretary of State;

(2) The clerks of superior court of Gaston, Lincoln, and Mecklenburg Counties; and

(3) The Executive Director of the Wildlife Commission;

(e) Any official designated in subsection (d) above may issue certified copies of regulations filed with him under the seal of his office. Those certified copies may be received in evidence in any proceeding.

(f) Publication and filing of regulations promulgated under this section as required above is for informational purposes and shall not be a prerequisite to their validity if they in fact have been duly promulgated, the public has been notified as to the substance of regulations, a copy of the text of all regulations is in fact available to any person who may be affected, and no party to any proceeding has been prejudiced by any defect that may exist with respect to publication and filing. Rules and

regulations promulgated by the Commission under the provisions of other sections of this act relating to internal governance of the Commission need not be filed or published. Where posting of any sign, notice, or marker or the making of other communication is essential to the validity of a regulation duly promulgated, it shall be presumed in any proceeding that prior notice was given and maintained and the burden lies upon the party asserting to the contrary to prove lack of adequate notice of any regulation.

Section 9. (a) Where a joint resolution so provides, all law enforcement officers, or those officers as may be designated in the joint resolution, with territorial jurisdiction as to any part of Mountain Island Lake or its shoreline area shall, within the limitations of their subject matter jurisdiction, have the authority of peace officers in enforcing the laws over all of Mountain Island Lake and its shoreline area.

(b) Where a joint resolution provides it, the Commission may hire special officers to patrol and enforce the laws on Mountain Island Lake and its shoreline area. These special officers have and exercise all the powers of peace officers generally within the area in question and shall take the oaths and be subject to all provisions of law relating to law enforcement officers.

(c) Unless a joint resolution provides otherwise, all courts in the three counties within the limits of their subject matter jurisdiction shall have concurrent jurisdiction as to all criminal offenses arising within the boundaries of Mountain Island Lake and its shoreline area.

(d) Where a law enforcement officer with jurisdiction over any part of Mountain Island Lake or its shoreline area is performing duties relating to the enforcement of the laws on Mountain Island Lake or in its shoreline area, the officer has the extraterritorial jurisdiction necessary to perform his duties. These duties include investigation of crimes an officer reasonably believes have been, or are about to be, committed within the area in question. This includes traversing by reasonable routes from one portion of that area to another although across territory not within the boundaries of Mountain Island Lake and its shoreline area; conducting prisoners in custody to court or detention facilities as authorized by law, although this may involve going outside the area in question; execution of process connected with any criminal offense alleged to have been committed within the boundaries in question, except that such process may not be executed by virtue of this provision beyond the boundaries of the three counties. This also includes continuing pursuit of and arresting any violator or suspected violator as to which grounds for arrest arose within the area in question.

(e) Where law enforcement officers are given additional territorial jurisdiction under the provisions of this section, this shall be deemed an extension of the duties of the office held, and no officer shall take any additional oath or title of office.

Section 10. This act applies only to Gaston, Lincoln, and Mecklenburg Counties.

Section 11. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 500*
Second Edition Engrossed 4/9/97

Short Title: Mtn. Island Lake Marine Commission. (Local)

Sponsors: Senator Odom.

Referred to: State Government, Local Government, and Personnel.

March 25, 1997

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE MOUNTAIN ISLAND LAKE MARINE COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. For purposes of this act:

(1) "Board" means the board of commissioners of one of the three counties.

(2) "Commission" means the Mountain Island Lake Marine Commission or its governing board, as the case may be.

(3) "Commissioner" means a member of the governing board of the Mountain Island Lake Marine Commission.

(4) "Three counties" means Gaston, Lincoln, and Mecklenburg Counties.

(5) "Joint resolution" means a resolution or ordinance substantially identical in content adopted separately by the governing boards in each of the three counties.

(6) "Mountain Island Lake" means the impounded body of water along the Catawba River in the three counties extending from the Cowans Ford Dam downstream to the Mountain Island Dam.

(7) "Shoreline area" means, except as modified by a joint resolution, the area within the three counties lying within 1,000 feet of the mean high waterline on Mountain Island Lake. In addition, the shoreline area includes all islands within Mountain Island Lake

and all peninsulas extending into the waters of Mountain Island Lake.

(8) "Wildlife Commission" means the North Carolina Wildlife Resources Commission.

Section 2. The three counties may by joint resolution create the Mountain Island Lake Marine Commission. Upon its creation the Commission has the powers, duties, and responsibilities conferred upon it by joint resolution, subject to the provisions of this act. The provisions of any joint resolution may be modified, amended, or rescinded by a subsequent joint resolution. A county may unilaterally withdraw from participation as provided by any joint resolution or the provisions of this act, once the Commission has been created, and any county may unilaterally withdraw from the Commission at the end of any budget period upon 90 days prior written notice. Upon the effectuation of the withdrawal, the Commission is dissolved, and all property of the Commission must be distributed to or divided among the three counties and any other public agency or agencies serving the Mountain Island Lake area in a manner considered equitable by the Commission by resolution adopted by it prior to dissolution.

Section 3. Upon its creation, the Commission shall have a governing board of seven. Except as otherwise provided for the initial appointees, each commissioner shall serve a three-year term. Upon creation of the Commission, the Boards of Commissioners of Gaston County and Mecklenburg County shall appoint three commissioners each, and the Board of Commissioners of Lincoln County shall appoint one commissioner. Of the initial appointees:

(1) One commissioner appointed by Gaston County and one member appointed by Mecklenburg County shall serve one-year terms;

(2) One commissioner appointed by Gaston County and one member appointed by Mecklenburg County shall serve two-year terms; and

(3) One member appointed by Gaston County, one member appointed by Mecklenburg County, and the member appointed by Lincoln County shall serve three-year terms.

Any commissioner who has served two consecutive terms, including any initial term of less than three years, may not be reappointed to a third consecutive term. Such a member may, however, be appointed to serve again after the expiration of the term of the member's successor.

On the death of a commissioner, resignation, incapacity, or inability to serve, as determined by the board appointing that commissioner, or removal of the commissioner for cause, as determined by the board appointing that commissioner, the board affected may appoint another commissioner to fill the unexpired term.

Section 4. The joint resolution of the three counties shall state the terms relating to compensation to commissioners, if any, compensation of consultants and staff members employed by the Commission, and reimbursement of expenses incurred by commissioners, consultants, and employees. The Commission shall be governed by those budgetary and accounting procedures specified by joint resolution.

Section 5. Upon creation of the Commission, its governing board shall meet at a time and place agreed upon by the boards of the three counties concerned. The commissioners shall elect a chairman and officers as they choose. All officers shall serve one-year terms. The governing board shall adopt rules and regulations as it deems necessary, not inconsistent with the provisions of this act or of any joint resolution, for the proper discharge of its duties and for the governance of the Commission. In order to conduct business, a quorum must be present. The chairman may adopt those committees as authorized by those rules and regulations. The Commission shall meet regularly at times and places as specified in its rules and regulations or in any joint resolution. However, meetings of the Commission must be held in all three counties on a rotating basis so that an equal number of meetings is held in each county. Special meetings may be called as specified in the rules and regulations. The provisions of the Open Meetings Law, Article 33C of Chapter 143 of the General Statutes, shall apply.

Section 6. (a) Within the limits of funds available to it and subject to the provisions of this act and of any joint resolution, the Commission may:

(1) Hire and fix the compensation of permanent and temporary employees and staff as it may deem necessary in carrying out its duties;

(2) Contract with consultants for services it requires;

(3) Contract with the State of North Carolina or the federal government, or any agency or department, or subdivision of them, for property or services as may be provided to or by these agencies and carry out the provisions of these contracts;

(4) Contract with persons, firms, and corporations generally as to all matters over which it has a proper concern, and carry out the provisions of contracts;

(5) Lease, rent, purchase, or otherwise obtain suitable quarters and office space for its employees and staff, and lease, rent, purchase, or otherwise obtain furniture, fixtures, vessels, vehicles, firearms, uniforms, and other supplies and equipment necessary or desirable for carrying out the duties imposed in or under the authority of this act; and

(6) Lease, rent, purchase, construct, otherwise obtain, maintain, operate, repair, and replace, either on its own or in cooperation with other public or private agencies or individuals, any of the following: boat docks, navigation aids, waterway markers, public information signs and notices, and other items of real and personal property designed to enhance public safety in Mountain Island Lake and its shoreline area, or protection of property in the shoreline area subject however to Chapter 113 of the General Statutes and rules promulgated under that Chapter.

(b) The Commission may accept, receive, and disburse in furtherance of its functions any funds, grants, services, or property made available by the federal

government or its agencies or subdivisions, by the State of North Carolina or its agencies or subdivisions, or by private and civic sources.

(c) The governing boards of the three counties may appropriate funds to the Commission out of surplus funds or funds derived from nontax sources. They may appropriate funds out of tax revenues and may also levy annually property taxes for the payments of such appropriation as a special purpose, in addition to any allowed by the Constitution, or as provided by G.S. 153A-149.

(d) The Commission shall be subject to those audit requirements as may be specified in any joint resolution.

(e) In carrying out its duties and either in addition to or in lieu of exercising various provisions of the above authorization, the Commission may, with the agreement of the governing board of the county concerned, utilize personnel and property of or assign responsibilities to any officer or employee of any of the three counties. Such contribution in kind, if substantial, may with the agreement of the other two counties be deemed to substitute in whole or in part for the financial contribution required of that county in support of the Commission.

(f) Unless otherwise specified by joint resolution, each of the three counties shall annually contribute an equal financial contribution to the Commission in an amount appropriate to support the activities of the Commission in carrying out its duties.

Section 7. (a) A copy of the joint resolution creating the Commission and of any joint resolution amending or repealing the joint resolution creating the Commission shall be filed with the Executive Director of the Wildlife Commission. When the Executive Director receives resolutions that are in substance identical from all three counties concerned, the Executive Director shall within 10 days so certify and distribute a certified single resolution text to the following:

(1) The Secretary of State;

(2) The clerk to the governing board of each of the three counties;

(3) The clerks of superior court of Lincoln, Mecklenburg, and Gaston Counties. Upon request, the Executive Director also shall send a certified single copy of any and all applicable joint resolutions to the chairman of the Commission; and

(4) A newspaper of general circulation in the three counties.

(b) Unless a joint resolution specifies a later date, it shall take effect when the Executive Director's certified text has been submitted to the Secretary of State for filing. Certifications of the Executive Director under the seal of the Commission as to the text or amended text of any joint resolution and of the date or dates of submission to the Secretary of State shall be admissible in evidence in any court. Certifications by any clerk of superior court of the text of any certified resolution filed with him by the Executive Director is admissible in evidence and the Executive Director's submission of the resolution for filing to the clerk shall constitute prima facie evidence that that resolution was on the date of submission also submitted for filing with the Secretary of State. Except for the certificate of a clerk as to receipt and date of submission, no evidence may be admitted in court

concerning the submission of the certified text of any resolution by the Executive Director to any person other than the Secretary of State.

Section 8. (a) Except as limited in subsection (b) of this section, by restrictions in any joint resolution, and by other supervening provisions of law, the Commission may make regulations applicable to Mountain Island Lake and its shoreline area concerning all matters relating to or affecting the use of Mountain Island Lake. These regulations may not conflict with or supersede provisions of general or special acts or of regulations of State agencies promulgated under the authority of general law. No regulations adopted under this section may be adopted by the Commission except after public hearing, with publication of notice of the hearing being given in a newspaper of general circulation in the three counties at least 10 days before the hearing. In lieu of or in addition to passing regulations supplementary to State law and regulations concerning the operation of vessels on Mountain Island Lake, the Commission may, after public notice, request that the Wildlife Commission pass local regulations on this subject in accordance with the procedure established by appropriate State law.

(b) Violation of any regulation of the Commission commanding or prohibiting an act shall be a Class 3 misdemeanor.

(c) The regulations promulgated under this section take effect upon passage or upon dates as stipulated in the regulations, except that no regulation may be enforced unless adequate notice of the regulation has been posted in or on Mountain Island Lake or its shoreline area. Adequate notice as to a regulation affecting only a particular location may be by a sign, uniform waterway marker, posted notice, or other effective method of communicating the essential provisions of the regulation in the immediate vicinity of the location in question. Where a regulation applies generally as to Mountain Island Lake or its shoreline area, or both, there must be a posting of notices, signs, or markers communicating the essential provisions in at least three different places throughout the area, and it must be printed in a newspaper of general circulation in the three counties.

(d) A copy of each regulation promulgated under this section must be filed by the Commission with the following persons:

(1) The Secretary of State;

(2) The clerks of superior court of Gaston, Lincoln, and Mecklenburg Counties; and

(3) The Executive Director of the Wildlife Commission;

(e) Any official designated in subsection (d) above may issue certified copies of regulations filed with him under the seal of his office. Those certified copies may be received in evidence in any proceeding.

(f) Publication and filing of regulations promulgated under this section as required above is for informational purposes and shall not be a prerequisite to their validity if they in fact have been duly promulgated, the public has been notified as to the substance of regulations, a copy of the text of all regulations is in fact available to any person who may be affected, and no party to any proceeding has been prejudiced by any defect that may exist with respect to publication and filing. Rules and

regulations promulgated by the Commission under the provisions of other sections of this act relating to internal governance of the Commission need not be filed or published. Where posting of any sign, notice, or marker or the making of other communication is essential to the validity of a regulation duly promulgated, it shall be presumed in any proceeding that prior notice was given and maintained and the burden lies upon the party asserting to the contrary to prove lack of adequate notice of any regulation.

Section 9. (a) Where a joint resolution so provides, all law enforcement officers, or those officers as may be designated in the joint resolution, with territorial jurisdiction as to any part of Mountain Island Lake or its shoreline area shall, within the limitations of their subject matter jurisdiction, have the authority of peace officers in enforcing the laws over all of Mountain Island Lake and its shoreline area.

(b) Where a joint resolution provides it, the Commission may hire special officers to patrol and enforce the laws on Mountain Island Lake and its shoreline area. These special officers have and exercise all the powers of peace officers generally within the area in question and shall take the oaths and be subject to all provisions of law relating to law enforcement officers.

(c) Unless a joint resolution provides otherwise, all courts in the three counties within the limits of their subject matter jurisdiction shall have concurrent jurisdiction as to all criminal offenses arising within the boundaries of Mountain Island Lake and its shoreline area.

(d) Where a law enforcement officer with jurisdiction over any part of Mountain Island Lake or its shoreline area is performing duties relating to the enforcement of the laws on Mountain Island Lake or in its shoreline area, the officer has the extraterritorial jurisdiction necessary to perform his duties. These duties include investigation of crimes an officer reasonably believes have been, or are about to be, committed within the area in question. This includes traversing by reasonable routes from one portion of that area to another although across territory not within the boundaries of Mountain Island Lake and its shoreline area; conducting prisoners in custody to court or detention facilities as authorized by law, although this may involve going outside the area in question; execution of process connected with any criminal offense alleged to have been committed within the boundaries in question, except that such process may not be executed by virtue of this provision beyond the boundaries of the three counties. This also includes continuing pursuit of and arresting any violator or suspected violator as to which grounds for arrest arose within the area in question.

(e) Where law enforcement officers are given additional territorial jurisdiction under the provisions of this section, this shall be deemed an extension of the duties of the office held, and no officer shall take any additional oath or title of office.

Section 10. This act applies only to Gaston, Lincoln, and Mecklenburg Counties.

Section 11. This act is effective when it becomes law.

Russell

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 698

Short Title: Wayne/Nahunta Real Property Conveyance. (Local)

Sponsors: Senator Kerr.

Referred to: State Government, Local Government, and Personnel.

April 7, 1997

A BILL TO BE ENTITLED

AN ACT ALLOWING WAYNE COUNTY TO CONVEY CERTAIN REAL PROPERTY TO THE NAHUNTA VOLUNTEER FIRE DEPARTMENT BY PRIVATE SALE.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding the provisions of Article 12 of Chapter 160A of the General Statutes, the County of Wayne may convey to the Nahunta Volunteer Fire Department, Inc., a nonprofit corporation, by private sale with or without consideration, a tract consisting of 2.88 acres and a right-of-way located in Buck Swamp Township, Wayne County, and described in the deed recorded in Book 1555, Page 1 of the Wayne County Registry, for use as a parking area and for use by the Nahunta Extension Homemakers Club, said property being more particularly described as follows:

"All that tract of land containing 2.88 acres more or less, being part of the property recorded in Deed Book 274, page 158 and Deed Book 410, page 407, being located in Buck Swamp Township, Wayne County, NC and described by metes and bounds as follows:

Commencing at an iron stake found on the eastern right-of-way of NC Highway No. 581, the southwestern corner of Ed Radford Auto Auction, Inc., Deed Book 1348, page 470, said stake being point 'A', having NC Grid Coordinates Y=640,662.6989 and X-2,278,646.8410 and being located from NC Geodetic station Monument entitled 'Nahunta', having grid coordinates Y=640,993.6524 and X-2,278,588.5365, a magnetic bearing S. 04-54-21 E. and a horizontal distance 336.09 feet; and runs thence, leaving said road right-of-way, and with the line of Ed Radford

Auto Auction, Inc., Deed Book 1348, Page 470, N. 80-30-00 E. 195.36 feet to an iron stake found; thence continued with said Radford line N. 08-38-23 W. 92.33 feet to a p.k. nail found; thence continued with said Radford line, N. 08-38-23 W. 85.86 feet to an iron stake found; thence continued with said Radford line N. 08-38.23 W 33.11 feet to an iron stake found; thence continued with said Radford line N. 80-36-52 E. 181.51 feet to an iron stake found; thence continued with said Radford line N. 80-36-52 E. 22.66 feet to an iron stake found on the western edge of a 30 foot right-of-way, Deed Book 1354, Page 186, said stake being located S. 09-30-02 E. 139.60 feet from a point on the southern right-of-way of NCSR No. 1336; thence with the western edge of said 30 foot right-of-way, S. 09-30-02 E. 33.66 feet to an iron stake found at the end of said 30 foot right-of-way, the point of beginning; thence from said beginning and along the southern end of said 30 foot right-of-way, Deed Book 1354, Page 186, N. 80-45-48 E. 30.00 feet to an iron stake found on the eastern edge of said 30 foot right-of-way; thence leaving said 30 foot right-of-way and with the line of the Trustees of the Nahunta Home Extension Club, Deed Book 1354, Page 186, N. 80-45-48 E. 24.01 feet to a point in said line; thence continued with said line and with an existing ditch, N. 80-45-48 E. 64.18 feet to a point in said line and in said ditch; thence continued with said line and said ditch, N. 81-03-19 E. 76.97 feet to an iron stake; thence continued with said Nahunta Home Extension Club Line, N. 71-56-52E. 109.32 feet to an iron stake; thence continued N. 71-56-52 E. 30.00 feet to a point in Brooks Branch; thence with said branch as it meanders S. 29-23-12E. 433.29 feet to an iron stake found (axle) in said branch; thence leaving said branch and with the line of Zeb Whaley Heirs, S. 83-13-43 W. 191.51 feet to an iron stake set; thence continued with said Whaley Line, S. 83-13-43 W. 200.00 feet to an iron stake set; thence leaving said Whaley Line, N. 07-27-40 W. 278.24 feet to an iron stake set; thence N. 65-18-27 W. 119.87 feet to an iron stake set; thence N. 09-30-02 W. 23.96 feet to the point of beginning.

THERE IS ALSO CONVEYED all of the Grantor's right title and interest in and to the perpetual easement for ingress, egress and regress described in Deed Book 1354, Page 186 of the Wayne County Registry."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 764*
Judiciary Committee Substitute Adopted 4/29/97

Short Title: Workers' Compensation Medical Care. (Public)

Sponsors:

Referred to:

April 9, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE WORKERS' COMPENSATION ACT REGARDING EMPLOYER ACCESS TO MEDICAL INFORMATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 97-25 reads as rewritten:

"**§ 97-25. Medical treatment and supplies.**

Medical compensation shall be provided by the employer. Notwithstanding the provisions of G.S. 8-53, any law relating to the privacy of medical records or information, and the prohibition against ex parte communications at common law, an employer paying medical compensation to a provider rendering treatment under this Chapter may obtain records of the treatment without the express authorization of the employee. The Commission shall adopt rules that govern additional methods of oral and written communications between an employer paying compensation under this Chapter and medical care providers. These rules shall protect the employee's right to a confidential physician-patient relationship while facilitating the release of information necessary to the administration of the employee's claim. In case of a controversy arising between the employer and employee relative to the continuance of medical, surgical, hospital, or other treatment, the Industrial Commission may order such further treatments as may in the discretion of the Commission be necessary.

The Commission may at any time upon the request of an employee order a change of treatment and designate other treatment suggested by the injured employee subject to the approval of the Commission, and in such a case the expense thereof shall be

borne by the employer upon the same terms and conditions as hereinbefore provided in this section for medical and surgical treatment and attendance.

The refusal of the employee to accept any medical, hospital, surgical or other treatment or rehabilitative procedure when ordered by the Industrial Commission shall bar said employee from further compensation until such refusal ceases, and no compensation shall at any time be paid for the period of suspension unless in the opinion of the Industrial Commission the circumstances justified the refusal, in which case, the Industrial Commission may order a change in the medical or hospital service.

If in an emergency on account of the employer's failure to provide the medical or other care as herein specified a physician other than provided by the employer is called to treat the injured employee, the reasonable cost of such service shall be paid by the employer if so ordered by the Industrial Commission.

Provided, however, if he so desires, an injured employee may select a physician of his own choosing to attend, prescribe and assume the care and charge of his case, subject to the approval of the Industrial Commission."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 809
Commerce Committee Substitute Adopted 4/23/97
Third Edition Engrossed 4/29/97
Proposed House Committee Substitute S809-PCS1828

Short Title: Amend NC Appraisers Act. (Public)

Sponsors:

Referred to:

April 10, 1997

A BILL TO BE ENTITLED

AN ACT AMENDING THE NORTH CAROLINA APPRAISERS ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 93E-1-3(c) reads as rewritten:

"(c) Nothing in this Chapter shall preclude a real estate broker or salesman licensed under Chapter 93A of the General Statutes from performing a comparative market ~~analysis, provided~~ analysis or broker's market analysis so long as the person does not represent himself or herself as being State-licensed or State-certified as a real estate ~~appraiser.~~ appraiser, and the analysis states that it is not an appraisal and shall not be used for lending purposes. A real estate broker or salesman may perform a comparative market analysis or broker's market analysis for compensation only for the following:

(1) A brokerage client or prospective brokerage client of the broker or salesman.

(2) Real property involved in an employee relocation program."

Section 2. G.S. 93E-1-4 reads as rewritten:

"**§ 93E-1-4. Definitions.**

~~When used in this Chapter, unless the context otherwise requires, the term:~~ The following definitions apply in this Chapter:

(1) ~~"Appraisal" or "real estate appraisal" means an~~ Appraisal or real estate appraisal. -- An analysis, opinion, or conclusion as to the

value of identified real estate or specified interests therein performed for compensation or other valuable consideration.

(2) ~~"Appraisal assignment" means an~~ Appraisal assignment. -- An engagement for which an appraiser is employed or retained to act, or would be perceived by third parties or the public as acting, as a disinterested third party in rendering an unbiased appraisal.

(3) ~~"Appraisal Board" or "Board" means the~~ Appraisal Board or Board. -- The North Carolina Appraisal Board established under G.S. 93E-1-5.

(4) ~~"Appraisal Foundation" or "Foundation" means~~ Appraisal Foundation or Foundation. -- The Appraisal Foundation established on November 20, 1987, as a not-for-profit corporation under the laws of Illinois.

(5) ~~"Appraisal report" means any~~ Appraisal report. -- Any communication, written or oral, of an appraisal.

(5a) Broker's market analysis. -- The analysis of a property's condition and of competition and future market conditions to derive an indication of the probable sales price of the property and market strategies to be used by a licensed real estate broker or salesperson.

(6) ~~"Certificate" means that~~ Certificate. -- The document issued by the North Carolina Appraisal Board evidencing that the person named therein has satisfied the requirements for certification as a State-certified real estate appraiser and bearing a certificate number assigned by the Board.

(7) ~~"Certificate holder" means a~~ Certificate holder. -- A person who is certified by the Board under the provisions of this Chapter.

(7a) ~~"Comparative market analysis" means the~~ Comparative market analysis. -- The analysis of sales of similar recently sold properties in order to derive an indication of the probable sales price of a particular property by a licensed real estate broker or ~~salesperson for the broker's or salesperson's principal.~~ salesperson.

(8) ~~"License" means that~~ License. -- The document issued by the North Carolina Appraisal Board evidencing that the person named therein has satisfied the requirements for licensure as a State-licensed real estate appraiser and bearing a license number assigned by the Board.

(9) ~~"Licensee" means a~~ Licensee. -- A person licensed by the Board under the provisions of this Chapter.

(10) ~~"Real estate" or "real property" means land,~~ Real estate or real property. -- Land, including the air above and ground below and all appurtenances and improvements thereto, as well as any interest or right inherent in the ownership of land.

(11) ~~"Real estate appraiser" or "appraiser" means a~~ Real estate appraiser or appraiser. -- A person who for a fee or valuable

consideration develops and communicates real estate appraisals or otherwise gives an opinion of the value of real estate or any interest therein.

(12) ~~"Real estate appraising" means the~~ Real estate appraising. -- The practice of developing and communicating real estate appraisals.

(13) ~~"Residential real estate" means any~~ Residential real estate. -- Any parcel of real estate, improved or unimproved, that is exclusively residential in nature and that includes or is intended to include a residential structure containing not more than four dwelling units and no other improvements except those which are typical residential improvements that support the residential use for the location and property type. A residential unit in a condominium, town house, or cooperative complex, or planned unit development is considered to be residential real estate.

(14) ~~"State-certified general real estate appraiser" means a~~ State-certified general real estate appraiser. -- A person who holds a current, valid certificate as a State-certified general real estate appraiser issued under the provisions of this Chapter.

(15) ~~"State-certified residential real estate appraiser" means a~~ State-certified residential real estate appraiser. -- A person who holds a current, valid certificate as a State-certified residential real estate appraiser issued under the provisions of this Chapter.

(16) ~~"State-licensed residential real estate appraiser" means a~~ State-licensed residential real estate appraiser. -- A person who holds a current, valid license as a State-licensed residential real estate appraiser issued under the provisions of this Chapter.

(17) ~~"Temporary appraiser licensure or certification" means the~~ Temporary appraiser licensure or certification. -- The issuance of a temporary license or certificate by the Board to a person licensed or certified in another state who enters this State for the purpose of completing a particular appraisal assignment.

(18) ~~"Trainee", "registered trainee", or "trainee real estate appraiser" means a~~ Trainee, registered trainee, or trainee real estate appraiser. -- A person who has satisfied the requirements to be registered as a trainee pursuant to G.S. 93E-1-6, but who has not satisfied the experience and other requirements set forth in G.S. 93E-1-6 to be licensed as a real estate appraiser.

(19) ~~"Trainee registration" or "registration as a trainee" means the~~ Trainee registration or registration as a trainee. -- The document issued by the North Carolina Appraisal Board evidencing that the person named therein has satisfied the requirements of registration as a trainee real estate appraiser and bearing a registration number assigned by the Board."

Section 3. G.S. 93E-1-10 reads as rewritten:

"**§ 93E-1-10. Rule-making authority.**

(a) The Board may adopt rules not inconsistent with the provisions of this Chapter and the General Statutes of North Carolina which may be reasonably necessary to implement, administer, and enforce the provisions of this Chapter, including, but not limited to, the authority to:

(1) Prescribe forms and procedures for submitting information to the Board;

(2) Prescribe standards of practice for persons licensed or certified under this Chapter; and

(3) Prescribe standards for the operation of real estate appraiser education programs.

(b) The Board shall not adopt any rule or take any administrative action that is more restrictive than the Uniform Standards of Professional Appraisal Practice (USPAP) as promulgated and interpreted by the Appraisal Standards Board of the Appraisal Foundation pursuant to Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (Public Law 101-73)."

Section 4. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 809
Commerce Committee Substitute Adopted 4/23/97
Third Edition Engrossed 4/29/97
Proposed House Committee Substitute S809-PCS1825

Short Title: Amend NC Appraisers Act. (Public)

Sponsors:

Referred to:

April 10, 1997

A BILL TO BE ENTITLED

AN ACT AMENDING THE NORTH CAROLINA APPRAISERS ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 93E-1-3(c) reads as rewritten:

"(c) Nothing in this Chapter shall preclude a real estate broker or salesman licensed under Chapter 93A of the General Statutes from performing a comparative market ~~analysis, provided~~ analysis or broker's market analysis so long as the person does not represent himself or herself as being State-licensed or State-certified as a real estate ~~appraiser.~~ appraiser, and the analysis states that it is not an appraisal and shall not be used for lending purposes. A real estate broker or salesman may perform a comparative market analysis or broker's market analysis for compensation only for the following:

(1) A client or prospective client of the broker or salesman.

(2) Real property involved in an employee relocation program."

Section 2. G.S. 93E-1-4 reads as rewritten:

"**§ 93E-1-4. Definitions.**

~~When used in this Chapter, unless the context otherwise requires, the term:~~ The following definitions apply in this Chapter:

(1) ~~"Appraisal" or "real estate appraisal" means an~~ Appraisal or real estate appraisal. -- An analysis, opinion, or conclusion as to the

value of identified real estate or specified interests therein performed for compensation or other valuable consideration.

(2) ~~"Appraisal assignment" means an~~ Appraisal assignment. -- An engagement for which an appraiser is employed or retained to act, or would be perceived by third parties or the public as acting, as a disinterested third party in rendering an unbiased appraisal.

(3) ~~"Appraisal Board" or "Board" means the~~ Appraisal Board or Board. -- The North Carolina Appraisal Board established under G.S. 93E-1-5.

(4) ~~"Appraisal Foundation" or "Foundation" means~~ Appraisal Foundation or Foundation. -- The Appraisal Foundation established on November 20, 1987, as a not-for-profit corporation under the laws of Illinois.

(5) ~~"Appraisal report" means any~~ Appraisal report. -- Any communication, written or oral, of an appraisal.

(5a) Broker's market analysis. -- The analysis of a property's condition and of competition and future market conditions to derive an indication of the probable sales price of the property and market strategies to be used by a licensed real estate broker or salesperson.

(6) ~~"Certificate" means that~~ Certificate. -- The document issued by the North Carolina Appraisal Board evidencing that the person named therein has satisfied the requirements for certification as a State-certified real estate appraiser and bearing a certificate number assigned by the Board.

(7) ~~"Certificate holder" means a~~ Certificate holder. -- A person who is certified by the Board under the provisions of this Chapter.

(7a) ~~"Comparative market analysis" means the~~ Comparative market analysis. -- The analysis of sales of similar recently sold properties in order to derive an indication of the probable sales price of a particular property by a licensed real estate broker or ~~salesperson for the broker's or salesperson's principal.~~ salesperson.

(8) ~~"License" means that~~ License. -- The document issued by the North Carolina Appraisal Board evidencing that the person named therein has satisfied the requirements for licensure as a State-licensed real estate appraiser and bearing a license number assigned by the Board.

(9) ~~"Licensee" means a~~ Licensee. -- A person licensed by the Board under the provisions of this Chapter.

(10) ~~"Real estate" or "real property" means land,~~ Real estate or real property. -- Land, including the air above and ground below and all appurtenances and improvements thereto, as well as any interest or right inherent in the ownership of land.

(11) ~~"Real estate appraiser" or "appraiser" means a~~ Real estate appraiser or appraiser. -- A person who for a fee or valuable

consideration develops and communicates real estate appraisals or otherwise gives an opinion of the value of real estate or any interest therein.

(12) ~~"Real estate appraising" means the~~ Real estate appraising. -- The practice of developing and communicating real estate appraisals.

(13) ~~"Residential real estate" means any~~ Residential real estate. -- Any parcel of real estate, improved or unimproved, that is exclusively residential in nature and that includes or is intended to include a residential structure containing not more than four dwelling units and no other improvements except those which are typical residential improvements that support the residential use for the location and property type. A residential unit in a condominium, town house, or cooperative complex, or planned unit development is considered to be residential real estate.

(14) ~~"State-certified general real estate appraiser" means a~~ State-certified general real estate appraiser. -- A person who holds a current, valid certificate as a State-certified general real estate appraiser issued under the provisions of this Chapter.

(15) ~~"State-certified residential real estate appraiser" means a~~ State-certified residential real estate appraiser. -- A person who holds a current, valid certificate as a State-certified residential real estate appraiser issued under the provisions of this Chapter.

(16) ~~"State-licensed residential real estate appraiser" means a~~ State-licensed residential real estate appraiser. -- A person who holds a current, valid license as a State-licensed residential real estate appraiser issued under the provisions of this Chapter.

(17) ~~"Temporary appraiser licensure or certification" means the~~ Temporary appraiser licensure or certification. -- The issuance of a temporary license or certificate by the Board to a person licensed or certified in another state who enters this State for the purpose of completing a particular appraisal assignment.

(18) ~~"Trainee", "registered trainee", or "trainee real estate appraiser" means a~~ Trainee, registered trainee, or trainee real estate appraiser. -- A person who has satisfied the requirements to be registered as a trainee pursuant to G.S. 93E-1-6, but who has not satisfied the experience and other requirements set forth in G.S. 93E-1-6 to be licensed as a real estate appraiser.

(19) ~~"Trainee registration" or "registration as a trainee" means the~~ Trainee registration or registration as a trainee. -- The document issued by the North Carolina Appraisal Board evidencing that the person named therein has satisfied the requirements of registration as a trainee real estate appraiser and bearing a registration number assigned by the Board."

Section 3. G.S. 93E-1-10 reads as rewritten:

"**§ 93E-1-10. Rule-making authority.**

(a) The Board may adopt rules not inconsistent with the provisions of this Chapter and the General Statutes of North Carolina which may be reasonably necessary to implement, administer, and enforce the provisions of this Chapter, including, but not limited to, the authority to:

(1) Prescribe forms and procedures for submitting information to the Board;

(2) Prescribe standards of practice for persons licensed or certified under this Chapter; and

(3) Prescribe standards for the operation of real estate appraiser education programs.

(b) The Board shall not adopt any rule or take any administrative action that is more restrictive than the Uniform Standards of Professional Appraisal Practice (USPAP) as promulgated and interpreted by the Appraisal Standards Board of the Appraisal Foundation pursuant to Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (Public Law 101-73)."

Section 4. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 3

SENATE BILL 809
Commerce Committee Substitute Adopted 4/23/97
Third Edition Engrossed 4/29/97

Short Title: Amend NC Appraisers Act. (Public)

Sponsors:

Referred to:

April 10, 1997

A BILL TO BE ENTITLED

AN ACT AMENDING THE NORTH CAROLINA APPRAISERS ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 93E-1-3(c) reads as rewritten:

"(c) Nothing in this Chapter shall preclude a real estate broker or salesman licensed under Chapter 93A of the General Statutes from performing a comparative market ~~analysis, provided~~ analysis or broker's market analysis so long as the person does not represent himself or herself as being State-licensed or State-certified as a real estate ~~appraiser.~~ appraiser, and the analysis states that it is not an appraisal and shall not be used for lending purposes. A real estate broker or salesman may perform a comparative market analysis or broker's market analysis for compensation only for the following:

(1) A client or prospective client of the broker or salesman.

(2) Real property involved in an employee relocation program."

Section 2. G.S. 93E-1-4 reads as rewritten:

"**§ 93E-1-4. Definitions.**

~~When used in this Chapter, unless the context otherwise requires, the term:~~ The following definitions apply in this Chapter:

(1) ~~"Appraisal" or "real estate appraisal" means an~~ Appraisal or real estate appraisal. -- An analysis, opinion, or conclusion as to the value of identified real estate or specified interests therein performed for compensation or other valuable consideration.

(2) ~~"Appraisal assignment" means an~~ Appraisal assignment. -- An engagement for which an appraiser is employed or retained to act, or would be perceived by third parties or the public as acting, as a disinterested third party in rendering an unbiased appraisal.

(3) ~~"Appraisal Board" or "Board" means the~~ Appraisal Board or Board. -- The North Carolina Appraisal Board established under G.S. 93E-1-5.

(4) ~~"Appraisal Foundation" or "Foundation" means~~ Appraisal Foundation or Foundation. -- The Appraisal Foundation established on November 20, 1987, as a not-for-profit corporation under the laws of Illinois.

(5) ~~"Appraisal report" means any~~ Appraisal report. -- Any communication, written or oral, of an appraisal.

(5a) Broker's market analysis. -- The analysis of a property's condition and of competition and future market conditions to derive an indication of the probable sales price of the property and market strategies to be used by a licensed real estate broker or salesperson.

(6) ~~"Certificate" means that~~ Certificate. -- The document issued by the North Carolina Appraisal Board evidencing that the person named therein has satisfied the requirements for certification as a State-certified real estate appraiser and bearing a certificate number assigned by the Board.

(7) ~~"Certificate holder" means a~~ Certificate holder. -- A person who is certified by the Board under the provisions of this Chapter.

(7a) ~~"Comparative market analysis" means the~~ Comparative market analysis. -- The analysis of sales of similar recently sold properties in order to derive an indication of the probable sales price of a particular property by a licensed real estate broker or ~~salesperson for the broker's or salesperson's principal.~~ salesperson.

(8) ~~"License" means that~~ License. -- The document issued by the North Carolina Appraisal Board evidencing that the person named therein has satisfied the requirements for licensure as a State-licensed real estate appraiser and bearing a license number assigned by the Board.

(9) ~~"Licensee" means a~~ Licensee. -- A person licensed by the Board under the provisions of this Chapter.

(10) ~~"Real estate" or "real property" means land,~~ Real estate or real property. -- Land, including the air above and ground below and all appurtenances and improvements thereto, as well as any interest or right inherent in the ownership of land.

(11) ~~"Real estate appraiser" or "appraiser" means a~~ Real estate appraiser or appraiser. -- A person who for a fee or valuable consideration develops and communicates real estate appraisals or

otherwise gives an opinion of the value of real estate or any interest therein.

(12) ~~"Real estate appraising" means the~~ Real estate appraising. -- The practice of developing and communicating real estate appraisals.

(13) ~~"Residential real estate" means any~~ Residential real estate. -- Any parcel of real estate, improved or unimproved, that is exclusively residential in nature and that includes or is intended to include a residential structure containing not more than four dwelling units and no other improvements except those which are typical residential improvements that support the residential use for the location and property type. A residential unit in a condominium, town house, or cooperative complex, or planned unit development is considered to be residential real estate.

(14) ~~"State-certified general real estate appraiser" means a~~ State-certified general real estate appraiser. -- A person who holds a current, valid certificate as a State-certified general real estate appraiser issued under the provisions of this Chapter.

(15) ~~"State-certified residential real estate appraiser" means a~~ State-certified residential real estate appraiser. -- A person who holds a current, valid certificate as a State-certified residential real estate appraiser issued under the provisions of this Chapter.

(16) ~~"State-licensed residential real estate appraiser" means a~~ State-licensed residential real estate appraiser. -- A person who holds a current, valid license as a State-licensed residential real estate appraiser issued under the provisions of this Chapter.

(17) ~~"Temporary appraiser licensure or certification" means the~~ Temporary appraiser licensure or certification. -- The issuance of a temporary license or certificate by the Board to a person licensed or certified in another state who enters this State for the purpose of completing a particular appraisal assignment.

(18) ~~"Trainee", "registered trainee", or "trainee real estate appraiser" means a~~ Trainee, registered trainee, or trainee real estate appraiser. -- A person who has satisfied the requirements to be registered as a trainee pursuant to G.S. 93E-1-6, but who has not satisfied the experience and other requirements set forth in G.S. 93E-1-6 to be licensed as a real estate appraiser.

(19) ~~"Trainee registration" or "registration as a trainee" means the~~ Trainee registration or registration as a trainee. -- The document issued by the North Carolina Appraisal Board evidencing that the person named therein has satisfied the requirements of registration as a trainee real estate appraiser and bearing a registration number assigned by the Board."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE JOINT RESOLUTION 1078
Proposed House Committee Substitute S1078-PCS2769

Sponsors:

Referred to:

May 12, 1997

A JOINT RESOLUTION PROVIDING FOR THE CONFIRMATION OF THE APPOINTMENT OF RICHARD CONDER MADE BY THE GOVERNOR TO MEMBERSHIP ON THE NORTH CAROLINA UTILITIES COMMISSION.

Whereas, under the provisions of G.S. 62-10, appointments made by the Governor to membership on the North Carolina Utilities Commission are subject to confirmation by the General Assembly by joint resolution; and

Whereas, the Governor has submitted to the presiding officers of the House of Representatives and the Senate, the names of his appointees to serve full terms on the North Carolina Utilities Commission;

Now, therefore, be it resolved by the Senate, the House of Representatives concurring:

Section 1. The appointment of Richard Conder to the North Carolina Utilities Commission for a term beginning July 1, 1997, and expiring June 30, 2005, is confirmed.

Section 2. This resolution is effective upon ratification.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE JOINT RESOLUTION 1078
Proposed House Committee Substitute S1078-PCS2769

Sponsors:

Referred to:

May 12, 1997

A JOINT RESOLUTION PROVIDING FOR THE CONFIRMATION OF THE APPOINTMENT OF RICHARD CONDER MADE BY THE GOVERNOR TO MEMBERSHIP ON THE NORTH CAROLINA UTILITIES COMMISSION.

Whereas, under the provisions of G.S. 62-10, appointments made by the Governor to membership on the North Carolina Utilities Commission are subject to confirmation by the General Assembly by joint resolution; and

Whereas, the Governor has submitted to the presiding officers of the House of Representatives and the Senate, the names of his appointees to serve full terms on the North Carolina Utilities Commission;

Now, therefore, be it resolved by the Senate, the House of Representatives concurring:

Section 1. The appointment of Richard Conder to the North Carolina Utilities Commission for a term beginning July 1, 1997, and expiring June 30, 2005, is confirmed.

Section 2. This resolution is effective upon ratification.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE JOINT RESOLUTION DRHJR2340

Sponsors: Rules, Calendar, and Operations of the House.

Referred to:

A JOINT RESOLUTION PROVIDING FOR THE CONFIRMATION OF THE APPOINTMENT OF ROBERT V. OWENS, JR. MADE BY THE GOVERNOR TO MEMBERSHIP ON THE NORTH CAROLINA UTILITIES COMMISSION.

Whereas, under the provisions of G.S. 62-10, appointments made by the Governor to membership on the North Carolina Utilities Commission are subject to confirmation by the General Assembly by joint resolution; and

Whereas, the Governor has submitted to the presiding officers of the House of Representatives and the Senate, the names of his appointees to serve full terms on the North Carolina Utilities Commission;

Now, therefore, be it resolved by the House of Representatives, the Senate concurring:

Section 1. The appointment of Robert V. Owens, Jr. to the North Carolina Utilities Commission for a term beginning July 1, 1997, and expiring June 30, 2005, is confirmed.

Section 2. This resolution is effective upon ratification.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 194*
Agriculture/Environment/Natural Resources Committee Substitute Adopted 4/28/97
Proposed House Committee Substitute S194-PCS1826

Short Title: Amend Env. Laws. (Public)

Sponsors:

Referred to:

February 19, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND VARIOUS ENVIRONMENTAL LAWS.

The General Assembly of North Carolina enacts:

Section 1. Part 1 of Article 3 of Chapter 90A is amended by adding a new section to read:

"**§ 90A-46.1. Expiration and renewal of certificates; continuing education requirements.**

A certificate issued under this Part expires on 31 December of the year in which it is issued or renewed. The Commission may establish minimum continuing education requirements that an applicant must meet to renew a certificate. The Commission shall renew a certificate if the applicant meets the continuing education requirement and pays the required renewal fee, any renewal fee in arrears, and any late application penalty."

Section 2. G.S. 113A-120(b1) reads as rewritten:

"(b1) In addition to those factors set out in subsection (a) of this section, and notwithstanding the provisions of subsection (b) of this section, the responsible official or body may deny an application for a permit upon finding that an applicant, or any parent or subsidiary corporation if the applicant is a corporation:

(1) Is conducting or has conducted any activity causing significant environmental damage for which a major development permit is required under this Article without having previously obtained such permit or has received a notice of violation with respect to

any activity governed by this Article and has not complied with the notice within the time specified in the notice;

(2) Has failed to pay a civil penalty assessed pursuant to this Article, a local ordinance adopted pursuant to this Article, or Article 17 of Chapter 113 of the General Statutes which is due and for which no appeal is pending;

(3) Has been convicted of a misdemeanor pursuant to G.S. 113A-126, G.S. 113-229(k), or any criminal provision of a local ordinance adopted pursuant to this Article; or

(4) Has failed to substantially comply with ~~State~~ state rules or local ordinances and regulations adopted pursuant to this Article or with other federal and ~~State~~ state laws, regulations, and rules for the protection of the environment."

Section 3. G.S. 143-215.1(c) reads as rewritten:

"(c) Applications for Permits and Renewals for Facilities Discharging to the Surface Waters. --

(1) All applications for permits and for renewal of existing permits for outlets and point sources and for treatment works and disposal systems discharging to the surface waters of the State shall be in writing, and the Commission may prescribe the form of such applications. All applications shall be filed with the Commission at least 180 days in advance of the date on which it is desired to commence the discharge of wastes or the date on which an existing permit expires, as the case may be. The Commission shall act on a permit application as quickly as possible. The Commission may conduct any inquiry or investigation it considers necessary before acting on an application and may require an applicant to submit plans, specifications, and other information the Commission considers necessary to evaluate the application.

(2) a. The Department shall refer each application for permit, or renewal of an existing permit, for outlets and point sources and treatment works and disposal systems discharging to the surface waters of the State to its staff for written evaluation and proposed determination with regard to issuance or denial of the permit. If the Commission concurs in the proposed determination, it shall give notice of intent to issue or deny the permit, along with any other data that the Commission may determine appropriate, to be given to the appropriate State, interstate and federal agencies, to interested persons, and to the public.

a1. The Commission shall prescribe the form and content of the notice. ~~The notice required herein~~ Public notice shall be given at least 45 days prior to any proposed final action granting or denying the permit. Public notice shall be given

by publication of the notice one time in a newspaper having general circulation within the county.

b. Repealed by Session Laws 1987, c. 734.

(3) If any person desires a public ~~meeting~~ hearing on any application for permit or renewal of an existing permit provided for in this subsection, he shall so request in writing to the Commission within 30 days following date of the notice of intent. The Commission shall consider all such requests for ~~meeting,~~ hearing, and if the Commission determines that there is a significant public interest in holding such ~~meeting,~~ hearing, at least 30 days' notice of such ~~meeting~~ hearing shall be given to all persons to whom notice of intent was sent and to any other person requesting notice. At least 30 days prior to the date of ~~meeting,~~ hearing, the Commission shall also cause a copy of the notice thereof to be published at least one time in a newspaper having general circulation in such county. In any county in which there is more than one newspaper having general circulation in that county, the Commission shall cause a copy of such notice to be published in as many newspapers having general circulation in the county as the Commission in its discretion determines may be necessary to assure that such notice is generally available throughout the county. The Commission shall prescribe the form and content of the notices.

The Commission shall prescribe the procedures to be followed in ~~such meetings.~~ hearings. If the ~~meeting~~ hearing is not conducted by the Commission, detailed minutes of the ~~meeting~~ hearing shall be kept and shall be submitted, along with any other written comments, exhibits or documents presented at the ~~meeting,~~ hearing, to the Commission for its consideration prior to final action granting or denying the permit.

(4) Not later than 60 days following notice of intent or, if a public hearing is held, within 90 days following consideration of the matters and things presented at such hearing, the Commission shall grant or deny any application for issuance of a new permit or for renewal of an existing permit. All permits or renewals issued by the Commission and all decisions denying application for permit or renewal shall be in writing.

(5) No permit issued pursuant to this subsection (c) shall be issued or renewed for a term exceeding five years.

(6) The Commission shall not act upon an application for a new nonmunicipal domestic wastewater discharge facility until it has received a written statement from each city and county government having jurisdiction over any part of the lands on which the proposed facility and its appurtenances are to be located which states whether the city or county has in effect a zoning or

subdivision ordinance and, if such an ordinance is in effect, whether the proposed facility is consistent with the ordinance. The Commission shall not approve a permit application for any facility which a city or county has determined to be inconsistent with its zoning or subdivision ordinance unless it determines that the approval of such application has statewide significance and is in the best interest of the State. An applicant for a permit shall request that each city and county government having jurisdiction issue the statement required by this subdivision by mailing by certified mail, return receipt requested, a written request for such statement and a copy of the draft permit application to the clerk of the city or county. If a local government fails to mail the statement required by this subdivision, as evidenced by a postmark, within 15 days after receiving and signing for the certified mail, the Commission may proceed to consider the permit application notwithstanding this subdivision."

Section 4. G.S. 143-215.4(b) reads as rewritten:

"(b) Procedures for Public Input. --

(1) The Commission may, on its own motion or when required by federal law, request public comments on or hold public hearings on matters within the scope of its authority under this Article or Articles 21A or 21B of this Chapter. To request public comments on a matter, the Commission shall notify appropriate agencies of the opportunity to submit written comments to the Commission on the matter and shall publish a notice in a newspaper having general circulation in the affected area, stating the matter under consideration by the Commission and informing the public of its opportunity to submit written comments to the Commission on the matter. A public comment period shall extend for at least 30 days after the notice is published.

(2) To hold a public hearing on a matter, the Commission shall notify, by personal service or certified mail, persons directly affected by the matter under consideration and shall publish a notice in a newspaper having general circulation in the affected area, stating the matter under consideration by the Commission and the time, date, and place of a public hearing to be held on the matter. A public hearing shall be held no sooner than 20 days after the notice is published. The proceedings at a public hearing held under this subsection shall be recorded. Upon payment of a fee established by the Commission, any person may obtain a copy of the record of the public hearing. After a public hearing, the Commission shall accept written comments for the time period prescribed by the Commission.

(3) This subsection does not apply to rule-making proceedings, contested case hearings, or the issuance of permits required under Title V. The Commission shall establish procedures for public hearings, public notice, and public comment respecting permits required by Title V as provided by G.S. 143-215.111(4).

(4) The Commission may hold a public meeting on any matter within its scope of authority. The Commission may hold a public meeting in addition to any public hearing that is required under any provision of law, but a public meeting may not be substituted for any required public hearing. Except as may be otherwise provided by law, the Commission may determine the procedures for any public meeting it holds."

Section 5. G.S. 143-215.3(a)(4) reads as rewritten:

"(4) To delegate such of the powers of the Commission as the Commission deems necessary to one or more of its members, to the Secretary or any other qualified employee of the Department. ~~Department; provided, that the provisions of any such delegation of power shall be set forth in the rules of the Commission; and provided further that the~~ The Commission shall not delegate to persons other than its own members and the designated employees of the Department the power to conduct hearings with respect to the classification of waters, the assignment of classifications, air quality standards, air contaminant source classifications, emission control standards, or the issuance of any special order except in the case of an emergency under subdivision (12) of this subsection for the abatement of existing water or air pollution. Any employee of the Department to whom a delegation of power is made to conduct a hearing shall report the hearing with its evidence and record to the Commission."

Section 6. Reserved.

Section 7. G.S. 143B-291 reads as rewritten:

"**§ 143B-291. North Carolina Mining Commission -- members; selection; removal; compensation; quorum; services.**

(a) Members, Selection. -- The North Carolina Mining Commission shall consist of nine members appointed by the ~~Governor. The Commission shall be composed of the following: one~~ Governor under a specified subdivision of this subsection as follows:

(1) One member who is the chairman of the North Carolina State University Minerals Research Laboratory Advisory Committee, ex officio. ~~Committee; three representatives of mining industries; three representatives of nongovernmental conservation interests and two who shall represent the Environmental Management Commission and be knowledgeable in the principles of water and air resources management.~~

(2) One member who is a representative of the mining industry.
(3) One member who is a representative of the mining industry.
(4) One member who is a representative of the mining industry.
(5) One member who is a representative of nongovernmental conservation interests.
(6) One member who is a representative of nongovernmental conservation interests.
(7) One member who is a representative of nongovernmental conservation interests.
(8) One who, at the time of the appointment to the Mining Commission, is a member of the Environmental Management Commission and knowledgeable in the principles of water and air resources management.
(9) One who, at the time of the appointment to the Mining Commission, is a member of the Environmental Management Commission and knowledgeable in the principles of water and air resources management.

~~The initial members of the North Carolina Mining Commission shall be those members of the present North Carolina Mining Council who shall meet the above requirements for membership on the North Carolina Mining Commission and who shall serve on the North Carolina Mining Commission for a period equal to the remainder of their current terms on the North Carolina Mining Council. The remaining initial members shall be appointed by the Governor to staggered terms of six years.~~

(b) Terms. -- The term of office of a member of the Commission is six years. ~~Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.~~ At the expiration of each member's term, the Governor shall replace the member with a new member of like qualifications for a term of six years. The term of members appointed under subdivisions (2), (5), and (8) of subsection (a) of this section shall expire on 30 June of years that precede by one year those years that are evenly divisible by six. The term of members appointed under subdivisions (3) and (6) of subsection (a) of this section shall expire on 30 June of years that follow by one year those years that are evenly divisible by six. The term of members appointed under subdivisions (4), (7), and (9) of subsection (a) of this section shall expire on 30 June of years that follow by three years those years that are evenly divisible by six. Upon the expiration of a six-year term, a member may continue to serve until a successor is appointed and duly qualified as provided by G.S. 128-7.

(c) Vacancies. -- An appointment to fill a vacancy shall be for the unexpired balance of the term.

(d) Removal. -- The Governor ~~shall have the power to~~ may remove any member of the Commission from office for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of ~~G.S. 143B-13 of the Executive Organization Act of 1973.~~ G.S. 143B-13.

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

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

(g) Staff. -- All clerical and other services required by the Commission shall be supplied by the Secretary of the Department."

Section 8. In order to reestablish a schedule of six-year staggered terms for the Mining Commission as required by G.S. 143B-291, as amended by Section 7 of this act, the Governor, in making appointments to replace the two members of the Mining Commission who represent the mining industry and whose terms both expire on 30 June 1997, shall appoint one member under G.S. 143B-291(a)(2) to a full six-year term expiring on 30 June 2003 and shall appoint one member under G.S. 143B-291(a)(4), to a four-year term expiring 30 June 2001.

Section 9. G.S. 143B-313.2 reads as rewritten:

"**§ 143B-313.2. North Carolina Parks and Recreation Authority; members; selection; compensation; meetings.**

(a) Membership. -- The North Carolina Parks and Recreation Authority shall consist of 11 members. The members shall include persons who are knowledgeable about park and recreation issues in North Carolina or with expertise in finance. ~~Three members shall be appointed by the Governor, four members shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, and four members shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121. The members shall serve at the pleasure of the appointing authority. The Governor shall appoint one of the members to be Chair of the North Carolina Parks and Recreation Authority. Vacancies shall be appointed by the original appointing authority, and the term shall be for the balance of the unexpired term. The North Carolina Parks and Recreation Authority shall meet at a time and place as designated by the Chair, but no less frequently than quarterly.~~ In making appointments, each appointing authority shall specify under which subdivision of this subsection the person is appointed. Members shall be appointed as follows:

(1) One member appointed by the Governor.

(2) One member appointed by the Governor.

(3) One member appointed by the Governor.

(4) One member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, as provided in G.S. 120-121.

(5) One member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, as provided in G.S. 120-121.

(6) One member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, as provided in G.S. 120-121.

(7) One member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, as provided in G.S. 120-121.

(8) One member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, as provided in G.S. 120-121.

(9) One member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, as provided in G.S. 120-121.

(10) One member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, as provided in G.S. 120-121.

(11) One member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, as provided in G.S. 120-121.

(b) Terms. -- Members shall serve two-year terms. Members shall serve no more than two full two-year terms. Upon the expiration of a two-year term, a member may continue to serve until a successor is appointed and duly qualified as provided by G.S. 128-7. The term of members appointed under odd-numbered subdivisions of subsection (a) of this section shall expire on 30 June of odd-numbered years. The term of members appointed under even-numbered subdivisions of subsection (a) of this section shall expire on 30 June of even-numbered years.

(c) Chair. -- The Governor shall appoint one member of the North Carolina Parks and Recreation Authority to serve as Chair.

(d) Vacancies. -- A vacancy on the North Carolina Parks and Recreation Authority shall be filled by the appointing authority responsible for making the appointment to that position as provided in subsection (a) of this section. An appointment to fill a vacancy shall be for the unexpired balance of the term.

(e) Removal. -- The Governor may remove, as provided in G.S. 143-13, any member of the North Carolina Parks and Recreation Authority appointed by the Governor for misfeasance, malfeasance, or nonfeasance. The General Assembly may remove any member of the North Carolina Parks and Recreation Authority appointed by the General Assembly for misfeasance, malfeasance, or nonfeasance.

~~(e)~~ (f) Compensation. -- The members of the North Carolina Parks and Recreation Authority shall receive per diem and necessary travel and subsistence expenses according to the provisions of G.S. 138-5.

(g) Meetings. -- The North Carolina Parks and Recreation Authority shall meet at least quarterly at a time and place designated by the Chair.

~~(d)~~ (h) Quorum. -- A majority of the North Carolina Parks and Recreation Authority shall constitute a quorum for the transaction of business.

~~(e)~~ (i) Staff. -- All clerical and other services required by the North Carolina Parks and Recreation Authority shall be provided by the Secretary of Environment, Health, and Natural Resources."

Section 10. In order to reestablish a schedule of two-year staggered terms for the North Carolina Parks and Recreation Authority as required by G.S. 143B-313.2, as amended by Section 9 of this act:

(1) The Governor, in making appointments to replace the one member of the North Carolina Parks and Recreation Authority appointed by the Governor whose term expires on 30 June 1997, shall appoint a member under G.S. 143B-313.2(a)(1) to a full two-year term expiring on 30 June 1999.

(2) The Governor, in making appointments to replace the two members of the North Carolina Parks and Recreation Authority appointed by the Governor whose terms expire on 30 June 1998, shall appoint one member under G.S. 143B-313.2(a)(2) to a full two-year term expiring on 30 June 2000 and shall appoint one member under G.S. 143B-313.2(a)(3) to a one-year term expiring 30 June 1999.

(3) The General Assembly, in making appointments to replace the four members of the North Carolina Parks and Recreation Authority appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives whose terms expire on 30 June 1998, shall appoint two members under G.S. 143B-313.2(a)(4) and G.S 143B-313.2(a)(6) to full two-year terms expiring on 30 June 2000 and shall appoint two members under G.S. 143B-313.2(a)(5) and G.S. 143B-313.2(a)(7) to one-year terms expiring 30 June 1999.

(4) The General Assembly, in making appointments to replace the four members of the North Carolina Parks and Recreation Authority appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate whose terms expire on 30 June 1998, shall appoint two members under G.S. 143B-313.2(a)(8) and G.S 143B-313.2(a)(10) to full two-year terms expiring on 30 June 2000 and shall appoint two members under G.S. 143B-313.2(a)(9) and G.S. 143B-313.2(a)(11) to one-year terms expiring 30 June 1999.

Section 11. Sections 11 through 18 of this act shall be known and may be cited as the "Environmentally Sound Policy Act of 1997 (ESP)".

Section 12. Article 67 of Chapter 106 of the General Statutes reads as rewritten:

"ARTICLE 67.
"Swine Farms.

"**§ 106-800. Title.**

This Article shall be known as the 'Swine Farm Siting Act'.

"§ 106-801. Purpose.

The General Assembly finds that certain limitations on the siting of swine houses and lagoons for swine farms can assist in the development of pork production, which contributes to the economic development of the State, by lessening the interference with the use and enjoyment of adjoining property.

"§ 106-802. Definitions.

As used in this Article, unless the context clearly requires otherwise:

(1a) 'Intensive animal feeding operation' means a new or enlarged swine farm with a design capacity of more than 800,000 pounds steady state live weight.

(1) 'Lagoon' means a confined body of water to hold animal byproducts including bodily waste from animals or a mixture of waste with feed, bedding, litter or other agricultural materials.

(2) Repealed by Session Laws 1997 (Regular Session, 1996), c. 626, s. 7.

(3) 'Occupied residence' means a dwelling actually inhabited by a person on a continuous basis as exemplified by a person living in his or her home.

(3a) 'Outdoor recreational facility' means any plot or tract of land on which there is located an outdoor swimming pool, tennis court, or golf course that is open to either the general public or to the members and guests of any organization having 50 or more members.

(4) 'Site evaluation' means an investigation to determine if a site meets all federal and State standards as evidenced by the Waste Management Facility Site Evaluation Report on file with the Soil and Water Conservation District office or a comparable report certified by a professional engineer or a comparable report certified by a technical specialist approved by the North Carolina Soil and Water Conservation Commission.

~~Department of Environment, Health and Natural Resources~~

(5) 'Swine farm' means a tract of land devoted to raising 250 or more animals of the porcine species.

(6) 'Swine house' means a building that shelters porcine animals on a continuous basis.

"§ 106-803. Siting requirements for swine houses, lagoons, and land areas onto which waste is applied at swine farms.

(a) A swine house or a lagoon that is a component of a swine farm shall be ~~located~~ located:

(1) ~~at~~ At least 1,500 feet from any occupied residence;

(2) ~~at~~ At least 2,500 feet from any school, hospital, national or State park or forest, wildlife refuge, fragile or historic area, or outdoor recreational facility, or church;

(3) At least 1,320 feet from any surface waters of the State;

(4) At least 1,000 feet from any property boundary for any new or enlarged swine farm with a design capacity of at least 500,000 pounds steady state live weight;

(5) At least 1,500 feet from any property boundary for any new or enlarged swine farm with a design capacity of more than 1,000,000 pounds steady state live weight; and

(6) ~~at~~ At least 500 feet from any property ~~boundary.~~ boundary or public or private drinking water supply.

(a1) The outer perimeter of the land area onto which waste is applied from a lagoon that is a component of a swine farm shall be at least 50 feet from any boundary of property on which an occupied residence is located from any perennial stream or river, other than an irrigation ditch or canal.

(a2) No component of a liquid animal waste management system for which a permit is required under Part 1A of Article 21 of Chapter 143 of the General Statutes, other than a land application site, shall be constructed on land that is located within the 100-year floodplain.

(b) A swine house or a lagoon that is a component of a swine farm may be located closer to a residence, school, hospital, church, or a property boundary than is allowed under subsection (a) of this section if written permission is given by the owner of the property and recorded with the Register of Deeds.

"§ 106-804. Enforcement.

(a) Any person ~~owning~~ who owns property directly affected by the siting requirements of G.S. 106-803 pursuant to subsection (b) of this section may bring a civil action against a swine farmer who has violated G.S. 106-803 and may seek any one or more of the following:

(1) Injunctive relief.

(2) An order enforcing the siting requirements under G.S. 106-803.

(3) Damages caused by the violation.

(b) A person is directly affected by the siting requirements of G.S. 106-803 only if the person ~~owns:~~ owns a facility or property located within the siting requirements specified under G.S. 106-803.

~~(1) An occupied residence located less than 1,500 feet from a swine house or lagoon in violation of G.S. 106-803.~~

~~(2) A school, hospital, or church located less than 2,500 feet from a swine house or lagoon in violation of G.S. 106-803.~~

~~(3) Property whose boundary is located less than 500 feet from a swine house or lagoon in violation of G.S. 106-803.~~

~~(4) Property on which an occupied residence is located and whose boundary is less than 50 feet from the outer perimeter of the land area onto which waste is applied from a lagoon that is a component of a swine farm in violation of G.S. 106-803.~~

~~(5) Property that abuts a perennial stream or river, or on which a perennial stream or river is located, and that property and that perennial stream or river are less than 50 feet from the outer~~

~~perimeter of the land area onto which waste is applied from a lagoon that is a component of a swine farm in violation of G.S. 106-803.~~

(c) If the court determines it is appropriate, the court may award court costs, including reasonable attorneys' fees and expert witnesses' fees, to any party. If a temporary restraining order or preliminary injunction is sought, the court may require the filing of a bond or equivalent security. The court shall determine the amount of the bond or security.

(d) Nothing in this section shall restrict any other right that any person may have under any statute or common law to seek injunctive or other relief.

"**§ 106-805. Written notice of swine farms.**

Any person who intends to construct a swine farm whose animal waste management system is subject to a permit under Part 1A of Article 21 of Chapter 143 of the General Statutes shall, after completing a site evaluation and before the farm site is modified, ~~attempt to~~ notify all adjoining property ~~owners and~~ owners, all property owners who own property located across a public road, street, or highway from the swine ~~farm~~ farm, the county or counties in which the farm site is located, and the local health departments of that person's intent to construct the swine farm. This notice shall be by certified mail sent to the address on record at the property tax office in the county in which the land is ~~located.~~ located, except that the notice to a county shall be to the county manager or the chairman if there is no county manager and the notice to a local health department shall be to the local health director. The written notice shall include all of the following:

(1) The name and address of the person intending to construct a swine farm.

(2) The type of swine farm and the design capacity of the animal waste management system.

(3) The name and address of the technical specialist preparing the waste management plan.

(4) The address of the local Soil and Water Conservation District office.

(5) Information informing the adjoining property owners and the property owners who own property located across a public road, street, or highway from the swine farm that they may submit written comments to the Division of Water Quality, Department of Environment, Health, and Natural Resources.

Prior to issuance of a permit for an intensive animal feeding operation, the Environmental Management Commission may hold a public hearing if it finds, upon its own initiative or in response to a request from a member of the public, that there is a significant public interest in holding the hearing. The notice and conduct of the hearing shall be in accordance with the relevant public meeting provisions of G.S. 143-215.1(c)(3)."

Section 12.1. G.S. 143-215.107(a) is amended by adding a new subdivision to read:

"(11) To develop and adopt standards and plans necessary to implement programs to control the emission of odors from animal operations, as defined in G.S. 143-215.10B."

Section 13. G.S. 143-215(e) is repealed.

Section 14. G.S. 153A-340 reads as rewritten:

"**§ 153A-340. Grant of power.**

(a) For the purpose of promoting health, safety, morals, or the general welfare, a county may regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lots that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes, and to provide density credits or severable development rights for dedicated rights-of-way pursuant to G.S. 136-66.10 or G.S. 136-66.11.

(b) These regulations may not affect bona fide farms, but any use of farm property for nonfarm purposes is subject to the regulations. Bona fide farm purposes include the production and activities relating or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agricultural products having a domestic or foreign market. These regulations may apply to intensive animal feeding operations, as defined in G.S. 106-802. An intensive animal feeding operation is not a farm for the purpose of this Part.

(c) The regulations may provide that a board of adjustment may determine and vary their application in harmony with their general purpose and intent and in accordance with general or specific rules therein contained. The regulations may also provide that the board of adjustment or the board of commissioners may issue special use permits or conditional use permits in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified therein and may impose reasonable and appropriate conditions and safeguards upon these permits. Where appropriate, the conditions may include requirements that street and utility rights-of-way be dedicated to the public and that recreational space be provided. When issuing or denying special use permits or conditional use permits, the board of commissioners shall follow the procedures for boards of adjustment except that no vote greater than a majority vote shall be required for the board of commissioners to issue such permits, and every such decision of the board of commissioners shall be subject to review by the superior court by proceedings in the nature of certiorari.

(d) A county may regulate the development over estuarine waters and over lands covered by navigable waters owned by the State pursuant to G.S. 146-12, within the bounds of that county.

(e) For the purpose of this section, the term 'structures' shall include floating homes.

(f) Any petition for review by the superior court shall be filed with the clerk of superior court within 30 days after the decision of the board of commissioners is filed in such office as the ordinance specifies, or after a written copy thereof is delivered to

every aggrieved party who has filed a written request for such copy with the clerk at the time of the hearing of the case, whichever is later. The decision of the board of commissioners may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested."

Section 15. A zoning regulation applicable to intensive animal feeding operations adopted by a board of county commissioners prior to the date Section 14 of this act becomes effective is hereby retroactively validated.

Section 16. There is established a temporary moratorium for any new or expanding swine farm or lagoon for which a permit is required under Part 1A of Chapter 143 of the General Statutes for any area in the State that: (i) has a county population of less than 75,000 according to the most recent decennial federal census; (ii) has over one hundred fifty million dollars ($150,000,000) on expenditures for travel and tourism based on the most recent figures of the Department of Commerce; and (iii) is not in the coastal area as defined by G.S. 113A-103. Effective 1 January 1997, until the expiration of a one-year period beginning on the date this act becomes effective, the Environmental Management Commission shall not issue a permit for an animal waste management system, as defined in G.S. 143-215.10B, or for a new or expanded swine farm or lagoon, as defined in G.S. 106-802.

Section 17. There is established a one-year moratorium on the construction or expansion of swine farms and lagoons. The Environmental Management Commission shall not issue a permit for an animal waste management system, as defined in G.S. 143-215.10B, for a new or expanded swine farm or lagoon, as defined in G.S. 106-802, for a one-year period beginning on the date this act becomes effective except as provided by this section. This section prohibits the construction or expansion of an animal waste management system for a swine farm for one year from the date this act becomes effective regardless of the date on which a site evaluation for the swine farm is completed and regardless of whether the animal waste management system is permitted under Part 1A of Article 21 of Chapter 143 of the General Statutes or deemed permitted under 15A North Carolina Administrative Code 2H.0217 but does not prohibit:

(1) Construction to repair a component of an existing swine farm or lagoon.

(2) Construction to replace a component of an existing swine farm or lagoon if the replacement does not result in an increase in swine population, except as provided in subdivision (4) of this section.

(3) Construction or expansion of a component or components of a swine farm or lagoon, if actual construction began prior to March 1, 1997, or if the owner of the swine farm entered into a bona fide contract to build the component or components prior to March 1, 1997. For purposes of this subdivision, "actual construction" is limited to the component or components of a swine farm or lagoon for which the foundation has been laid prior to March 1, 1997, from a blueprint drawing.

(4) Construction or expansion on or after the date this act becomes law for the purpose of increasing the swine population to the projected population or to the population that the animal waste management system serving that swine farm is designed to accommodate, as set forth in a registration of the swine operation filed with the Department of Environment, Health, and Natural Resources before the date this act becomes law.

(5) Construction or expansion on or after the date this act becomes law for the purpose of complying with applicable animal waste management rules and not for the purpose of increasing the swine population.

(6) Construction or expansion, if the person undertaking the construction or expansion of the swine farm, lagoon, or animal waste management system has, prior to the effective date of this section, been approved for a loan or line of credit from a lending institution to finance the construction or expansion and has obligated or expended funds derived from the loan or line of credit.

(7) Construction or expansion of an innovative animal waste system approved by the Department.

Section 18. (a) Except as provided in subsection (b) of this section, Section 12 of this act is effective when it becomes law and applies to the construction or enlargement, on or after the effective date of this act, of swine houses, lagoons, and land areas onto which waste is applied from a lagoon that are components of a swine farm. Section 12 of this act does not apply under each of the following circumstances when the construction or enlargement occurs on or after the effective date of this act:

(1) For the purpose of increasing the swine population to that set forth as the projected population in a registration of the swine operation filed with the Department of Environment, Health, and Natural Resources prior to the effective date of this act.

(2) For the purpose of increasing the swine population to the population that the animal waste management system is designed to accommodate as that system is set forth in a registration of the swine operation filed with the Department of Environment, Health, and Natural Resources, or an animal waste management plan approved prior to the effective date of this act.

(3) For the purpose of complying with applicable animal waste management rules and not for the purpose of increasing the swine population.

(b) Section 11 and Sections 13 through 18 of this act are effective when this act becomes law. Section 11, Sections 13 through 18, and the provisions of Section 12 of this act applicable to intensive animal feeding operations as defined in G.S. 106-802, as amended by Section 12 of this act, apply to any intensive animal

feeding operation for which construction began on or after 1 January 1997, regardless of the date on which the site evaluation was completed.

(c) Section 12.1 of this act is effective when it becomes law. The Environmental Management Commission shall publish the text of a proposed rule to regulate the emission of odors from animal operations under G.S. 143-215.107(11), as enacted by Section 12.1 of this act, within six months of the date on which the North Carolina Agricultural Research Service at North Carolina State University issues its final report on economically feasible odor control technologies as provided in Section 27.3 of Chapter 18 of the 1995 Session Laws (1996 Second Extra Session) and in any event, not later than 1 May 1998. The Environmental Management Commission shall adopt a rule to regulate the emission of odors from animal waste management systems within one year of the date the Commission publishes the text of a proposed rule as required by this subsection and in any event, not later than 1 May 1999. The Board of Governors of The University of North Carolina shall present its final report and recommendations on economically feasible odor control technologies to the Environmental Review Commission and the Environmental Management Commission not later than 1 November 1997.

(d) Sections 1 through 10 of this act are effective when they become law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 194*
Agriculture/Environment/Natural Resources Committee Substitute Adopted 4/28/97
Proposed House Committee Substitute S194-PCS1826

Short Title: Amend Env. Laws. (Public)

Sponsors:

Referred to:

February 19, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND VARIOUS ENVIRONMENTAL LAWS.

The General Assembly of North Carolina enacts:

Section 1. Part 1 of Article 3 of Chapter 90A is amended by adding a new section to read:

"**§ 90A-46.1. Expiration and renewal of certificates; continuing education requirements.**

A certificate issued under this Part expires on 31 December of the year in which it is issued or renewed. The Commission may establish minimum continuing education requirements that an applicant must meet to renew a certificate. The Commission shall renew a certificate if the applicant meets the continuing education requirement and pays the required renewal fee, any renewal fee in arrears, and any late application penalty."

Section 2. G.S. 113A-120(b1) reads as rewritten:

"(b1) In addition to those factors set out in subsection (a) of this section, and notwithstanding the provisions of subsection (b) of this section, the responsible official or body may deny an application for a permit upon finding that an applicant, or any parent or subsidiary corporation if the applicant is a corporation:

(1) Is conducting or has conducted any activity causing significant environmental damage for which a major development permit is required under this Article without having previously obtained such permit or has received a notice of violation with respect to

any activity governed by this Article and has not complied with the notice within the time specified in the notice;

(2) Has failed to pay a civil penalty assessed pursuant to this Article, a local ordinance adopted pursuant to this Article, or Article 17 of Chapter 113 of the General Statutes which is due and for which no appeal is pending;

(3) Has been convicted of a misdemeanor pursuant to G.S. 113A-126, G.S. 113-229(k), or any criminal provision of a local ordinance adopted pursuant to this Article; or

(4) Has failed to substantially comply with ~~State~~ state rules or local ordinances and regulations adopted pursuant to this Article or with other federal and ~~State~~ state laws, regulations, and rules for the protection of the environment."

Section 3. G.S. 143-215.1(c) reads as rewritten:

"(c) Applications for Permits and Renewals for Facilities Discharging to the Surface Waters. --

(1) All applications for permits and for renewal of existing permits for outlets and point sources and for treatment works and disposal systems discharging to the surface waters of the State shall be in writing, and the Commission may prescribe the form of such applications. All applications shall be filed with the Commission at least 180 days in advance of the date on which it is desired to commence the discharge of wastes or the date on which an existing permit expires, as the case may be. The Commission shall act on a permit application as quickly as possible. The Commission may conduct any inquiry or investigation it considers necessary before acting on an application and may require an applicant to submit plans, specifications, and other information the Commission considers necessary to evaluate the application.

(2) a. The Department shall refer each application for permit, or renewal of an existing permit, for outlets and point sources and treatment works and disposal systems discharging to the surface waters of the State to its staff for written evaluation and proposed determination with regard to issuance or denial of the permit. If the Commission concurs in the proposed determination, it shall give notice of intent to issue or deny the permit, along with any other data that the Commission may determine appropriate, to be given to the appropriate State, interstate and federal agencies, to interested persons, and to the public.

a1. The Commission shall prescribe the form and content of the notice. ~~The notice required herein~~ Public notice shall be given at least 45 days prior to any proposed final action granting or denying the permit. Public notice shall be given

by publication of the notice one time in a newspaper having general circulation within the county.

b. Repealed by Session Laws 1987, c. 734.

(3) If any person desires a public ~~meeting~~ hearing on any application for permit or renewal of an existing permit provided for in this subsection, he shall so request in writing to the Commission within 30 days following date of the notice of intent. The Commission shall consider all such requests for ~~meeting,~~ hearing, and if the Commission determines that there is a significant public interest in holding such ~~meeting,~~ hearing, at least 30 days' notice of such ~~meeting~~ hearing shall be given to all persons to whom notice of intent was sent and to any other person requesting notice. At least 30 days prior to the date of ~~meeting,~~ hearing, the Commission shall also cause a copy of the notice thereof to be published at least one time in a newspaper having general circulation in such county. In any county in which there is more than one newspaper having general circulation in that county, the Commission shall cause a copy of such notice to be published in as many newspapers having general circulation in the county as the Commission in its discretion determines may be necessary to assure that such notice is generally available throughout the county. The Commission shall prescribe the form and content of the notices.

The Commission shall prescribe the procedures to be followed in ~~such meetings.~~ hearings. If the ~~meeting~~ hearing is not conducted by the Commission, detailed minutes of the ~~meeting~~ hearing shall be kept and shall be submitted, along with any other written comments, exhibits or documents presented at the ~~meeting,~~ hearing, to the Commission for its consideration prior to final action granting or denying the permit.

(4) Not later than 60 days following notice of intent or, if a public hearing is held, within 90 days following consideration of the matters and things presented at such hearing, the Commission shall grant or deny any application for issuance of a new permit or for renewal of an existing permit. All permits or renewals issued by the Commission and all decisions denying application for permit or renewal shall be in writing.

(5) No permit issued pursuant to this subsection (c) shall be issued or renewed for a term exceeding five years.

(6) The Commission shall not act upon an application for a new nonmunicipal domestic wastewater discharge facility until it has received a written statement from each city and county government having jurisdiction over any part of the lands on which the proposed facility and its appurtenances are to be located which states whether the city or county has in effect a zoning or

subdivision ordinance and, if such an ordinance is in effect, whether the proposed facility is consistent with the ordinance. The Commission shall not approve a permit application for any facility which a city or county has determined to be inconsistent with its zoning or subdivision ordinance unless it determines that the approval of such application has statewide significance and is in the best interest of the State. An applicant for a permit shall request that each city and county government having jurisdiction issue the statement required by this subdivision by mailing by certified mail, return receipt requested, a written request for such statement and a copy of the draft permit application to the clerk of the city or county. If a local government fails to mail the statement required by this subdivision, as evidenced by a postmark, within 15 days after receiving and signing for the certified mail, the Commission may proceed to consider the permit application notwithstanding this subdivision."

Section 4. G.S. 143-215.4(b) reads as rewritten:

"(b) Procedures for Public Input. --

(1) The Commission may, on its own motion or when required by federal law, request public comments on or hold public hearings on matters within the scope of its authority under this Article or Articles 21A or 21B of this Chapter. To request public comments on a matter, the Commission shall notify appropriate agencies of the opportunity to submit written comments to the Commission on the matter and shall publish a notice in a newspaper having general circulation in the affected area, stating the matter under consideration by the Commission and informing the public of its opportunity to submit written comments to the Commission on the matter. A public comment period shall extend for at least 30 days after the notice is published.

(2) To hold a public hearing on a matter, the Commission shall notify, by personal service or certified mail, persons directly affected by the matter under consideration and shall publish a notice in a newspaper having general circulation in the affected area, stating the matter under consideration by the Commission and the time, date, and place of a public hearing to be held on the matter. A public hearing shall be held no sooner than 20 days after the notice is published. The proceedings at a public hearing held under this subsection shall be recorded. Upon payment of a fee established by the Commission, any person may obtain a copy of the record of the public hearing. After a public hearing, the Commission shall accept written comments for the time period prescribed by the Commission.

(3) This subsection does not apply to rule-making proceedings, contested case hearings, or the issuance of permits required under Title V. The Commission shall establish procedures for public hearings, public notice, and public comment respecting permits required by Title V as provided by G.S. 143-215.111(4).

(4) The Commission may hold a public meeting on any matter within its scope of authority. The Commission may hold a public meeting in addition to any public hearing that is required under any provision of law, but a public meeting may not be substituted for any required public hearing. Except as may be otherwise provided by law, the Commission may determine the procedures for any public meeting it holds."

Section 5. G.S. 143-215.3(a)(4) reads as rewritten:

"(4) To delegate such of the powers of the Commission as the Commission deems necessary to one or more of its members, to the Secretary or any other qualified employee of the Department. ~~Department; provided, that the provisions of any such delegation of power shall be set forth in the rules of the Commission; and provided further that the~~ The Commission shall not delegate to persons other than its own members and the designated employees of the Department the power to conduct hearings with respect to the classification of waters, the assignment of classifications, air quality standards, air contaminant source classifications, emission control standards, or the issuance of any special order except in the case of an emergency under subdivision (12) of this subsection for the abatement of existing water or air pollution. Any employee of the Department to whom a delegation of power is made to conduct a hearing shall report the hearing with its evidence and record to the Commission."

Section 6. Reserved.

Section 7. G.S. 143B-291 reads as rewritten:

"**§ 143B-291. North Carolina Mining Commission -- members; selection; removal; compensation; quorum; services.**

(a) Members, Selection. -- The North Carolina Mining Commission shall consist of nine members appointed by the ~~Governor. The Commission shall be composed of the following: one~~ Governor under a specified subdivision of this subsection as follows:

(1) One member who is the chairman of the North Carolina State University Minerals Research Laboratory Advisory Committee, ex officio. ~~Committee; three representatives of mining industries; three representatives of nongovernmental conservation interests and two who shall represent the Environmental Management Commission and be knowledgeable in the principles of water and air resources management.~~

(2) One member who is a representative of the mining industry.
(3) One member who is a representative of the mining industry.
(4) One member who is a representative of the mining industry.
(5) One member who is a representative of nongovernmental conservation interests.
(6) One member who is a representative of nongovernmental conservation interests.
(7) One member who is a representative of nongovernmental conservation interests.
(8) One who, at the time of the appointment to the Mining Commission, is a member of the Environmental Management Commission and knowledgeable in the principles of water and air resources management.
(9) One who, at the time of the appointment to the Mining Commission, is a member of the Environmental Management Commission and knowledgeable in the principles of water and air resources management.

~~The initial members of the North Carolina Mining Commission shall be those members of the present North Carolina Mining Council who shall meet the above requirements for membership on the North Carolina Mining Commission and who shall serve on the North Carolina Mining Commission for a period equal to the remainder of their current terms on the North Carolina Mining Council. The remaining initial members shall be appointed by the Governor to staggered terms of six years.~~

(b) Terms. -- The term of office of a member of the Commission is six years. ~~Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.~~ At the expiration of each member's term, the Governor shall replace the member with a new member of like qualifications for a term of six years. The term of members appointed under subdivisions (2), (5), and (8) of subsection (a) of this section shall expire on 30 June of years that precede by one year those years that are evenly divisible by six. The term of members appointed under subdivisions (3) and (6) of subsection (a) of this section shall expire on 30 June of years that follow by one year those years that are evenly divisible by six. The term of members appointed under subdivisions (4), (7), and (9) of subsection (a) of this section shall expire on 30 June of years that follow by three years those years that are evenly divisible by six. Upon the expiration of a six-year term, a member may continue to serve until a successor is appointed and duly qualified as provided by G.S. 128-7.

(c) Vacancies. -- An appointment to fill a vacancy shall be for the unexpired balance of the term.

(d) Removal. -- The Governor ~~shall have the power to~~ may remove any member of the Commission from office for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of ~~G.S. 143B-13 of the Executive Organization Act of 1973.~~ G.S. 143B-13.

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

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

(g) Staff. -- All clerical and other services required by the Commission shall be supplied by the Secretary of the Department."

Section 8. In order to reestablish a schedule of six-year staggered terms for the Mining Commission as required by G.S. 143B-291, as amended by Section 7 of this act, the Governor, in making appointments to replace the two members of the Mining Commission who represent the mining industry and whose terms both expire on 30 June 1997, shall appoint one member under G.S. 143B-291(a)(2) to a full six-year term expiring on 30 June 2003 and shall appoint one member under G.S. 143B-291(a)(4), to a four-year term expiring 30 June 2001.

Section 9. G.S. 143B-313.2 reads as rewritten:

"**§ 143B-313.2. North Carolina Parks and Recreation Authority; members; selection; compensation; meetings.**

(a) Membership. -- The North Carolina Parks and Recreation Authority shall consist of 11 members. The members shall include persons who are knowledgeable about park and recreation issues in North Carolina or with expertise in finance. ~~Three members shall be appointed by the Governor, four members shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, and four members shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121. The members shall serve at the pleasure of the appointing authority. The Governor shall appoint one of the members to be Chair of the North Carolina Parks and Recreation Authority. Vacancies shall be appointed by the original appointing authority, and the term shall be for the balance of the unexpired term. The North Carolina Parks and Recreation Authority shall meet at a time and place as designated by the Chair, but no less frequently than quarterly.~~ In making appointments, each appointing authority shall specify under which subdivision of this subsection the person is appointed. Members shall be appointed as follows:

(1) One member appointed by the Governor.

(2) One member appointed by the Governor.

(3) One member appointed by the Governor.

(4) One member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, as provided in G.S. 120-121.

(5) One member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, as provided in G.S. 120-121.

(6) One member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, as provided in G.S. 120-121.

(7) One member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, as provided in G.S. 120-121.

(8) One member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, as provided in G.S. 120-121.

(9) One member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, as provided in G.S. 120-121.

(10) One member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, as provided in G.S. 120-121.

(11) One member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, as provided in G.S. 120-121.

(b) Terms. -- Members shall serve two-year terms. Members shall serve no more than two full two-year terms. Upon the expiration of a two-year term, a member may continue to serve until a successor is appointed and duly qualified as provided by G.S. 128-7. The term of members appointed under odd-numbered subdivisions of subsection (a) of this section shall expire on 30 June of odd-numbered years. The term of members appointed under even-numbered subdivisions of subsection (a) of this section shall expire on 30 June of even-numbered years.

(c) Chair. -- The Governor shall appoint one member of the North Carolina Parks and Recreation Authority to serve as Chair.

(d) Vacancies. -- A vacancy on the North Carolina Parks and Recreation Authority shall be filled by the appointing authority responsible for making the appointment to that position as provided in subsection (a) of this section. An appointment to fill a vacancy shall be for the unexpired balance of the term.

(e) Removal. -- The Governor may remove, as provided in G.S. 143-13, any member of the North Carolina Parks and Recreation Authority appointed by the Governor for misfeasance, malfeasance, or nonfeasance. The General Assembly may remove any member of the North Carolina Parks and Recreation Authority appointed by the General Assembly for misfeasance, malfeasance, or nonfeasance.

~~(e)~~ (f) Compensation. -- The members of the North Carolina Parks and Recreation Authority shall receive per diem and necessary travel and subsistence expenses according to the provisions of G.S. 138-5.

(g) Meetings. -- The North Carolina Parks and Recreation Authority shall meet at least quarterly at a time and place designated by the Chair.

~~(d)~~ (h) Quorum. -- A majority of the North Carolina Parks and Recreation Authority shall constitute a quorum for the transaction of business.

~~(e)~~ (i) Staff. -- All clerical and other services required by the North Carolina Parks and Recreation Authority shall be provided by the Secretary of Environment, Health, and Natural Resources."

Section 10. In order to reestablish a schedule of two-year staggered terms for the North Carolina Parks and Recreation Authority as required by G.S. 143B-313.2, as amended by Section 9 of this act:

(1) The Governor, in making appointments to replace the one member of the North Carolina Parks and Recreation Authority appointed by the Governor whose term expires on 30 June 1997, shall appoint a member under G.S. 143B-313.2(a)(1) to a full two-year term expiring on 30 June 1999.

(2) The Governor, in making appointments to replace the two members of the North Carolina Parks and Recreation Authority appointed by the Governor whose terms expire on 30 June 1998, shall appoint one member under G.S. 143B-313.2(a)(2) to a full two-year term expiring on 30 June 2000 and shall appoint one member under G.S. 143B-313.2(a)(3) to a one-year term expiring 30 June 1999.

(3) The General Assembly, in making appointments to replace the four members of the North Carolina Parks and Recreation Authority appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives whose terms expire on 30 June 1998, shall appoint two members under G.S. 143B-313.2(a)(4) and G.S 143B-313.2(a)(6) to full two-year terms expiring on 30 June 2000 and shall appoint two members under G.S. 143B-313.2(a)(5) and G.S. 143B-313.2(a)(7) to one-year terms expiring 30 June 1999.

(4) The General Assembly, in making appointments to replace the four members of the North Carolina Parks and Recreation Authority appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate whose terms expire on 30 June 1998, shall appoint two members under G.S. 143B-313.2(a)(8) and G.S 143B-313.2(a)(10) to full two-year terms expiring on 30 June 2000 and shall appoint two members under G.S. 143B-313.2(a)(9) and G.S. 143B-313.2(a)(11) to one-year terms expiring 30 June 1999.

Section 11. Sections 11 through 18 of this act shall be known and may be cited as the "Environmentally Sound Policy Act of 1997 (ESP)".

Section 12. Article 67 of Chapter 106 of the General Statutes reads as rewritten:

"ARTICLE 67.
"Swine Farms.

"**§ 106-800. Title.**

This Article shall be known as the 'Swine Farm Siting Act'.

"**§ 106-801. Purpose.**

The General Assembly finds that certain limitations on the siting of swine houses and lagoons for swine farms can assist in the development of pork production, which contributes to the economic development of the State, by lessening the interference with the use and enjoyment of adjoining property.

"**§ 106-802. Definitions.**

As used in this Article, unless the context clearly requires otherwise:

(1a) 'Intensive animal feeding operation' means a new or enlarged swine farm with a design capacity of more than 800,000 pounds steady state live weight.

(1) 'Lagoon' means a confined body of water to hold animal byproducts including bodily waste from animals or a mixture of waste with feed, bedding, litter or other agricultural materials.

(2) Repealed by Session Laws 1997 (Regular Session, 1996), c. 626, s. 7.

(3) 'Occupied residence' means a dwelling actually inhabited by a person on a continuous basis as exemplified by a person living in his or her home.

(3a) 'Outdoor recreational facility' means any plot or tract of land on which there is located an outdoor swimming pool, tennis court, or golf course that is open to either the general public or to the members and guests of any organization having 50 or more members.

(4) 'Site evaluation' means an investigation to determine if a site meets all federal and State standards as evidenced by the Waste Management Facility Site Evaluation Report on file with the Soil and Water Conservation District office or a comparable report certified by a professional engineer or a comparable report certified by a technical specialist approved by the North Carolina Soil and Water Conservation Commission.

~~Department of Environment, Health and Natural Resources~~

(5) 'Swine farm' means a tract of land devoted to raising 250 or more animals of the porcine species.

(6) 'Swine house' means a building that shelters porcine animals on a continuous basis.

"**§ 106-803. Siting requirements for swine houses, lagoons, and land areas onto which waste is applied at swine farms.**

(a) A swine house or a lagoon that is a component of a swine farm shall be ~~located~~ located:

(1) ~~at~~ At least 1,500 feet from any occupied residence;

(2) ~~at~~ At least 2,500 feet from any school, hospital, national or State park or forest, wildlife refuge, fragile or historic area, or outdoor recreational facility, or church;

(3) At least 1,320 feet from any surface waters of the State;

(4) At least 1,000 feet from any property boundary for any new or enlarged swine farm with a design capacity of at least 500,000 pounds steady state live weight;

(5) At least 1,500 feet from any property boundary for any new or enlarged swine farm with a design capacity of more than 1,000,000 pounds steady state live weight; and

(6) ~~at~~ At least 500 feet from any property ~~boundary.~~ boundary or public or private drinking water supply.

(a1) The outer perimeter of the land area onto which waste is applied from a lagoon that is a component of a swine farm shall be at least 50 feet from any boundary of property on which an occupied residence is located from any perennial stream or river, other than an irrigation ditch or canal.

(a2) No component of a liquid animal waste management system for which a permit is required under Part 1A of Article 21 of Chapter 143 of the General Statutes, other than a land application site, shall be constructed on land that is located within the 100-year floodplain.

(b) A swine house or a lagoon that is a component of a swine farm may be located closer to a residence, school, hospital, church, or a property boundary than is allowed under subsection (a) of this section if written permission is given by the owner of the property and recorded with the Register of Deeds.

"**§ 106-804. Enforcement.**

(a) Any person ~~owning~~ who owns property directly affected by the siting requirements of G.S. 106-803 pursuant to subsection (b) of this section may bring a civil action against a swine farmer who has violated G.S. 106-803 and may seek any one or more of the following:

(1) Injunctive relief.

(2) An order enforcing the siting requirements under G.S. 106-803.

(3) Damages caused by the violation.

(b) A person is directly affected by the siting requirements of G.S. 106-803 only if the person ~~owns:~~ owns a facility or property located within the siting requirements specified under G.S. 106-803.

~~(1) An occupied residence located less than 1,500 feet from a swine house or lagoon in violation of G.S. 106-803.~~

~~(2) A school, hospital, or church located less than 2,500 feet from a swine house or lagoon in violation of G.S. 106-803.~~

~~(3) Property whose boundary is located less than 500 feet from a swine house or lagoon in violation of G.S. 106-803.~~

~~(4) Property on which an occupied residence is located and whose boundary is less than 50 feet from the outer perimeter of the land area onto which waste is applied from a lagoon that is a component of a swine farm in violation of G.S. 106-803.~~

~~(5) Property that abuts a perennial stream or river, or on which a perennial stream or river is located, and that property and that perennial stream or river are less than 50 feet from the outer~~

~~perimeter of the land area onto which waste is applied from a lagoon that is a component of a swine farm in violation of G.S. 106-803.~~

(c) If the court determines it is appropriate, the court may award court costs, including reasonable attorneys' fees and expert witnesses' fees, to any party. If a temporary restraining order or preliminary injunction is sought, the court may require the filing of a bond or equivalent security. The court shall determine the amount of the bond or security.

(d) Nothing in this section shall restrict any other right that any person may have under any statute or common law to seek injunctive or other relief.

"**§ 106-805. Written notice of swine farms.**

Any person who intends to construct a swine farm whose animal waste management system is subject to a permit under Part 1A of Article 21 of Chapter 143 of the General Statutes shall, after completing a site evaluation and before the farm site is modified, ~~attempt to~~ notify all adjoining property ~~owners and~~ owners, all property owners who own property located across a public road, street, or highway from the swine ~~farm~~ farm, the county or counties in which the farm site is located, and the local health departments of that person's intent to construct the swine farm. This notice shall be by certified mail sent to the address on record at the property tax office in the county in which the land is ~~located.~~ located, except that the notice to a county shall be to the county manager or the chairman if there is no county manager and the notice to a local health department shall be to the local health director. The written notice shall include all of the following:

(1) The name and address of the person intending to construct a swine farm.

(2) The type of swine farm and the design capacity of the animal waste management system.

(3) The name and address of the technical specialist preparing the waste management plan.

(4) The address of the local Soil and Water Conservation District office.

(5) Information informing the adjoining property owners and the property owners who own property located across a public road, street, or highway from the swine farm that they may submit written comments to the Division of Water Quality, Department of Environment, Health, and Natural Resources.

Prior to issuance of a permit for an intensive animal feeding operation, the Environmental Management Commission may hold a public hearing if it finds, upon its own initiative or in response to a request from a member of the public, that there is a significant public interest in holding the hearing. The notice and conduct of the hearing shall be in accordance with the relevant public meeting provisions of G.S. 143-215.1(c)(3)."

Section 12.1. G.S. 143-215.107(a) is amended by adding a new subdivision to read:

"(11) To develop and adopt standards and plans necessary to implement programs to control the emission of odors from animal operations, as defined in G.S. 143-215.10B."

Section 13. G.S. 143-215(e) is repealed.

Section 14. G.S. 153A-340 reads as rewritten:

"§ 153A-340. Grant of power.

(a) For the purpose of promoting health, safety, morals, or the general welfare, a county may regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lots that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes, and to provide density credits or severable development rights for dedicated rights-of-way pursuant to G.S. 136-66.10 or G.S. 136-66.11.

(b) These regulations may not affect bona fide farms, but any use of farm property for nonfarm purposes is subject to the regulations. Bona fide farm purposes include the production and activities relating or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agricultural products having a domestic or foreign market. These regulations may apply to intensive animal feeding operations, as defined in G.S. 106-802. An intensive animal feeding operation is not a farm for the purpose of this Part.

(c) The regulations may provide that a board of adjustment may determine and vary their application in harmony with their general purpose and intent and in accordance with general or specific rules therein contained. The regulations may also provide that the board of adjustment or the board of commissioners may issue special use permits or conditional use permits in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified therein and may impose reasonable and appropriate conditions and safeguards upon these permits. Where appropriate, the conditions may include requirements that street and utility rights-of-way be dedicated to the public and that recreational space be provided. When issuing or denying special use permits or conditional use permits, the board of commissioners shall follow the procedures for boards of adjustment except that no vote greater than a majority vote shall be required for the board of commissioners to issue such permits, and every such decision of the board of commissioners shall be subject to review by the superior court by proceedings in the nature of certiorari.

(d) A county may regulate the development over estuarine waters and over lands covered by navigable waters owned by the State pursuant to G.S. 146-12, within the bounds of that county.

(e) For the purpose of this section, the term 'structures' shall include floating homes.

(f) Any petition for review by the superior court shall be filed with the clerk of superior court within 30 days after the decision of the board of commissioners is filed in such office as the ordinance specifies, or after a written copy thereof is delivered to

every aggrieved party who has filed a written request for such copy with the clerk at the time of the hearing of the case, whichever is later. The decision of the board of commissioners may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested."

Section 15. A zoning regulation applicable to intensive animal feeding operations adopted by a board of county commissioners prior to the date Section 14 of this act becomes effective is hereby retroactively validated.

Section 16. There is established a temporary moratorium for any new or expanding swine farm or lagoon for which a permit is required under Part 1A of Chapter 143 of the General Statutes for any area in the State that: (i) has a county population of less than 75,000 according to the most recent decennial federal census; (ii) has over one hundred fifty million dollars ($150,000,000) on expenditures for travel and tourism based on the most recent figures of the Department of Commerce; and (iii) is not in the coastal area as defined by G.S. 113A-103. Effective 1 January 1997, until the expiration of a one-year period beginning on the date this act becomes effective, the Environmental Management Commission shall not issue a permit for an animal waste management system, as defined in G.S. 143-215.10B, or for a new or expanded swine farm or lagoon, as defined in G.S. 106-802.

Section 17. There is established a one-year moratorium on the construction or expansion of swine farms and lagoons. The Environmental Management Commission shall not issue a permit for an animal waste management system, as defined in G.S. 143-215.10B, for a new or expanded swine farm or lagoon, as defined in G.S. 106-802, for a one-year period beginning on the date this act becomes effective except as provided by this section. This section prohibits the construction or expansion of an animal waste management system for a swine farm for one year from the date this act becomes effective regardless of the date on which a site evaluation for the swine farm is completed and regardless of whether the animal waste management system is permitted under Part 1A of Article 21 of Chapter 143 of the General Statutes or deemed permitted under 15A North Carolina Administrative Code 2H.0217 but does not prohibit:

(1) Construction to repair a component of an existing swine farm or lagoon.

(2) Construction to replace a component of an existing swine farm or lagoon if the replacement does not result in an increase in swine population, except as provided in subdivision (4) of this section.

(3) Construction or expansion of a component or components of a swine farm or lagoon, if actual construction began prior to March 1, 1997, or if the owner of the swine farm entered into a bona fide contract to build the component or components prior to March 1, 1997. For purposes of this subdivision, "actual construction" is limited to the component or components of a swine farm or lagoon for which the foundation has been laid prior to March 1, 1997, from a blueprint drawing.

(4) Construction or expansion on or after the date this act becomes law for the purpose of increasing the swine population to the projected population or to the population that the animal waste management system serving that swine farm is designed to accommodate, as set forth in a registration of the swine operation filed with the Department of Environment, Health, and Natural Resources before the date this act becomes law.

(5) Construction or expansion on or after the date this act becomes law for the purpose of complying with applicable animal waste management rules and not for the purpose of increasing the swine population.

(6) Construction or expansion, if the person undertaking the construction or expansion of the swine farm, lagoon, or animal waste management system has, prior to the effective date of this section, been approved for a loan or line of credit from a lending institution to finance the construction or expansion and has obligated or expended funds derived from the loan or line of credit.

(7) Construction or expansion of an innovative animal waste system approved by the Department.

Section 18. (a) Except as provided in subsection (b) of this section, Section 12 of this act is effective when it becomes law and applies to the construction or enlargement, on or after the effective date of this act, of swine houses, lagoons, and land areas onto which waste is applied from a lagoon that are components of a swine farm. Section 12 of this act does not apply under each of the following circumstances when the construction or enlargement occurs on or after the effective date of this act:

(1) For the purpose of increasing the swine population to that set forth as the projected population in a registration of the swine operation filed with the Department of Environment, Health, and Natural Resources prior to the effective date of this act.

(2) For the purpose of increasing the swine population to the population that the animal waste management system is designed to accommodate as that system is set forth in a registration of the swine operation filed with the Department of Environment, Health, and Natural Resources, or an animal waste management plan approved prior to the effective date of this act.

(3) For the purpose of complying with applicable animal waste management rules and not for the purpose of increasing the swine population.

(b) Section 11 and Sections 13 through 18 of this act are effective when this act becomes law. Section 11, Sections 13 through 18, and the provisions of Section 12 of this act applicable to intensive animal feeding operations as defined in G.S. 106-802, as amended by Section 12 of this act, apply to any intensive animal

feeding operation for which construction began on or after 1 January 1997, regardless of the date on which the site evaluation was completed.

(c) Section 12.1 of this act is effective when it becomes law. The Environmental Management Commission shall publish the text of a proposed rule to regulate the emission of odors from animal operations under G.S. 143-215.107(11), as enacted by Section 12.1 of this act, within six months of the date on which the North Carolina Agricultural Research Service at North Carolina State University issues its final report on economically feasible odor control technologies as provided in Section 27.3 of Chapter 18 of the 1995 Session Laws (1996 Second Extra Session) and in any event, not later than 1 May 1998. The Environmental Management Commission shall adopt a rule to regulate the emission of odors from animal waste management systems within one year of the date the Commission publishes the text of a proposed rule as required by this subsection and in any event, not later than 1 May 1999. The Board of Governors of The University of North Carolina shall present its final report and recommendations on economically feasible odor control technologies to the Environmental Review Commission and the Environmental Management Commission not later than 1 November 1997.

(d) Sections 1 through 10 of this act are effective when they become law.

VISITOR REGISTRATION SHEET

RULES, CALENDAR, AND OPERATIONS OF THE HOUSE **June 3, 1997**

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
PERRI MORGON	NFIB
Alan Miles	Bailey & Dixon LLP
Ann Case	DEHNR
Mike Cecconte	NCHBA
Mark Stenmofel	PRESS
[illegible]	NC Assoc of REALTORS
[illegible]	CCNC / Sierra Club
[illegible]	CPdC
[illegible]	NCBA
[illegible]	NCATA
[illegible]	Moore & Van Allen
[illegible]	Charlotte Chamber
Curt Williams	Davis Office
John McAlister	Duke Power
[illegible]	NCFB

MINUTES
RULES, CALENDAR AND OPERATIONS OF THE HOUSE
June 16, 1997

The Committee on Rules, Calendar, and Operations of the House met in the House Conference Room in the Legislative Building at 5:40 p.m. on Monday, June 16, 1997. Representative Morgan, Committee Chair, called the meeting to order and asked the clerk to call the roll. The following members were present: Representatives Crawford, Culp, Esposito, Gulley, Hill, Miner, Mitchell, Neely, Thompson and C. Wilson.

S.J.R. 1080, A JOINT RESOLUTION HONORING THE LIFE, SERVICE, AND MEMORY OF CHARLES DUNN, was brought before the Committee. Chairman Morgan called on Staff Council Linwood Jones who explained that the bill honors the life and memory of Charles Dunn, former S.B.I. Director. Representative Crawford moved for a favorable report for the joint resolution and the motion carried.

There being no further business, the meeting adjourned at 5:41.

Representative Richard T. Morgan, Committee Chair

Dixie Epps, Committee Clerk

Attachments:
Committee Report
Resolution

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House**.

☐ Committee Substitute for
S.J.R. 1080 A JOINT RESOLUTION HONORING THE LIFE, SERVICE, AND MEMORY OF CHARLES DUNN.

☒ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE JOINT RESOLUTION 1080

Sponsors: Senators Kerr; Albertson, Allran, Ballance, Ballantine, Basnight, Blust, Carpenter, Carrington, Clark, Cochrane, Conder, Cooper, Dalton, Dannelly, Forrester, Foxx, Garwood, Gulley, Hartsell, Horton, Hoyle, Jenkins, Kincaid, Kinnaird, Ledbetter, Lee, Lucas, Martin of Pitt, Martin of Guilford, McDaniel, Miller, Odom, Page, Perdue, Phillips, Plyler, Rand, Reeves, Rucho, Shaw of Cumberland, Shaw of Guilford, Soles, Warren, Webster, Weinstein, Wellons, and Winner.

Referred to: Rules and Operations of the Senate.

June 2, 1997

A JOINT RESOLUTION HONORING THE LIFE, SERVICE, AND MEMORY OF CHARLES DUNN.

Whereas, Charles Dunn's illustrious life of civic and political service began with his work as a top reporter in the old Senate and House chambers;

Whereas, Charles Dunn went on to assist former Governor Luther Hodges in writing his book, "Businessman in the Statehouse", serve as Administrative Aide to Congressman Horace Kornegay, and serve as Administrative/Special Assistant to Governor Dan K. Moore; and

Whereas, as Director of the North Carolina State Bureau of Investigation, Charles Dunn took a woefully understaffed and ill-equipped law enforcement agency and doubled its staff, raised education standards for agents, established the North Carolina Justice Academy, built a modern crime lab, hired the first female agent and the first African-American special agent, and became a key spokesman on many criminal justice issues; and

Whereas, during his service as Director of the North Carolina State Bureau of Investigation, Charles Dunn not only made the agency an exemplary law enforcement agency, he went on to participate in the implementation of the D.A.R.E. program in North Carolina, he became a forceful advocate for children's causes, he helped raise millions of dollars to build chapels at institutions for the retarded, and he taught junior high school-age boys in Sunday School; and

Whereas, Charles Dunn was a founding member of the University of North Carolina at Chapel Hill School of Social Work, where he gave generously of his time and resources, established a scholarship fund in honor of his wife, Martha, and literally never missed a board meeting; and

Whereas, while working as Executive Vice President of the North Carolina Textile Manufacturers Association, Charles Dunn made "Made in the USA" a household term, asked everyone to wear North Carolina- and USA-made clothes, and established the Charles and Martha Dunn Textile Scholarship; and

Whereas, Charles Dunn returned to the North Carolina State Bureau of Investigation, first as Deputy Director and then as Director, and continued to speak out on a variety of children's issues, one of which was Justice for Children; and

Whereas, in all of his public service, Charles Dunn set an example of integrity, honesty, and character and he always comported himself as a "gentleman's gentleman", a statesman, a Christian man, a man among men, and a friend; and

Whereas, although Charles Dunn was a public figure, he was driven by a private obsession--as the father of three children, he came to fear for the future of many of North Carolina's less-advantaged youngsters; and

Whereas, this profound concern for all of North Carolina's children led him to be a founding member of and recipient of the John F. Baggett award from the North Carolina Alliance for the Mentally Ill, Inc., to serve as Chairman of the Board of Directors of North Carolina Drug Abuse Resistance Education, to serve as a member of the board of directors of the United Way of North Carolina, to serve as President of Chapels for the North Carolina Centers for the Retarded, Inc., to serve as chairman of the Executive Committee of the Governor's Relations Committee, and to serve on the board of many other children's organizations including the Child Advocacy Council, the Methodist Home for Children, Wake County Opportunities, Inc., the Governor's Crime Commission, and the Governor's Interagency Advisory Committee on Alcohol and Drug Abuse; and

Whereas, Charles Dunn was always a spokesman for those who could not speak for themselves and a supporter of the weak; and

Whereas, after being striken with leukemia, Charles Dunn did not give up--he fought a hard fight, he continued his work on behalf of children, and he wrote three novels and a number of beautiful poems; and

Whereas, Charles Dunn was a loving and devoted husband, father, and grandfather who, all-too-soon, left behind his wife, Martha; his daughter Sherrill Dunn Jones, her husband Sam, and their child and Charles Dunn's namesake, Charlie; his son Charles Jerome Dunn, III, "Jay", who graduated magna cum laude from the school of Design at North Carolina State University in May; and his daughter Lelia Marie Dunn, "Lea" or "chicken" to the family, who works at the North Carolina Retail Merchants Association; and

Whereas, the General Assembly wishes to honor the life and memory of Charles Dunn and to recognize his many years of service to his beloved State and his fellow citizens;

Now, therefore, be it resolved by the Senate, the House of Representatives concurring:

Section 1. The General Assembly of North Carolina recognizes the many accomplishments of Charles Dunn and expresses the gratitude of North Carolina and its citizens for his life and service towards the betterment of all.

Section 2. The General Assembly of North Carolina offers its deepest sympathy to the family and friends of Charles Dunn for the loss of their loved one and friend.

Section 3. The Secretary of State shall transmit a certified copy of this resolution to the family of Charles Dunn.

Section 4. This resolution is effective upon ratification.

MINUTES
COMMITTEE ON RULES, CALENDAR, AND OPERATIONS OF THE HOUSE
June 25, 1997

The Committee on Rules, Calendar, and Operations of the House met June 25, 1997, at 1:00 p.m. in Room 544 in the Legislative Office Building. Representative Morgan, Committee Chair, called the meeting to order and asked the clerk to call the roll. The following members were present: Representative Bowie, Vice Chair; and Representatives Crawford, Culp, Dockham, Esposito, Gulley, McMahan, Miner, Mitchell, Neely and C. Wilson.

The following bills were considered by the Committee:

SJR 414 - A JOINT RESOLUTION HONORING THE ACCOMPLISHMENTS OF COACH DEAN EDWARDS SMITH AND THE MEN'S BASKETBALL PROGRAM AT THE UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL. Senator Rand, bill sponsor, was recognized to speak on the Resolution. Representative McMahan moved for a favorable report. Motion carried.

SB 143 - A BILL TO BE ENTITLED AN ACT TO AMEND THE LAWS PROHIBITING THE SALE OR PURCHASE OF TOBACCO PRODUCTS TO PERSONS LESS THAN EIGHTEEN YEARS OF AGE AND TO REQUIRE THAT CERTAIN PERSONS BE TRAINED REGARDING THESE LAWS. A proposed committee substitute was offered and Representative Mitchell moved for its adoption. Motion carried. Senator Rand, bill sponsor, was recognized to explain the bill. Representative Mitchell moved for a favorable report to the House committee substitute for SB 143 and unfavorable report to the original bill. Motion carried.

SJR 707 - A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF ROYCE PHELPS "BO" THOMAS, FORMER MEMBER OF THE GENERAL ASSEMBLY. The resolution was temporarily displaced by the Chair.

Senate Committee Substitute for SB 660 - A BILL TO BE ENTITLED AN ACT TO LICENSE ATHLETIC TRAINERS, was displaced temporarily at the request of Senator Hoyle.

Senate committee substitute for SB 668 - A BILL TO BE ENTITLED AN ACT TO AMEND THE EDUCATION REQUIREMENTS FOR CERTIFIED PUBLIC ACCOUNTANTS. Senator Hoyle was recognized to comment on the bill. He said the bill was requested by the North Carolina Association of Certified Public Accountants and would bring North Carolina in compliance with national standards. Representative Cansler was recognized and spoke in favor of the bill. Representative Neely moved for a favorable report to committee substitute for SB 668 and motion carried.

SB1074 - A BILL TO BE ENTITLED AN ACT TO OFFICIALLY RECOGNIZE THE INDIANS PREVIOUSLY RECOGNIZED IN THE GENERAL STATUTES AS THE HALIWA TRIBE AS THE HALIWA SAPONI TRIBE. The Chair explained that Representative Hardaway had a companion bill in the House that had passed. Senator Ballance was recognized to speak on the bill. Representative Esposito moved for a favorable report. Motion carried.

Senate committee substitute for SB 1055 - A BILL TO BE ENTITLED AN ACT ESTABLISHING THE PUBLIC HOSPITAL PERSONNEL ACT. A proposed House committee substitute was distributed. Representative Culp moved for its adoption; motion carried. Committee Counsel Linwood Jones was recognized to explain the changes in the House Committee Substitute which would require a hospital, medical facility, or medical or research laboratory or facility to dispose of the remains of a "recognizable fetus" only by burial or cremation. It does not impose any additional duty on the treatment facility to inspect waste received from a hospital or medical facility. The Commission for Health Services would determine a recognizable fetus.

The Chair recognized Mr. Bill Pulley who represents the North Carolina Hospital Association. He spoke in favor of the House Committee Substitute and said that he did not anticipate any problems in complying with the new requirement that establishes the Public Hospital Personnel Act of 1997.

Senator Cooper, bill sponsor, was recognized to speak on his bill. He said that the bill would for the first time provide a personnel act for public hospitals. Public hospital employees would operate under the same personnel act as county employees.
Currently, public hospitals do not know under what laws their personnel fall. This bill took what county employees now have and applies it to all public hospital employees.
Mr. John Crill, a Durham attorney specializing in public hospital law, was recognized for comment. He said that in 1981, the Court of Appeals held that public hospitals were public agencies subject to the public records law. Yet most hospital employees are not county employees so these employees do not have the protection of privacy statutes.

Representative Neely moved for a favorable report to House Committee Substitute for SB 1055; unfavorable report to the original bill. Motion carried.

Senate Bill 996 - A BILL TO BE ENTITLED AN ACT TO EXEMPT FROM THE PLUMBING LICENSURE REQUIREMENTS CERTAIN PERSONS PERFORMING ON-SITE ASSEMBLY OF FACTORY DESIGNED DRAIN SYSTEMS UNDERNEATH MANUFACTURED HOMES. Representative Ives was recognized by the Chair to explain

the bill for Senator Warren. Representative Mitchell moved for a favorable report. Motion carried.

Senate committee substitute 862 -A BILL TO BE ENTITLED AN ACT TO PROVIDE GREATER FLEXIBILITY TO THE UNIVERSITY OF NORTH CAROLINA IN NEGOTIATING CERTAIN CONTRACTS AND CAPITAL PROJECTS, TO INCREASE THE BENCHMARK FOR PURCHASES BY THE UNIVERSITY OF NORTH CAROLINA AND OTHER STATE AGENCIES, AND TO AUTHORIZE EMPLOYEE PAYROLL DEDUCTIONS FOR CERTAIN DISCRETIONARY PRIVILEGES OF UNIVERSITY SERVICE AT THE UNIVERSITY OF NORTH CAROLINA. A House committee substitute was offered. Representative McMahan moved for its adoption. Motion carried. Senator Lee, sponsor, gave an overview of the bill. The bill was introduced at the request of the University system of North Carolina. The University was requesting greater budget flexibility in managing various purchasing and construction design projects as well as payroll deduction flexibility for parking fees, athletic passes, admission to recreational facilities, concert series and the like.

The Chair recognized Representative McMahan to speak on the committee substitute which focused mainly on the construction/design portion of the bill and makes the following changes in the original bill: Reduces the amount of the contract from $1 million back to $500 thousand; additional oversights were added to report back to government operations and the State Building Commission and also a report to the General Assembly in June 1998 outlining what the university was doing; a provision was added that required the use of standardized contracts; power is still given to the Board of Governors and to the University of North Carolina Central Office, but before the power can be delegated to the individual campuses, it basically has to be reviewed and approved by the State Building Commission.

Representative Neely moved to give a favorable report to the House committee substitute for SB 862; unfavorable report to the original bill. Motion carried.

House Bill 777 - A BILL TO BE ENTITLED AN ACT EXTENDING RIGHTS TO PETITION OR INITIATE ANNEXATION BY RESOLUTION FOR VOLUNTARY NONCONTIGUOUS ANNEXATION INTO THE CITY OF KINGS MOUNTAIN. A committee substitute was offered and Representative Gulley moved for its adoption; motion carried. Representative Clary was recognized to explain the bill. The City of Kings Mountain requested the bill to annex some of the city's own property that is noncontiguous. Representative Dockham moved for a favorable report as to the committee substitute and an unfavorable report to the original bill and be re-referred to the Committee on Finance. Motion carried.

House Bill 568- A BILL TO BE ENTITLED AN ACT RELATING TO WAKE COUNTY. A committee substitute was offered and Representative Miner moved for its adoption; motion carried. Representative Eddins, sponsor, was recognized to explain the bill. He said that the bill is at the request of a property owner. The only land involved is the land of one particular property owner who wants to be annexed into Wake Forest because there is a sewer line close to the property. Representative Neely moved for a favorable report to the proposed committee substitute and unfavorable report to the original bill. Motion carried. The Chair stated that without opposition the committee substitute would be re-referred to the Committee on Finance.

Senate Bill 660 - A BILL TO BE ENTITLED AN ACT TO LICENSE ATHLETIC TRAINERS. A committee substitute was offered and Representative McMahan moved to adopt the House Committee Substitute for the purpose of discussion. Motion carried. Representative Morgan, Chair, recognized Representative McMahan to explain the committee substitute. Currently in this state anyone can represent themselves as an athletic trainer. This bill would prohibit any person from practicing as an athletic trainer unless licensed. It provides that persons with appropriate college degrees and current certificates from the National Board are entitled to license. It provides that persons who have been actively practicing since August 1, 1994 and who have the appropriate college degree must be licensed without examination. Senator Hoyle was recognized to explain the companion Senate bill.

Representative Neely asked why some physical therapists objected to the bill. The Chair recognized Ms. Flo Moses, a licensed physical therapist and a certified athletic trainer, who said the opposition came from the pursuit of third party reimbursement. Representative McMahan then stated that third party reimbursement was prohibited in the bill and language was also included to have an athletic trainer work under the protocol of a licensed physician.

Mr. William Potter who represents the North Carolina Physical Therapy Association was also recognized and spoke in opposition to the bill. The concerns of the North Carolina Physical Therapy Association were the clinical practices that would be allowed under this bill, not on the field situations. Mr. Steve Keen, representative of the North Carolina Medical Society, was recognized by the Chair and spoke in favor of the bill.

Representative Crawford moved for a favorable report as to House Committee Substitute and unfavorable report as to the Senate Committee Substitute. Motion carried. Without objection, the Chair stated that the committee substitute would be re-referred to the Committee on Finance.

The Chair announced a five minute recess after which the House Commerce Subcommittee on Public Utilities joined the Rules Committee.

The following members of the House Commerce Subcommittee on Public Utilities were present: Representative McComas, Chair; Representative Crawford, Ranking Minority Member; and Representatives Bonner, Dickson, Hiatt, Ives, McCombs, Miner, Mitchell, Neely, C. Wilson and Womble.

The following bills were considered: SJR 1078 - A JOINT RESOLUTION PROVIDING FOR THE CONFIRMATION OF THE APPOINTMENT OF RICHARD CONDER MADE BY THE GOVERNOR TO MEMBERSHIP ON THE NORTH CAROLINA UTILITIES COMMISSION. Representative Morgan recognized Representative McComas, Chairman of the Public Utilities Subcommittee.

Chairman McComas hoped to move favorably on the two nominations since Utilities had three vacancies to fill. Mr. Rose, legal counsel, was recognized to explain his memorandum about the Utilities Commission that had been distributed to the committee and sub-committee members. The Chair recognized Mr. Richard Condor, nominee for the Public Utililites Commission, to speak. The Chair opened the floor for questions and comments. Representative Dockham moved the House Joint Committee Substitute be given a favorable report and that the original Senate Joint Resolution be given an unfavorable report. The motion carried.

House Joint Resolution DRHJR2340- A JOINT RESOLUTION PROVIDING FOR THE CONFIRMATION OF THE APPOINTMENT OF ROBERT V. OWENS, JR., MADE BY THE GOVERNOR TO MEMBERSHIP ON THE NORTH CAROLINA UTILITIES COMMISSION was the next resolution before the Committee.The Chair recognized Mr. Robert V. Owens, Jr. to speak to the Committee and the Public Utilities Subcommittee. The Chair opened the floor for questions and comments. Representative Dockham moved that the Joint Resolution be given a favorable report. The Chair asked if their was further discussion or debate on the motion. Motion carried.

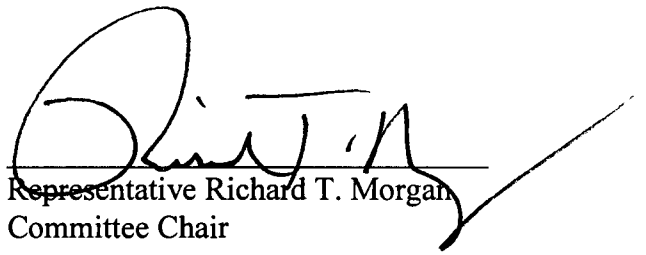
Meredith Gregory and Sally Styers, pages from Wilkes County, were recognized by the Chair. Members of the Sub-committee on Public Utilities were dismissed. The Chair recessed the Rules Committee for five minutes.

The first resolution on the agenda after recess was House Joint Resolution 1237 - A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF MAZIE

SPENCER WOODRUFF, A DEVOTED PUBLIC SERVANT AND COMMUNITY ACTIVIST. Representative Womble, bill sponsor, was recognized to explain the resolution. Representative Esposito moved that the bill be given a favorable report. Motion carried.

The next resolution before the Committee was Senate Joint Resolution 707 - A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF ROYCE PHELPS "BO" THOMAS, FORMER MEMBER OF THE GENERAL ASSEMBLY. The Chair had temporarily displaced the resolution when Senator Jenkins was not present to explain the resolution. The Chair recognized Representative Crawford to explain the resolution. Representative Crawford moved for a favorable report. Motion carried.

There being no further business, the meeting adjourned.



Representative Richard T. Morgan
Committee Chair

Anne M. Cole
Acting Committee Clerk

Attachments:
Committee Reports
Bills
Memorandum from Steve Rose,
Committee Counsel for Subcommittee on Public
Utilities about Utilities Commission Appointments
Resume of J. Richard Conder
Resume of Robert V. Owens, Jr.
Visitor's Sheets

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House.**

☒ Committee Substitute for
S.J.R. 414 A JOINT RESOLUTION HONORING THE ACCOMPLISHMENTS OF COACH DEAN EDWARDS SMITH AND THE MEN'S BASKETBALL PROGRAM AT THE UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL.

☒ 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)

4/24/97

mc Mahan

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE JOINT RESOLUTION 414
Rules and Operations of the Senate Committee Substitute Adopted 6/16/97

Sponsors:

Referred to:

March 18, 1997

A JOINT RESOLUTION HONORING THE ACCOMPLISHMENTS OF COACH DEAN EDWARDS SMITH AND THE MEN'S BASKETBALL PROGRAM AT THE UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL.

Whereas, Dean Edwards Smith was a member of the 1952 Kansas University Jayhawks national championship basketball team and a disciple of Kansas Coach Phog Allen; and

Whereas, his loyalty to his alma mater, the University of Kansas, so impressed former head coach Frank McGuire that he offered Smith a job as an assistant coach, which Smith accepted, despite UNC's victory over Smith's beloved Jayhawks in the 1957 NCAA men's basketball championship game; and

Whereas, Coach Smith's love for the State of North Carolina and the University of North Carolina has continued to grow since his arrival in Chapel Hill in 1958; and

Whereas, Coach Smith and the UNC men's basketball program have constantly been the source of visionary innovation, perfecting such signature practices as the man-to-man trap defense, the team huddle before a free throw, the "tired" signal, the acknowledgment of a teammate's assist, and the "Four Corners" offense that proved so effective that the institution of the shot clock was the only way to combat it; and

Whereas, Coach Smith has established a tradition of excellence in the UNC men's basketball program during his 36 years as head coach, winning more conference games, more regular season titles, more ACC Tournament games, more ACC championships and more NCAA tournament games than any other coach, and has attained 11 Final Four appearances, 14 ACC titles, and two national championships so far; and

Whereas, Coach Smith, along with Bill Guthridge, John Thompson, with a nucleus of Tar Heels and players from around the country, guided the United States to a gold medal in basketball in the 1976 Olympic Games; and

Whereas, Coach Smith' s keen insight into the game and his ability to adapt to changes in the times, the rules, and the nature of the game is vividly demonstrated by his continuing successes in his fourth decade as a coach; and

Whereas, on March 15, 1997, Coach Smith became the "all-time winningest coach" in the history of NCAA Division I basketball, coaching the Tar Heels to their 877th victory under his leadership; and

Whereas, Coach Smith and the UNC men's basketball program have produced nearly 100 professional basketball players, 43 basketball coaches and teachers, and numerous entrepreneurs, professionals, ministers, and other leaders who contribute to their communities throughout the world; and

Whereas, Coach Smith and the UNC basketball program have consistently emphasized teamwork, discipline, education and character above athletic success, and have served as ambassadors for the State of North Carolina, training young people, from around the world in the principles of honesty, integrity, and respect; and

Whereas, Coach Smith has been revered by former players, team members, and members of the UNC basketball family as a man who seeks the best interest of his students above his own; and

Whereas, for 36 years, Coach Smith has taught his players that basketball is secondary to honor, has maintained a model athletic program that is untainted by scandal, has helped his players mature into responsible adults, and has emphasized the importance of education to a life plan; and

Whereas, Coach Smith's greatest accomplishments lie not in the number of his victories but in the number of his lettermen who have obtained university degrees; a total of 216 of his 222 lettermen have graduated, many with honors; and

Whereas, Coach Smith is a man of character and compassion who was an early advocate for a more equal society, and his commitment to the betterment of all is reflected in his many endeavors to promote education and achievement in all facets of life; and

Whereas, Coach Smith is known as the "Dean of Basketball," but those who are aware of his accomplishments consider him the "Dean of Gentlemen," exemplifying the very best North Carolina has to offer; Now, therefore,

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

Section 1. The General Assembly recognizes the outstanding achievements of Coach Dean Edwards Smith and the men's basketball program at the University of North Carolina at Chapel Hill, expresses the appreciation and admiration of the people of the State of North Carolina to Dean Edwards Smith for his leadership, integrity, and unparalleled excellence, both on and off the basketball court, and acknowledges the invaluable contribution that the players, coaches, managers, and other members of the UNC basketball family have made to a better world, not only in North Carolina, but across the globe.

Section 2. The Secretary of State shall send certified copies of this resolution to Coach Dean Edwards Smith, the Athletic Director, and the Chancellor of the University of North Carolina at Chapel Hill, and the Chairman of the University of North Carolina at Chapel Hill Board of Trustees.

Section 3. This resolution is effective upon ratification.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House.**

☒ Committee Substitute for
S.B. 143 A BILL TO BE ENTITLED AN ACT TO AMEND THE LAWS PROHIBITING THE SALE OR PURCHASE OF TOBACCO PRODUCTS TO PERSONS LESS THAN EIGHTEEN YEARS OF AGE AND TO REQUIRE THAT CERTAIN PERSONS BE TRAINED REGARDING THESE LAWS.

☐ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 143
Judiciary Committee Substitute Adopted 3/10/97
Third Edition Engrossed 3/12/97
Proposed House Committee Substitute S143-PCS1839

Short Title: Stop Tobacco Sales to Minors. (Public)

Sponsors:

Referred to:

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE SALE OR PURCHASE OF TOBACCO PRODUCTS TO PERSONS LESS THAN EIGHTEEN YEARS OF AGE AND TO REQUIRE THAT CERTAIN PERSONS BE TRAINED REGARDING THESE LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-313(a) reads as rewritten:

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

(1) Distribute. -- To sell, furnish, give, or provide tobacco products, including tobacco product samples, or cigarette wrapping papers to the ultimate consumer.

(2) Proof of age. -- A drivers license or other ~~documentary or written evidence~~ photographic identification that includes the bearer's date of birth that purports to establish that the person is 18 years of age or older.

(3) Sample. -- A tobacco product distributed to members of the general public at no cost for the purpose of promoting the product.

(4) Tobacco product. -- Any product that contains tobacco and is intended for human consumption."

Section 2. G.S. 14-313(b) reads as rewritten:

"(b) Sale or distribution to persons under the age of 18 years. -- If any person shall ~~knowingly~~ distribute, or ~~knowingly~~ aid, assist, or abet any other person in distributing tobacco products or cigarette wrapping papers to any person under the age of 18 years, or if any person shall ~~knowingly~~ purchase tobacco products or cigarette wrapping papers on behalf of a person, less than 18 years, the person shall ~~be guilty of a Class 2 misdemeanor;~~ have committed an infraction and pay the following penalties:

(1) Twenty-five dollars ($25.00) upon the first violation.

(2) One hundred dollars ($100.00) upon the second violation.

(3) Three hundred dollars ($300.00) upon the third and subsequent violation.

~~provided, however, that it~~ It shall not be unlawful to distribute tobacco products or cigarette wrapping papers to an employee when required in the performance of the employee's duties. Retail distributors of tobacco products shall prominently display near the point of sale a sign in letters at least five-eighths of an inch high which states the following:

N.C. LAW STRICTLY PROHIBITS
THE PURCHASE OF TOBACCO PRODUCTS
BY PERSONS UNDER THE AGE OF 18.
PROOF OF AGE REQUIRED.

Failure to post the required sign shall be an infraction with a penalty of twenty-five dollars ($25.00) for the first violation and seventy-five dollars ($75.00) for each succeeding violation.

A person engaged in the sale of tobacco products shall demand proof of age from a prospective purchaser if the person has reasonable grounds to believe that the prospective purchaser is under 18 years of age. Failure to demand proof of age as required by this subsection is ~~a Class 2 misdemeanor.~~ an infraction with a penalty of two hundred fifty dollars ($250.00). Proof that the defendant demanded, was shown, and reasonably relied upon proof of age in the case of a retailer, or any other documentary or written evidence of age in the case of a nonretailer, shall be a defense to any action brought under this subsection. Retail distributors of tobacco products shall train their sales employees in the requirements of this law."

Section 3. G.S. 14-313(c) reads as rewritten:

"(c) Purchase by persons under the age of 18 years. -- If any person under the age of 18 years purchases or accepts receipt, or attempts to purchase or accept receipt, of tobacco products or cigarette wrapping papers, ~~or presents or offers to any person any purported proof of age which is false, fraudulent, or not actually his or her own, for the purpose of purchasing or receiving any tobacco product,~~ the person shall ~~be guilty of~~ have committed an infraction ~~as provided in G.S. 14-3.1.~~ and pay the following penalties:

(1) Twenty-five dollars ($25.00) upon the first violation.

(2) One hundred dollars ($100.00) upon the second violation.

(3) Three hundred dollars ($300.00) upon the third and subsequent violation.

If any person presents or offers to any person any purported proof of age which is false, fraudulent, or not actually his or her own, for the purpose of purchasing or receiving any tobacco products or cigarette wrapping papers, the person shall have committed an infraction and pay a penalty of two hundred fifty dollars ($250.00)."

Section 4. G.S. 14-313(d) reads as rewritten:

"(d) Send or assist person less than 18 years to purchase or receive tobacco product. -- If any person shall ~~knowingly~~ send or assist a person less than 18 years of age to purchase, acquire, receive, or attempt to purchase, acquire, or receive tobacco products or cigarette wrapping papers, the person shall be guilty of a Class 2 misdemeanor; provided, however, persons under the age of 18 may be enlisted by police or local sheriffs' departments to test compliance if the testing is under the direct supervision of that law enforcement department and written parental consent is provided; provided further, that the Department of Human Resources shall have the authority, pursuant to a written plan prepared by the Secretary of Human Resources, to use persons under 18 years of age in annual, random, unannounced inspections, provided that prior written parental consent is given for the involvement of these persons and that the inspections are conducted for the sole purpose of preparing a scientifically and methodologically valid statistical study of the extent of success the State has achieved in reducing the availability of tobacco products to persons under the age of 18, and preparing any report to the extent required by section 1926 of the federal Public Health Service Act (42 USC § 300x-26)."

Section 5. G.S. 14-313 is amended by adding a new subsection to read:

"(b1) Vending machines. -- Tobacco products shall not be distributed in vending machines; provided, however, vending machines distributing tobacco products are permitted (i) in any establishment which is open only to persons 18 years of age and older; or (ii) in any establishment if the vending machine is under the continuous control of the owner or licensee of the premises or an employee thereof and can be operated only upon activation by the owner, licensee or employee prior to each purchase, and the vending machine is not accessible to the public when the establishment is closed. The owner, licensee or employee shall demand proof of age from a prospective purchaser if the person has reasonable grounds to believe that the prospective purchaser is under 18 years of age. Failure to demand proof of age as required by this subsection is an infraction with a penalty of two hundred fifty dollars ($250.00). Proof that the defendant demanded, was shown, and reasonably relied upon proof of age shall be a defense to any action brought under this subsection. Vending machines distributing tobacco products in establishments not meeting the above conditions shall be removed by July 31, 1997. Any person distributing tobacco products through vending machines in violation of this subsection shall have committed an infraction and pay the following penalties:

(1) Twenty-five dollars ($25.00) upon the first violation.

(2) One hundred dollars ($100.00) upon the second violation.

(3) Three hundred dollars ($300.00) upon the third and subsequent violation."

Section 6. G.S. 14-313 is amended by adding a new subsection to read:

"(b2) Out-of-package sales. -- If any person engaged in the sale of cigarettes shall sell cigarettes other than in unopened packages originating with the manufacturer, the person shall be guilty of a Class 2 misdemeanor."

Section 7. This act becomes effective August 1, 1997, and applies to violations committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 3

SENATE BILL 143
Judiciary Committee Substitute Adopted 3/10/97
Third Edition Engrossed 3/12/97

Short Title: Ban Tobacco Sales to Minors. (Public)

Sponsors:

Referred to:

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS PROHIBITING THE SALE OR PURCHASE OF TOBACCO PRODUCTS TO PERSONS LESS THAN EIGHTEEN YEARS OF AGE AND TO REQUIRE THAT CERTAIN PERSONS BE TRAINED REGARDING THESE LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-313(a) reads as rewritten:

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

(1) Distribute. -- To sell, furnish, give, or provide tobacco products, including tobacco product samples, or cigarette wrapping papers to the ultimate consumer.

(2) Proof of age. -- A drivers license or other ~~documentary or written evidence~~ photographic identification that includes the bearer's date of birth that purports to establish that the person is 18 years of age or older.

(3) Sample. -- A tobacco product distributed to members of the general public at no cost for the purpose of promoting the product.

(4) Tobacco product. -- Any product that contains tobacco and is intended for human consumption."

Section 2. G.S. 14-313(b) reads as rewritten:

"(b) Sale or distribution to persons under the age of 18 years. -- If any person shall ~~knowingly~~ distribute, or ~~knowingly~~ aid, assist, or abet any other person in

distributing tobacco products or cigarette wrapping papers to any person under the age of 18 years, or if any person shall ~~knowingly~~ purchase tobacco products or cigarette wrapping papers on behalf of a person, less than 18 years, the person shall be guilty of a Class 2 misdemeanor; provided, however, that it shall not be unlawful to distribute tobacco products or cigarette wrapping papers to an employee when required in the performance of the employee's duties. Retail distributors of tobacco products shall prominently display near the point of sale a sign in letters at least five-eighths of an inch high which states the following:

N.C. LAW STRICTLY PROHIBITS
THE PURCHASE OF TOBACCO PRODUCTS
BY PERSONS UNDER THE AGE OF 18.
PROOF OF AGE REQUIRED.

Failure to post the required sign shall be an infraction punishable by a fine of twenty-five dollars ($25.00) for the first offense and seventy-five dollars ($75.00) for each succeeding offense.

A person engaged in the sale of tobacco products shall demand proof of age from a prospective purchaser if the person has reasonable grounds to believe that the prospective purchaser is under 18 years of age. Failure to demand proof of age as required by this subsection is a Class 2 ~~misdemeanor.~~ misdemeanor if in fact the prospective purchaser is under 18 years of age. Proof that the defendant demanded, was shown, and reasonably relied upon proof of age in the case of a retailer, or any other documentary or written evidence of age in the case of a nonretailer, shall be a defense to any action brought under this subsection. Retail distributors of tobacco products shall train their sales employees in the requirements of this law."

Section 3. G.S. 14-313(c) reads as rewritten:

"(c) Purchase by persons under the age of 18 years. -- If any person under the age of 18 years purchases or accepts receipt, or attempts to purchase or accept receipt, of tobacco products or cigarette wrapping papers, ~~or presents or offers to any person any purported proof of age which is false, fraudulent, or not actually his or her own, for the purpose of purchasing or receiving any tobacco product,~~ the person shall be guilty of an infraction as provided in G.S. 14-3.1. If any person under the age of 18 years presents or offers to any person any purported proof of age which is false, fraudulent, or not actually his or her own, for the purpose of purchasing or receiving any tobacco product or cigarette wrapping papers, the person shall be guilty of a Class 2 misdemeanor."

Section 4. G.S. 14-313(d) reads as rewritten:

"(d) Send or assist person less than 18 years to purchase or receive tobacco product. -- If any person shall ~~knowingly~~ send ~~or assist~~ a person less than 18 years of age to purchase, acquire, receive, or attempt to purchase, acquire, or receive tobacco products or cigarette wrapping papers, or if any person shall aid or abet a person who is less than 18 years of age in purchasing, acquiring, or receiving or attempting to purchase, acquire or receive tobacco products or cigarette wrapping papers, the person shall be guilty of a Class 2 misdemeanor; provided, however, persons under the age of 18 may be enlisted by police or local sheriffs' departments to test

compliance if the testing is under the direct supervision of that law enforcement department and written parental consent is provided; provided further, that the Department of Human Resources shall have the authority, pursuant to a written plan prepared by the Secretary of Human Resources, to use persons under 18 years of age in annual, random, unannounced inspections, provided that prior written parental consent is given for the involvement of these persons and that the inspections are conducted for the sole purpose of preparing a scientifically and methodologically valid statistical study of the extent of success the State has achieved in reducing the availability of tobacco products to persons under the age of 18, and preparing any report to the extent required by section 1926 of the federal Public Health Service Act (42 USC § 300x-26)."

Section 5. G.S. 14-313 is amended by adding a new subsection to read:

"(b1) Vending machines. -- Tobacco products shall not be distributed in vending machines; provided, however, vending machines distributing tobacco products are permitted (i) in any establishment which is open only to persons 18 years of age and older; or (ii) in any establishment if the vending machine is under the continuous control of the owner or licensee of the premises or an employee thereof and can be operated only upon activation by the owner, licensee, or employee prior to each purchase and the vending machine is not accessible to the public when the establishment is closed. The owner, licensee, or employee shall demand proof of age from a prospective purchaser if the person has reasonable grounds to believe that the prospective purchaser is under 18 years of age. Failure to demand proof of age as required by this subsection is a Class 2 misdemeanor if in fact the prospective purchaser is under 18 years of age. Proof that the defendant demanded, was shown, and reasonably relied upon proof of age shall be a defense to any action brought under this subsection. Vending machines distributing tobacco products in establishments not meeting the above conditions shall be removed by July 31, 1997. Any person distributing tobacco products through vending machines in violation of this subsection shall be guilty of a Class 2 misdemeanor."

Section 6. G.S. 14-313 is amended by adding a new subsection to read:

"(b2) Out-of-package sales. -- If any person engaged in the sale of cigarettes shall sell cigarettes other than in unopened packages originating with the manufacturer, the person shall be guilty of a Class 2 misdemeanor."

Section 7. This act becomes effective August 1, 1997, and applies to offenses committed on or after that date.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House.**

☒ Committee Substitute for
S.B. 668 A BILL TO BE ENTITLED AN ACT TO AMEND THE EDUCATION REQUIREMENTS FOR CERTIFIED PUBLIC ACCOUNTANTS.

☒ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 3

SENATE BILL 668*
Education/Higher Education Committee Substitute Adopted 4/17/97
Third Edition Engrossed 6/9/97

Short Title: CPA Education Requirements/AB. (Public)

Sponsors:

Referred to: Appropriations.

April 2, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE EDUCATION REQUIREMENTS FOR CERTIFIED PUBLIC ACCOUNTANTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 93-12(5) reads as rewritten:

"(5) To issue certificates of qualification admitting to practice as certified public accountants, each applicant who, having the qualifications herein specified, ~~shall have~~ has passed an examination to the satisfaction of the Board, in 'accounting,' 'auditing,' 'business law,' and other related subjects.

A person is eligible to take the examination given by the Board, or to receive a certificate of qualification to practice as a certified public accountant, ~~who~~ if the person is a citizen of the United States, has declared the intention of becoming a citizen, is a resident alien, or is a citizen of a foreign jurisdiction which extends to citizens of this State like or similar privileges to be examined or certified, is 18 years of age or over, and is of good moral ~~character, and submits evidence satisfactory to the Board that:~~ character.

~~a. He holds a bachelor's degree from a college or university accredited by one of the regional accrediting associations or from a college or university determined by the Board to~~

~~have standards substantially equivalent to a regionally accredited institution, and~~

~~b. His degree studies included a concentration in accounting as defined by the Board or that he supplemented his degree studies with courses that the Board determines to be substantially equivalent to a concentration in accounting.~~

~~c. Repealed by Session Laws 1991, c. 214, s. 1, effective January 1, 1997.~~

To be eligible to take the examination given by the Board, a person shall submit evidence satisfactory to the Board that the person holds a bachelors degree from a college or university that is accredited by one of the regional accrediting associations or from a college or university determined by the Board to have standards that are substantially equivalent to a regionally accredited institution. The degree studies shall include a concentration in accounting as prescribed by the Board or shall be supplemented with courses that are determined by the Board to be substantially equivalent to a concentration in accounting.

~~Provided, however, the~~ The Board may, in its discretion, waive the education requirement of any candidate if the Board is satisfied from the result of a special written examination given the candidate by the Board to test ~~his~~ the candidate's educational qualifications that ~~he~~ the candidate is as well qualified as if ~~he~~ the candidate met the education requirements specified above. The Board may provide by regulation for the general scope of such examinations and may obtain such advice and assistance as it deems appropriate to assist it in preparing, administering and grading such special examinations.

To be eligible to receive a certificate of qualification to practice as a certified public accountant, a person shall submit evidence satisfactory to the Board that:

a. The person has completed 150 semester hours and received a bachelors degree with a concentration in accounting and other courses that the Board may require from a college or university that is accredited by a regional accrediting association or from a college or university determined by the Board to have standards that are substantially equivalent to those of a regionally accredited institution.

b. ~~Such applicant, in addition to passing the examination given by the Board, shall have~~ The person has the endorsement as to ~~his~~ the person's eligibility of three certified public

accountants who currently hold licenses in any state or territory of the United States or the District of ~~Columbia and shall have had either:~~ Columbia.

c. The person has one of the following:

~~a.~~1. ~~Two years~~ One year's experience in the field of accounting under the direct supervision of a certified public accountant who currently holds a valid license in any state or territory of the United States or the District of ~~Columbia, or~~ Columbia.

~~b.~~2. ~~Five~~ Four years of experience teaching accounting in a four-year college or university accredited by one of the regional accrediting associations or in a college or university determined by the Board to have standards substantially equivalent to a regionally accredited ~~institution; or~~ institution.

~~c.~~3. ~~Five~~ Four years of experience in the field of ~~accounting;~~ accounting.

4. ~~or five~~ Four years of experience teaching college transfer accounting courses at a community college or technical institute accredited by one of the regional accrediting ~~associations; or~~ associations.

~~d.~~5. Any combination of such experience determined by the Board to be substantially equivalent to the foregoing.

~~A Master's or more advanced degree in accounting, tax law, economics, business administration, or the equivalent thereof, or a law degree with emphasis in taxation or accounting from an accredited college or university may be substituted for one year of experience.~~ The Board may permit persons otherwise eligible to take its examinations and withhold certificates until ~~such~~ the person ~~shall have~~ has had the required experience."

Section 2. This act is effective when it becomes law and applies to applications for certificates of qualification received after December 31, 2000.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House.**

☐ Committee Substitute for
S.B. 1074 A BILL TO BE ENTITLED AN ACT TO OFFICIALLY RECOGNIZE THE INDIANS PREVIOUSLY RECOGNIZED IN THE GENERAL STATUTES AS THE HALIWA TRIBE AS THE HALIWA SAPONI TRIBE.

☒ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

SENATE BILL 1074*

Short Title: Haliwa Name Change. (Public)

Sponsors: Senators Ballance and Cooper.

Referred to: State Government, Local Government, and Personnel.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO OFFICIALLY RECOGNIZE THE INDIANS PREVIOUSLY RECOGNIZED IN THE GENERAL STATUTES AS THE HALIWA TRIBE AS THE HALIWA SAPONI TRIBE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 71A-5 reads as rewritten:

"**§ 71A-5. Haliwa Saponi Tribe of North Carolina; rights, privileges, immunities, obligations and duties.**

The Indians now residing in Halifax, Warren and adjoining counties of North Carolina, originally found by the first permanent white settlers on the Roanoke River in Halifax and Warren Counties, and claiming descent from certain tribes of Indians originally inhabiting the coastal regions of North Carolina, shall, from and after April 15, 1965, be designated and officially recognized as the Haliwa Saponi Tribe of North Carolina, and they shall continue to enjoy all their rights, privileges and immunities as citizens of the State as now or hereafter provided by law, and shall continue to be subject to all the obligations and duties of citizens under the law."

Section 2. G.S. 143B-407(a) reads as rewritten:

"(a) The State Commission of Indian Affairs shall consist of two persons appointed by the General Assembly, the Secretary of Human Resources, the Director of the State Employment Security Commission, the Secretary of Administration, the Secretary of Environment, Health, and Natural Resources, the Commissioner of Labor or their designees and 18 representatives of the Indian community. These Indian members shall be selected by tribal or community consent from the Indian groups that are recognized by the State of North Carolina and are principally

geographically located as follows: the Coharie of Sampson and Harnett Counties; the Eastern Band of Cherokees; the Haliwa Saponi of Halifax, Warren, and adjoining counties; the Lumbees of Robeson, Hoke and Scotland Counties; the Meherrin of Hertford County; the Waccamaw-Siouan from Columbus and Bladen Counties; and the Native Americans located in Cumberland, Guilford and Mecklenburg Counties. The Coharie shall have two members; the Eastern Band of Cherokees, two; the ~~Haliwa,~~ Haliwa Saponi, two; the Lumbees, three; the Meherrin, one; the Waccamaw-Siouan, two; the Cumberland County Association for Indian People, two; the Guilford Native Americans, two; the Metrolina Native Americans, two. Of the two appointments made by the General Assembly, one shall be made upon the recommendation of the Speaker, and one shall be made upon recommendation of the President Pro Tempore of the Senate. Appointments by the General Assembly shall be made in accordance with G.S. 120-121 and vacancies shall be filled in accordance with G.S. 120-122."

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

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House.**

☒ Committee Substitute for
S.B. 1055 A BILL TO BE ENTITLED AN ACT ESTABLISHING THE PUBLIC HOSPITAL PERSONNEL 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 ☐

☐ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1055
Rules and Operations of the Senate Committee Substitute Adopted 4/29/97
Proposed House Committee Substitute S1055-PCS7819

Short Title: Public Hospital Personnel Act. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT ESTABLISHING THE PUBLIC HOSPITAL PERSONNEL ACT AND AMENDING THE LAW GOVERNING DISPOSAL OF FETAL REMAINS.

The General Assembly of North Carolina enacts:

Section 1. This act shall be known as the "Public Hospital Personnel Act of 1997".

Section 2. Chapter 131E of the General Statutes is amended by adding the following new Article to read:

"ARTICLE 15A.

"Public Hospital Personnel Act.

"§ 131E-257. Title; purpose; applicability of other laws; 'public hospital' defined.

(a) This Article shall be known and may be cited as the 'Public Hospital Personnel Act'.

(b) The purpose of this Article is to protect the privacy of the personnel records of public hospital employees and to authorize public hospitals to determine employee compensation and personnel policies and to establish employee benefit plans.

(c) Unless otherwise provided, none of the provisions of Part 4, Article 5, Chapter 153A and Part 4, Article 7, Chapter 160A shall apply to public hospitals.

(d) If any provision of this Article is inconsistent with any provision of any other law, the provision of this Article shall be controlling.

(e) As used in this Article, unless the context clearly indicates otherwise, the term 'public hospital' has the same meaning as in G.S. 159-39.

"**§ 131E-257.1. Compensation; personnel policies; employee benefits plans.**

(a) A public hospital shall determine the pay, expense allowances, and other compensation of its officers and employees, and may establish position classification and pay plans and incentive compensation plans.

(b) A public hospital may:

(1) Adopt personnel policies and procedures regarding, without limitation, vacations, personal leave, service award programs, other personnel policies and procedures, and any other measures that enhance the ability of a public hospital to hire and retain employees.

(2) Determine the work hours, workdays, and holidays applicable to its employees.

(3) Establish and pay all or part of the cost of benefit plans for its employees and former employees, including without limitation, life, health and disability plans, pension, profit sharing, deferred compensation and other retirement plans, and other fringe benefit plans.

(4) Pay severance payments and provide other employee severance benefits to its employees and former employees pursuant to a severance plan established in connection with a reduction in the size of the workforce of a public hospital or, with respect to an individual employee, pursuant to an employment agreement entered into prior to the date the employee receives notice of termination of employment.

(c) The provisions of G.S. 159-30 and G.S. 159-31 are not applicable to public hospitals with respect to the investment of escrowed or trusteed retirement and deferred compensation funds. Public hospitals may invest such escrowed and trusteed funds in property or securities in which trustees, guardians, personal representatives, and others acting in a fiduciary capacity may legally invest funds under their control.

"**§ 131E-257.2. Privacy of employee personnel records.**

(a) Notwithstanding the provisions of G.S. 132-6 or any other general law or local act concerning access to public records, personnel files of employees and applicants for employment maintained by a public hospital are subject to inspection and may be disclosed only as provided by this section. For purposes of this section, an employee's personnel file consists of any information in any form gathered by the public hospital with respect to an employee and, by way of illustration but not limitation, relating to the employee's application, selection or nonselection, performance, promotions, demotions, transfers, suspensions and other disciplinary actions, evaluation forms, leave, salary, and termination of employment. As used in this section, 'employee' includes both current and former employees of a public hospital.

(b) The following information with respect to each public hospital employee is a matter of public record:

(1) Name.

(2) Age.
(3) Date of original employment.
(4) Current position title, current salary, and the date and amount of the most recent increase or decrease in salary.
(5) Date of the most recent promotion, demotion, transfer, suspension, separation or other change in position classification.
(6) The office to which the employee is currently assigned.

In addition, the following information with respect to each licensed medical provider employed by or having privileges to practice in a public hospital shall be a matter of public record: educational history and qualifications, date and jurisdiction or original and current licensure; and information relating to medical board certifications or other qualifications of medical specialists.

The governing board of a public hospital shall determine in what form and by whom this information will be maintained. Any person may have access to this information for the purpose of inspection, examination, and copying, during regular business hours, subject only to such rules and regulations for the safekeeping of public records as the governing board of the public hospital may have adopted. Any person denied access to this information may apply to the appropriate division of the General Court of Justice for an order compelling disclosure, and the court shall have jurisdiction to issue such orders.

(c) All information contained in a public hospital employee's personnel file, other than the information made public by subsection (b) of this section, is confidential and shall be open to inspection only in the following instances:

(1) The employee or the employee's duly authorized agent may examine all portions of the employee's personnel file, except letters of reference solicited prior to employment.
(2) A licensed physician designated in writing by the employee may examine the employee's medical record.
(3) A public hospital employee having supervisory authority over the employee may examine all material in the employee's personnel file.
(4) By order of a court of competent jurisdiction, any person may examine such portion of an employee's personnel file as may be ordered by the court.
(5) An official of an agency of the State or federal government, or any political subdivision of the State, may inspect any portion of a personnel file when the inspection is deemed by the person having custody of the file to be inspected to be necessary and essential to the pursuance of a proper function of the inspecting agency, but no information shall be divulged for the purpose of assisting in criminal prosecution of the employee, or for the purpose of assisting in an investigation of the employee's tax liability. However, the official having custody of the records may release the

name, address, and telephone number from a personnel file for the purpose of assisting in a criminal investigation.

(6) An employee may sign a written release, to be placed with the employee's personnel file, that permits the person with custody of the file to provide, either in person, by telephone, or by mail, information specified in the release to prospective employers, educational institutions, or other persons specified in the release.

(d) Even if considered part of an employee's personnel file, the following information need not be disclosed to an employee nor to any other person:

(1) Testing or examination material used solely to determine individual qualifications for appointment, employment, or promotion in the public hospital's service, when disclosure would compromise the objectivity or the fairness of the testing or examination process.

(2) Investigative reports or memoranda and other information concerning the investigation of possible criminal actions of an employee, until the investigation is completed and no criminal action taken, or until the criminal action is concluded.

(3) Information that might identify an undercover law enforcement officer or a law enforcement informer.

(4) Notes, preliminary drafts, and internal communications concerning an employee. In the event such materials are used for any official personnel decision, then the employee or his duly authorized agent shall have a right to inspect such materials.

(e) The governing board of a public hospital may permit access, subject to limitations they may impose, to selected personnel files by a professional representative of a training, research, or academic institution if that representative certifies that he or she will not release information identifying the employees whose files are opened and that the information will be used solely for statistical, research, or teaching purposes. This certification shall be retained by the public hospital as long as each personnel file so examined is retained.

(f) The governing board of a public hospital that maintains personnel files containing information other than the information mentioned in subsection (b) of this section shall establish procedures whereby an employee who objects to material in his or her file on grounds that it is inaccurate or misleading may seek to have the material removed from the file or may place in the file a statement relating to the material.

(g) A public hospital director, trustee, officer, or employee who knowingly, willfully, and with malice permits any person to have access to information contained in a personnel file, except as is permitted by this section, is guilty of a Class 3 misdemeanor; however, conviction under this subsection shall be punishable only by a fine not to exceed five hundred dollars ($500.00).

(h) Any person not specifically authorized by this section to have access to a personnel file designated as confidential, who shall knowingly and willfully examine

in its official filing place, or remove, or copy any portion of a confidential personnel file shall be guilty of a Class 3 misdemeanor; however, conviction under this subsection shall be punishable, in the discretion of the court, by a fine not to exceed five hundred dollars ($500.00)."

Section 3. G.S. 131E-97.1(b) is repealed.

Section 4. G.S. 130A-131.10 reads as rewritten:

"**§ 130A-131.10. Manner of disposition of remains of ~~terminated~~ pregnancies.**

(a) The Commission for Health Services shall adopt rules to ensure that all facilities authorized to terminate pregnancies, and all medical or research laboratories or facilities to which the remains of terminated pregnancies are sent by facilities authorized to terminate pregnancies, shall dispose of the remains in a manner limited to burial, cremation, ~~or~~ or, except as prohibited by subsection (b) of this section, approved hospital type of incineration. ~~Rules adopted pursuant to this section shall provide that the obligation to dispose of the remains of terminated pregnancies by a facility authorized to terminate pregnancies ceases as to any remains of terminated pregnancies that the facility has sent to a medical or research laboratory or facility.~~

(b) A hospital or other medical facility or a medical or research laboratory or facility shall dispose of the remains of a recognizable fetus only by burial or cremation. The Commission shall adopt rules to implement this subsection.

(c) A hospital or other medical facility is relieved from the obligation to dispose of the remains in accordance with subsections (a) and (b) of this section if it sends the remains to a medical or research laboratory or facility.

(d) This section does not impose liability on a permitted medical waste treatment facility for a hospital's or other medical facility's violation of this section nor does it impose any additional duty on the treatment facility to inspect waste received from the hospital or medical facility to determine compliance with this section."

Section 5. Section 4 of this act becomes effective October 1, 1997. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 1055
Rules and Operations of the Senate Committee Substitute Adopted 4/29/97

Short Title: Public Hospital Personnel Act. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT ESTABLISHING THE PUBLIC HOSPITAL PERSONNEL ACT.

The General Assembly of North Carolina enacts:

Section 1. This act shall be known as the "Public Hospital Personnel Act of 1997".

Section 2. Chapter 131E of the General Statutes is amended by adding the following new Article to read:

"ARTICLE 15A.

"Public Hospital Personnel Act.

"§ 131E-257. Title; purpose; applicability of other laws; 'public hospital' defined.

(a) This Article shall be known and may be cited as the 'Public Hospital Personnel Act'.

(b) The purpose of this Article is to protect the privacy of the personnel records of public hospital employees and to authorize public hospitals to determine employee compensation and personnel policies and to establish employee benefit plans.

(c) Unless otherwise provided, none of the provisions of Part 4, Article 5, Chapter 153A and Part 4, Article 7, Chapter 160A shall apply to public hospitals.

(d) If any provision of this Article is inconsistent with any provision of any other law, the provision of this Article shall be controlling.

(e) As used in this Article, unless the context clearly indicates otherwise, the term 'public hospital' has the same meaning as in G.S. 159-39.

"§ 131E-257.1. Compensation; personnel policies; employee benefits plans.

(a) A public hospital shall determine the pay, expense allowances, and other compensation of its officers and employees, and may establish position classification and pay plans and incentive compensation plans.

(b) A public hospital may:

(1) Adopt personnel policies and procedures regarding, without limitation, vacations, personal leave, service award programs, other personnel policies and procedures, and any other measures that enhance the ability of a public hospital to hire and retain employees.

(2) Determine the work hours, workdays, and holidays applicable to its employees.

(3) Establish and pay all or part of the cost of benefit plans for its employees and former employees, including without limitation, life, health and disability plans, pension, profit sharing, deferred compensation and other retirement plans, and other fringe benefit plans.

(4) Pay severance payments and provide other employee severance benefits to its employees and former employees pursuant to a severance plan established in connection with a reduction in the size of the workforce of a public hospital or, with respect to an individual employee, pursuant to an employment agreement entered into prior to the date the employee receives notice of termination of employment.

(c) The provisions of G.S. 159-30 and G.S. 159-31 are not applicable to public hospitals with respect to the investment of escrowed or trusteed retirement and deferred compensation funds. Public hospitals may invest such escrowed and trusteed funds in property or securities in which trustees, guardians, personal representatives, and others acting in a fiduciary capacity may legally invest funds under their control.

"§ 131E-257.2. Privacy of employee personnel records.

(a) Notwithstanding the provisions of G.S. 132-6 or any other general law or local act concerning access to public records, personnel files of employees and applicants for employment maintained by a public hospital are subject to inspection and may be disclosed only as provided by this section. For purposes of this section, an employee's personnel file consists of any information in any form gathered by the public hospital with respect to an employee and, by way of illustration but not limitation, relating to the employee's application, selection or nonselection, performance, promotions, demotions, transfers, suspensions and other disciplinary actions, evaluation forms, leave, salary, and termination of employment. As used in this section, 'employee' includes both current and former employees of a public hospital.

(b) The following information with respect to each public hospital employee is a matter of public record:

(1) Name.

(2) Age.

(3) Date of original employment.
(4) Current position title, current salary, and the date and amount of the most recent increase or decrease in salary.
(5) Date of the most recent promotion, demotion, transfer, suspension, separation or other change in position classification.
(6) The office to which the employee is currently assigned.

In addition, the following information with respect to each licensed medical provider employed by or having privileges to practice in a public hospital shall be a matter of public record: educational history and qualifications, date and jurisdiction or original and current licensure; and information relating to medical board certifications or other qualifications of medical specialists.

The governing board of a public hospital shall determine in what form and by whom this information will be maintained. Any person may have access to this information for the purpose of inspection, examination, and copying, during regular business hours, subject only to such rules and regulations for the safekeeping of public records as the governing board of the public hospital may have adopted. Any person denied access to this information may apply to the appropriate division of the General Court of Justice for an order compelling disclosure, and the court shall have jurisdiction to issue such orders.

(c) All information contained in a public hospital employee's personnel file, other than the information made public by subsection (b) of this section, is confidential and shall be open to inspection only in the following instances:

(1) The employee or the employee's duly authorized agent may examine all portions of the employee's personnel file, except letters of reference solicited prior to employment.
(2) A licensed physician designated in writing by the employee may examine the employee's medical record.
(3) A public hospital employee having supervisory authority over the employee may examine all material in the employee's personnel file.
(4) By order of a court of competent jurisdiction, any person may examine such portion of an employee's personnel file as may be ordered by the court.
(5) An official of an agency of the State or federal government, or any political subdivision of the State, may inspect any portion of a personnel file when the inspection is deemed by the person having custody of the file to be inspected to be necessary and essential to the pursuance of a proper function of the inspecting agency, but no information shall be divulged for the purpose of assisting in criminal prosecution of the employee, or for the purpose of assisting in an investigation of the employee's tax liability. However, the official having custody of the records may release the name, address, and telephone number from a personnel file for the purpose of assisting in a criminal investigation.

(6) An employee may sign a written release, to be placed with the employee's personnel file, that permits the person with custody of the file to provide, either in person, by telephone, or by mail, information specified in the release to prospective employers, educational institutions, or other persons specified in the release.

(d) Even if considered part of an employee's personnel file, the following information need not be disclosed to an employee nor to any other person:

(1) Testing or examination material used solely to determine individual qualifications for appointment, employment, or promotion in the public hospital's service, when disclosure would compromise the objectivity or the fairness of the testing or examination process.

(2) Investigative reports or memoranda and other information concerning the investigation of possible criminal actions of an employee, until the investigation is completed and no criminal action taken, or until the criminal action is concluded.

(3) Information that might identify an undercover law enforcement officer or a law enforcement informer.

(4) Notes, preliminary drafts, and internal communications concerning an employee. In the event such materials are used for any official personnel decision, then the employee or his duly authorized agent shall have a right to inspect such materials.

(e) The governing board of a public hospital may permit access, subject to limitations they may impose, to selected personnel files by a professional representative of a training, research, or academic institution if that representative certifies that he or she will not release information identifying the employees whose files are opened and that the information will be used solely for statistical, research, or teaching purposes. This certification shall be retained by the public hospital as long as each personnel file so examined is retained.

(f) The governing board of a public hospital that maintains personnel files containing information other than the information mentioned in subsection (b) of this section shall establish procedures whereby an employee who objects to material in his or her file on grounds that it is inaccurate or misleading may seek to have the material removed from the file or may place in the file a statement relating to the material.

(g) A public hospital director, trustee, officer, or employee who knowingly, willfully, and with malice permits any person to have access to information contained in a personnel file, except as is permitted by this section, is guilty of a Class 3 misdemeanor; however, conviction under this subsection shall be punishable only by a fine not to exceed five hundred dollars ($500.00).

(h) Any person not specifically authorized by this section to have access to a personnel file designated as confidential, who shall knowingly and willfully examine in its official filing place, or remove, or copy any portion of a confidential personnel file shall be guilty of a Class 3 misdemeanor; however, conviction under this

subsection shall be punishable, in the discretion of the court, by a fine not to exceed five hundred dollars ($500.00)."

Section 3. G.S. 131E-97.1(b) is repealed.

Section 4. This act is effective when it becomes law.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House.**

☐ Committee Substitute for
S.B. 996 A BILL TO BE ENTITLED AN ACT TO EXEMPT FROM THE PLUMBING LICENSURE REQUIREMENTS CERTAIN PERSONS PERFORMING ON-SITE ASSEMBLY OF FACTORY DESIGNED DRAIN SYSTEMS UNDERNEATH MANUFACTURED HOMES.

☒ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 996

Short Title: Plumbing License Exemption. (Public)

Sponsors: Senators Warren; and Albertson.

Referred to: Commerce.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO EXEMPT FROM THE PLUMBING LICENSURE REQUIREMENTS CERTAIN PERSONS PERFORMING ON-SITE ASSEMBLY OF FACTORY DESIGNED DRAIN SYSTEMS UNDERNEATH MANUFACTURED HOMES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 87-21 reads as rewritten:

"**§ 87-21. Definitions; contractors licensed by Board; examination; posting license, etc.**

(a) Definitions. -- For the purpose of this Article:

(1) The word 'plumbing' is hereby defined to be the system of pipes, fixtures, apparatus and appurtenances, installed upon the premises, or in a building, to supply water thereto and to convey sewage or other waste therefrom.

(2) The phrase 'heating, group number one' shall be deemed and held to be the heating system of a building, which requires the use of high or low pressure steam, vapor or hot water, including all piping, ducts, and mechanical equipment appurtenant thereto, within, adjacent to or connected with a building, for comfort heating.

(3) The phrase 'heating, group number two' means an air conditioning system which consists of an assemblage of interacting components producing conditioned air for comfort cooling by the lowering of temperature, and having a mechanical refrigeration capacity in excess of fifteen tons, and which circulates air.

(4) The phrase 'heating, group number three' shall be deemed and held to be a direct heating system of a building which produces heat to raise the temperature of the space within the building for the purpose of comfort in which electric heating elements or products of combustion exchange heat either directly with the building supply air or indirectly through a heat exchanger and using an air distribution system of ducts. A heating system requiring air distribution ducts and supplied by ground water or utilizing a coil supplied by water from a domestic hot water heater not exceeding 150 Fahrenheit requires either plumbing or heating group number one license to extend piping from valved connections in the domestic hot water system to the heating coil and requires either heating group number one or heating group number three license for installation of coil, duct work, controls, drains and related appurtenances.

(5) Any person, firm or corporation, who for a valuable consideration, (i) installs, alters or restores, or offers to install, alter or restore, either plumbing, heating group number one, or heating group number two, or heating group number three, or (ii) lays out, fabricates, installs, alters or restores, or offers to lay out, fabricate, install, alter or restore fire sprinklers, or any combination thereof, as defined in this Article, shall be deemed and held to be engaged in the business of plumbing, heating, or fire sprinkler contracting; provided, however, that nothing herein shall be deemed to restrict the practice of qualified registered professional engineers. Any person who installs a plumbing, heating, or fire sprinkler system on property which at the time of installation was intended for sale or to be used primarily for rental is deemed to be engaged in the business of plumbing, heating, or fire sprinkler contracting without regard to receipt of consideration, unless exempted elsewhere in this Article.

(6) The word 'contractor' is hereby defined to be a person, firm or corporation engaged in the business of plumbing, heating, or fire sprinkler contracting.

(7) The word 'heating' shall be deemed and held to mean heating group number one, heating group number two, heating group number three, or any combination thereof.

~~(8) The obtaining of a license, as required by this Article, shall not of itself authorize the practice of another profession or trade for which a State qualification license is required.~~

(9) The word 'Board' means the State Board of Examiners of Plumbing, Heating, and Fire Sprinkler Contractors.

(10) The word 'experience' means actual and practical work directly related to the category of plumbing, heating group number one,

heating group number two, heating group number three, or fire sprinkler contracting, and includes related work for which a license is not required.

(11) The phrase 'fire sprinkler' means an automatic or manual sprinkler system designed to protect the interior or exterior of a building or structure from fire, and where the primary extinguishing agent is water. These systems include wet pipe and dry pipe systems, preaction systems, water spray systems, foam water sprinkler systems, foam water spray systems, nonfreeze systems, and circulating closed-loop systems. These systems also include the overhead piping, combination standpipes, inside hose connections, thermal systems used in connection with the sprinklers, tanks, and pumps connected to the sprinklers, and controlling valves and devices for actuating an alarm when the system is in operation. This subsection shall not apply to owners of property who are building or improving farm outbuildings. This subsection shall not include water and standpipe systems having no connection with a fire sprinkler system. Nothing herein shall prevent licensed plumbing contractors, utility contractors, or fire sprinkler contractors from installing underground water supplies for fire sprinkler systems.

(b) Classes of Licenses; Eligibility and Examination of Applicant; Necessity for License. -- In order to protect the public health, comfort and safety, the Board shall establish two classes of licenses: Class I covering all plumbing, heating, and fire sprinkler systems for all structures, and Class II covering plumbing and heating systems in single-family detached residential dwellings. The Board shall prescribe the standard of competence, experience and efficiency to be required of an applicant for license of each class, and shall give an examination designed to ascertain the technical and practical knowledge of the applicant concerning the analysis of plans and specifications, estimating costs, fundamentals of installation and design, codes, fire hazards, and related subjects as these subjects pertain to plumbing, heating, or fire sprinkler systems. The examination for a fire sprinkler contractor's license shall include such materials as would test the competency of the applicant and which may include the minimum requirements of certification for Level III, subfield of Automatic Sprinkler System Layout, National Institute for Certification of Engineering Technologies (NICET).

As a result of the examination, the Board shall issue a certificate of license of the appropriate class in plumbing, heating, or fire sprinkler contracting, and a license shall be obtained, in accordance with the provisions of this Article, before any person, firm or corporation shall engage in, or offer to engage in, the business of plumbing, heating, or fire sprinkler contracting, or any combination thereof. <u>The obtaining of a license, as required by this Article, shall not of itself authorize the practice of another profession or trade for which a State qualification license is required.</u> The Board may require experience as a condition of examination, provided

that (i) the experience required may not exceed two years, (ii) that up to one-half the experience may be in the form of academic or technical courses of study, and (iii) that registration is not required at the commencement of the period of experience. Conditions of examination set by the Board shall be uniformly applied to each applicant within each license classification. It is the purpose and intent of this section that the Board shall provide an examination for plumbing, heating group number one, or heating group number two, or heating group number three, and may provide an examination for fire sprinkler contracting or may accept a current certification of the National Institute for Certification in Engineering Technologies for Fire Protection Engineering Technician, Level III, subfield of Automatic Sprinkler System Layout. The Board is authorized to issue a certificate of license limited to either plumbing or heating group number one, or heating group number two, or heating group number three, or fire sprinkler contracting, or any combination thereof.

Each application for examination shall be accompanied by a check, post-office money order, or cash, in the amount of the annual license fee required by this Article. Regular examinations shall be given in the months of April and October of each year, and additional examinations may be given at such other times as the Board may deem wise and necessary. Any person may demand in writing a special examination, and upon payment by the applicant of the cost of holding such examination and the deposit of the amount of the annual license fee, the Board in its discretion will fix a time and place for such examination. Upon satisfactory proof of the applicant's inability to write and upon demand of an applicant for a Class II plumbing or heating license six weeks prior to an examination, the Board shall conduct the examination of that applicant orally, and shall not require that applicant to take a written examination as to examination inquiries answered other than by preparation of diagrams. Signed statements from two reliable citizens resident in the home county of the applicant shall constitute satisfactory proof of an applicant's inability to write. A person who fails to pass any examination shall not be reexamined until the next regular examination.

(c) To Whom Article Applies. -- The provisions of this Article shall apply to all persons, firms, or corporations who engage in, or attempt to engage in, the business of plumbing, heating, or fire sprinkler contracting, or any combination thereof as defined in this Article. The provisions of this Article shall not apply to those who make minor repairs or minor replacements to an already installed system of plumbing or heating, but shall apply to those who make repairs, replacements, or modifications to an already installed fire sprinkler system.

(c1) Exemption. -- The provisions of this Article shall not apply to a person who performs the on-site assembly of a factory designed drain line system for a manufactured home, as defined in G.S. 143-143.9(6), if the person is a licensed manufactured home retailer, a licensed manufactured home set-up contractor, or an employee of either, and the person performs the assembly according to factory instructions. The assembly of the drain system shall be approved by a local building inspector.

(d) Repealed by Session Laws 1979, c. 834, s. 7.

(d1) Expired.

(e) Posting License; License Number on Contracts, etc. -- The current license issued in accordance with the provisions of this Article shall be posted in the business location of the licensee, and its number shall appear on all proposals or contracts and requests for permits issued by municipalities. The initial qualified licensee on a license is the permanent possessor of the license number under which that license is issued, except that a licensee, or the licensee's legal agent, personal representative, heirs or assigns, may designate in writing to the Board a qualified licensee to whom the Board shall assign the license number upon the payment of a ten dollar ($10.00) assignment fee. Upon such assignment, the qualified licensee becomes the permanent possessor of the assigned license number. Notwithstanding the foregoing, the license number may be assigned only to a qualified licensee who has been employed by the initial licensee's plumbing and heating company for at least 10 years or is a lineal relative, sibling, first cousin, nephew, niece, daughter-in-law, son-in-law, brother-in-law, or sister-in-law of the initial licensee. Each successive licensee to whom a license number is assigned under this subsection may assign the license number in the same manner as provided in this subsection.

(f) Repealed by Session Laws 1971, c. 768, s. 4.

(g) The Board may, in its discretion, grant to plumbing, heating, or fire sprinkler contractors licensed by other states license of the same or equivalent classification without written examination upon receipt of satisfactory proof that the qualifications of such applicants are substantially equivalent to the qualifications of holders of similar licenses in North Carolina and upon payment of the usual license fee.

(h) Expired."

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

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House.**

☒ Committee Substitute for

S.B. 862 A BILL TO BE ENTITLED AN ACT TO PROVIDE GREATER FLEXIBILITY TO THE UNIVERSITY OF NORTH CAROLINA IN NEGOTIATING CERTAIN CONTRACTS AND CAPITAL PROJECTS, TO INCREASE THE BENCHMARK FOR PURCHASES BY THE UNIVERSITY OF NORTH CAROLINA AND OTHER STATE AGENCIES, AND TO AUTHORIZE EMPLOYEE PAYROLL DEDUCTIONS FOR CERTAIN DISCRETIONARY PRIVILEGES OF UNIVERSITY SERVICE AT THE UNIVERSITY OF 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 862
Judiciary Committee Substitute Adopted 4/28/97
Proposed Committee Substitute S862-PCS7822

Short Title: UNC Contracts Negotiations. (Public)

Sponsors:

Referred to:

April 15, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE GREATER FLEXIBILITY TO THE UNIVERSITY OF NORTH CAROLINA AND OTHER AGENCIES IN NEGOTIATING CERTAIN CONTRACTS AND CAPITAL PROJECTS, TO INCREASE THE BENCHMARK FOR PURCHASES BY THE UNIVERSITY OF NORTH CAROLINA AND OTHER STATE AGENCIES, AND TO AUTHORIZE EMPLOYEE PAYROLL DEDUCTIONS FOR CERTAIN DISCRETIONARY PRIVILEGES OF UNIVERSITY SERVICE AT THE UNIVERSITY OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. Article 1 of Chapter 116 of the General Statutes is amended by adding two new sections to read:

"**§ 116-31.10. Powers of Board regarding certain purchasing contracts.**

Notwithstanding G.S. 143-53.1 or G.S. 143-53(a)(2), the expenditure benchmark for a special responsibility constituent institution with regard to competitive bid procedures and the bid value benchmark shall be an amount not greater than two hundred fifty thousand dollars ($250,000). The Board shall set the benchmark for each institution from time to time. In setting an institution's benchmark in accordance with this section, the Board shall consider the institution's overall capabilities including staff resources, purchasing compliance reviews, and audit reports. The Board shall also consult with the Director of the Division of Purchase and Contract and the Director of the Budget prior to setting the benchmark.

"§ 116-31.11. Powers of Board regarding certain fee negotiations, contracts, and capital improvements.

(a) Notwithstanding G.S. 143-341(3), 143-135.1, and 143-31.1, the Board shall, with respect to the design, construction, or renovation of buildings, utilities, and other property developments of The University of North Carolina requiring the estimated expenditure of public money of five hundred thousand dollars ($500,000) or less:

(1) Conduct the fee negotiations for all design contracts and supervise the letting of all construction and design contracts.

(2) Develop procedures governing the responsibilities of The University of North Carolina and its affiliated and constituent institutions to perform the duties of the Department of Administration, the Director of the Budget, and the Director or Office of State Construction under G.S. 133-1.1(d), 143-341(3), and 143-31.1.

(3) Develop procedures and reasonable limitations governing the use of open-end design agreements, subject to G.S. 143-64.34 and the approval of the State Building Commission.

(b) The Board may delegate its authority under subsection (a) of this section to a constituent or affiliated institution if the institution is qualified under guidelines adopted by the Board and approved by the State Building Commission and the Director of the Budget.

(c) The University shall use the standard contracts for design and construction currently in use for State capital improvement projects by the Office of State Construction of the Department of Administration.

(d) A contract may not be divided for the purpose of evading the monetary limit under this section."

Section 2. G.S. 143-52 reads as rewritten:

"**§ 143-52. Competitive bidding procedure; consolidation of estimates by Secretary; bids; awarding of contracts.**

As feasible, the Secretary of Administration will compile and consolidate all such estimates of supplies, materials, printing, equipment and contractual services needed and required by State departments, institutions and agencies to determine the total requirements of any given commodity. Where such total requirements will involve an expenditure in excess of the expenditure benchmark established under the provisions of G.S. 143-53.1 and where the competitive bidding procedure is employed as hereinafter provided, sealed bids shall be solicited by advertisement in a newspaper ~~of statewide circulation~~ widely distributed in this State or through electronic means, or both, as determined by the Secretary to be most advantageous, at least once and at least 10 days prior to the date designated for opening. ~~opening of the bids and awarding of the contract: Provided, other methods of advertisement may be adopted by the Secretary of Administration when such other method is deemed more advantageous for certain items or commodities. Regardless of the amount of the expenditure, under the competitive bidding procedure it shall be the duty of the Secretary of Administration to solicit bids direct by mail from qualified sources of~~

~~supply.~~ Except as otherwise provided under this Article, contracts for the purchase of supplies, materials or equipment shall be based on competitive bids and acceptance made of the lowest and best bid(s) most advantageous to the State as determined upon consideration of the following criteria: prices offered; the quality of the articles offered; the general reputation and performance capabilities of the bidders; the substantial conformity with the specifications and other conditions set forth in the request for bids; the suitability of the articles for the intended use; the personal or related services needed; the transportation charges; the date or dates of delivery and performance; and such other factor(s) deemed pertinent or peculiar to the purchase in question, which if controlling shall be made a matter of record. Competitive bids on such contracts shall be received in accordance with rules and regulations to be adopted by the Secretary of Administration, which rules and regulations shall prescribe for the manner, time and place for proper advertisement for such bids, the time and place when bids will be received, the articles for which such bids are to be submitted and the specifications prescribed for such articles, the number of the articles desired or the duration of the proposed contract, and the amount, if any, of bonds or certified checks to accompany the bids. Bids shall be publicly opened. Any and all bids received may be rejected. Each and every bid conforming to the terms of the invitation, together with the name of the bidder, shall be tabulated ~~or otherwise entered as a matter of record, and all such records with the name of the successful bidder indicated thereon shall, after the award of the contract, be open to public inspection.~~ and that tabulation shall become public record in accordance with the rules adopted by the Secretary. All contract information shall be made a matter of public record after the award of contract. Provided, that trade secrets, test data and similar proprietary information may remain confidential. A bond for the faithful performance of any contract may be required of the successful bidder at bidder's expense and in the discretion of the Secretary of Administration. After contracts have been awarded, the Secretary of Administration shall certify to the departments, institutions and agencies of the State government the sources of supply and the contract price of the supplies, materials and equipment so contracted for. Prior to adopting other methods of advertisement under this section, the Secretary of Administration may consult with the Advisory Budget Commission. Prior to adopting rules and regulations under this section, the Secretary of Administration may consult with the Advisory Budget Commission."

Section 3. G.S. 143-53(a) reads as rewritten:

"(a) The Secretary of Administration may adopt rules governing the following:

(1) Prescribing the routine and procedures to be followed in canvassing bids and awarding contracts, and for reviewing decisions made pursuant thereto, and the decision of the reviewing body shall be the final administrative review.

(2) Prescribing ~~routine~~ routine, including consistent contract language, for securing bids on items that do not exceed the bid value benchmark established under the provisions of G.S. ~~143-53.1.~~ 143-53.1 or G.S. 116-31.10.

The purchasing delegation for securing offers, (excluding the special responsibility constituent institutions of The University of North Carolina), for each State department, institution, agency, community college, and public school administrative unit shall be determined by the Director of the Division of Purchase and Contract. For the State agencies this shall be done following the Director's consultation with the State Budget Officer and the State Auditor. The Director for the Division of Purchase and Contract may set or lower the delegation, or raise the delegation upon written request by the agency, after consideration of their overall capabilities, including staff resources, purchasing compliance reviews, and audit reports of the individual agency. The routine prescribed by the Secretary shall include contract award protest procedures and consistent requirements for advertising of solicitations for securing offers issued by State departments, institutions, universities (including the special responsibility constituent institutions of The University of North Carolina), agencies, community colleges, and the public school administrative units.

(3) Defining contractual services for the purposes of G.S. ~~143-49(3).~~ 143-49(3) and G.S. 143-49(5).

(4) Prescribing items and quantities, and conditions and procedures, governing the acquisition of goods and services which may be delegated to departments, institutions and agencies, notwithstanding any other provisions of this Article.

(5) Prescribing conditions under which purchases and contracts for the purchase, rental or lease of equipment, materials, supplies or services may be entered into by means other than competitive bidding.

(6) Prescribing conditions under which partial, progressive and multiple awards may be made.

(7) Prescribing conditions and procedures governing the purchase of used equipment, materials and supplies.

(8) Providing conditions under which bids may be rejected in whole or in part.

(9) Prescribing conditions under which information submitted by bidders or suppliers may be considered proprietary or confidential.

(10) Prescribing procedures for making purchases under programs involving participation by two or more levels or agencies of government, or otherwise with funds other than State-appropriated.

(11) Prescribing procedures to encourage the purchase of North Carolina farm products, and products of North Carolina manufacturing enterprises.

(12) Repealed by Session Laws 1987, c. 827, s. 216."

Section 4. G.S. 143-53.1 reads as rewritten:

"**§ 143-53.1. Setting of benchmarks; increase by Secretary.**

On and after July 1, ~~1990,~~ 1997, the ~~expenditure benchmark~~ procedures prescribed by G.S. 143-52 with respect to competitive ~~bid procedures~~ bids and the bid value benchmark authorized by G.S. ~~143-53(2)~~ 143-53(a)(2) with respect to rule making by the Secretary of Administration for competitive bidding shall be ~~ten thousand dollars ($10,000);~~ no more than twenty-five thousand dollars ($25,000); provided, the Secretary of Administration may, in his or her discretion, increase the benchmarks effective as of the beginning of any fiscal biennium of the State commencing after June 30, ~~1992,~~ 1999, in an amount whose increase, expressed as a percentage, does not exceed the rise in the Consumer Price Index during the fiscal biennium next preceding the effective date of the benchmark increase. For a special responsibility constituent institution of The University of North Carolina, the benchmark prescribed in this section shall be ~~thirty-five thousand dollars ($35,000).~~ as provided in G.S. 116-31.10."

Section 5. G.S. 143-64.34 reads as rewritten:

"**§ 143-64.34. Exemption of certain ~~State Capital Improvement Projects.~~ projects.**

(a) State Capital Improvement Projects under the jurisdiction of the State Building Commission where the estimated expenditure of public money is less than ~~fifty thousand dollars ($50,000)~~ one hundred thousand dollars ($100,000) are exempt from the provisions of this Article.

(b) A capital improvement project of The University of North Carolina under G.S. 116-31.11 where the estimated expenditure of public money is less than three hundred thousand dollars ($300,000) is exempt from this Article if:

(1) The architectural, engineering, or surveying services to be rendered are under an open-end design agreement;

(2) The open-end design agreement has been publicly announced; and

(3) The open-end design agreement complies with procedures adopted by the University and approved by the State Building Commission under G.S. 116-31.11(a)(3)."

Section 5.1. Effective July 1, 2001, G.S. 143-64.34, as amended by Section 5 of this act, reads as rewritten:

"**§ 143-64.34. Exemption of certain projects.**

~~(a)~~ State Capital Improvement Projects under the jurisdiction of the State Building Commission where the estimated expenditure of public money is less than hundred thousand dollars ($100,000) are exempt from the provisions of this Article.

~~(b) A capital improvement project of the University of North Carolina under G.S. 116-31.11 where the estimated expenditure of public money is less than three hundred thousand dollars ($300,000) is exempt from this Article if:~~

~~(1) The architectural, engineering, or surveying services to be rendered are under an open-end design agreement;~~

~~(2) The open-end design agreement has been publicly announced; and~~

~~(3) The open-end design agreement complies with procedures adopted by the University and approved by the State Building Commission under G.S. 116-31.11(a)(3).~~"

Section 6. G.S. 143-341(3) reads as rewritten:

"(3) Architecture and Engineering:

a. To examine and approve all plans and specifications for the construction or renovation of:

1. All State buildings; and

2. All community college buildings requiring the estimated expenditure for construction or repair work for which public bidding is required under G.S. 143-129

prior to the awarding of a contract for such work; and to examine and approve all changes in those plans and specifications made after the contract for such work has been awarded.

b. To prepare preliminary studies and cost estimates and otherwise to assist all agencies in the preparation of requests for appropriations for the construction or renovation of all State buildings.

c. To supervise the letting of all contracts for the design, construction or renovation of all State buildings and all community college buildings whose plans and specifications must be examined and approved under a.2. of this subdivision.

d. To supervise and inspect all work done and materials used in the construction or renovation of all State buildings and all community college buildings whose plans and specifications must be examined and approved under a.2. of this subdivision; and no such work may be accepted by the State or by any State agency until it has been approved by the Department.

Except for sub-subdivision b., this subdivision does not apply to the design, construction, or renovation or projects by The University of North Carolina pursuant to G.S. 116-31.11."

Section 7. G.S. 143-135.3 reads as rewritten:

"**§ 143-135.3. Adjustment and resolution of State board construction contract claim.**

(a) The word 'board' as used in this section shall mean the State of North Carolina or any board, bureau, commission, institution, or other agency of the State, as distinguished from a board or governing body of a subdivision of the State. 'A contract for construction or repair work,' as used in this section, is defined as any contract for the construction of buildings and appurtenances thereto, including, but not by way of limitation, utilities, plumbing, heating, electrical, air conditioning, elevator, excavation, grading, paving, roofing, masonry work, tile work and painting,

and repair work as well as any contract for the construction of airport runways, taxiways and parking aprons, sewer and water mains, power lines, docks, wharves, dams, drainage canals, telephone lines, streets, site preparation, parking areas and other types of construction on which the Department of Administration or The University of North Carolina enters into contracts.

'Contractor' as used in this section includes any person, firm, association or corporation which has contracted with a State board for architectural, engineering or other professional services in connection with construction or repair work as well as those persons who have contracted to perform such construction or repair work.

(b) A contractor who has not completed a contract with a board for construction or repair work and who has not received the amount he claims is due under the contract may submit a verified written claim to the Director of the Office of State Construction of the Department of Administration for the amount the contractor claims is due. The Director may deny, allow, or compromise the claim, in whole or in part. A claim under this subsection is not a contested case under Chapter 150B of the General Statutes.

(c) A contractor who has completed a contract with a board for construction or repair work and who has not received the amount he claims is due under the contract may submit a verified written claim to the Director of the Office of State Construction of the Department of Administration for the amount the contractor claims is due. The claim shall be submitted within 60 days after the contractor receives a final statement of the board's disposition of his claim and shall state the factual basis for the claim.

The Director shall investigate a submitted claim within 90 days of receiving the claim, or within any longer time period upon which the Director and the contractor agree. The contractor may appear before the Director, either in person or through counsel, to present facts and arguments in support of his claim. The Director may allow, deny, or compromise the claim, in whole or in part. The Director shall give the contractor a written statement of the Director's decision on the contractor's claim.

A contractor who is dissatisfied with the Director's decision on a claim submitted under this subsection may commence a contested case on the claim under Chapter 150B of the General Statutes. The contested case shall be commenced within 60 days of receiving the Director's written statement of the decision.

(c1) A contractor who is dissatisfied with the Director's decision on a claim submitted under subsection (c) of this section may commence a contested case on the claim under Chapter 150B of the General Statutes. The contested case shall be commenced within 60 days of receiving the Director's written statement of the decision.

(d) As to any portion of a claim that is denied by the Director, the contractor may, in lieu of the procedures set forth in the preceding subsection of this section, within six months of receipt of the Director's final decision, institute a civil action for the sum he claims to be entitled to under the contract by filing a verified complaint and the issuance of a summons in the Superior Court of Wake County or in the

superior court of any county where the work under the contract was performed. The procedure shall be the same as in all civil actions except that all issues shall be tried by the judge, without a jury.

(e) The provisions of this section are part of every contract for construction or repair work made by a board and a contractor. A provision in a contract that conflicts with this section is invalid."

Section 8. G.S. 150B-1(f) reads as rewritten:

"(f) Exemption ~~from All But Judicial Review.~~ for The University of North Carolina. -- ~~No~~ Except as provided in G.S. 143-135.3, no Article in this Chapter except Article 4 applies to The University of North Carolina."

Section 9. G.S. 143-3.3 is amended by adding a new subsection to read:

"(k) Payroll Deduction for University of North Carolina System Employees to Pay for Discretionary Privileges of University Service. -- Subject to rules adopted by the State Controller, if a constituent institution of The University of North Carolina approves a payroll deduction plan under this subsection, an employee of the constituent institution may authorize, in writing, the periodic deduction from the employee's salary or wages paid for employment by the constituent institution, of one or more designated lump sums to be applied to the cost of corresponding discretionary privileges available at employee expense from the employing institution. Discretionary privileges from the employing institution that may be paid for through this subsection include parking privileges, athletic passes, use of recreational facilities, admission to campus concert series, and access to other institutionally hosted or provided entertainments, events, and facilities."

Section 10. G.S. 143-135.1 reads as rewritten:

"**§ 143-135.1. State buildings exempt from county and municipal building requirements; consideration of recommendations by counties and municipalities.**

(a) Buildings constructed by the State of North Carolina or by any agency or institution of the State in accordance with plans and specifications approved by the Department of Administration or by The University of North Carolina or one of its affiliated or constituent institutions pursuant to G.S. 116-31.11 shall not be subject to inspection by any county or municipal authorities and shall not be subject to county or municipal building codes and requirements.

(b) Inspection fees fixed by counties and municipalities shall not be applicable to such construction by the State of North Carolina. County and municipal authorities may inspect any plans or specifications upon their request to the Department of ~~Administration,~~ Administration or, with respect to projects under G.S. 116-31.11, The University of North Carolina, and any and all recommendations made by them shall be given ~~consideration by the Department of Administration.~~ consideration. Requests by county and municipal authorities to inspect plans and specifications for State projects shall be on the basis of a specific project. Should any agency or institution of the State require the services of county or municipal authorities, notice shall be given for the need of such services, and appropriate fees for such services shall be paid to the county or municipality; provided, however, that the application for such services to be rendered by any county or municipality shall have prior written approval of the

Department of ~~Administration.~~ Administration, or with respect to projects under G.S. 116-31.11, The University of North Carolina.

(c) Notwithstanding any law to the contrary, including any local act, no county or municipality may impose requirements that exceed the North Carolina State Building Code regarding the design or construction of buildings constructed by the State of North Carolina."

Section 11. G.S. 133-1.1(d) reads as rewritten:

"(d) On projects on which no registered architect or engineer is required pursuant to the provisions of this section, the governing board or awarding authority shall require a certificate of compliance with the State Building Code from the city or county inspector for the specific trade or trades involved or from a registered architect or engineer, except that the provisions of this subsection shall not apply on projects (i) wherein plans and specifications are approved by the Department of Administration, Division of State Construction, and the completed project is inspected by the Division of State Construction and the State Electrical Inspector, ~~or on projects~~ (ii) that are exempt from the State Building ~~Code.~~ Code, or (iii) that are subject to G.S. 116-31.11 and the completed project is inspected by the State Electrical Inspector and by The University of North Carolina or its constituent or affiliated institution."

Section 12. (a) The Office of State Budget and Management and the State Building Commission shall evaluate the process and quality of construction completed under G.S. 116-31.11 as enacted by this act. The evaluation shall include an analysis of the time required to complete projects, project savings or costs, necessary increases or decreases in staffing, if any, any other benefits or detriments regarding the delegation of authority under G.S. 116-31.11; recommendations regarding the continuance of the delegated powers, continuance with modifications, expansion, or discontinuance. The Office of State Budget and Management and the State Building Commission shall jointly report their findings and recommendations to the Board of Governors of The University of North Carolina and to the General Assembly by April 15, 2001.

(b) The Board of Governors of The University of North Carolina shall report to the Joint Legislative Commission on Governmental Operations, the State Building Commission, and the Director of the Budget no later than December 1, 1997, on the procedures it intends to implement pursuant to G.S. 116-31.11, as enacted in Section 1 of this act. The State Building Commission shall report to the General Assembly no later than June 1, 1998, with respect to action taken pursuant to G.S. 116-31.11(a)(3) and (b).

Section 13. The Office of State Budget and Management shall evaluate the effectiveness and efficiency of the increase of the purchasing benchmark and its delegation to the special responsibility constituent institutions under G.S. 116-31.10 and other agencies under G.S. 143-53.1 and G.S. 143-53(a)(2). In its evaluation, the Office of State Budget and Management shall consider such factors as costs of goods and services purchased, administrative costs, effective time for completion of the purchasing process, agency satisfaction, vendor reactions, and other factors it deems

appropriate. The Office of State Budget and Management shall report its findings and recommendations to the General Assembly by April 15, 2001.

Section 14. This section and Section 12(b) of this act are effective when they become law. Section 5.1 becomes effective July 1, 2001. The remainder of this act becomes effective January 1, 1998. Sections 5, 6, 7, 8, 10, and 11 of this act and G.S. 116-31.11, as enacted by Section 1 of this act, expire July 1, 2001.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 862
Judiciary Committee Substitute Adopted 4/28/97

Short Title: UNC Contracts Negotiations. (Public)

Sponsors:

Referred to:

April 15, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE GREATER FLEXIBILITY TO THE UNIVERSITY OF NORTH CAROLINA IN NEGOTIATING CERTAIN CONTRACTS AND CAPITAL PROJECTS, TO INCREASE THE BENCHMARK FOR PURCHASES BY THE UNIVERSITY OF NORTH CAROLINA AND OTHER STATE AGENCIES, AND TO AUTHORIZE EMPLOYEE PAYROLL DEDUCTIONS FOR CERTAIN DISCRETIONARY PRIVILEGES OF UNIVERSITY SERVICE AT THE UNIVERSITY OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. Article 1 of Chapter 116 of the General Statutes is amended by adding two new sections to read:

"**§ 116-31.10. Powers of Board regarding certain purchasing contracts.**

Notwithstanding G.S. 143-53.1 or G.S. 143-53(a)(2), the expenditure benchmark for a special responsibility constituent institution with regard to competitive bid procedures and the bid value benchmark shall be an amount not greater than two hundred fifty thousand dollars ($250,000). The Board shall set the benchmark for each institution from time to time. In setting an institution's benchmark in accordance with this section, the Board shall consider the institution's overall capabilities including staff resources, purchasing compliance reviews, and audit reports. The Board shall also consult with the Director of the Division of Purchase and Contract and the Director of the Budget prior to setting the benchmark.

"**§ 116-31.11. Powers of Board regarding certain fee negotiations, contracts, and capital improvements.**

(a) With regard to buildings at The University of North Carolina, the Board shall conduct the fee negotiations and supervise the letting of all contracts for the design, construction, or renovation for the following:

(1) Open-end design agreements.

(2) Individual projects if the project costs three hundred thousand dollars ($300,000) or less and is designed under the terms of an open-end design agreement.

(3) Minor individual capital improvements projects costing five hundred thousand dollars ($500,000) or less.

(b) The Board may delegate its authority under subsection (a) of this section to the affected constituent institution if the institution is qualified under university procedures approved by the State Building Commission.

(c) All duties and responsibilities of the Department of Administration and the Director of the Office of State Construction of the Department of Administration set forth respectively in G.S. 143-341(3) and G.S. 143-135.3 are delegated to the Board for capital improvements projects of The University of North Carolina costing one million dollars ($1,000,000) or less.

The Board of Governors shall determine, in consultation with the State Building Commission and the Director of the Budget, the extent to which this authority may be further delegated to the constituent institutions."

Section 2. G.S. 143-52 reads as rewritten:

"**§ 143-52. Competitive bidding procedure; consolidation of estimates by Secretary; bids; awarding of contracts.**

As feasible, the Secretary of Administration will compile and consolidate all such estimates of supplies, materials, printing, equipment and contractual services needed and required by State departments, institutions and agencies to determine the total requirements of any given commodity. Where such total requirements will involve an expenditure in excess of the expenditure benchmark established under the provisions of G.S. 143-53.1 and where the competitive bidding procedure is employed as hereinafter provided, sealed bids shall be solicited by advertisement in a newspaper ~~of statewide circulation~~ widely distributed in this State or through electronic means, or both, as determined by the Secretary to be most advantageous, at least once and at least 10 days prior to the date designated for opening. ~~opening of the bids and awarding of the contract. Provided, other methods of advertisement may be adopted by the Secretary of Administration when such other method is deemed more advantageous for certain items or commodities. Regardless of the amount of the expenditure, under the competitive bidding procedure it shall be the duty of the Secretary of Administration to solicit bids direct by mail from qualified sources of supply.~~ Except as otherwise provided under this Article, contracts for the purchase of supplies, materials or equipment shall be based on competitive bids and acceptance made of the lowest and best bid(s) most advantageous to the State as determined upon consideration of the following criteria: prices offered; the quality of the articles offered; the general reputation and performance capabilities of the bidders; the substantial conformity with the specifications and other conditions set forth in the

request for bids; the suitability of the articles for the intended use; the personal or related services needed; the transportation charges; the date or dates of delivery and performance; and such other factor(s) deemed pertinent or peculiar to the purchase in question, which if controlling shall be made a matter of record. Competitive bids on such contracts shall be received in accordance with rules and regulations to be adopted by the Secretary of Administration, which rules and regulations shall prescribe for the manner, time and place for proper advertisement for such bids, the time and place when bids will be received, the articles for which such bids are to be submitted and the specifications prescribed for such articles, the number of the articles desired or the duration of the proposed contract, and the amount, if any, of bonds or certified checks to accompany the bids. Bids shall be publicly opened. Any and all bids received may be rejected. Each and every bid conforming to the terms of the invitation, together with the name of the bidder, shall be tabulated ~~or otherwise entered as a matter of record, and all such records with the name of the successful bidder indicated thereon shall, after the award of the contract, be open to public inspection.~~ and that tabulation shall become public record in accordance with the rules adopted by the Secretary. All contract information shall be made a matter of public record after the award of contract. Provided, that trade secrets, test data and similar proprietary information may remain confidential. A bond for the faithful performance of any contract may be required of the successful bidder at bidder's expense and in the discretion of the Secretary of Administration. After contracts have been awarded, the Secretary of Administration shall certify to the departments, institutions and agencies of the State government the sources of supply and the contract price of the supplies, materials and equipment so contracted for. Prior to adopting other methods of advertisement under this section, the Secretary of Administration may consult with the Advisory Budget Commission. Prior to adopting rules and regulations under this section, the Secretary of Administration may consult with the Advisory Budget Commission."

Section 3. G.S. 143-53(a) reads as rewritten:

"(a) The Secretary of Administration may adopt rules governing the following:

(1) Prescribing the routine and procedures to be followed in canvassing bids and awarding contracts, and for reviewing decisions made pursuant thereto, and the decision of the reviewing body shall be the final administrative review.

(2) Prescribing ~~routine~~ routine, including consistent contract language, for securing bids on items that do not exceed the bid value benchmark established under the provisions of G.S. ~~143-53.1.~~ 143-53.1 or G.S. 116-31.10.

The purchasing delegation for securing offers, (excluding the special responsibility constituent institutions of The University of North Carolina), for each State department, institution, agency, community college, and public school administrative unit shall be determined by the Director of the Division of Purchase and Contract. For the State agencies this shall be done following the

Director's consultation with the State Budget Officer and the State Auditor. The Director for the Division of Purchase and Contract may set or lower the delegation, or raise the delegation upon written request by the agency, after consideration of their overall capabilities, including staff resources, purchasing compliance reviews, and audit reports of the individual agency. The routine prescribed by the Secretary shall include contract award protest procedures and consistent requirements for advertising of solicitations for securing offers issued by State departments, institutions, universities (including the special responsibility constituent institutions of The University of North Carolina), agencies, community colleges, and the public school administrative units.

(3) Defining contractual services for the purposes of G.S. ~~143-49(3).~~ 143-49(3) and G.S. 143-49(5).

(4) Prescribing items and quantities, and conditions and procedures, governing the acquisition of goods and services which may be delegated to departments, institutions and agencies, notwithstanding any other provisions of this Article.

(5) Prescribing conditions under which purchases and contracts for the purchase, rental or lease of equipment, materials, supplies or services may be entered into by means other than competitive bidding.

(6) Prescribing conditions under which partial, progressive and multiple awards may be made.

(7) Prescribing conditions and procedures governing the purchase of used equipment, materials and supplies.

(8) Providing conditions under which bids may be rejected in whole or in part.

(9) Prescribing conditions under which information submitted by bidders or suppliers may be considered proprietary or confidential.

(10) Prescribing procedures for making purchases under programs involving participation by two or more levels or agencies of government, or otherwise with funds other than State-appropriated.

(11) Prescribing procedures to encourage the purchase of North Carolina farm products, and products of North Carolina manufacturing enterprises.

(12) Repealed by Session Laws 1987, c. 827, s. 216."

Section 4. G.S. 143-53.1 reads as rewritten:

"**§ 143-53.1. Setting of benchmarks; increase by Secretary.**

On and after July 1, ~~1990,~~ 1997, the ~~expenditure benchmark~~ procedures prescribed by G.S. 143-52 with respect to competitive ~~bid procedures~~ bids and the bid value benchmark authorized by G.S. ~~143-53(2)~~ 143-53(a)(2) with respect to rule making by the Secretary of Administration for competitive bidding shall be ~~ten~~

~~thousand dollars ($10,000);~~ no more than twenty-five thousand dollars ($25,000); provided, the Secretary of Administration may, in his or her discretion, increase the benchmarks effective as of the beginning of any fiscal biennium of the State commencing after June 30, ~~1992,~~ 1999, in an amount whose increase, expressed as a percentage, does not exceed the rise in the Consumer Price Index during the fiscal biennium next preceding the effective date of the benchmark increase. For a special responsibility constituent institution of The University of North Carolina, the benchmark prescribed in this section shall be ~~thirty-five thousand dollars ($35,000).~~ as provided in G.S. 116-31.10."

Section 5. G.S. 143-341(3) reads as rewritten:

"(3) Architecture and Engineering:

a. To examine and approve all plans and specifications for the construction or renovation of:

1. All State buildings; and
2. All community college buildings requiring the estimated expenditure for construction or repair work for which public bidding is required under G.S. 143-129

prior to the awarding of a contract for such work; and to examine and approve all changes in those plans and specifications made after the contract for such work has been awarded.

b. To prepare preliminary studies and cost estimates and otherwise to assist all agencies in the preparation of requests for appropriations for the construction or renovation of all State buildings.

c. To supervise the letting of all contracts for the design, construction or renovation of all State buildings and all community college buildings whose plans and specifications must be examined and approved under a.2. of this ~~subdivision.~~ subdivision, except as provided in G.S. 116-31.11.

d. To supervise and inspect all work done and materials used in the construction or renovation of all State buildings and all community college buildings whose plans and specifications must be examined and approved under a.2. of this subdivision; and no such work may be accepted by the State or by any State agency until it has been approved by the Department.

e. With respect to capital improvements projects of The University of North Carolina, all duties and responsibilities of the Department set forth in subdivision (3) of this section, are delegated to the Board of Governors of The University

of North Carolina to the extent provided by G.S. 116-31.11(c)."

Section 6. G.S. 143-64.34 reads as rewritten:

"**§ 143-64.34. Exemption of certain State Capital Improvement Projects.**

State Capital Improvement Projects under the jurisdiction of the State Building Commission where the estimated expenditure of public money is less than ~~fifty thousand dollars ($50,000)~~ one hundred thousand dollars ($100,000) are exempt from the provisions of this Article. Further, with respect to capital improvement projects for The University of North Carolina, including its constituent institutions and the North Carolina School of Science and Mathematics, individual projects having estimated expenditures of public money of three hundred thousand dollars ($300,000) or less are exempt from the provisions of this Article provided that the architectural, engineering, and surveying services to be rendered are included under the provisions of an open-end design agreement that has been publicly announced."

Section 7. G.S. 143-135.3 is amended by adding a new subsection to read:

"(f) With respect to capital improvement projects of The University of North Carolina costing one million dollars ($1,000,000) or less, all duties and responsibilities of the Department of Administration set forth in this section are delegated to the Board of Governors of The University of North Carolina."

Section 8. G.S. 143-3.3 is amended by adding a new subsection to read:

"(k) Payroll Deduction for University of North Carolina System Employees to Pay for Discretionary Privileges of University Service. -- Subject to rules adopted by the State Controller, if a constituent institution of The University of North Carolina approves a payroll deduction plan under this subsection, an employee of the constituent institution may authorize, in writing, the periodic deduction from the employee's salary or wages paid for employment by the constituent institution, of one or more designated lump sums to be applied to the cost of corresponding discretionary privileges available at employee expense from the employing institution. Discretionary privileges from the employing institution that may be paid for through this subsection include parking privileges, athletic passes, use of recreational facilities, admission to campus concert series, and access to other institutionally hosted or provided entertainments, events, and facilities."

Section 9. The Office of State Budget and Management shall evaluate the process and quality of construction completed under G.S. 116-31.11 as enacted by this act. The evaluation shall include an analysis of the time required to complete projects, project savings or costs, necessary increases or decreases in staffing, if any, any other benefits or detriments regarding the delegation of authority under G.S. 116-31.11; recommendations regarding the continuance of the delegated powers, their continuance with modifications, their expansion, or their discontinuance. The Office of State Budget and Management shall report its findings and recommendations to the Board of Governors of The University of North Carolina and to the General Assembly by April 15, 2001.

Section 10. The Office of State Budget and Management shall evaluate the effectiveness and efficiency of the increase of the purchasing benchmark and its delegation to the special responsibility constituent institutions under G.S. 116-31.10 and other agencies under G.S. 143-53.1 and G.S. 143-53(a)(2). In its evaluation the Office of State Budget and Management shall consider such factors as costs of goods and services purchased, administrative costs, effective time for completion of the purchasing process, agency satisfaction, vendor reactions, and other factors it deems appropriate. The Office of State Budget and Management shall report its findings and recommendations to the General Assembly by April 15, 2001.

Section 11. This act is effective when it becomes law. G.S. 116-31.11(c), as enacted by Section 1 of this act, shall expire July 1, 2001.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House.**

☐ Committee Substitute for
H.B. 777 A BILL TO BE ENTITLED AN ACT EXTENDING RIGHTS TO PETITION OR INITIATE ANNEXATION BY RESOLUTION FOR VOLUNTARY NONCONTIGUOUS ANNEXATION INTO THE CITY OF KINGS MOUNTAIN.

☐ 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 Finance.

☐ 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)

4/24/97

Com Rule

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 777
Proposed Committee Substitute H777-PCSXA398

Short Title: Kings Mt. Annexation/Moss Lake Use. (Local)

Sponsors:

Referred to:

April 3, 1997

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE CITY OF KINGS MOUNTAIN TO ANNEX CERTAIN NONCONTIGUOUS PROPERTY, PROHIBITING THE CITY FROM RESTRICTING RECREATIONAL USES OF MOSS LAKE, AND REQUIRING THE CITY TO CREATE AN AUTHORITY TO ADDRESS ISSUES RELATED TO MOSS LAKE.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding the provisions of G.S. 160A-58.7 and G.S. 160A-58.1(b), the City of Kings Mountain may annex under Part 4 of Article 4A of Chapter 160A of the General Statutes the property on which the John Henry Moss Water Treatment Plant and Moss Lake Dam are situated.

Section 2. The boundaries of any area annexed under this act shall not be considered the primary corporate limits of the City for the purpose of Part 4 of Article 4A of Chapter 160A of the General Statutes, and shall not be considered the boundary of the municipality for the purpose of Part 1, 2, or 3 of that Article, even if the area becomes contiguous due to annexation of the intervening property.

Section 3. Except as provided in Chapter 166A of the General Statutes, the City of Kings Mountain may not restrict recreational uses of Moss Lake that are allowed on June 1, 1997. Except as provided by Chapter 166A of the General Statutes or any safety ordinances, homeowners who are current on any fees or assessments shall have unlimited access to the waterfront.

Homeowners may make improvements on the control strip that both enhance recreational use of the lake and do not violate any city ordinance in effect on June 1, 1997.

Section 4. (a) The City of Kings Mountain may charge owners of property situated on the waterfront of Moss Lake a user fee for the use of the eight-foot control strip of property around the lake and for recreational use of the lake. However, the fee may not exceed the amount determined by the audit under Section 6 of this act to cover expenses that primarily and directly benefit the property owners. This is to be a pro rata share of all items determined by the audit under Section 6 of this act as recreation expense impacted by waterfront homeowners usage, nonwaterfront lake homeowners who use the lake for recreational purposes, and nonwaterfront recreational users.

(b) Notwithstanding subsection (a) of this section, the fees authorized by subsection (a) of this section may not be used for expenses relating to:

(1) Public swimming areas and buildings utilized for public swimming and concessions for public swimming; or

(2) Water treatment and reservoir functions.

These items are the responsibility of the City of Kings Mountain.

(c) In any case where expenses are to be prorated, the amount to be charged to user fees shall be determined by the City of Kings Mountain subject to change based on the audit findings as provided by Section 6 of this act.

(d) When establishing a fee schedule as authorized by this section, the component of the fee relating to lot ownership shall provide for an equal fee per lot for all developed lots.

(e) The City shall establish and maintain a separate fund for all user fees collected from Moss Lake property owners and nonresident fees for use of recreation facilities at Moss Lake. The expenditure of these fees is limited to operation of Moss Lake and cannot be transferred to any other fund of the City.

Section 5. There is established the Moss Lake Authority which shall consist of two members of the Kings Mountain City Council appointed by that Council, one member of the Cleveland County Board of Commissioners appointed by that Board, and two members of the Moss Lake Property Owners' Association appointed by that Association. Members shall serve for a term of three years, except that the city clerk of the City of Kings Mountain shall randomly designate two of the initial members to serve initial two-year terms and one of the initial members to serve an initial one-year term. The Authority shall be responsible for addressing issues related to user fees, lake patrol, and the operation, maintenance, and improvement of the Lake. The Authority shall report and make recommendations on these issues to the Kings Mountain City Council.

Section 6. (a) Prior to August 30, 1997, the Moss Lake Authority shall cause an independent audit to be conducted of the City of Kings Mountain expenses related to Moss Lake to determine whether fees that will be charged to property owners by the City for the use of the Lake during the 1997-98 fiscal year and in

future years are fair and equitable. The Authority shall authorize an independent audit of the City's expenses related to Moss Lake to be conducted every two years.

(b) The audit shall include an assessment of the cost of services provided to the property owners by the City, including security and cleanup costs. If the audit finds that property owners are being charged excessive fees, the City shall reimburse the property owners the amount that is determined to be excessive. If it is found that property owners are being charged less than a fair and equitable fee, the City shall bill the property owners for the difference as a special assessment. The cost of the audits shall be paid from fees paid by the property owners to the City.

(c) The Moss Lake Authority shall determine an equitable method for allocation of pro rata cost based on boat registration for homeowners of lakefront property and nonlake resident registration from 1996 accounting reports of the City of Kings Mountain.

(d) Fees shall be equitable for property owners and nonproperty owners and for assessment of fees for all boats, whether fishing and recreational.

Section 7. This act becomes effective July 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 777

Short Title: Kings Mountain Annexation. (Local)

Sponsors: Representatives Weatherly, Clary, and Dedmon.

Referred to: Local and Regional Government II, if favorable, Finance.

April 3, 1997

A BILL TO BE ENTITLED

AN ACT EXTENDING RIGHTS TO PETITION OR INITIATE ANNEXATION BY RESOLUTION FOR VOLUNTARY NONCONTIGUOUS ANNEXATION INTO THE CITY OF KINGS MOUNTAIN.

The General Assembly of North Carolina enacts:

Section 1. (a) Notwithstanding the provisions of G.S. 160A-58.7 and G.S. 160A-58.1(b) a city may annex any noncontiguous area provided it meets all of the following standards:

(1) The area proposed for annexation must be owned by the annexing city.

(2) The nearest point on the proposed satellite corporate limits must not be more than five and one-half miles from the primary corporate limits of the annexing city.

(3) No point on the proposed satellite corporate limits may be closer to the primary corporate limits of another city than to the primary corporate limits of the annexing city unless the other city consents to the same by ordinance.

(4) The area must be so situated that the annexing city will be able to provide the same services within the proposed satellite corporate limits that it provides within its primary corporate limits.

(5) The area within the proposed satellite corporate limits shall not be counted toward the ten percent (10%) noncontiguous annexation areas as set forth in G.S. 160A-53.1(b)(5).

(b) The boundaries of any area annexed under this act shall not be considered the primary corporate limits of the city for the purpose of Part 4 of Article 4A of Chapter 160A of the General Statutes, and shall not be considered the boundary of the municipality for the purpose of Part 1, 2, or 3 of that Article, even if the area becomes contiguous due to annexation of the intervening property.

Section 2. This act applies to the City of Kings Mountain only.

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

Title change

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House.**

☐ Committee Substitute for
H.B. 568 A BILL TO BE ENTITLED AN ACT RELATING TO WAKE COUNTY.

☐ 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 Finance.

☐ 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)

4/24/97

Com Sub

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 568
Proposed Committee Substitute H568-PCS1414

Short Title: Wake Forest Annexation. (Local)

Sponsors:

Referred to:

March 20, 1997

A BILL TO BE ENTITLED

AN ACT TO ANNEX A CERTAIN DESCRIBED TERRITORY TO THE TOWN OF WAKE FOREST.

The General Assembly of North Carolina enacts:

Section 1. The corporate limits of the Town of Wake Forest are extended to include the following described area:

BEGINNING at a stake in the southern boundary of the Old Avenue Road, a corner of Mrs. Ella Caddell, runs thence along the southern boundary of said road South 83 degrees 30 minutes East 1230 feet to a stake in the Southwestern corner of the intersection of Old Avenue Road with Old Powell Road: thence along said Old Powell Road South 18 degrees 30 minutes East 1600 feet, South 16 degrees 50 minutes East 860 feet South 48 degrees 40 minutes West 400 feet, South 20 degrees West 300 feet, South 5 degrees 15 minutes East 50 feet, South 12 degrees 40 minutes West 300 feet, South 8 degrees 10 minutes West 200 feet, South 7 degrees 30 minutes West 50 feet to a maple stump; thence North 58 degrees 15 minutes West 2154 feet to a stake; thence North 11 degrees East 315 feet to a stake; thence North 54 degrees West 420 feet to a stake near a hickory; thence North 8 degrees 30 minutes East 1596 feet to a red oak; thence North 88 degrees East 310 feet to a stake; thence North 12 degrees 05 minutes East 445 feet to a stake and point of BEGINNING, and being the property deeded by deed recorded in Book 1348, Page 581, Wake County Registry.

There is excepted from the above-described land 4.9 acres deeded to Charles B. Shearon and wife. For a complete description of said exception, see Book 2009, Page 369, Wake County Registry.

Section 2. Real and personal property in the territory annexed pursuant to this act is subject to municipal taxes as provided in G.S. 160A-58.10.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 568

Short Title: Wake Local Act. (Local)

Sponsors: Representatives Ellis; and Decker.

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

March 20, 1997

A BILL TO BE ENTITLED

AN ACT RELATING TO WAKE COUNTY.

The General Assembly of North Carolina enacts:

Section 1. The law relating to Wake County is amended.

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

~~1997 COMMITTEE REPORT~~
~~HOUSE OF REPRESENTATIVES~~

The following report(s) from standing committee(s) is/are presented:
By Representative(s) ~~Morgan for the Committee on Rules, Calendar and Operations of the House~~:

☒ Committee Substitute for
S.B. 660 A BILL TO BE ENTITLED AN ACT TO LICENSE ATHLETIC TRAINERS.

☐ 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, #2 and re-referred to the Committee on Finance. recommendation that the House committee substitute bill be

☐ 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)

4/24/97

Comm. pub

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 660
Finance Committee Substitute Adopted 5/15/97
Finance Committee Substitute No. 2 Adopted 5/20/97
Proposed House Committee Substitute S660-PCS6687

Short Title: License Athletic Trainers. (Public)

Sponsors:

Referred to:

April 2, 1997

A BILL TO BE ENTITLED

AN ACT TO LICENSE ATHLETIC TRAINERS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 90 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 33.

"Athletic Trainers.

"**§ 90-512. Title; purpose.**

(a) This Article may be cited as the 'Athletic Trainers Licensing Act'.

(b) The practice of athletic trainer services affects the public health, safety, and welfare. Licensure of the practice of athletic trainer services is necessary to ensure minimum standards of competency and to provide the public with safe athletic trainer services. It is the purpose of this Article to provide for the regulation of persons offering athletic trainer services.

"**§ 90-513. Definitions.**

The following definitions apply in this Article:

(1) Athletic trainer. -- A person who, under a written protocol with a physician licensed under Article 1 of Chapter 90 of the General Statutes and filed with the North Carolina Medical Board, carries out the practice of care, prevention, and rehabilitation of injuries incurred by athletes, and who, in carrying out these functions, may

use physical modalities, including heat, light, sound, cold, electricity, or mechanical devices related to rehabilitation and treatment. A committee composed of two members of the North Carolina Medical Board and two members of the North Carolina Board of Athletic Trainer Examiners shall jointly define by rule the content, format, and minimum requirements for the written protocol required by this subdivision. The members shall be selected by their respective boards. The decision of this committee shall be binding on both Boards unless changed by mutual agreement of both Boards.

(2) Board. -- The North Carolina Board of Athletic Trainer Examiners as created by G.S. 90-514.

(3) License. -- A certificate that evidences approval by the Board that a person has successfully completed the requirements set forth in G.S. 90-518 entitling the person to perform the functions and duties of an athletic trainer.

"**§ 90-514. Board of Examiners created.**

(a) The North Carolina Board of Athletic Trainer Examiners is created.

(b) Composition and Terms. -- The Board shall consist of seven members who shall serve staggered terms. Four members shall be athletic trainers certified by the National Athletic Trainers' Association Board of Certification, Inc. One member shall be a licensed orthopedic surgeon, one member shall be a licensed family practice physician or pediatrician, and one member shall represent the public at large.

The initial Board members shall be selected on or before August 1, 1997, as follows:

(1) The General Assembly, upon the recommendation of the President Pro Tempore of the Senate, shall appoint two certified athletic trainers and an orthopedic surgeon. The certified athletic trainers shall serve for terms of three years, and the orthopedic surgeon shall serve for a term of one year.

(2) The General Assembly, upon the recommendation of the Speaker of the House of Representatives, shall appoint two certified athletic trainers and a family practice physician or pediatrician. The certified athletic trainers and the family practice physician or pediatrician shall serve for terms of two years.

(3) The Governor shall appoint for a three-year term a public member to the Board.

Upon the expiration of the terms of the initial Board members, each member shall be appointed for a term of three years and shall serve until a successor is appointed. No member may serve more than two consecutive full terms.

(c) Qualifications. -- The athletic trainer members shall hold current licenses and shall reside or be employed in North Carolina. They shall have at least five years' experience as athletic trainers, including the three years immediately preceding

appointment to the Board, and shall remain in active practice and in good standing with the Board as a licensee during their terms. The first athletic trainers appointed to the Board pursuant to this section shall be eligible for licensure under G.S. 90-519 and, upon appointment, shall immediately apply for a license.

(d) Vacancies. -- A vacancy shall be filled in the same manner as the original appointment, except that all unexpired terms of Board members appointed by the General Assembly shall be filled in accordance with G.S. 120-122 and shall be filled within 45 days after the vacancy occurs. Appointees to fill vacancies shall serve the remainder of the unexpired term and until their successors have been duly appointed and qualified.

(e) Removal. -- The Board may remove any of its members for neglect of duty, incompetence, or unprofessional conduct. A member subject to disciplinary proceedings as a licensee shall be disqualified from participating in the official business of the Board until the charges have been resolved.

(f) Compensation. -- Each member of the Board shall receive per diem and reimbursement for travel and subsistence as provided in G.S. 93B-5.

(g) Officers. -- The officers of the Board shall be a chair, who shall be a licensed athletic trainer, a vice-chair, and other officers deemed necessary by the Board to carry out the purposes of this Article. All officers shall be elected annually by the Board for one-year terms and shall serve until their successors are elected and qualified.

(h) Meetings. -- The Board shall hold at least two meetings each year to conduct business and to review the standards and rules for improving athletic training services. The Board shall establish the procedures for calling, holding, and conducting regular and special meetings. A majority of Board members constitutes a quorum.

"**§ 90-515. Powers of the Board.**

The Board shall have the power and duty to:

(1) Administer this Article.

(2) Issue interpretations of this Article.

(3) Adopt, amend, or repeal rules as may be necessary to carry out the provisions of this Article.

(4) Employ and fix the compensation of personnel that the Board determines is necessary to carry into effect the provisions of this Article and incur other expenses necessary to effectuate this Article.

(5) Examine and determine the qualifications and fitness of applicants for licensure, renewal of licensure, and reciprocal licensure.

(6) Issue, renew, deny, suspend, or revoke licenses and carry out any disciplinary actions authorized by this Article.

(7) In accordance with G.S. 90-524, set fees for licensure, license renewal, and other services deemed necessary to carry out the purposes of this Article.

(8) Conduct investigations for the purpose of determining whether violations of this Article or grounds for disciplining licensees exist.
(9) Maintain a record of all proceedings and make available to licensees and other concerned parties an annual report of all Board action.
(10) Develop standards and adopt rules for the improvement of athletic training services in the State.
(11) Adopt a seal containing the name of the Board for use on all licenses and official reports issued by it.

"§ 90-516. Custody and use of funds; contributions.

(a) All fees payable to the Board shall be deposited in the name of the Board in financial institutions designated by the Board as official depositories and shall be used to pay all expenses incurred in carrying out the purposes of this Article.

(b) The Board may accept grants, contributions, bequests, and gifts that shall be kept in a separate fund and shall be used by it to enhance the practice of athletic trainers.

"§ 90-517. License required; exemptions from license requirement.

(a) On or after January 1, 1998, no person shall practice or offer to practice as an athletic trainer, perform activities of an athletic trainer, or use any card, title, or abbreviation to indicate that the person is an athletic trainer unless that person is currently licensed as provided by this Article.

(b) The provisions of this Article do not apply to:

(1) Licensed, registered, or certified professionals, such as nurses, physical therapists, and chiropractors if they do not hold themselves out to the public as athletic trainers.
(2) A physician licensed under Article 1 of Chapter 90 of the General Statutes.
(3) A person serving as a student-trainer or in a similar position under the supervision of a physician or licensed athletic trainer.
(4) An athletic trainer who is employed by, or under contract with, an organization, corporation, or educational institution located in another state and who is representing that organization, corporation, or educational institution at an event held in this State.

"§ 90-518. Application for license; qualifications; issuance.

(a) An applicant for a license under this Article shall make a written application to the Board on a form approved by the Board and shall submit to the Board an application fee along with evidence that demonstrates good moral character and graduation from an accredited four-year college or university in a course of study approved by the Board.

(b) The applicant shall also pass the examination administered by the National Athletic Trainers' Association Board of Certification, Inc.

(c) When the Board determines that an applicant has met all the qualifications for licensure and has submitted the required fee, the Board shall issue a license to the

applicant. A license is valid for a period of one year from the date of issuance and may be renewed subject to the requirements of this Article.

"§ 90-519. Athletic trainers previously certified.

The Board shall issue a license to practice as an athletic trainer to a person who applies to the Board on or before August 1, 1998, and furnishes to the Board on a form approved by the Board proof of good moral character, graduation from an accredited four-year college or university in a course of study approved by the Board, and a current certificate from the National Athletic Trainers' Association Board of Certification, Inc.

"§ 90-520. Athletic trainers not certified.

(a) A person who has been actively engaged as an athletic trainer since August 1, 1994, and who continues to practice up to the time of application, shall be eligible for licensure without examination by paying the required fee and by demonstrating the following:

(1) Proof of good moral character.

(2) Proof of practice in this State since August 1, 1994.

(3) Proof of graduation from an accredited four-year college or university in a course of study approved by the Board.

(4) Fulfillment of any other requirements set by the Board.

An application made pursuant to this section shall be filed with the Board on or before August 1, 1998.

(b) A person is 'actively engaged' as an athletic trainer if the person is a salaried employee of, or has contracted with, an educational institution, an industry, a hospital, a rehabilitation clinic, or a professional athletic organization or another bona fide athletic organization and the person performs the duties of an athletic trainer.

"§ 90-521. Reciprocity with other states.

A license may be issued to a qualified applicant holding an athletic trainer license in another state if that state recognizes the license of this State in the same manner.

"§ 90-522. License renewal.

Every license issued under this Article shall be renewed during the month of January. On or before the date the current license expires, any person who desires to continue practice shall apply for a license renewal and shall submit the required fee. Licenses that are not renewed shall automatically lapse. In accordance with rules adopted by the Board, a license that has lapsed may be reissued within five years from the date it lapsed. A license that has been expired for more than five years may be reissued only in a manner prescribed by the Board.

"§ 90-523. Continuing education.

(a) As a condition of license renewal, a licensee must meet the continuing education requirements set by the Board. The Board shall determine the number of hours and subject matter of continuing education required as a condition of license renewal. The Board shall determine the qualifications of a provider of an educational program that satisfies the continuing education requirement.

(b) The Board shall grant approval to a continuing education program or course upon finding that the program or course offers an educational experience designed to enhance the practice of athletic trainer, including the continuing education program of the National Athletic Trainers' Association.

(c) If a continuing education program offers to teach licensees to perform advanced skills, the Board may grant approval for the program when it finds that the nature of the procedure taught in the program and the program facilities and faculty are such that a licensee fully completing the program can reasonably be expected to carry out those procedures safely and properly.

"§ 90-524. Expenses and fees.

(a) All salaries, compensation, and expenses incurred or allowed to carry out the purposes of this Article shall be paid by the Board exclusively out of the fees received by the Board as authorized by this Article or funds received from other sources. In no case shall any salary, expense, or other obligation of the Board be charged against the State treasury.

(b) The schedule of fees shall not exceed the following:

(1)	Issuance of a license	$100.00
(2)	License renewal	50.00
(3)	Reinstatement of lapsed license	75.00
(4)	Reasonable charges for duplication services and material.	

"§ 90-525. Hiring of athletic trainers by school units.

Local school administrative units may hire persons who are not licensed under this Article. The persons hired may perform the activities of athletic trainers in the scope of their employment but may not claim to be licensed under this Article. The persons hired may not perform the activities of athletic trainers outside the scope of this employment unless they are authorized to do so under G.S. 90-517(b).

"§ 90-526. Disciplinary authority of the Board; administrative proceedings.

(a) Grounds for disciplinary action against a licensee shall include the following:

(1) Giving false information or withholding material information from the Board in procuring a license to practice as an athletic trainer.

(2) Having been convicted of or pled guilty or no contest to a crime that indicates that the person is unfit or incompetent to practice as an athletic trainer or that indicates that the person has deceived or defrauded the public.

(3) Having a mental or physical disability or using a drug to a degree that interferes with the person's fitness to practice as an athletic trainer.

(4) Engaging in conduct that endangers the public health.

(5) Being unfit or incompetent to practice as an athletic trainer by reason of deliberate or negligent acts or omissions regardless of whether actual injury to a patient is established.

(6) Willfully violating any provision of this Article or rules adopted by the Board.

(7) Having been convicted of or pled guilty or no contest to an offense under State or federal narcotic or controlled substance laws.

(b) In accordance with Article 3A of Chapter 150B of the General Statutes, the Board may require remedial education, issue a letter of reprimand, restrict, revoke, or suspend any license to practice as an athletic trainer in North Carolina or deny any application for licensure if the Board determines that the applicant or licensee has committed any of the above acts or is no longer qualified to practice as an athletic trainer. The Board may reinstate a revoked license or remove licensure restrictions when it finds that the reasons for revocation or restriction no longer exist and that the person can reasonably be expected to practice as an athletic trainer safely and properly.

"§ 90-527. Enjoining illegal practices.

If the Board finds that a person who does not have a license issued under this Article claims to be an athletic trainer or is engaging in practice as an athletic trainer in violation of this Article, the Board may apply in its own name to the Superior Court of Wake County for a temporary restraining order or other injunctive relief to prevent the person from continuing illegal practices. The court may grant injunctions regardless of whether criminal prosecution or other action has been or may be instituted as a result of a violation.

"§ 90-528. Penalties.

A person who does not have a license issued under this Article who either claims to be an athletic trainer or engages in practice as an athletic trainer in violation of this Article is guilty of a Class 1 misdemeanor. Each act of unlawful practice constitutes a distinct and separate offense.

"§ 90-529. Reports; immunity from suit.

A person who has reasonable cause to suspect misconduct or incapacity of a licensee, or who has reasonable cause to suspect that a person is in violation of this Article, shall report the relevant facts to the Board. Upon receipt of a charge, or upon its own initiative, the Board may give notice of an administrative hearing or may, after diligent investigation, dismiss unfounded charges. A person who, in good faith, makes a report pursuant to this section shall be immune from any criminal prosecution or civil liability resulting therefrom.

"§ 90-530. No third-party reimbursement required.

Nothing in this Article shall be construed to require direct third-party reimbursement to persons licensed under this Article."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 3

SENATE BILL 660
Finance Committee Substitute Adopted 5/15/97
Finance Committee Substitute No. 2 Adopted 5/20/97

Short Title: License Athletic Trainers. (Public)

Sponsors:

Referred to:

April 2, 1997

A BILL TO BE ENTITLED

AN ACT TO LICENSE ATHLETIC TRAINERS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 90 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 33.

"Athletic Trainers.

"**§ 90-512. Title; purpose.**

(a) This Article may be cited as the 'Athletic Trainers Licensing Act'.

(b) The practice of athletic trainer services affects the public health, safety, and welfare. Licensure of the practice of athletic trainer services is necessary to ensure minimum standards of competency and to provide the public with safe athletic trainer services. It is the purpose of this Article to provide for the regulation of persons offering athletic trainer services.

"**§ 90-513. Definitions.**

The following definitions apply in this Article:

(1) Athletic trainer. -- A person who, under a written protocol with a physician licensed under Article 1 of Chapter 90 of the General Statutes and filed with the North Carolina Medical Board, carries out the practice of care, prevention, and rehabilitation of injuries incurred by athletes, and who, in carrying out these functions, may use physical modalities, including heat, light, sound, cold,

electricity, or mechanical devices related to rehabilitation and treatment.

(2) Board. -- The North Carolina Board of Athletic Trainer Examiners as created by G.S. 90-514.

(3) License. -- A certificate that evidences approval by the Board that a person has successfully completed the requirements set forth in G.S. 90-518 entitling the person to perform the functions and duties of an athletic trainer.

"**§ 90-514. Board of Examiners created.**

(a) The North Carolina Board of Athletic Trainer Examiners is created.

(b) Composition and Terms. -- The Board shall consist of seven members who shall serve staggered terms. Four members shall be athletic trainers certified by the National Athletic Trainers' Association Board of Certification, Inc. One member shall be a licensed orthopedic surgeon, one member shall be a licensed family practice physician or pediatrician, and one member shall represent the public at large.

The initial Board members shall be selected on or before August 1, 1997, as follows:

(1) The General Assembly, upon the recommendation of the President Pro Tempore of the Senate, shall appoint two certified athletic trainers and an orthopedic surgeon. The certified athletic trainers shall serve for terms of three years, and the orthopedic surgeon shall serve for a term of one year.

(2) The General Assembly, upon the recommendation of the Speaker of the House of Representatives, shall appoint two certified athletic trainers and a family practice physician or pediatrician. The certified athletic trainers and the family practice physician or pediatrician shall serve for terms of two years.

(3) The Governor shall appoint for a three-year term a public member to the Board.

Upon the expiration of the terms of the initial Board members, each member shall be appointed for a term of three years and shall serve until a successor is appointed. No member may serve more than two consecutive full terms.

(c) Qualifications. -- The athletic trainer members shall hold current licenses and shall reside or be employed in North Carolina. They shall have at least five years' experience as athletic trainers, including the three years immediately preceding appointment to the Board, and shall remain in active practice and in good standing with the Board as a licensee during their terms. The first athletic trainers appointed to the Board pursuant to this section shall be eligible for licensure under G.S. 90-519 and, upon appointment, shall immediately apply for a license.

(d) Vacancies. -- A vacancy shall be filled in the same manner as the original appointment, except that all unexpired terms of Board members appointed by the General Assembly shall be filled in accordance with G.S. 120-122 and shall be filled within 45 days after the vacancy occurs. Appointees to fill vacancies shall serve the

remainder of the unexpired term and until their successors have been duly appointed and qualified.

(e) Removal. -- The Board may remove any of its members for neglect of duty, incompetence, or unprofessional conduct. A member subject to disciplinary proceedings as a licensee shall be disqualified from participating in the official business of the Board until the charges have been resolved.

(f) Compensation. -- Each member of the Board shall receive per diem and reimbursement for travel and subsistence as provided in G.S. 93B-5.

(g) Officers. -- The officers of the Board shall be a chair, who shall be a licensed athletic trainer, a vice-chair, and other officers deemed necessary by the Board to carry out the purposes of this Article. All officers shall be elected annually by the Board for one-year terms and shall serve until their successors are elected and qualified.

(h) Meetings. -- The Board shall hold at least two meetings each year to conduct business and to review the standards and rules for improving athletic training services. The Board shall establish the procedures for calling, holding, and conducting regular and special meetings. A majority of Board members constitutes a quorum.

"**§ 90-515. Powers of the Board.**

The Board shall have the power and duty to:

(1) Administer this Article.

(2) Issue interpretations of this Article.

(3) Adopt, amend, or repeal rules as may be necessary to carry out the provisions of this Article.

(4) Employ and fix the compensation of personnel that the Board determines is necessary to carry into effect the provisions of this Article and incur other expenses necessary to effectuate this Article.

(5) Examine and determine the qualifications and fitness of applicants for licensure, renewal of licensure, and reciprocal licensure.

(6) Issue, renew, deny, suspend, or revoke licenses and carry out any disciplinary actions authorized by this Article.

(7) In accordance with G.S. 90-524, set fees for licensure, license renewal, and other services deemed necessary to carry out the purposes of this Article.

(8) Conduct investigations for the purpose of determining whether violations of this Article or grounds for disciplining licensees exist.

(9) Maintain a record of all proceedings and make available to licensees and other concerned parties an annual report of all Board action.

(10) Develop standards and adopt rules for the improvement of athletic training services in the State.

(11) Adopt a seal containing the name of the Board for use on all licenses and official reports issued by it.

"**§ 90-516. Custody and use of funds; contributions.**

(a) All fees payable to the Board shall be deposited in the name of the Board in financial institutions designated by the Board as official depositories and shall be used to pay all expenses incurred in carrying out the purposes of this Article.

(b) The Board may accept grants, contributions, bequests, and gifts that shall be kept in a separate fund and shall be used by it to enhance the practice of athletic trainers.

"**§ 90-517. License required; exemptions from license requirement.**

(a) On or after January 1, 1998, no person shall practice or offer to practice as an athletic trainer, perform activities of an athletic trainer, or use any card, title, or abbreviation to indicate that the person is an athletic trainer unless that person is currently licensed as provided by this Article.

(b) The prohibition against performing the activities of an athletic trainer does not apply to any of the following persons as long as they do not hold themselves out to the public as athletic trainers:

(1) A licensed, registered, or certified professional, such as a nurse, a physical therapist, and a chiropractor.

(2) A physician licensed under Article 1 of Chapter 90 of the General Statutes.

(3) A person serving as a student-trainer or in a similar position under the supervision of a physician or licensed athletic trainer.

(c) The prohibitions in subsection (a) of this section do not apply to an athletic trainer who is employed by, or under contract with, an organization, a corporation, or an educational institution located in another state and who is representing that organization, corporation, or educational institution at an event held in this State.

"**§ 90-518. Application for license; qualifications; issuance.**

(a) An applicant for a license under this Article shall make a written application to the Board on a form approved by the Board and shall submit to the Board an application fee along with evidence that demonstrates good moral character and graduation from an accredited four-year college or university in a course of study approved by the Board.

(b) The applicant shall also pass the examination administered by the National Athletic Trainers' Association Board of Certification, Inc.

(c) When the Board determines that an applicant has met all the qualifications for licensure and has submitted the required fee, the Board shall issue a license to the applicant. A license is valid for a period of one year from the date of issuance and may be renewed subject to the requirements of this Article.

"**§ 90-519. Athletic trainers previously certified.**

The Board shall issue a license to practice as an athletic trainer to a person who applies to the Board on or before August 1, 1998, and furnishes to the Board on a form approved by the Board proof of good moral character, graduation from an accredited four-year college or university in a course of study approved by the Board, and a current certificate from the National Athletic Trainers' Association Board of Certification, Inc.

"**§ 90-520. Athletic trainers not certified.**

(a) A person who has been actively engaged as an athletic trainer since August 1, 1994, and who continues to practice up to the time of application, shall be eligible for licensure without examination by paying the required fee and by demonstrating the following:

(1) Proof of good moral character.

(2) Proof of practice in this State since August 1, 1994.

(3) Proof of graduation from an accredited four-year college or university in a course of study approved by the Board.

(4) Fulfillment of any other requirements set by the Board.

An application made pursuant to this section shall be filed with the Board on or before August 1, 1998.

(b) A person is 'actively engaged' as an athletic trainer if the person is a salaried employee of, or has contracted with, an educational institution, an industry, a hospital, a rehabilitation clinic, or a professional athletic organization or another bona fide athletic organization and the person performs the duties of an athletic trainer.

"**§ 90-521. Reciprocity with other states.**

A license may be issued to a qualified applicant holding an athletic trainer license in another state if that state recognizes the license of this State in the same manner.

"**§ 90-522. License renewal.**

Every license issued under this Article shall be renewed during the month of January. On or before the date the current license expires, any person who desires to continue practice shall apply for a license renewal and shall submit the required fee. Licenses that are not renewed shall automatically lapse. In accordance with rules adopted by the Board, a license that has lapsed may be reissued within five years from the date it lapsed. A license that has been expired for more than five years may be reissued only in a manner prescribed by the Board.

"**§ 90-523. Continuing education.**

(a) As a condition of license renewal, a licensee must meet the continuing education requirements set by the Board. The Board shall determine the number of hours and subject matter of continuing education required as a condition of license renewal. The Board shall determine the qualifications of a provider of an educational program that satisfies the continuing education requirement.

(b) The Board shall grant approval to a continuing education program or course upon finding that the program or course offers an educational experience designed to enhance the practice of athletic trainer, including the continuing education program of the National Athletic Trainers' Association.

(c) If a continuing education program offers to teach licensees to perform advanced skills, the Board may grant approval for the program when it finds that the nature of the procedure taught in the program and the program facilities and faculty are such that a licensee fully completing the program can reasonably be expected to carry out those procedures safely and properly.

"**§ 90-524. Expenses and fees.**

(a) All salaries, compensation, and expenses incurred or allowed to carry out the purposes of this Article shall be paid by the Board exclusively out of the fees received by the Board as authorized by this Article or funds received from other sources. In no case shall any salary, expense, or other obligation of the Board be charged against the State treasury.

(b) The schedule of fees shall not exceed the following:

(1)	Issuance of a license	$100.00
(2)	License renewal	50.00
(3)	Reinstatement of lapsed license	75.00
(4)	Reasonable charges for duplication services and material.	

"**§ 90-525. Hiring of athletic trainers by school units.**

Local school administrative units may hire persons who are not licensed under this Article. The persons hired may perform the activities of athletic trainers in the scope of their employment but may not claim to be licensed under this Article. The persons hired may not perform the activities of athletic trainers outside the scope of this employment unless they are authorized to do so under G.S. 90-517(b).

"**§ 90-526. Disciplinary authority of the Board; administrative proceedings.**

(a) Grounds for disciplinary action against a licensee shall include the following:

(1) Giving false information or withholding material information from the Board in procuring a license to practice as an athletic trainer.

(2) Having been convicted of or pled guilty or no contest to a crime that indicates that the person is unfit or incompetent to practice as an athletic trainer or that indicates that the person has deceived or defrauded the public.

(3) Having a mental or physical disability or using a drug to a degree that interferes with the person's fitness to practice as an athletic trainer.

(4) Engaging in conduct that endangers the public health.

(5) Being unfit or incompetent to practice as an athletic trainer by reason of deliberate or negligent acts or omissions regardless of whether actual injury to a patient is established.

(6) Willfully violating any provision of this Article or rules adopted by the Board.

(7) Having been convicted of or pled guilty or no contest to an offense under State or federal narcotic or controlled substance laws.

(b) In accordance with Article 3A of Chapter 150B of the General Statutes, the Board may require remedial education, issue a letter of reprimand, restrict, revoke, or suspend any license to practice as an athletic trainer in North Carolina or deny any application for licensure if the Board determines that the applicant or licensee has committed any of the above acts or is no longer qualified to practice as an athletic trainer. The Board may reinstate a revoked license or remove licensure restrictions when it finds that the reasons for revocation or restriction no longer exist and that the person can reasonably be expected to practice as an athletic trainer safely and properly.

"**§ 90-527. Enjoining illegal practices.**

If the Board finds that a person who does not have a license issued under this Article claims to be an athletic trainer or is engaging in practice as an athletic trainer in violation of this Article, the Board may apply in its own name to the Superior Court of Wake County for a temporary restraining order or other injunctive relief to prevent the person from continuing illegal practices. The court may grant injunctions regardless of whether criminal prosecution or other action has been or may be instituted as a result of a violation.

"**§ 90-528. Penalties.**

A person who does not have a license issued under this Article who either claims to be an athletic trainer or engages in practice as an athletic trainer in violation of this Article is guilty of a Class 1 misdemeanor. Each act of unlawful practice constitutes a distinct and separate offense.

"**§ 90-529. Reports; immunity from suit.**

A person who has reasonable cause to suspect misconduct or incapacity of a licensee, or who has reasonable cause to suspect that a person is in violation of this Article, shall report the relevant facts to the Board. Upon receipt of a charge, or upon its own initiative, the Board may give notice of an administrative hearing or may, after diligent investigation, dismiss unfounded charges. A person who, in good faith, makes a report pursuant to this section shall be immune from any criminal prosecution or civil liability resulting therefrom.

"**§ 90-530. No third-party reimbursement required.**

Nothing in this Article shall be construed to require direct third-party reimbursement to persons licensed under this Article."

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

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House**.

☐ Committee Substitute for
S.J.R. 1078 A JOINT RESOLUTION PROVIDING FOR THE CONFIRMATION OF THE APPOINTMENTS OF RICHARD CONDER AND ROBERT V. OWENS, JR. MADE BY THE GOVERNOR TO MEMBERSHIP ON THE NORTH CAROLINA UTILITIES 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 House committee substitute ~~bill~~ joint resolution (#_____), ☒ which changes the title, unfavorable as to original ~~bill~~ resolution (~~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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE JOINT RESOLUTION 1078
Proposed House Committee Substitute S1078-PCS2769

Sponsors:

Referred to:

May 12, 1997

A JOINT RESOLUTION PROVIDING FOR THE CONFIRMATION OF THE APPOINTMENT OF RICHARD CONDER MADE BY THE GOVERNOR TO MEMBERSHIP ON THE NORTH CAROLINA UTILITIES COMMISSION.

Whereas, under the provisions of G.S. 62-10, appointments made by the Governor to membership on the North Carolina Utilities Commission are subject to confirmation by the General Assembly by joint resolution; and

Whereas, the Governor has submitted to the presiding officers of the House of Representatives and the Senate, the names of his appointees to serve full terms on the North Carolina Utilities Commission;

Now, therefore, be it resolved by the Senate, the House of Representatives concurring:

Section 1. The appointment of Richard Conder to the North Carolina Utilities Commission for a term beginning July 1, 1997, and expiring June 30, 2005, is confirmed.

Section 2. This resolution is effective upon ratification.

1997 HOUSE OF REPRESENTATIVES
COMMITTEE REPORT - BILL INTRODUCTION

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

Representative Morgan (Committee Chair's Name), for the Committee on Rules, Calendar and Operations of the (Committee Name) House

submits the following bill with a favorable report for introduction. A JOINT RESOLUTION PROVIDING FOR THE CONFIRMATION OF THE APPOINTMENT OF ROBERT V. OWENS, JR. MADE BY THE GOVERNOR TO MEMBERSHIP ON THE NORTH CAROLINA UTILITIES COMMISSION.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 31(a), the bill is filed, assigned the number H. B. _____ and placed on the Calendar for its _____ reading.

North Carolina General Assembly
Legislative Services Office

George R. Hall, Legislative Services Officer
(919) 733-7044

Elaine W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones Street
Raleigh, NC 27603-5925
(919) 733-7500

Gerry F. Cohen, Director
Bill Drafting Division
Suite 401, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

June 25, 1997

MEMORANDUM

TO: **House Committee on Rules**
House Subcommittee on Public Utilities

FROM: **Steven Rose, Committee Counsel for Subcommittee on Public Utilities**

RE: **Utilities Commission Appointments**

The North Carolina Utilities Commission consists of seven commissioners who are appointed for eight year terms. Commissioners are appointed by the Governor and must be confirmed by the General Assembly by Joint Resolution.

A Utilities Commissioner is paid the same salary as a Superior Court Judge, $90,915 at present. There are fixed salary increases based upon length of service on the Utilities Commission, 4.8% after five years of service and 9.6% after ten years. Members of the Utilities Commission are subject to the same standards of conduct as a judge. They may be removed during their term of office only for cause, by impeachment.

During service on the Commission, a Commissioner may not engage in any other employment, business, profession or vocation. During the term of office the Commissioner may

not be associated in any way with any public utility company, including ownership of any interest.

The General Assembly created the Utilities Commission and establishes policies which the Commission carries out, usually with broad discretion. The Commission is both a regulator of public utilities, as well as a judge in all contested matters relating to public utilities. Decisions of the Utilities Commission are appealable directly to the North Carolina Court of Appeals, with the exception of general rate cases, which are appealable directly to the North Carolina Supreme Court.

The North Carolina Utilities Commission regulates the rates and services of the intrastate operations of public utilities supplying electricity, gas, telecommunications services, water and sewer services, taxis, buses, trains, trucking services, express package and mail services, and radio common carriers. The extent of this regulation varies from utility to utility, and there are limitations imposed by federal law. The Commission hears and decides proceedings relating to the issuance of utility franchises, the construction of electric generating plants, the setting of utility rates, the adjustment of electric utility rates based upon fuel cost changes, the adjustment of natural gas rates based upon changes in the cost of natural gas, the provision of new utility services, and the adjudication of complaints concerning the services of public utilities. Again, the extent of the Commission's jurisdiction varies from utility to utility and is effected in some cases by federal law.

ARTICLE 2.

Organization of Utilities Commission.

§ 62-10. Number; appointment; terms; qualifications; chairman; vacancies; compensation; other employment prohibited.

(a) The North Carolina Utilities Commission shall consist of seven commissioners who shall be appointed by the Governor subject to confirmation by the General Assembly by joint resolution. The names of commissioners to be appointed by the Governor shall be submitted by the Governor to the General Assembly for confirmation by the General Assembly on or before May 1, of the year in which the terms for which the appointments are to be made are to expire. Upon failure of the Governor to submit names as herein provided, the Lieutenant Governor and Speaker of the House jointly shall submit the names of a like number of commissioners to the General Assembly on or before May 15 of the same year for confirmation by the General Assembly. Regardless of the way in which names of commissioners are submitted, confirmation of commissioners must be accomplished prior to adjournment of the then current session of the General Assembly. This subsection shall be subject to the provisions of subsection (c) of this section.

(b) The terms of the commissioners now serving shall expire at the conclusion of the term for which they were appointed which shall remain as before with two regular eight-year terms expiring on July 1 of each fourth year after July 1, 1965, and the fifth term expiring on July 1 of each eighth year after July 1, 1963. The terms of office of utilities commissioners thereafter shall be eight years commencing on July 1 of the year in which the predecessor terms expired, and ending on July 1 of the eighth year thereafter.

(c) In order to increase the number of commissioners to seven, the names of two additional commissioners shall be submitted to the General Assembly on or before May 27, 1975, for confirmation by the General Assembly as provided in G.S. 62-10(a). The commissioners so appointed and confirmed shall serve new terms commencing on July 1, 1975, one of which shall be for a period of two years (with the immediate successor serving for a period of six years), and one of which shall be for a period of two years.

Thereafter, the terms of office of the additional commissioners shall be for eight years as provided in G.S. 62-10(b).

(d) A commissioner in office shall continue to serve until his successor is duly confirmed and qualified but such holdover shall not affect the expiration date of such succeeding term.

(e) On July 1, 1965, and every four years thereafter, one of the commissioners shall be designated by the Governor to serve as chairman of the Commission for the succeeding four years and until his successor is duly confirmed and qualifies. Upon death or resignation of the commissioner appointed as chairman, the Governor shall designate the chairman from the remaining commissioners and appoint a successor as hereinafter provided to fill the vacancy on the Commission.

(f) In case of death, incapacity, resignation or vacancy for any other reason in the office of any commissioner prior to the expiration of his term of office, the name of his successor shall be submitted by the Governor within four weeks after the vacancy arises to the General Assembly for confirmation by the General Assembly. Upon failure of the Governor to submit the name of the successor, the Lieutenant Governor and Speaker of the House jointly shall submit the name of a successor to the General Assembly within six weeks after the vacancy arises. Regardless of the way in which names of commissioners are submitted, confirmation of commissioners must be accomplished prior to the adjournment of the then current session of the General Assembly.

(g) If a vacancy arises or exists pursuant to either subsection (a) or (c) or (f) of this section when the General Assembly is not in session, and the appointment is deemed urgent by the Governor, the commissioner may be appointed and serve on an interim basis pending confirmation by the General Assembly.

(h) The salary of each commissioner shall be the same as that fixed from time to time for judges of the superior court except that the commissioner designated as the chairman shall receive one thousand dollars ($1,000) additional per annum. In lieu of merit and other increment raises paid to regular State employees, each commissioner, including the commissioner designated as chairman, shall receive as longevity pay an amount equal to four and eight-tenths percent (4.8%) of the annual salary set forth in the Current Operations Appropriations Act payable monthly after five years of service, and nine and six-tenths percent (9.6%) after 10 years of service. "Service" means service as a member of the Utilities Commission.

(i) The standards of judicial conduct provided for judges in Article 30 Chapter 7A of the General Statutes shall apply to members of the Commission. Members of the Commission shall be liable to impeachment for the causes and in the manner provided for judges of the General Court of Justice in Chapter 123 of the General Statutes. Members of the Commission shall not engage in any other employment, business, profession, or vocation while in office.

(j) Members of the Commission shall be reimbursed for travel and subsistence expenses at the rates allowed to State officers and employees by G.S. 138-6(a). (1941, c. 97, s. 2; 1949, c. 1009, s. 1; 1959, c. 1319; 1963, c. 1165, s. 1; 1967, c. 1238; 1975, c. 243, s. 3; c. 867, ss. 1, 2; 1977, c. 468, s. 1; c. 913, s. 2; 1983 (Reg. Sess., 1984), c. 1116, s. 91; 1989, c. 781, s. 41.2; 1993 (Reg. Sess., 1994), c. 769, s. 7.4(b); 1996, 2nd Ex. Sess., c. 18, s. 28.2(b).)

§ 62-11. Oath of office.

Each utilities commissioner before entering upon the duties of his office shall file with the Secretary of State his oath of office to support the Constitution and laws of the United States and the Constitution and laws of the State of North Carolina, and to well and truly perform the duties of his said office as utilities commissioner, and that he is not the agent or attorney of any public utility, or an employee thereof, and that he has no interest in any public utility. (1933, c. 134, s. 5; 1935, c. 280; 1939, c. 404; 1941, c. 97; 1963, c. 1165, s. 1.)

J. Richard Conder
1401 Carolina Drive
Rockingham, N. C. 28379

Education:

College: BS Degree in Accounting
East Carolina University

High School: Hamlet High School 1949

Other: Louisiana State University
Graduate School of Banking

N. C. Bankers Association School
Chapel Hill, N. C.

Personal Data:

Married, Three (3) Children, two daughters and one son

Member First Presbyterian Church, Rockingham, N. C.

Elder, First Presbyterian Church, Rockingham, N. C.

Experience:

1974 to Present - Vice President
First Union National Bank

1960 to 1974 Southern National Bank
Senior Vice President-Area Manager

1958 to 1960 Lundin and Spencer, CPA

Military Service:

U. S. Air Force
Honorable Discharge 1955

OTHER RESPONSIBILITIES:

County Commissioner 1962 to 1984 Richmond County

Chairman of Board for 20 years. 1964 to 1984

President of North Carolina County Commissioners Association 1973

President, National Association of Counties 1980

North Carolina Senator 1984 to Present

Chairman, Children and Youth Committee - 1987 - 1989

Chairman, N. C. Senate Education Committee - 1989 - 1992

Chairman, N. C. Senate Mental Health Committee 1993 - 1994

Majority Leader, N. C. Senate 1993 - to present

Civic Involvement:

Former Chairman Richmond County Economic Development Authority

Former President of Hamlet and Rockingham Rotary Clubs.

Former Hospital Trustee Richmond Memorial Hospital

Former Chairman of Cancer Drive Richmond County

Former Chairman of Heart Fund Richmond County

Former Member- President Reagan's Private Sector Initiative

Tar Heel of the Week - Raleigh News and Observer

Outstanding Alumnus Award - East Carolina University

N. C. Distinguished Citizens Award 1982

NORTH CAROLINA BOARD OF ETHICS
116 WEST JONES STREET
RALEIGH 27603-8003
(919) 733-5103

STATEMENT OF ECONOMIC INTEREST FOR EXECUTIVE ORDER NUMBER ONE DATED JANUARY 9, 1993, BY GOVERNOR JAMES B. HUNT, JR.

MAIL FORM TO THE BOARD OF ETHICS, 116 WEST JONES STREET, RALEIGH, NC 27603. FOR ASSISTANCE, CALL MILLIE DONAVANT AT 919-733-5103.

THE PERSON FILING SHALL INCLUDE IN THE FOLLOWING THE ASSETS, LIABILITIES, AND SOURCES OF INCOME OF HIS OR HER SPOUSE WHICH ARE DERIVED FROM THE ASSETS OR INCOME OF THE PERSON FILING, CONTROLLED BY THE PERSON FILING, OR FOR WHICH THE PERSON FILING IS JOINTLY OR SEVERALLY LIABLE.

Name of Person Filing: J. Richard Conder

Home Address: 1401 Carolina Drive
Rockingham, N. C. 28379

Home Telephone: 910-895-9747

Occupation, Position, or Title: V.P. First Union Bank/N. C. Senate

Employer: First Union Bank/State of N. C.

Office Address: 202 E. Washington Street
Rockingham, N. C. 28379

Office Telephone: 910-997-5551

If you are filing as an appointee, please list the name of the board or commission on which you are serving, and the position on the board that you are appointed to.

N. C. Utilities Commission
Name of Board

At Large
Position (example = at large position)

1. List all parcels of real estate located in North Carolina in which you have an ownership interest of more than $5,000, and asterisk (*) parcels valued more than $10,000. Give street address or other description adequate to determine the location of each parcel. If persons other than your spouse have an ownership interest in the property, state the type of ownership and name of the person having the interest. If any parcels are located in an area over which the board you are serving on has regulatory authority or could otherwise be affected by board decisions, please state the particulars.

*Home - 1401 Carolina Drive

Rockingham, N.C. 28379

Joint Ownership with spouse.

2. List the name of each publicly-owned company in which you own securities valued more than $10,000. These companies are required to register with the Securities and Exchange Commission.

*First Union National Bank

*Carolina Fincorp

These are held in a self directed IRA

3. List the name of each non-publicly-owned company or business entity in which you own securities or other equity interests with a value exceeding $5,000. Asterisk (*) all with a value exceeding $10,000.

None

With respect to the entities listed with a value exceeding $10,000, should any of the entities own securities or equity interests exceeding $10,000 in other companies or business entities, list the name of the company or business entity.

Unknown

Are you or any of the entities listed licensed by, regulated by, or have business relationships with the same area of state government with which you are associated? If so, state the particulars.

N/A

4. If you, your spouse, or your dependent children are the beneficiary of a trust created, established or controlled by you which holds assets, and if those assets are known, list the name and address of the trustee and describe the trust. List each business in which the trust has an ownership interest exceeding $5,000, and asterisk (*) all with a value exceeding $10,000.

N/A

5. List assets with a value exceeding $5,000 each held by you which have not been listed elsewhere, and asterisk (*) all with a value exceeding $10,000. Some examples are mutual funds, certificates of deposit, and retirement accounts. It is not necessary to list household furniture, jewelry, automobiles, and other personal effects.

*First Union Retirement Fund (Personal)

6. List liabilities with a value exceeding $5,000 each, asterisk (*) all with a value exceeding $10,000, give the name of the creditor, and describe the nature of the liability. It is not necessary to list credit card debts, mortgage for personal residence, automobile loans, and loans of this nature.

N/A

7. List sources of income shown on the most recent federal and state income tax returns of the person filing where $5,000 or more was received from each source. For each source listed, describe the type of income received, and state the name of the business entity or individual from which the income was received. Some examples of income are salary or wages, professional fees, honoraria, interest, stock dividends, capital gains, and business profits.

Salary - First Union Bank - will resign if confirmed

Salary - N.C. Senate - will resign if confirmed

State the particulars if any of the sources of income are regulated by, receive permits from, or otherwise connected with the same area of state government with which you are connected.

N/A

8. If you are a practicing attorney, check each category of legal representation in which you and/or the law firm with which you are associated has during any single year of the past five years earned legal fees in excess of $5,000 from any of the following categories of legal representation:

( ) Admiralty ( ) Taxation ( ) Decedent's estates
( ) Negligence (representing plaintiffs)
( ) Negligence (representing defendants)
( ) Criminal law ( ) Labor law ( ) Insurance law
( ) Utilities regulation or representation of regulated utilities
( ) Corporation law ( ) Administrative law
( ) Real property ( ) Representation of local governments

9. List all businesses you have been associated with during the past five years as an employee, officer, director, partner, or a material owner of a security or other equity interest which have not been previously listed. Include your present employment if it is not listed in Question three.

For each business listed, state your association, and the time period of your association.

To the best of your knowledge, state whether any of the businesses listed does business with the state, the nature of the business, and whether you or the business is licensed by, regulated by, receives permits, grants or other funding from, or otherwise connected with the same area of state government with which you are connected.

It is not necessary to list not-for-profit organizations or civic organizations unless the entities receive benefits from the same area of state government with which you are connected.

V.P. - First Union National Bank - Vice President for 23 years as City Executive and Manager, including business developments

I assume that our Corporate Headquarters in Charlotte does routine banking business with the State of North Carolina.

10. Explain any involvement your spouse has with any business or organization which might create a conflict of interest for you.

My wife owns the following utility stocks:

*Duke Power

*C.P. & L.

If these stocks pose a conflict of interest, she will dispose of them immediately.

11. List all gifts received with a value exceeding $100 during the past twelve months preceding the date of this statement from sources other than your spouse or relatives.

N/A

List all gifts received with a value exceeding $50 from any source having business with or regulated by the state.

N/A

12. Having read Executive Order Number One, state any problems or conflicts of interest you may have which are not fully covered in previous questions. Include an explanation of how you would propose to resolve the matter.

My wife's investments were paid 100% from her earnings as Director of Literacy at Richmond Community Community College. As indicated, she will dispose of them if necessary.

VERIFICATION

I hereby do certify that I have read this Statement of Economic interest, and all attachments, and to the best of my knowledge and belief it is true, correct and complete.

I hereby do certify that I have not transferred, and will not transfer, any asset, interest or property for the purpose of concealing it from disclosure while retaining an equitable interest therein.

May 13, 1997
Date

J Richard Corder
Signature

STATE OF NORTH CAROLINA

COUNTY OF Wake

Subscribed and sworn to before me this the 13th day of May 19 97.

My Commission Expires:
1/24/2000

Beverly Adams
Notary Public

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE JOINT RESOLUTION DRHJR2340

Sponsors: Rules, Calendar, and Operations of the House.

Referred to:

A JOINT RESOLUTION PROVIDING FOR THE CONFIRMATION OF THE APPOINTMENT OF ROBERT V. OWENS, JR. MADE BY THE GOVERNOR TO MEMBERSHIP ON THE NORTH CAROLINA UTILITIES COMMISSION.

Whereas, under the provisions of G.S. 62-10, appointments made by the Governor to membership on the North Carolina Utilities Commission are subject to confirmation by the General Assembly by joint resolution; and

Whereas, the Governor has submitted to the presiding officers of the House of Representatives and the Senate, the names of his appointees to serve full terms on the North Carolina Utilities Commission;

Now, therefore, be it resolved by the House of Representatives, the Senate concurring:

Section 1. The appointment of Robert V. Owens, Jr. to the North Carolina Utilities Commission for a term beginning July 1, 1997, and expiring June 30, 2005, is confirmed.

Section 2. This resolution is effective upon ratification.

BIOGRAPHICAL SKETCH
ROBERT V. OWENS, JR.

Post Office Box 968
Nags Head, NC 27959
(919) 441-5336

505 Amanias Dare Street
Manteo, NC 27954
(919) 473-2721

Personal Information:
Life-long resident of Dare County (64 years)
Married to Sarah A. Owens for 41 years
Two children: R.V. Owens, III, Manteo, NC, a Dare County entrepreneur
Married to Julie Tillett
Two children--Shannon and Robert Daniel ("Bo)

Lisa S. Hooper, Bruxton, NC, Homemaker and Active Community Volunteer
Married to Edgar Hooper, Jr.
Two children-Chase and Avery

Business Background:
Co-owner and manager of Owens' Restaurant, a family business in existence since 1946
Co-owner of a fast-food franchise in Dare County since 1985

Military/Education Background:
United States Coast Guard
Attended East Carolina University
Graduated from Manteo High School

Government Involvement:
Director of Governor's Eastern Office; 1993 to present
Dare County Board of Commissioners; 1970-1978; 1984 to present; Chairman, 13 years
North Carolina Tax Study Commission; 1986-1988
North Carolina State Banking Commission; 1982-1984
North Carolina State Parks and Recreation Commission; 1980-1982

Community Involvement:
Member of Manteo Baptist Church
Member of Manteo Lions Club, past president
Member of Manteo Masonic Lodge
Member of Dare County Shrine Club, past president
Served on numerous local commissions and committees

Special Recognition:
Leadership Award for Promotion of Education and Technology in Dare County Schools
Leadership Award for Promotion of Dare County Babe Ruth World Series
Dare County Citizen of the Year Award
Town of Manteo Citizen of the Year Award
Leadership Award for North Carolina Mentally Handicapped

NORTH CAROLINA BOARD OF ETHICS
116 WEST JONES STREET
RALEIGH 27603-8003
(919) 733-5103

SUPPLEMENTAL STATEMENT OF ECONOMIC INTEREST

FOR EXECUTIVE ORDER NUMBER ONE DATED JANUARY 9, 1993, BY GOVERNOR JAMES B. HUNT, JR.

FOR A COPY OF YOUR PREVIOUS STATEMENT, OR ASSISTANCE, CALL MILLIE DONAVANT AT 919-733-5103.

PLEASE NOTE THAT THIS FORM REQUIRES YOU TO ADD NEW INFORMATION, AND TO DELETE INFORMATION WHICH IS NO LONGER APPLICABLE, TO YOUR STATEMENT OF ECONOMIC INTEREST FOR EXECUTIVE ORDER NUMBER ONE DATED JANUARY 9, 1993. IF YOU HAVE NOT FILED THAT STATEMENT, PLEASE REQUEST THE STATEMENT OF ECONOMIC INTEREST FORM. IT IS NOT NECESSARY TO HAVE THE SUPPLEMENTAL FORM NOTARIZED.

THE PERSON FILING SHALL INCLUDE IN THE FOLLOWING THE ASSETS, LIABILITIES, AND SOURCES OF INCOME OF HIS OR HER SPOUSE WHICH ARE DERIVED FROM THE ASSETS OR INCOME OF THE PERSON FILING, CONTROLLED BY THE PERSON FILING, OR FOR WHICH THE PERSON FILING IS JOINTLY OR SEVERALLY LIABLE.

Name of Person Filing Robert V. Owens, Jr

Dir. Governor's Easter Office
State Employee Position, Agency

Governor / Easter Office
Name of Board or Commission

IF YOU DO NOT HAVE CHANGES TO REPORT, PLEASE SIGN YOUR NAME, ADD DATE, AND RETURN THIS PAGE TO THE ABOVE ADDRESS.

Robert V. Owens, Jr. 5/2/97
Signature Date

* Note: Last filed 2/22/96

NORTH CAROLINA BOARD OF ETHICS
116 WEST JONES STREET
RALEIGH 27603-8003
(919) 733-5103

SUPPLEMENTAL STATEMENT OF ECONOMIC INTEREST

FOR EXECUTIVE ORDER NUMBER ONE DATED JANUARY 9, 1993, BY GOVERNOR JAMES B. HUNT, JR.

FOR A COPY OF YOUR PREVIOUS STATEMENT, OR ASSISTANCE, CALL MILLIE DONAVANT AT 919-733-5103.

PLEASE NOTE THAT THIS FORM REQUIRES YOU TO ADD NEW INFORMATION, AND TO DELETE INFORMATION WHICH IS NO LONGER APPLICABLE, TO YOUR STATEMENT OF ECONOMIC INTEREST FOR EXECUTIVE ORDER NUMBER ONE DATED JANUARY 9, 1993. IF YOU HAVE NOT FILED THAT STATEMENT, PLEASE REQUEST THE STATEMENT OF ECONOMIC INTEREST FORM. IT IS NOT NECESSARY TO HAVE THE SUPPLEMENTAL FORM NOTARIZED.

THE PERSON FILING SHALL INCLUDE IN THE FOLLOWING THE ASSETS, LIABILITIES, AND SOURCES OF INCOME OF HIS OR HER SPOUSE WHICH ARE DERIVED FROM THE ASSETS OR INCOME OF THE PERSON FILING, CONTROLLED BY THE PERSON FILING, OR FOR WHICH THE PERSON FILING IS JOINTLY OR SEVERALLY LIABLE.

Name of Person Filing Robert V. Owens, Jr.

Governor's Office
State Employee Position, Agency

Director, Governor's Eastern Office
Name of Board or Commission

✓ IF YOU DO NOT HAVE CHANGES TO REPORT, PLEASE SIGN YOUR NAME, ADD DATE, AND RETURN THIS PAGE TO THE ABOVE ADDRESS.

Robert V. Owens Jr. 2/15/96
Signature Date

NORTH CAROLINA BOARD OF ETHICS
116 WEST JONES STREET
RALEIGH 27603-8003
(919) 733-5103

SUPPLEMENTAL STATEMENT OF ECONOMIC INTEREST

FOR EXECUTIVE ORDER NUMBER ONE DATED JANUARY 9, 1993, BY GOVERNOR JAMES B. HUNT, JR.

FOR A COPY OF YOUR PREVIOUS STATEMENT, OR ASSISTANCE, CALL MILLIE DONAVANT AT 919-733-5103.

PLEASE NOTE THAT THIS FORM REQUIRES YOU TO ADD NEW INFORMATION, AND TO DELETE INFORMATION WHICH IS NO LONGER APPLICABLE, TO YOUR STATEMENT OF ECONOMIC INTEREST FOR EXECUTIVE ORDER NUMBER ONE DATED JANUARY 9, 1993. IF YOU HAVE NOT FILED THAT STATEMENT, PLEASE REQUEST THE STATEMENT OF ECONOMIC INTEREST FORM. IT IS NOT NECESSARY TO HAVE THE SUPPLEMENTAL FORM NOTARIZED.

THE PERSON FILING SHALL INCLUDE IN THE FOLLOWING THE ASSETS, LIABILITIES, AND SOURCES OF INCOME OF HIS OR HER SPOUSE WHICH ARE DERIVED FROM THE ASSETS OR INCOME OF THE PERSON FILING, CONTROLLED BY THE PERSON FILING, OR FOR WHICH THE PERSON FILING IS JOINTLY OR SEVERALLY LIABLE.

Name of Person Filing Robert V. Owens Jr.

Director, Eastern Governor's Office
State Employee Position, Agency

Name of Board or Commission

* IF YOU DO NOT HAVE CHANGES TO REPORT, PLEASE SIGN YOUR NAME, ADD DATE, AND RETURN THIS PAGE TO THE ABOVE ADDRESS.

Robert V. Owens Jr. 7/1/95
Signature Date

→ SAME INFO AS PREVIOUSLY FILED

NORTH CAROLINA BOARD OF ETHICS
116 WEST JONES STREET
RALEIGH 27603-8003
(919) 733-5103

SUPPLEMENTAL STATEMENT OF ECONOMIC INTEREST

FOR EXECUTIVE ORDER NUMBER ONE DATED JANUARY 9, 1993, BY GOVERNOR JAMES B. HUNT, JR.

FOR A COPY OF YOUR PREVIOUS STATEMENT, OR ASSISTANCE, CALL MILLIE DONAVANT AT 919-733-5103.

PLEASE NOTE THAT THIS FORM REQUIRES YOU TO ADD NEW INFORMATION, AND TO DELETE INFORMATION WHICH IS NO LONGER APPLICABLE, TO YOUR STATEMENT OF ECONOMIC INTEREST FOR EXECUTIVE ORDER NUMBER ONE DATED JANUARY 9, 1993. IF YOU HAVE NOT FILED THAT STATEMENT, PLEASE REQUEST THE STATEMENT OF ECONOMIC INTEREST FORM. IT IS NOT NECESSARY TO HAVE THE SUPPLEMENTAL FORM NOTARIZED.

THE PERSON FILING SHALL INCLUDE IN THE FOLLOWING THE ASSETS, LIABILITIES, AND SOURCES OF INCOME OF HIS OR HER SPOUSE WHICH ARE DERIVED FROM THE ASSETS OR INCOME OF THE PERSON FILING, CONTROLLED BY THE PERSON FILING, OR FOR WHICH THE PERSON FILING IS JOINTLY OR SEVERALLY LIABLE.

Name of Person Filing Robert V. Owens, Jr.

Director, Governor's Eastern Office
State Employee Position, Agency

Name of Board or Commission

IF YOU DO NOT HAVE CHANGES TO REPORT, PLEASE SIGN YOUR NAME, ADD DATE, AND RETURN THIS PAGE TO THE ABOVE ADDRESS.

Robert V. Owens, Jr. March 2, 1994
Signature Date

6/8/93

NORTH CAROLINA BOARD OF ETHICS
116 WEST JONES STREET
RALEIGH 27603-8003
(919) 733-5103

STATEMENT OF ECONOMIC INTEREST FOR EXECUTIVE ORDER NUMBER ONE DATED JANUARY 9, 1993, BY GOVERNOR JAMES B. HUNT, JR.

MAIL FORM TO THE BOARD OF ETHICS, 116 WEST JONES STREET, RALEIGH, NC 27603. FOR ASSISTANCE, CALL MILLIE DONAVANT AT 919-733-5103.

THE PERSON FILING SHALL INCLUDE IN THE FOLLOWING THE ASSETS, LIABILITIES, AND SOURCES OF INCOME OF HIS OR HER SPOUSE WHICH ARE DERIVED FROM THE ASSETS OR INCOME OF THE PERSON FILING, CONTROLLED BY THE PERSON FILING, OR FOR WHICH THE PERSON FILING IS JOINTLY OR SEVERALLY LIABLE.

Name of Person Filing: Robert V. Owens Jr.

Home Address: 7114 S. VA. Dare Trail
Nags Head, N.C. 27959

Home Telephone: 919-441-5336

Occupation, Position, or Title: Owner

Employer: Owens' Motel / Restaurant

Office Address: 7114 A. S. VA. Dare Trail
Nags Head, N.C. 27959

Office Telephone: 919-441-7309

If you are filing as an appointee, please list the name of the board or commission on which you are serving, and the position on the board that you are appointed to.

Eastern Office of the Governor (Bobby Owens 919-514-4825)
Name of Board

Director
Position (example = at large position)

1. List all parcels of real estate located in North Carolina in which you have an ownership interest of more than $5,000, and asterisk (*) parcels valued more than $10,000. Give street address or other description adequate to determine the location of each parcel. If persons other than your spouse have an ownership interest in the property, state the type of ownership and name of the person having the interest. If any parcels are located in an area over which the board you are serving on has regulatory authority or could otherwise be affected by board decisions, please state the particulars.

* Owens' Motel and Restaurant property in South Nags Head 16½ M.P. Lower beach area.

* Lot adjoining Restaurant property 50 X 400 same location

2. List the name of each publicly-owned company in which you own securities valued more than $10,000. These companies are required to register with the Securities and Exchange Commission.

None

3. List the name of each non-publicly-owned company or business entity in which you own securities or other equity interests with a value exceeding $5,000. Asterisk (*) all with a value exceeding $10,000.

* Owens' Motel and Restaurant
* Kentucky Fried Chicken store on Outer Banks, Nags Head and Kill Devil Hills (2)

With respect to the entities listed with a value exceeding $10,000, should any of the entities own securities or equity interests exceeding $10,000 in other companies or business entities, list the name of the company or business entity.

No

Are you or any of the entities listed licensed by, regulated by, or have business relationships with the same area of state government with which you are associated? If so, state the particulars.

No

4. If you, your spouse, or your dependent children are the beneficiary of a trust created, established or controlled by you which holds assets, and if those assets are known, list the name and address of the trustee and describe the trust. List each business in which the trust has an ownership interest exceeding $5,000, and asterisk (*) all with a value exceeding $10,000.

NONE

5. List assets with a value exceeding $5,000 each held by you which have not been listed elsewhere, and asterisk (*) all with a value exceeding $10,000. Some examples are mutual funds, certificates of deposit, and retirement accounts. It is not necessary to list household furniture, jewelry, automobiles, and other personal effects.

NONE

6. List liabilities with a value exceeding $5,000 each, asterisk (*) all with a value exceeding $10,000, give the name of the creditor, and describe the nature of the liability. It is not necessary to list credit card debts, mortgage for personal residence, automobile loans, and loans of this nature.

(Same as above)

East Carolina Bank Manteo N.C. (Note / Deed of Trust)

Centura Bank Manteo N.C.

7. List each source of income received by you with a value exceeding $5,000 shown on your most recent federal and state tax returns. For each source listed, describe the type of income received, and state the name of the business entity or individual from which the income was received. Some examples of income are salary or wages, professional fees, honoraria, interest, stock dividends, capital gains, and business profits.

Salaries (from business as listed above)
Salary (Dare Cnty Commissioner)
Chairman of Dare County Commission

State the particulars if any of the sources of income are regulated by, receive permits from, or otherwise connected with the same area of state government with which you are connected.

NO

8. If you are a practicing attorney, check each category of legal representation in which you and/or the law firm with which you are associated has during any single year of the past five years earned legal fees in excess of $5,000 from any of the following categories of legal representation:

N/A

( ) Admiralty ( ) Taxation ( ) Decedent's estates
( ) Negligence (representing plaintiffs)
( ) Negligence (representing defendants)
( ) Criminal law ( ) Labor law ( ) Insurance law
( ) Utilities regulation or representation of regulated utilities
( ) Corporation law ( ) Administrative law
( ) Real property ( ) Representation of local governments

9. List all businesses you have been associated with during the past five years as an employee, officer, director, partner, or a material owner of a security or other equity interest which have not been previously listed. Include your present employment if it is not listed in Question three.

For each business listed, state your association, and the time period of your association.

To the best of your knowledge, state whether any of the businesses listed does business with the state, the nature of the business, and whether you or the business is licensed by, regulated by, receives permits, grants or other funding from, or otherwise connected with the same area of state government with which you are connected.

It is not necessary to list not-for-profit organizations or civic organizations unless the entities receive benefits from the same area of state government with which you are connected.

NONE

10. Explain any involvement your spouse has with any business or organization which might create a conflict of interest for you.

NONE

11. List all gifts received with a value exceeding $100 during the past twelve months preceding the date of this statement from sources other than your spouse or relatives.

NONE

List all gifts received with a value exceeding $50 from any source having business with or regulated by the state.

NONE

12. Having read Executive Order Number One, state any problems or conflicts of interest you may have which are not fully covered in previous questions. Include an explanation of how you would propose to resolve the matter.

NONE

VERIFICATION

I hereby do certify that I have read this Statement of Economic interest, and all attachments, and to the best of my knowledge and belief it is true, correct and complete.

I hereby do certify that I have not transferred, and will not transfer, any asset, interest or property for the purpose of concealing it from disclosure while retaining an equitable interest therein.

June 1, 1993
Date

Robert V. Owens Jr.
Signature

STATE OF NORTH CAROLINA

COUNTY OF Dare

Subscribed and sworn to before me this the 1 day of June 1993.

My Commission Expires:
1/7/95

Cora L. Aubree
Notary Public

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House**.

☐ Committee Substitute for
H.J.R. 1237 A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF MAZIE SPENCER WOODRUFF, A DEVOTED PUBLIC SERVANT AND COMMUNITY ACTIVIST.

☒ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

HOUSE JOINT RESOLUTION 1237*

Sponsors: Representatives Womble, Oldham, Gray, Esposito, Decker, and Sexton.

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

June 19, 1997

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF MAZIE SPENCER WOODRUFF, A DEVOTED PUBLIC SERVANT AND COMMUNITY ACTIVIST.

Whereas, Mazie Spencer Woodruff was born on September 25, 1922, to the late William and Virgie Spencer; and

Whereas, Mazie Spencer Woodruff worked for and retired from the Hollady Surgical Supply Company; and

Whereas, in 1976, Mazie Spencer Woodruff became the first African-American to be elected to the Forsyth County Board of Commissioners, on which she served for 14 years; and

Whereas, Mazie Spencer Woodruff was one of the original members of the Winston-Salem Board of Directors of the Mechanics and Farmers Bank; and

Whereas, Mazie Spencer Woodruff was a devoted and active member of her community, serving on numerous boards and committees, including the Forsyth County Board of Social Services, Forsyth County Library Board of Trustees, Forsyth County Tourism Development Authority, Reynolds Health Center Advisory Committee, Forsyth County Cooperative Extension Advisory Council, 4-H Advisory Committee, Farm-City Committee, and Northwest Piedmont Council of Governments, and Cherry Hill Community Club; and

Whereas, Mazie Spencer Woodruff was a member of the Board of Directors of the Red Cross, the Goodwill Industries, and the United Way; and

Whereas, Mazie Spencer Woodruff served on the Governor's Council on the Status of Women and the North Carolina Mental Health Study Commission; and

Whereas, Mazie Spencer Woodruff was a devoted volunteer for Meals-on-Wheels of Winston-Salem and was a member of the American Legion Post 220; and

Whereas, Mazie Spencer Woodruff received numerous honors and awards, including the Charles McLean Public Service Award, the NAACP Achievements Award, and was recognized as the Winston-Salem Chronicle Woman of the Year in 1988, and as the Outstanding County Commissioner by the National Association of Black County Officials in 1996; and

Whereas, Mazie Spencer Woodruff was a deeply religious woman who was actively involved in the Union Chapel Baptist Church, serving as a Sunday School teacher and as a member of the Senior Usher Board; and

Whereas, on January 7, 1997, the State of North Carolina and Forsyth County lost one of its most beloved and productive citizens with the death of Mazie Spencer Woodruff; and

Whereas, Mazie Spencer Woodruff is survived by four sons, Melvin Woodruff, Charles Woodruff, Robert Woodruff, and Kenneth Woodruff; three daughters, Mildred Woodruff Strange, Sylvia Woodruff, and Arnetta Woodruff Hauser; 15 grandchildren; 13 great-grandchildren; and a sister, Mabel Price; and

Whereas, Mazie Spencer Woodruff was respected, admired, and loved by those who knew her and those who had the privilege of working with her;

Now, therefore, be it resolved by the House of Representatives, the Senate concurring:

Section 1. The General Assembly expresses its appreciation of Mazie Spencer Woodruff as a devoted public servant and citizen and extends its sympathy to her family and friends for their loss.

Section 2. The Secretary of State shall transmit a certified copy of this resolution to the family of Mazie Spencer Woodruff.

Section 3. This resolution is effective upon ratification.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House.**

☐ Committee Substitute for
S.J.R. 707 A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF ROYCE PHELPS "BO" THOMAS, FORMER MEMBER OF THE GENERAL ASSEMBLY.

☒ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE JOINT RESOLUTION 707

Sponsors: Senators Jenkins; Albertson, Allran, Ballance, Ballantine, Basnight, Blust, Carpenter, Carrington, Clark, Cochrane, Conder, Cooper, Dalton, Dannelly, East, Forrester, Foxx, Garwood, Gulley, Hartsell, Horton, Hoyle, Jordan, Kerr, Kincaid, Kinnaird, Ledbetter, Lee, Lucas, Martin of Pitt, Martin of Guilford, McDaniel, Miller, Odom, Page, Perdue, Phillips, Plyler, Rand, Reeves, Rucho, Shaw of Cumberland, Shaw of Guilford, Soles, Warren, Webster, Weinstein, Wellons, and Winner.

Referred to: Rules and Operations of the Senate.

April 7, 1997

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF ROYCE PHELPS "BO" THOMAS, FORMER MEMBER OF THE GENERAL ASSEMBLY.

Whereas, Royce Phelps Thomas, affectionately known as "Bo", was born in Avon Park, Florida, on January 3, 1932, to J.R. Thomas and Eunice Phelps Thomas; and

Whereas, Bo Thomas graduated from the Blue Ridge School for Boys in 1948, and attended Duke University from 1948 to 1951; and

Whereas, Bo Thomas was a veteran of the Korean War, serving in the United States Army from 1957 to 1960, and was inducted into the Officer's Candidate School Hall of Fame in Fort Benning, Georgia; and

Whereas, Bo Thomas bore a great love for Western North Carolina, spending most of his life in Hendersonville and contributing to the area's economy as vice-president and owner of Thomas Produce Company; and

Whereas, Bo Thomas showed an outstanding devotion to public service, serving with honor and distinction as a member of the North Carolina Senate from 1979 to 1988; and

Whereas, during his tenure in the General Assembly, Bo Thomas was tenacious in seeking to improve the welfare of his mountain community, to which he remained loyal; and

Whereas, Bo Thomas was a staunch supporter of the Blue Ridge Community College for which he helped to secure funds to plan the college's new Allied Health and Human Services Building and funds for the college's Killian Building, which houses a library, an audiovisual center, a student lounge, a cafeteria, and a bookstore and is used by both the students and the public; and

Whereas, Bo Thomas played a large role in securing funding to replace the condemned Henderson County Courthouse with a new structure; and

Whereas, having a great respect for the environment, Bo Thomas vigorously pushed for legislation restricting tall structures on mountain ridges, which became an act referred to as the "Ridge Law"; and

Whereas, Bo Thomas's love for public service was extended to his activities as a member of Veterans of Foreign Wars and the American Legion and as a member of the Hendersonville Lions Club; and

Whereas, Bo Thomas served on the National Board of Advisors for the renowned Brevard Music Center; and

Whereas, Bo Thomas was active in the Presbyterian Church, having served as a Deacon of the First Presbyterian Church in Hendersonville; and

Whereas, Bo Thomas was a man of the people, who said what he thought and believed that direct action was the most effective means to an end; and

Whereas, the State of North Carolina suffered a great loss when Bo Thomas died on January 14, 1997; and

Whereas, Bo Thomas is survived by his wife, Margaret Stonecipher Thomas; three children, James Royce Thomas, Mary Thomas Vieira, and Richard Latt Thomas; four grandchildren; and several other close relatives and friends; and

Now, therefore, be it resolved by the Senate, the House of Representatives concurring:

Section 1. The General Assembly honors the memory of Bo Thomas and expresses the gratitude and appreciation of this State and its citizens for his life and service to North Carolina.

Section 2. The General Assembly extends its deepest sympathy to the family of Bo Thomas for the loss of a dear family member.

Section 3. The Secretary of State shall transmit a certified copy of this resolution to the family of Royce Phelps "Bo" Thomas.

Section 4. This resolution is effective upon ratification.

VISITOR REGISTRATION SHEET

RULES, CALENDAR, AND OPERATIONS OF THE HOUSE **June 25, 1997**

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Amy Jo Bain	Smith Anderson
Cam Cover	BPMHL
Molly Diggins	NC Sierra Club
W Hatch Jr	NCPHYS THERAPY Ass'n.
Jane Cox	NCMA
Dana Simmons	ZDA, PA
LEIGHTON ROPER	"
Suzanne Williams	Bone v Assoc -
Laura Hartsell	MCIC
Akilah R. [illegible]	(AHA)
Donald Eckley	AHA (Am. Heart Assoc)
Maggie Clark	American Heart Assoc.
Tommy Taylor	American Heart Assoc.
George Reeves	Johnson + Johnson
David Ferrell	Hyatt McNamee, Caldwell, McElroy & Cuffe PA
John Crill	NC Hosp. Ass'n.
George Rose	NC Council of Churches
Lee Holmes	[illegible]
Curt Williams	Governor's Office
BILL SCOGGIN	NCBA
Sarah Zieler	DEHNR
[illegible]	NCIBA
Stan Lane	DEHNR
L Rogers	DEHNR
[illegible]	
Alan Miles	Baker & Dixon LLP
[illegible]	NCATA

VISITOR REGISTRATION SHEET

RULES, CALENDAR, AND OPERATIONS OF THE HOUSE **June 25, 1997**

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Lucius PULLEN	ATTORNEY
ZEB ALLEY	"
Peyton MAYNARD	"
Bill Breeze	NC Med Bd.
Jane P. Gray	DOJ
Tommy Hamilton	NACPA
SAM JOHNSON	Atty
MIKE JAMES	OSHNC
FRAN PRESTON	NCRMA
DON McCORQUODALE	NCRMA
Jim Upchurch	CP&L
KEITH HUNDLEY	WEYERHAEUSER
Mark Nunnelee	Poyner & Spruill
Amy Tinkham	Hunton & Williams
John McAlister	Duke Power
Jay	NCAHC
Rudolph E. Clark	Tri-agency Council
Deborah Brown	Assn. Trng Assn. of NC
Amanda Mathey	Citizen
Susan Crocker	DHR
Delilah P. WARNER	DWNC
John Nichols	Allen & Pinnix P.A.
TIM KENT	Am. Institute of Architects
AB Swindell, IV	BFI
Suzanne Dudley	Rep. Gulley's wife
Diane Simpson	Cawings A&C
Lucia Bell	NC Medical Society

VISITOR REGISTRATION SHEET

RULES, CALENDAR, AND OPERATIONS OF THE HOUSE **June 25, 1997**

Name of Committee Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Craig Baker	NCATA
Mike Garland	Electric Cities
[illegible]	WCSR
Sandra Kane	Martin Marietta
Smith Lingerfelt	Electric Cities of NC
Rick Proctor	NCATA
PG	NCHB
Tom Berry	NC Wildlife Federation
[illegible]	NC Bankers
[illegible]	Project Challenge
Roshyn Sawyer	[illegible]
Paul H. Stock	NCBA

MINUTES
COMMITTEE ON RULES, CALENDAR, AND OPERATIONS OF THE HOUSE
June 26, 1997
12:00 Noon

The Committee on Rules, Calendar and Operations of the House met on Thursday, June 26, 1997 at 12:00 noon in the House Conference Room. Representative Morgan, Committee Chair called the meeting to order and asked the clerk to call the roll. The following members were present: Representative Bowie, Vice-Chair; and Representatives Crawford, Esposito, Gulley, McMahan, Miner, Mitchell, Neely, Thompson and C Wilson.

Chairman Morgan brought forward Senate Committee Substitute for House Bill 810 - NASH ROOM TAX/ROCKY MOUNT ANNEX. Representative Arnold explained that the substitute bill would annex the Gold Rock community. Representative Mitchell moved that the House do concur with the Senate Committee substitute and the vote was unananimous.

The meeting adjourned at 12:05.

Representative Richard T. Morgan
Committee Chair

Dixie Epps
Committee Clerk

Attachments:
Committee Report
Bill

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House.**

☐ Committee Substitute for
H.B. 810 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE NASH COUNTY TO LEVY AN ADDITIONAL ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX AND TO ANNEX THE GOLD ROCK I-95 INTERCHANGE AREA INTO THE CITY OF ROCKY MOUNT.

☐ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 810
Committee Substitute Favorable 4/21/97
Senate Judiciary Committee Substitute Adopted 6/18/97

Short Title: Nash Room Tax/Rocky Mount Annex. (Local)

Sponsors:

Referred to: Finance.

April 7, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE NASH COUNTY TO LEVY AN ADDITIONAL ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX AND TO ANNEX THE GOLD ROCK I-95 INTERCHANGE AREA INTO THE CITY OF ROCKY MOUNT.

The General Assembly of North Carolina enacts:

Section 1. Nash Occupancy Tax. Section 1 of Chapter 32 of the 1987 Session Laws, as amended by Chapter 545 of the 1993 Session Laws, reads as rewritten:

"Section 1. Occupancy tax. (a) Authorization and scope. The Nash County Board of Commissioners may ~~by resolution, after not less than ten (10) days' public notice and after a public hearing held pursuant thereto,~~ levy a room occupancy tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the county that is subject to sales tax imposed by the State under G.S. ~~105-164.4(3).~~ 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations.

(a1) Authorization of Additional Tax. In addition to the tax authorized by subsection (a) of this section, the Nash County Board of Commissioners may levy an additional room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of accommodations taxable under subsection (a). The levy,

collection, administration, and repeal of the tax authorized by this subsection shall be in accordance with the provisions of this section. Nash County may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

(b) Administration. A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

~~(b) Collection. Every operator of a business subject to the tax levied under this act shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects the occupancy tax levied under this act may deduct from the amount remitted to the county a discount equal to the discount the State allows the operator for collecting State sales and use taxes.~~

~~(c) Administration. The county shall administer a tax levied under this act. A tax levied under this act is due and payable to the county finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.~~

~~A return filed with the county finance officer under this act is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~

~~(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this act is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The Board of Commissioners has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.~~

(e) Distribution and use of tax revenue. Nash County shall, on a quarterly basis, remit the net proceeds of the occupancy ~~tax~~ taxes to the Nash Tourism Development ~~Authority.~~ Authority, itemized by tax. ~~The~~ Of the net proceeds of the tax levied under subsection (a) of this section, the Authority shall spend at least two-thirds ~~of the funds remitted to it under this subsection~~ only to promote travel and tourism in Nash County, and shall spend the remainder on tourism-related expenditures. The Authority shall spend the net proceeds of the tax levied under subsection (a1) of this section only to construct, maintain, operate, or market a convention center. The following definitions apply in this subsection:

(1) Net proceeds. -- Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed seven percent (7%) of the amount collected.

(2) Promote travel and tourism. -- To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. -- Expenditures that are designed to increase the use of lodging facilities in a county or to attract tourists or business travelers to the county and expenditures incurred by the county in collecting the tax. The term includes expenditures to construct, maintain, operate, or market a convention center and other expenditures that, in the judgment of the Authority, will facilitate and support tourism.

~~(f) Effective date of levy. A tax levied under this act shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.~~

~~(g) Repeal. A tax levied under this act may be repealed by a resolution adopted by the Nash County Board of Commissioners. Repeal of a tax levied under this act does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.~~"

Section 2. County administrative provisions. Section 3(b) of S.L. 1997-102 reads as rewritten:

"(b) This section applies only to ~~Madison County.~~ Madison and Nash Counties."

Section 3. Gold Rock Annexation. (a) The corporate limits of the City of Rocky Mount are extended to include the Gold Rock I-95 interchange area as described below:

Beginning at N.C.G.S. Monument "AVENT" having coordinates N=842,408.476 feet and E=2,351,974.00 feet North American Datum of 1983; thence N 69° 27'05"W a horizontal ground distance of 1833.62 feet to a point on the southern right-of-way of S.R. 1522 (N.C. 4, I-95 BUS. LOOP) and the northeastern corner of Nash County ABC Board, THE POINT OF BEGINNING; thence along the property of Nash County ABC Board S 25°01'16" W 175.00 feet to a point on the northern property line of McLane Company, Inc.; thence along said property line the following six courses and distances: N 65°00'53"W 80.17 feet to a point; thence S 24° 59'07"W 278.16 feet to a point; thence N 65°00'53"W 250.00 feet to a point; thence N 65°43'09"W 666.62 feet to a point; thence S 24°14'24"W 363.08 feet to a point; thence N 71°49'49"W 400.34 feet to a point on the eastern right-of-way of Goldrock Road (N.C. HWY 48); thence N 71°49'49"W 48.53 feet to a point; thence N 56°42'05"W 132.54 feet to a point where the western right-of-way of Goldrock Road

intersects the southern right-of-way of S.R. 1527; thence along the southern right-of-way of S.R. 1527, the following three courses and distances: N 73°04'07"W 576.50 feet to a point; thence N 14°15'53"E 20.00 feet to a point; thence N 80°06'07"W 371.90 feet to a point on the eastern right-of-way of Interstate 95, thence along the eastern right-of-way of Interstate 95 the following four courses and distances: N 38°18'51"E 127.97 feet to a point; thence N 42°46'54"E 370.70 feet to a point; thence N 53°36'38"E 97.40 feet to a point; thence N 56°05'42"E 528.44 feet to a point on the southern right-of-way of S.R. 1522; thence across S.R. 1522 N 56°09'54"E 321.63 feet to a point on the northern right-of-way of S.R. 1522; thence along a curve concave to the right having a radius of 876.93 feet and a chord bearing and distance of N 32°33'20"W 164.83 feet to a point; thence along a curve concave to the right having a radius of 638.20 feet and a chord bearing and distance of N 14°20'06"W 220.95 feet to a point; thence N 09°26'54"E 198.70 feet to a point, thence N 15°28'54"E 179.36 feet to a point; thence N 26°31'54"E 233.15 feet to a point in the southwestern corner of the property now or formerly owned by Harry A. Whitaker, Jr.; thence along the southern line of Harry A. Whitaker, S 54°03'06"E 853.10 feet to a point on the western right-of-way of Goldrock Road; thence S 57°08'52"E 59.31 feet to a point on the eastern right-of-way of Goldrock Road; thence along the property now or formerly owned by M.C. Braswell Heirs, Deed Book 220 Page 86, S 54°06'53"E 472.16 feet to a point; thence S 24°59'07"W 704.34 feet to a point on the northern right-of-way of S.R. 1522; thence along S.R. 1522, S 65°00'53"E 60.00 feet to a point; thence along the property of Hotel Ventures of Goldrock Inc., Deed Book 1331 Page 700, the following three courses and distances: N 24°59'07"E 445.00 feet to a point; thence S 65°00'53"E 337.00 feet to a point; thence S 24°59'07"W 445.00 feet to a point on the northern right-of-way of S.R. 1522; thence along S.R. 1522, S 65°00'53"E 472.38 feet to a point; thence S 25°01'16"W 171.00 feet to the Point of Beginning containing 71.70 acres and being in South Whitakers Township, Nash County, North Carolina and as shown on map by Joyner, Keeny & Associates entitled "Areas to be annexed to City of Rocky Mount" dated April 9, 1997.

(b) The corporate limits of the area annexed by subsection (a) of this section shall be considered satellite corporate limits within the meaning of Part 4 of Article 4A of Chapter 160A of the General Statutes. The corporate limits of the area annexed by subsection (a) of this section are not external boundaries for the purposes of Part 2 or 3 of Article 4A of Chapter 160A of the General Statutes until they are contiguous to the municipality.

(c) Real and personal property in the territory annexed pursuant to this section is subject to municipal taxes as provided in G.S. 160A-58.10.

(d) This section becomes effective only if the City Council of the City of Rocky Mount adopts an ordinance including the area described in subsection (a) of this section in the corporate limits of the City of Rocky Mount. The ordinance is effective at the date specified therein, but not later than July 1, 1998.

Section 4. This act is effective when it becomes law.

MINUTES
COMMITTEE ON RULES, CALENDAR, AND OPERATIONS OF THE HOUSE
June 26, 1997
1:00 p.m.

The Committee on Rules, Calendar, and Operations of the House met on Thursday, June 26, 1997 at 1:00 in the House Conference Room. Representative Morgan, Committee Chair, called the meeting to order and asked the clerk to call the roll. The following members were present: Representative Bowie, Vice Chair; and Representatives Dockham, Esposito, Hill, Miner, Thompson and C. Wilson.

Chairman Morgan brought forward the Senate Committee substitute for House Bill 67 SUMMERFIELD ANNEXATION. Representative Hill moved that the House do concur with the Senate Committee substitute and the motion carried.

The meeting adjourned at 1:05.

Representative Richard T Morgan
Committee Chair

Dixie Epps
Committee Clerk

Attachments:
Committee Report
Bill

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) Morgan for the Committee on **Rules, Calendar and Operations of the House.**

---

x Committee Substitute for
H.B. 67 A BILL TO BE ENTITLED AN ACT TO REDEFINE THE CORPORATE LIMITS OF THE TOWN OF SUMMERFIELD.

☐ 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.

X 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 67
Committee Substitute Favorable 4/10/97

Short Title: Summerfield Amendments. (Local)

Sponsors:

Referred to:

February 6, 1997

A BILL TO BE ENTITLED

AN ACT TO REDEFINE THE CORPORATE LIMITS OF THE TOWN OF SUMMERFIELD.

The General Assembly of North Carolina enacts:

Section 1. Section 2.1 of the Charter of the Town of Summerfield, being Chapter 426, Session Laws of 1995 as rewritten by Chapter 2 of the Session Laws, Second Extra Session of 1996 reads as rewritten:

"Sec. 2.1. **Town Boundaries.** Until modified in accordance with law the boundaries of the Town of Summerfield are as follows:

~~BEGINNING at the intersection of the western edge of United States Highway 220 and the middle of the Haw River. Thence in a generally western direction following the middle of the Haw River To the Bruce Township Line.~~

~~Thence south along the Bruce Township Line to the intersection with the corner of Guilford County Tax Map ACL-10-654, Block 1038, Lot 4.~~

~~Thence in a generally eastern direction along the northern boundary of Lot 4.~~

~~Thence in a generally southern direction along the eastern line of Lots 4 and 54, and Guilford County Tax Map ACL-10-654, Block 1037, Lots 14 and 15 to the intersection of the northern boundary of Lot 2.~~

~~Thence in a generally eastern direction along the northern boundary of Lot 2, and Guilford county Tax Map ACL-10-654, Block 984, Lot 6 and Lot 4 until reaching a point on the western edge of Belford Road.~~

~~Thence in a generally northern direction along the western edge of Belford Road to a point due west of the intersection of the southern corner of Guilford County Tax Map ACL-10-654, Block 983, Lot 33.~~
~~Thence in generally northern direction to and following the southern and eastern boundaries of Lot 33 to the southern most line of Lot 18.~~
~~Thence in a generally eastern direction along the southern boundaries of Guilford County Tax Map ACL-10-654, Block 983, Lots 18, 17, and 4.~~
~~Thence in a generally southern direction along the western boundary of Guilford County Tax Map ACL-10-654, Block 983, Lot 2.~~
~~Thence in a generally eastern direction along the southern boundaries of Guilford County Tax Map 10-654, Block 983, Lots 2, 31, 21, and 36.~~
~~Thence generally north along the eastern boundary of Lot 36 until reaching a point on the southern edge of Highway 150.~~
~~Thence east following the southern edge of Highway 150 to the intersection of Guilford County Tax Map 10-654 Block 972, Lot 1.~~
~~Thence generally south then east and then north following the boundaries of Lot 1.~~
~~Thence east following Highway 150 to the western boundary of Guilford County Tax Map 10-654, Block 972, Lot 15.~~
~~Thence south along the western boundaries of Lots 15 and 21.~~
~~Thence east along the southern boundary of Lot 21.~~
~~Thence south along the western boundary of Lot 18.~~
~~Thence generally east following the southern boundary of Lots 18, 17, and 20.~~
~~Thence generally north along the eastern boundary of Lots 20 and 11 until the intersection with the southern boundary of Lot 3.~~
~~Thence generally north east along the southern boundary of Lot 3 and generally east along the southern boundary of Lot 13 until reaching a point on the western edge of Brookbank Road.~~
~~Thence generally north following the western edge of Brookbank Road until a point on the southern edge of Highway 150,~~
~~Thence generally east along the southern edge of Highway 150 to the intersection of the western corner of Guilford County Tax Map ACL-1-37, Block 917, Lot 66.~~
~~Thence generally southeast, then northeast and then northwest along the boundaries of Lot 66 to a point on the southern side of Highway 150.~~
~~Thence generally east along the southern edge of Highway 150 to the western corner of Guilford County Tax Map ACL-1-37, Block 917, Lot 35.~~
~~Thence generally south along the western boundary of Lot 35.~~
~~Thence generally east along the southern boundary of Lots 35, 16, and 14 to the western boundary of Lot 32.~~
~~Thence south along the western boundary of Lot 32.~~
~~Thence generally east along the southern boundaries of Lots 32, 33, and 6 to a point on the eastern edge of Trinity Church Road at the western intersection of Lots 55 and 15.~~
~~Thence generally south along the western boundary of Lot 15; thence east on the southern boundary of Lot 15, thence south on the western boundary of Lots 34 & 59.~~

~~Thence generally east along the southern boundary of Lot 59.~~
~~Thence generally south along the eastern boundary of Lot 13 until reaching the northern most edge of Centerfield Road.~~
~~Thence generally east until the intersection of State Road 2120.~~
~~Thence generally southwest along State Road 2120 to the intersection of Greenlawn Drive.~~
~~Thence along Greenlawn Drive to the intersection of the G.S. Miles Subdivision line.~~
~~Thence west on northern boundary of G.S. Miles and south along the western boundary following the western boundary of the G.S. Miles Subdivision until reaching the northern boundary of Guilford County Tax Map ACL-1-35, Block 905, Lot 10.~~
~~Thence west following the northern boundary of Lot 10 and then generally south following the western boundaries of Lots 10, 9, 82, 41, 11, and 46.~~
~~Thence east along the southern boundary of Lot 46 to the western edge of Pleasant Ridge Road.~~
~~Thence south following the western edge of Pleasant Ridge Road until reaching the northern boundary of Lot 44.~~
~~Thence generally west along the northern boundary of Lot 44.~~
~~Thence south along the western boundaries of Lots 44 and 63.~~
~~Thence east along the southern boundary of Lot 63 until reaching the eastern edge of Pleasant Ridge Road.~~
~~Thence south along the eastern edge of Pleasant Ridge Road until reaching the southern boundary of the A. J. Norman Subdivision.~~
~~Thence east along the southern boundary of the A. J. Norman subdivision and Guilford County Tax Map ACL-1-35, Block 905, Lot 47 to the western boundary of Guilford Tax Map ACL-1-35, Block 905, Lot 21.~~
~~Thence south, then east and then north along the boundaries of Lot 21.~~
~~Thence east along the southern boundary of Lots 19, 51, 2, and 52 and continuing due east until reaching a point on the eastern edge of Summerfield Road.~~
~~Thence south along the eastern edge of Summerfield road to a point on the western edge of United States Highway 220.~~
~~Thence generally north along the western edge of Highway 220 to a point due west of the southern boundary of Guilford County Tax Map ACL-1-35, Block 852, Lot 21; thence generally east to and along the southern boundary of Lot 21; thence north along the eastern boundary to a point on the northern edge of North Carolina Highway 150 that is due north of the point of the intersection with North Carolina Highway 150.~~
~~Thence east along the northern edge of Highway 150 to the intersection of Stradder road. Thence north along the western edge of Stradder road to the intersection of Scalesville road. Thence generally west to the intersection with Highway 220. Thence generally north along the western boundary of Highway 220 to the intersection of the Haw River and the point of beginning.~~
Beginning at the intersection of the middle of Highway U.S. 220 North and the northern bank of the Haw River:

Thence in a generally western direction following the northern bank of the Haw River to the intersection of the Stokesdale, North Carolina town limit line;

Thence in a generally western direction following the Stokesdale, North Carolina town limit line until reaching the intersection with the Bruce Township Line;

Thence generally south following the Bruce Township Line until reaching the intersection with the northern edge of Bunch Road;

Thence in a generally southeast direction following the northern edge of Bunch Road to a point due north of the eastern intersection with Northwest School Road;

Thence south crossing Bunch Road then generally south following the eastern edge of Northwest School Road to the western-most intersection of Guilford County Tax Map ACL 10-652 Block 1034 Lot 1;

Thence generally southeast along the southwestern boundaries of Lot 1 and Guilford County Tax Map ACL 10-652 Block 987 Lot 8 and the western boundary of Lot 2;

Thence generally east along the southern boundary of Lot 2, then generally north along the eastern boundary of Lot 2 until reaching the intersection of the northern boundary of Guilford County Tax Map ACL 10-650 Block 988 Lot 12;

Thence generally east, then generally south, following the boundaries of Lot 12 and the western boundaries of Lots 26, 25, and 14 until reaching the intersection of the corner of Lot 14 and the southern boundary of Lot 12;

Thence generally east along the southern boundary of Lot 14 to the intersection with the western boundary of Lot 6;

Thence generally south along the western boundary of Lot 6 until reaching the intersection with the northern edge of Pleasant Ridge Road;

Thence generally east along the northern edge of Pleasant Ridge Road until reaching a point due north of the intersection with the eastern edge of Fleming Road;

Thence south crossing Pleasant Ridge Road, then generally southeast along the northeast edge of Fleming Road until reaching a point due east of the northern boundary of Guilford County Tax Map ACL 10-650 Block 967 Lot 88;

Thence west crossing Fleming Road, then generally southwest along the northern boundary of Lot 88, then generally south along the western boundaries of Lots 88 and 32, then generally east along the southern boundary of Lot 32 to the western edge of Fleming Road;

Thence generally northwest along the western edge of Fleming Road to a point due west of the common intersection of Fleming Road, Lot 19, and Lot 78;

Thence east crossing Fleming Road, then generally north, then generally east, then generally southeast, and then generally southwest following the boundaries of Lot 78 to the intersection with the eastern edge of Fleming Road;

Thence generally southeast along the eastern edge of Fleming Road until reaching a point due east of the northern boundary of Lot 1;

Thence west crossing Fleming Road, then generally southwest along the northern boundary of Lot 1, then generally southeast, then generally northeast along the boundary of Lot 1, then due east crossing Fleming Road until reaching a point on the northeast edge of Fleming Road;

Thence generally southeast along the northeast edge of Fleming Road until reaching the intersection of the western boundary of Lot 6;

Thence generally northeast, then generally east, then generally south following the boundaries of Lot 6 until reaching a point on the northeast edge of Fleming Road;

Thence generally southeast along the northeast edge of Fleming Road until reaching the intersection with Lot 14;

Thence generally northeast, then generally southeast, then generally southwest following the boundaries of Lot 14 until reaching a point on the northeast edge of Fleming Road;

Thence generally southeast along the northeast edge of Fleming Road until reaching the southeast boundary of Lot 4;

Thence generally northeast along the southeast boundary of Lot 4;

Thence generally east along the southern boundary of Guilford County Tax Map ACL-1-33 Block 922 Lot 26;

Thence generally north along the western boundary of the M. E. Tumbleson Subdivision until intersecting with the western edge of Long Valley Road;

Thence generally north along the western edge of Long Valley Road until reaching a point on the northern edge of Pleasant Ridge Road due north of the intersection of Long Valley Road;

Thence generally northeast along the north western edge of Pleasant Ridge Road until reaching a point due east of the southern boundary of Guilford County Tax Map ACL-1-33 Block 921 Lot 37;

Thence east crossing Pleasant Ridge Road, then generally east along the southern boundary of Lots 37 and 25 to the intersection with the western boundary of lot 27, then generally south along the western boundary of Lots 27 and 28 and the western boundaries of Block 902 Lots 33, 35, 37 and 38 until intersecting with the Greensboro City Limits;

Thence following the Greensboro City Limit line generally east, then generally south, then generally southeast to the southern boundary of Block 901 Lot 7;

Thence following along the boundary of Lakes Higgins and Brandt and Reedy Fork Creek (the existing Greensboro City limits) in a generally northeastern, then generally western, then generally northern, then generally eastern direction until reaching the intersection of the southern boundary of Guilford County Tax Map ACL-1-35 Block 853 Lot 6;

Thence generally southeast following the boundary of Lot 6 to the intersection with Lot 24;

Thence generally south along the western boundary of Lot 24, then generally northeast following the southeastern boundary of Lot 24 to a point on the western edge of Highway 220 North and continuing due east until reaching a point on the eastern edge of U.S. Highway 220 North;

Thence generally south following the eastern edge of U.S. Highway 220 North until reaching the southern boundary of Lot 17;

Thence generally east along the southern boundary of Lot 17 to the boundary of Lot 2;

Thence generally southeast along the boundary of Lot 2 to the intersection with the Greensboro City Limits;

Thence generally east following the Greensboro City Limits until reaching the intersection with the western boundary of Guilford County Tax Map ACL 6-356 Block 772N, Lot 3;

Thence generally north on the western boundary of Lots 3 and 4 to the intersection of the boundary line of Guilford county Tax Map ACL 6-354, Block 721S Lot 1;

Thence following the boundaries of Lot 1 generally west, then generally north, then generally east, then generally north, then generally east to the intersection of the western boundary of Guilford County Tax Map ACL 6-356 Block 773, Lot 8;

Thence generally south then generally east following the boundaries of Lot 8 to the western boundary of Lot 9;

Thence generally south then generally east following the boundaries of Lot 9 to a point on the western edge of Lake Brandt Road;

Thence due east crossing lake Brandt Road then generally south following the eastern edge of Lake Brandt Road to the intersection of the northern edge of Plainfield Road;

Thence generally east along the northern edge of Plainfield Road to a point due north of the western boundary of Guilford County Tax Map ACL-6-656, Block 720 Lot 8;

Thence south crossing Plainfield Road, then generally south, then generally east, then generally north along the boundary of Lot 8 to the southern boundary of Lot 16;

Thence generally east, then generally north, along the boundaries of Lot 16 and generally north along the eastern boundary of Lot 13 to a point on the southern edge of Plainfield Road;

Thence generally east along the southern edge of Plainfield Road to the western boundary of Lot 11;

Thence generally south, then generally east, and then generally north following the boundaries of Lot 11 and continuing generally north along the western boundary of Lot 6, then crossing Plainfield Road and continuing generally north on the western boundary of Lot 7;

Thence generally west along the northern boundary of Lot 7 to the intersection with the eastern boundary of lot 10;

Thence generally north, then generally west, then generally north, then generally west following the boundaries of Lot 10 and continuing generally west along the northern boundary of Block 733 Lot 1;

Thence generally north, then generally west along the boundary of Lot 6 until reaching a point due south of the western boundary of Block 774 Lot 38;

Thence due north and continuing generally north following the eastern boundary of Lots 38, 36, 62, 14 and 16 and continuing due north until reaching a point on the northern edge of North Carolina Highway 150;

Thence generally east along the northern edge of North Carolina Highway 150 until reaching a point due north of the eastern edge of the intersection of Bar-mot Drive;

Thence south crossing North Carolina Highway 150, then generally south along the eastern edge of Bar-mot Drive until reaching a point due north of the intersection of the western boundary of Block 719 Lot 28 and Bar-Mot Drive;

Thence generally south crossing Bar-Mot Drive, then generally south along the western boundary of Lot 28, then generally east, then generally north along the boundaries of Lot 28, then due north until reaching a point on the northern edge of Bar-mot Drive;

Thence generally east along Bar-mot Drive, then generally north along the eastern boundary of Lot 21, then generally east along the southern boundary of Lot 11, then generally north along the eastern boundary of Lot 11, then generally northeast along the northern boundary of Lot 10, then generally south along the eastern boundary of Lot 10, then generally east along the southern boundary of Guilford County Tax Map ACL-6-358 Block 718 Lot 2;

Thence generally north along the eastern boundary of Lot 2 then crossing Highway 150 and continuing generally north on the eastern boundary of Lot 11;

Thence generally west along the northern boundaries of Lots 11, 12 and 8, then generally south along the western boundary of Lot 8, then generally west along the northern boundary of Lot 23 and continuing generally west until reaching and following the northern boundary of Lot 22, then generally south along the western boundary of Lots 22 and 17, then generally southeast along the southern boundary of Lot 17 until reaching a point on the western edge of North Carolina Highway 150;

Thence generally south along the western edge of North Carolina Highway 150 until reaching the northern boundary of Block 719 Lot 8;

Thence generally west along the northern boundary of Lot 8 and continuing generally west along the northern boundary of Lots 14, 13, and 1 until reaching the eastern boundary of Guilford County Tax Map ACL-6-356 Block 774 Lot 9;

Thence generally north along the eastern boundary of Lot 9, then generally west along the northern boundaries of Lots 9, 65, 64, 45, 46 and 10 and then continuing due west to a point on the western edge of Lake Brandt Road;

Thence generally north along the western edge of Lake Brandt Road until reaching the intersection with the northern bank of the Haw River;

Thence generally west following the northern bank of the Haw River to the point of beginning at the intersection with the middle of U.S. Highway 220 North.

In addition, the boundaries of the Town of Summerfield include the following:

I. Polo Farms and Adjoining Property:

(1) Polo Farms Subdivision: Beginning at a right-of-way monument in the eastern margin of S.R. 2321 (Strawberry Road), being the northernmost point of the land of T.L. Alley and a common corner of T.L. Alley and Robert C. Lock, thence, with the eastern margin of S.R. 2321 the following courses and distances: N. 62°18' E. 191.96 ft.; N. 55°02' E. 205.76 ft.; N. 47°00' E. 184.82 ft.; N. 39°09' E. 224.75 ft. to a right-of-way monument; N. 29°06' E. 482.21 ft. to a concrete monument; N. 27°30'

E. 599.90 ft.; N. 27°55' E. 60.33 ft.; N. 30°14' E. 484.52 ft.; N. 33°35' E. 250.85 ft. to an existing iron pin in the eastern margin of S.R. 2321; thence N. 38°32' E. 21.05 ft. to an existing iron pin; thence S. 56°08' E. 244.55 ft. to an existing iron pin; thence S. 89°28' E. 424.88 ft. to an existing iron pin in the line of Alvin G. Wall; thence with the line of Wall the following courses and distances: S. 10°16' W. 183.99 ft.; S. 10°17' W. 85.24 ft.; S. 35°02' W. 145.77 ft.; thence N. 84°19' E. 1414.31 ft. to an existing iron pin in the eastern edge of a 60 ft. right-of-way for S.R. 2322 (Alley Road); thence N. 7°31' E. 168.4 ft. to an existing iron pin, the southwest corner of Benjamin C. Alley; thence with Benjamin C. Alley's south line N. 88°48' E. 1062.67 ft. to an existing iron pin, said Alley's southeast corner; thence N. 00°56' W. 230 ft. to an existing iron pin in the line of Lunsford Richardson; thence with the line of Richardson S. 82°07' E. 1009.08 ft. to a new iron pin; thence N. 84°45' E. 1439.45 ft. to a new iron pin; thence S. 12°21' E. 332.5 ft. to an existing iron pin in the centerline of S.R. 2323; thence on the same bearing 2331.0 ft. to an existing iron pin in the line of the City of Greensboro; thence with the line of the City of Greensboro the following courses and distances: N. 89°02' W. 400.04 ft.; N. 89°02' W. 399.96 ft.; N. 10°28' E. 449.82 ft.; N. 67°32' W. 299.84 ft.; S. 25°58' W. 515.95 ft.; S. 84°08' W. 1244.80 ft.; N. 79°30' W. 530.25 ft.; N. 89°12' W. 407.88 ft.; S. 00°36' W. 259.88 ft.; S. 62°04' W. 599.50 ft.; S. 69°15' W. 1294.14 ft.; N. 33°48' W. 658.12 ft.; S. 85°59' W. 1076.52 ft.; N. 64°55' W. 652.26 ft. to an existing iron pin, the southeastern corner of T. L. Alley; thence with the eastern line of T. L. Alley N. 09°37' W. 312.83 ft. to an existing iron pin; thence N. 48°40' W. 442.87 ft. to a right-of-way monument in the eastern margin of S.R. 2321, the Point of Beginning.

(2) William W. Dick & Teresa F. Dick property of 6.12 acres recorded at Deed Book, 3185, page 637 and Deed Book 3717, page 1330.

(3) Alice B. Dick property consisting of approximately 11 acres, recorded at Deed Book 1295, page 594.

II. Hillsdale Lake Community:

(1) Lona T. Long and Others Subdivision Plat Book 108, page 40, Lots 1, 2, and 3.

(2) Lona T. Long Subdivision Plat Book 90, page 25, Lots 5, 6, 7, and 8.

(3) Lona T. Long Heirs Property, Tax Map 839, Lot 7.

(4) Lona T. Long Subdivision Plat Book, 85, page 105.

(5) Lots 1 through 104 of the Hillsdale Lake Subdivision, recorded in Plat Book 27, pages 8 and 17, Plat Book 26, page 55, Plat Book 28, page 29, Plat Book 32, page 27, and Plat Book 72, page 372.

(6) Gene B. Lickel Subdivision Plat Book 43, Page 63, Lots 1, 2, 3, and 4. III. Rayle Heights: Tax Lots 3, 4, 5, 6, 7, 8, 9, 12, 14, 15, 16, 17, 18, 19, 20, 22, 26, 27, 28, 29, 32, 33, 34."

Section 2. This act becomes effective June 30, 1997.

MINUTES
COMMITTEE ON RULES, CALENDAR, AND OPERATIONS OF THE HOUSE
July 2, 1997

The Committee on Rules, Calendar, and Operations of the House met July 2, 1997, at 1:10 p.m. in Room 421 in the Legislative Office Building. Representative Morgan, Committee Chair, called the meeting to order and asked the clerk to call the roll. The following members were present: Representative Bowie, Vice Chair: and Representatives Crawford, Culp, Dockham, Gulley, Hill, McMahan, Miner, Mitchell, and Thompson.

Senate Joint Resolution 414 - A JOINT RESOLUTION HONORING THE ACCOMPLISHMENTS OF COACH DEAN EDWARDS SMITH AND THE MEN'S BASKETBALL PROGRAM AT THE UNIVERSITY OF NORTH CAROLINA, introduced by Senator Rand was brought before the Committee. Representative Crawford moved for a favorable report and the motion carried.

Next before the Committee was House Bill 566 - A BILL TO BE ENTITLED AN ACT RELATING TO WAKE COUNTY, sponsored by Representative Ellis. Representative Thompson moved for adoption of a committee substitute for Committee discussion and the motion carried. Representative Ellis explained the bill. Representative Crawford moved for a favorable report for the committee substitute with a re-referral to the Committee on Finance and an unfavorable report to the original bill. Motion carried.

House Bill 600 - A BILL TO BE ENTITLED AN ACT RELATING TO LOCAL GOVERNMENT, sponsored by Representative Holmes, was next before the committee. Representative Miner moved for adoption of a committee substitute for the purpose of Committee discussion. Gerry Cohen explained the bill. Representative Thompson moved for a favorable report to the committee substitute with a re-referral to the Committee on Finance, and an unfavorable report to the original bill. The motion carried.

Next was Senate Bill 550 A BILL TO BE ENTITLED AN ACT TO AMEND CHAPTER 89C OF THE GENERAL STATUTES TO PROVIDE THAT THE DESIGN OF LAND APPLICATION IRRIGATION SYSTEMS FOR ANIMAL WASTE MANAGEMENT SYSTEMS MAY BE PERFORMED BY IRRIGATION DESIGN TECHNICAL SPECIALISTS AND CONCERNING AGRICULTURAL BEST MANAGEMENT PRACTICES, sponsored by Senator Albertson, before the Committee.

Chairman Morgan called for a five minute recess.

The meeting reconvened and Representative Mitchell explained Senate Bill 550. Representative Culp moved for a favorable report and the motion carried.

There being no further business, the meeting adjourned at 1:25.

Representative Richard T. Morgan
Committee Chair

Dixie Epps
Committee Clerk

Attachments:

Committee Reports
Bills
Letter and Resolution to exempt Wake County Public School System from Impact Fees on School Construction
Letter and Resolution from Foxfire Village requesting Underground Electrical Systems
Visitor's Sheet

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House**.

☒ Committee Substitute for
S.J.R. 414 A JOINT RESOLUTION HONORING THE ACCOMPLISHMENTS OF COACH DEAN EDWARDS SMITH AND THE MEN'S BASKETBALL PROGRAM AT THE UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL.

☒ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE JOINT RESOLUTION 414
Rules and Operations of the Senate Committee Substitute Adopted 6/16/97

Sponsors:

Referred to:

March 18, 1997

A JOINT RESOLUTION HONORING THE ACCOMPLISHMENTS OF COACH DEAN EDWARDS SMITH AND THE MEN'S BASKETBALL PROGRAM AT THE UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL.

Whereas, Dean Edwards Smith was a member of the 1952 Kansas University Jayhawks national championship basketball team and a disciple of Kansas Coach Phog Allen; and

Whereas, his loyalty to his alma mater, the University of Kansas, so impressed former head coach Frank McGuire that he offered Smith a job as an assistant coach, which Smith accepted, despite UNC's victory over Smith's beloved Jayhawks in the 1957 NCAA men's basketball championship game; and

Whereas, Coach Smith's love for the State of North Carolina and the University of North Carolina has continued to grow since his arrival in Chapel Hill in 1958; and

Whereas, Coach Smith and the UNC men's basketball program have constantly been the source of visionary innovation, perfecting such signature practices as the man-to-man trap defense, the team huddle before a free throw, the "tired" signal, the acknowledgment of a teammate's assist, and the "Four Corners" offense that proved so effective that the institution of the shot clock was the only way to combat it; and

Whereas, Coach Smith has established a tradition of excellence in the UNC men's basketball program during his 36 years as head coach, winning more conference games, more regular season titles, more ACC Tournament games, more ACC championships and more NCAA tournament games than any other coach, and has attained 11 Final Four appearances, 14 ACC titles, and two national championships so far; and

Whereas, Coach Smith, along with Bill Guthridge, John Thompson, with a nucleus of Tar Heels and players from around the country, guided the United States to a gold medal in basketball in the 1976 Olympic Games; and

Whereas, Coach Smith' s keen insight into the game and his ability to adapt to changes in the times, the rules, and the nature of the game is vividly demonstrated by his continuing successes in his fourth decade as a coach; and

Whereas, on March 15, 1997, Coach Smith became the "all-time winningest coach" in the history of NCAA Division I basketball, coaching the Tar Heels to their 877th victory under his leadership; and

Whereas, Coach Smith and the UNC men's basketball program have produced nearly 100 professional basketball players, 43 basketball coaches and teachers, and numerous entrepreneurs, professionals, ministers, and other leaders who contribute to their communities throughout the world; and

Whereas, Coach Smith and the UNC basketball program have consistently emphasized teamwork, discipline, education and character above athletic success, and have served as ambassadors for the State of North Carolina, training young people, from around the world in the principles of honesty, integrity, and respect; and

Whereas, Coach Smith has been revered by former players, team members, and members of the UNC basketball family as a man who seeks the best interest of his students above his own; and

Whereas, for 36 years, Coach Smith has taught his players that basketball is secondary to honor, has maintained a model athletic program that is untainted by scandal, has helped his players mature into responsible adults, and has emphasized the importance of education to a life plan; and

Whereas, Coach Smith's greatest accomplishments lie not in the number of his victories but in the number of his lettermen who have obtained university degrees; a total of 216 of his 222 lettermen have graduated, many with honors; and

Whereas, Coach Smith is a man of character and compassion who was an early advocate for a more equal society, and his commitment to the betterment of all is reflected in his many endeavors to promote education and achievement in all facets of life; and

Whereas, Coach Smith is known as the "Dean of Basketball," but those who are aware of his accomplishments consider him the "Dean of Gentlemen," exemplifying the very best North Carolina has to offer; Now, therefore,

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

Section 1. The General Assembly recognizes the outstanding achievements of Coach Dean Edwards Smith and the men's basketball program at the University of North Carolina at Chapel Hill, expresses the appreciation and admiration of the people of the State of North Carolina to Dean Edwards Smith for his leadership, integrity, and unparalleled excellence, both on and off the basketball court, and acknowledges the invaluable contribution that the players, coaches, managers, and other members of the UNC basketball family have made to a better world, not only in North Carolina, but across the globe.

Section 2. The Secretary of State shall send certified copies of this resolution to Coach Dean Edwards Smith, the Athletic Director, and the Chancellor of the University of North Carolina at Chapel Hill, and the Chairman of the University of North Carolina at Chapel Hill Board of Trustees.

Section 3. This resolution is effective upon ratification.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House**.

☐ Committee Substitute for
H.B. 566 A BILL TO BE ENTITLED AN ACT RELATING TO WAKE COUNTY.

☐ 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 Finance

☐ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 566
Proposed Committee Substitute H566-PCSX4130

Short Title: Wake Schools Development Charges. (Local)

Sponsors:

Referred to:

March 20, 1997

A BILL TO BE ENTITLED

AN ACT EXEMPTING THE WAKE COUNTY PUBLIC SCHOOL SYSTEM FROM DEVELOPMENT CHARGES RELATED TO THE CONSTRUCTION, RENOVATION, AND REPAIR OF PUBLIC SCHOOL SYSTEM INFRASTRUCTURE FACILITIES IN WAKE COUNTY AND THE MUNICIPALITIES THEREIN.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding any other provision of law, the Wake County Public School System shall be exempt from development charges assessed by Wake County or any municipality having territory within Wake County where the development charge is assessed against the construction, renovation, or repair of public school infrastructure facilities.

Section 2. For the purposes of this act:

(a) "Development charge" means any:

(1) Impact fee, facility fee, development fee, project fee, regulatory fee, or other similar fee assessed in connection with the construction, renovation, or repair of a public school infrastructure facility where the fee is based on the student seating capacity of the facility.

(2) Water and sewer acreage fee when the Wake County Public School System has installed water and sewer improvements.

(3) Transportation development fee when the Wake County Public School System has installed transportation improvements.

(4) Utility tap fee.
(5) Plan review fee.
(6) Building permit fee.
(7) Fee to place a mobile classroom unit on property owned by the Wake County Public School System.

(b) "Public school infrastructure facility" means any building, structure, or other facility used or to be used by the Wake County Public School System for instructional, administrative, or maintenance purposes. The term includes mobile classroom units.

Section 3. This act is effective when it becomes law and applies to Wake County Public School System construction, renovation, and repair projects started or in progress on or after that date, except that any valid development charge that accrued prior to that date shall remain valid and payable by the Wake County Public School System.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 566

Short Title: Wake Local Act. (Local)

Sponsors: Representatives Ellis; and Decker.

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

March 20, 1997

A BILL TO BE ENTITLED

AN ACT RELATING TO WAKE COUNTY.

The General Assembly of North Carolina enacts:

Section 1. The law relating to Wake County is amended.

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

WAKE COUNTY PUBLIC SCHOOL SYSTEM

Auxiliary Services

PLEASE DELIVER THE FOLLOWING PAGE(S):

TO: The Honorable Sam Ellis

FAX #: (919) 733-2599
AREA CODE NUMBER LONG DISTANCE? YES ☐ NO ☒

FROM: Ray Massey, Jr.

DATE: 5/21/97

SUBJECT: Impact Fees

3 **PAGE(S) INCLUDING THIS COVER LETTER.**

THESE ARE TRANSMITTED AS CHECKED BELOW:

_____ For Approval
X For Your Use
_____ As Requested
_____ For Your Information/File
_____ For Review and Comment
_____ For Follow-Up

_____ Approved as Submitted
_____ Approved as Noted
_____ Returned for Corrections
_____ Other: _____
_____

COMMENTS:

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL (919) 850-1900

FAX #919-850-1780

3600 Wake Forest Road ☐ P. O. Box 28041 ☐ Raleigh, NC 27611

WAKE COUNTY PUBLIC SCHOOL SYSTEM

Associate Superintendent
Auxiliary Services

May 21, 1997

The Honorable Sam Ellis
State Representative
1303 Legislative Building
16 West Jones Street
Raleigh, NC 27601-2808

Dear Mr. Ellis:

The Wake County Public School System is presently being charged impact fees for construction and renovations of schools. Several municipalities in Wake County charge fees to offset the 'impact' of facilities on future demands for road improvements, parks, utilities, etc. Some of these fees are imposed based on a count of student seats that will be provided in the new construction and do not take into account that these seats are for students already in the community.

Transportation development fees are usually for improvements to existing roads or for construction of new roads that will serve the school. However, the district is required to pay the fees as well as make street improvements from project funds. Often the new school is built to serve a community that has already been developed and has residents in place. These new schools are a necessary response to the growth in the community. In such cases, the impact is actually upon the school system and our building program budgets. Unfortunately, the school system continues to be treated as a developer rather than as a provider of public infrastructure and services. Below is a listing of the types of fees we are currently being charged:

* Municipal impact fees based on the number of seats (capacity) being provided.

* Water and sewer acreage fees (and we install improvements).

* Transportation development fees (and we install improvements).

* Utility tap fees.

* Plan review fees.

* Fees to place a mobile classroom unit on school property (even when pupils are already on campus). These fees are not refunded when the mobile units are removed from the school site.

* Building permit fees.

Please don't hesitate to call us if we can provide additional information to you or be of assistance in any way. Thank you for your continued assistance and support of public education in Wake County.

Sincerely,

Ray Massey, Jr.

c: Phyllis Pickett, Attorney
Jim Surratt, Superintendent
Members, Board of Education

RESOLUTION OF SUPPORT FOR LOCAL LEGISLATION TO EXEMPT THE WAKE COUNTY PUBLIC SCHOOL SYSTEM FROM IMPACT FEES ON SCHOOL CONSTRUCTION

WHEREAS, the student population served by the Wake County Public School System continues to grow at an annual rate in excess of five percent, equal to approximately 3,500-4,500 students per year, and

WHEREAS, the Wake County Board of Education, despite an ambitious school building program, is unable to keep pace with growth in the student population, evidenced by a current seating deficit of 4,606 student seats and the continued use of nearly 500 mobile classroom units (trailers), and

WHEREAS, funding for new schools and expansions is provided primarily through state and local tax levies and through the sale of state and local general obligation bonds, and

WHEREAS, funding raised through available revenue sources must be used wisely to meet housing demands and to improve existing facilities, and

WHEREAS, the Wake County Board of Education is obligated to pay impact fees to municipalities for the construction and renovation of schools, and

WHEREAS, the impact fees paid by the Wake County Board of Education for the period 1993-1997 will exceed $1.1 million, and

WHEREAS, the funds used to pay impact fees are needed by the Wake County Board of Education to meet the increasing capital needs of the school system,

THEREFORE, BE IT HEREBY RESOLVED, that the Wake County Board of Education endorses the introduction and passage of local legislation to exempt the Wake County Public School System from impact fees assessed by local municipalities on school construction projects.

Resolved this 19th day of May 1997.

WAKE COUNTY BOARD OF EDUCATION

John H. Gilbert, Chairman

Jim Surratt, Secretary

COUNTY OF WAKE
BOARD OF COMMISSIONERS

Stewart Adcock
Chairman

June 3, 1997

The Honorable J. Sam Ellis
North Carolina State House of Representatives
Room 1303, State Legislative Building
Raleigh, North Carolina 27601-1096

Dear Sam:

I am writing to ask for your support of a Wake County Public School System legislative goal. I am aware that you have been asked to support legislation which would exempt the Wake County Public School System from paying impact fees to municipalities for construction of schools. I support this legislative goal.

Since the County has responsibility for funding the construction of schools, I am supportive of any and all efforts to ensure that funds we allocate for school construction are used for just that - school construction. Based on figures provided by the Wake County Public School System, approximately $1.2 million of one phase of school construction (Phase IIIA) went to Raleigh, Cary, Garner and Knightdale in the payment of impact fees. These funds did not go to fund the construction or equipping of new schools.

The Wake County Public School System has a difficult job in meeting the growth demands in Wake County. They are anticipating and reacting to the tremendous residential growth we are experiencing. Yet, they are treated like a new development project with municipalities extracting impact fees when they build a new school.

I ask your support with this legislative goal. Please feel free to contact me if you have any questions.

Sincerely,

Stewart Adcock

Stewart Adcock, Chairman
Wake County Board of Commissioners

c: Board of County Commissioners
Richard Stevens, County Manager
Jim Surratt, Superintendent, WCPSS

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House**.

☐ Committee Substitute for
H.B. 600 A BILL TO BE ENTITLED AN ACT RELATING TO LOCAL GOVERNMENT.

☐ 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 Finance

☐ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 600
Proposed Committee Substitute H600-PCS1424

Short Title: Foxfire Assessment Clarification. (Local)

Sponsors:

Referred to:

March 25, 1997

A BILL TO BE ENTITLED

AN ACT CLARIFYING THAT IN MODIFYING THE REQUIREMENTS FOR MAKING STREET ASSESSMENTS IN FOXFIRE VILLAGE UNDER CERTAIN CIRCUMSTANCES, UNDERGROUNDING OF UTILITIES, WHICH WAS PART OF THE PROJECT, IS ALSO SUBJECT TO ASSESSMENT.

The General Assembly of North Carolina enacts:

Section 1. (a) Section 8.1 of the Charter of Foxfire Village, being Chapter 237 of the 1977 Session Laws as added by Chapter 574 of the 1995 Session Laws, reads as rewritten:

"Sec. 8.1. Street Assessments.

(a) In addition to any authority which is now or hereafter may be granted by general law to the town for making street improvements, the Village Council may make street improvements and assess the cost thereof against abutting property owners in accordance with the provisions of this section.

(b) The Village Council may order street improvements and assess the cost thereof against the abutting property owners, according to one or more of the assessment bases set forth in Article 10 of Chapter 160A of the General Statutes without the necessity of a petition meeting the requirements of that Article, upon the finding by the Village Council as a fact that:

(1) The street improvement project does not exceed 30,000 lineal front footage;

(2) The street improvement project involves no more than 200 lots;

(3) The street improvement project consists of a series of streets all of which are contiguous to at least one other street in the project;

(4) The street improvement project abuts at least one other paved street in the Village;

(5) The street improvement project consists solely of a collection of streets for which petitions under Article 10 of Chapter 160A of the General Statutes were received within two years before a preliminary assessment resolution is adopted under the authority of this Article, in accordance with G.S. 160A-223, where:

a. The petitions taken as a whole were signed by at least forty percent (40%) of the owners of property to be assessed, who represent at least forty percent (40%) of all the lineal front footage of the lands abutting on the streets or portions thereof to be improved; but

b. Where for at least five streets in the project, the petitions were signed by at least two-thirds of the owners of property to be assessed, who represent at least two-thirds of all the lineal front footage of the lands abutting on the streets or portions thereof to be improved.

(c) For the purpose of this Article, the term 'street improvement' shall include grading, regrading, surfacing, resurfacing, widening, paving, repaving, the acquisition of right-of-way, underground electrical systems, and the construction or reconstruction of curbs, gutters, and street drainage facilities.

(d) In ordering street improvements without a petition and assessing the cost thereof under authority of this Article, the Village Council shall comply with the procedure provided by Article 10 of Chapter 160A of the General Statutes, except those provisions relating to the petition of property owners and the sufficiency thereof. Any assessment under the authority of this act must be under a preliminary assessment resolution adopted under G.S. 160A-223 no later than December 31, 1998.

(e) The effect of the act of levying assessments under the authority of this Article shall for all purposes be the same as if the assessments were levied under authority of Article 10 of Chapter 160A of the General Statutes."

(b) In order to assess for underground electrical systems under the authority of this act, the Village Council may either commence a new assessment proceeding, or may amend the preliminary resolution for an existing assessment proceeding, and may act under petitions already received for the project.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 600
Proposed Committee Substitute H600-CSLB-1

Short Title: Foxfire Assessment Clarification. (Local)

Sponsors:

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

March 25, 1997

A BILL TO BE ENTITLED

AN ACT CLARIFYING THAT TO IN MODIFYING THE REQUIREMENTS FOR MAKING STREET ASSESSMENTS IN FOXFIRE VILLAGE UNDER CERTAIN CIRCUMSTANCES, UNDERGROUNDING OF UTILITIES, WHICH WAS PART OF THE PROJECT, ARE ALSO SUBJECT TO ASSESSMENT.

The General Assembly of North Carolina enacts:

Section 1. (a) Section 8.1 of the Charter of Foxfire Village, being Chapter 237 of the 1977 Session Laws as added by Chapter 574 of the 1995 Session Laws, reads as rewritten:

"Sec. 8.1. Street Assessments.

(a) In addition to any authority which is now or hereafter may be granted by general law to the town for making street improvements, the Village Council may make street improvements and assess the cost thereof against abutting property owners in accordance with the provisions of this section.

(b) The Village Council may order street improvements and assess the cost thereof against the abutting property owners, according to one or more of the assessment bases set forth in Article 10 of Chapter 160A of the General Statutes without the necessity of a petition meeting the requirements of that Article, upon the finding by the Village Council as a fact that:

(1) The street improvement project does not exceed 30,000 lineal front footage;

(2) The street improvement project involves no more than 200 lots;
(3) The street improvement project consists of a series of streets all of which are contiguous to at least one other street in the project;
(4) The street improvement project abuts at least one other paved street in the Village;
(5) The street improvement project consists solely of a collection of streets for which petitions under Article 10 of Chapter 160A of the General Statutes were received within two years before a preliminary assessment resolution is adopted under the authority of this Article, in accordance with G.S. 160A-223, where:
a. The petitions taken as a whole were signed by at least forty percent (40%) of the owners of property to be assessed, who represent at least forty percent (40%) of all the lineal front footage of the lands abutting on the streets or portions thereof to be improved; but
b. Where for at least five streets in the project, the petitions were signed by at least two-thirds of the owners of property to be assessed, who represent at least two-thirds of all the lineal front footage of the lands abutting on the streets or portions thereof to be improved.

(c) For the purpose of this Article, the term 'street improvement' shall include grading, regrading, surfacing, resurfacing, widening, paving, repaving, the acquisition of right-of-way, underground electrical systems, and the construction or reconstruction of curbs, gutters, and street drainage facilities.

(d) In ordering street improvements without a petition and assessing the cost thereof under authority of this Article, the Village Council shall comply with the procedure provided by Article 10 of Chapter 160A of the General Statutes, except those provisions relating to the petition of property owners and the sufficiency thereof. Any assessment under the authority of this act must be under a preliminary assessment resolution adopted under G.S. 160A-223 no later than December 31, 1998.

(e) The effect of the act of levying assessments under the authority of this Article shall for all purposes be the same as

if the assessments were levied under authority of Article 10 of Chapter 160A of the General Statutes."

(b) In order to assess for underground electrical systems under the authority of this act, the Village Council may either commence a new assessment proceeding, or may amend the preliminary resolution for an existing assessment proceeding, and may act under petitions already received for the project.

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

Foxfire VILLAGE

Councilmen
Wayne Arnold
Edwin C. Kingsbury
Carl B. Munro
Richard W. Peckitt

1 Town Hall Drive
Jackson Springs, North Carolina 27281
910-295-5959

FAX 910-295-4841

S. Joseph Steiner,
Mayor

Janice S. Thomas,
Village Clerk

June 12, 1997

Representative Richard T. Morgan
Legislative Office Building
Room 404
Raleigh, North Carolina 27601-1096

Re: Foxfire Village Underground Electrical Systems

Dear Representative Morgan:

In accordance with a request which we received from your office you will find attached a copy of Foxfire Village Underground Electrical Systems Assessment Bill Resolution 97-6, dated June 12, 1997. As indicated therein, we are requesting your assistance in the introduction of a revised legislative bill to add the words "underground electrical systems" to Senate Bill 1176, ratified on June 20, 1996. Resolution 97-6 was adopted unanimously by the village council and will be recorded in the minutes of our regular monthly meeting of June 12, 1997.

We appreciate very much your assistance and that of your associate, Mr. Gerry Cohen, in preparing and introducing this legislation which will play a vital role in the development and growth of Foxfire Village. A hard copy of this letter and resolution will be forwarded to you today.

Sincerely,

S. Joseph Steiner

S. Joseph Steiner
Mayor

Fax cc: Mr. Gerry Cohen, Director, Bill Drafting Division. Fax (919) 715-5459

P.S. Mr. Cohen-You can reach Mr. Dow at Gill and Dow, Attorneys.
Telephone No. (910) 692-7100

Fax cc: Mr. Randolph C. Dow

No. 97-6 June 12, 1997

FOXFIRE VILLAGE

1 Town Hall Drive

Jackson Springs, North Carolina 27281

RESOLUTION REQUESTING STATE LEGISLATIVE ASSISTANCE-
UNDERGROUND ELECTRICAL SYSTEMS

Whereas, Foxfire Village is desirous of making certain major improvements to its infrastructure and has received prior legislative assistance to accomplish them, and

Whereas, the Village has contracted to pave streets and extend the existing water system and intends to contract to extend the existing underground electrical systems, and

Whereas, early planning meetings with the electrical utility did not indicate charges to the village for the installation of this system, and

Whereas, the Village has recently been informed that total installation cost of the underground electrical system in the amount of $150,000.00 will be payable up front, and

Whereas, the Village has advertised that the total cost of this project will be assessed to the property owners of the streets improved,

Now, therefore, the Council of Foxfire Village directs Mayor S. Joseph Steiner to contact North Carolina Representative Richard T. Morgan and request his assistance in the introduction of a revised legislative bill to include the words "underground electrical systems" to Senate Bill 1176, ratified on June 20, 1996.

Janice Thomas, Village Clerk

S. Joseph Steiner, Mayor

ch 574

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House.**

☐ Committee Substitute for
S.B. 550 A BILL TO BE ENTITLED AN ACT TO AMEND CHAPTER 89C OF THE GENERAL STATUTES TO PROVIDE THAT THE DESIGN OF LAND APPLICATION IRRIGATION SYSTEMS FOR ANIMAL WASTE MANAGEMENT SYSTEMS MAY BE PERFORMED BY IRRIGATION DESIGN TECHNICAL SPECIALISTS AND CONCERNING AGRICULTURAL BEST MANAGEMENT PRACTICES.

☒ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 550*
Second Edition Engrossed 4/17/97

Short Title: Irrigation Syst. Design Not Engineering. (Public)

Sponsors: Senators Albertson; Cooper, Kerr, Martin of Pitt, Perdue, Plyler, Warren, and Wellons.

Referred to: Commerce.

March 27, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND CHAPTER 89C OF THE GENERAL STATUTES TO PROVIDE THAT THE DESIGN OF LAND APPLICATION IRRIGATION SYSTEMS FOR ANIMAL WASTE MANAGEMENT SYSTEMS MAY BE PERFORMED BY IRRIGATION DESIGN TECHNICAL SPECIALISTS AND CONCERNING AGRICULTURAL BEST MANAGEMENT PRACTICES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 89C-25 reads as rewritten:

"**§ 89C-25. Limitations on application of Chapter.**

This Chapter shall not be construed to prevent or affect:

(1) The practice of architecture, landscape architecture, or contracting or any other legally recognized profession or ~~trade; or~~ trade.

(2) The practice of professional engineering or land surveying in this State or by any person not a resident of this State and having no established place of business in this State when this practice does not aggregate more than 90 days in any calendar year, whether performed in this State or elsewhere, or involve more than one specific project; provided, however, that such person is legally qualified by registration to practice the said profession in his own state or country, in which the requirements and qualifications for obtaining a certificate of registration are satisfactory to the Board;

in which case the person shall apply for and the Board will issue a temporary ~~permit; or~~ permit.

(3) The practice of professional engineering or land surveying in this State not to aggregate more than 90 days by any person residing in this State, but whose residence has not been of sufficient duration for the Board to grant or deny registration; provided, however, such person shall have filed an application for registration as a professional engineer or registered land surveyor and shall have paid the fee provided for in G.S. 89C-14, and provided that such a person is legally qualified by registration to practice professional engineering or land surveying in his own state or country in which the requirements and qualifications for obtaining a certificate of registration are satisfactory to the Board, in which case the person shall apply for and the Board will issue a temporary ~~permit; or~~ permit.

(4) Engaging in engineering or land surveying as an employee or assistant under the responsible charge of a professional engineer or registered land surveyor or as an employee or assistant of a nonresident professional engineer or a nonresident registered land surveyor provided for in subdivisions (2) and (3) of this section, provided that said work as an employee may not include responsible charge of design or ~~supervision; or~~ supervision.

(5) The practice of professional engineering or land surveying by any person not a resident of, and having no established place of business in this State, as a consulting associate of a professional engineer or registered land surveyor registered under the provisions of this Chapter; provided, the nonresident is qualified for such professional service in his own state or ~~country; or~~ country.

(6) Practice by members of the armed forces or employees of the government of the United States while engaged in the practice of engineering or land surveying solely for said government on government-owned works and projects; or practice by those employees of the Natural Resources Conservation Service having federal engineering job approval authority that involves the planning, designing or implementation of best management practices on agricultural lands.

(7) The internal engineering or surveying activities of a person, firm or corporation engaged in manufacturing, processing, or producing a product, including the activities of public service corporations, public utility companies, authorities, State agencies, railroads, or membership cooperatives, or the installation and servicing of their product in the field; or research and development in connection with the manufacture of that product or their service; or of their

research affiliates; or their employees in the course of their employment in connection with the manufacture, installation, or servicing of their product or service in the field, or on-the-premises maintenance of machinery, equipment, or apparatus incidental to the manufacture or installation of the product or service of a firm by the employees of the firm upon property owned, leased or used by the firm; inspection, maintenance and service work done by employees of the State of North Carolina, any political subdivision thereof, or any municipality therein including construction, installation, servicing, maintenance by regular full-time employees of streets, street lighting, traffic-control signals, police and fire alarm systems, waterworks, steam, electric and sewage treatment and disposal plants; the services of superintendents, inspectors or foremen regularly employed by the State of North Carolina or any political subdivision thereof, or municipal corporation therein; provided, however, that the internal engineering or surveying activity is not a holding out to or an offer to the public of engineering or any service thereof as prohibited by this Chapter. Engineering work, not related to the foregoing exemptions, where the safety of the public is directly involved shall be under the responsible charge of a registered professional engineer, or in accordance with standards prepared or approved by a registered professional engineer.

(8) The (i) preparation of fire sprinkler planning and design drawings by a fire sprinkler contractor licensed under Article 2 of Chapter 87 of the General Statutes, or (ii) the performance of internal engineering or survey work by a manufacturing or communications common carrier company, or by a research and development company, or by employees of such corporations provided that such work is in connection with, or incidental to products of, or nonengineering services rendered by such corporations or their affiliates.

(9) The routine maintenance or servicing of machinery, equipment, facilities or structures, the work of mechanics in the performance of their established functions, or the inspection or supervision of construction by a foreman, superintendent, or agent of the architect or professional engineer, or services of an operational nature performed by an employee of a laboratory, a manufacturing plant, a public service corporation, or governmental operation.

(10) The design of land application irrigation systems for an animal waste management plan, required by G.S. 143-215.10C, by a designer who exhibits, by at least three years of relevant experience, proficiency in soil science and basic hydraulics, and

who is thereby listed as an Irrigation Design Technical Specialist by the North Carolina Soil and Water Conservation Commission."

Section 2. This act is retroactively effective March 1, 1997.

VISITOR REGISTRATION SHEET

RULES, CALENDAR, AND OPERATIONS OF THE HOUSE **July 2, 1997**

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jerry Carter	N.C. Bd. of Registration
Butch Gunnells	NCSDA
Sheila H. Atkinson	NC DOI
Carroll Price	Division Soil & Water
Ronald E. Sneed	Self Employed
Jerry Hakeslay	NCPC.
Paul B. Horton	Prof Engineers of NC
Tom Bean	NC Wildlife Federation
Jim Upchurch	CPLL
Bob Kaylor	citizen lobbyist
John Bode	Bode Call & Stroupe
Andy Ellen	NC Farm Bureau
Jackie Stalnaker	DHR - Voc. Rehab
Douglas H. Van Essen	NC State Cosmetic Arts Board
Bill Scoggin	NCBA
Lucius Pullen	L. Pullen Land Firm
Jim Brown	N.C. State Ports
[illegible]	NCFB
R. Neal Wilcox	NCMBA
Henry Jones	Attorney Raleigh
Judy Bolt	DEHNR
[illegible]	DEHNR
Leighton Roper	ZDA, PA
Dave Horne	[illegible]

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 42

Short Title: Extend Sunset for Carolina Trace. (Local)

Sponsors: Representatives Davis, Hall; Hill, Mosley, and Moore.

Referred to: Local and Regional Government I.

February 5, 1997

A BILL TO BE ENTITLED

AN ACT TO EXTEND AN ACT TO PROVIDE THAT THE LAWS RELATING TO MOTOR VEHICLES APPLY WITHIN THE CAROLINA TRACE COMMUNITY IN LEE COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Section 5 of Chapter 96 of the 1995 Session Laws reads as rewritten:

"Sec. 5. This act is effective upon ratification and shall expire ~~July 1, 1997.~~ July 1, 1999."

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

Sen Amendment to H42

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 42

AMENDMENT NO. 1
(to be filled in by Principal Clerk)

H42-ALB-1

Page 1 of 2

Date 6/24, 1997

Comm. Sub. []
Amends Title [YES]

Senator Wellons

moves to amend the bill on page 1, line 4, by adding the following to the end of the sentence immediately before the period: "AND TO EXTEND THE APPLICATION OF THAT ACT TO THE LAKE ROYALE COMMUNITY IN FRANKLIN AND NASH COUNTIES."

further moves to amend the bill on page 1, line 9, by adding the following between lines 9 and 10:

"Section 1.1. Chapter 96 of the 1995 Session Laws is amended by adding new sections to read:

'Section 3.1. (a) The provisions of Chapter 20 of the General Statutes relating to the use of the highways of the State and the operation of motor vehicles are applicable to the streets, roadways, and alleys on the properties owned by or under the control of the Lake Royale Property Owners Association, Inc., or the members of the Lake Royale Property Owners Association, Inc. For purposes of this act, streets, roadways, and alleys in the Lake Royale Community shall have the same meaning as highways and public vehicular areas pursuant to G.S. 20-4.01. A violation of any of those laws is punishable as prescribed by those laws.

(b) This section is enforceable by any company policeman appointed under Chapter 74E of the General Statutes, certified by the North Carolina Criminal Justice Education and Training Standards Commission, and employed by the Lake Royale Property Owners Association, Inc.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 42

AMENDMENT NO. 1
(to be filled in by
Principal Clerk)

H42-ALB-1

(c) This section shall not be construed as in any way interfering with the ownership and control of the streets, roadways, and alleys of the Lake Royale Property Owners Association, Inc., or its members as is now vested by law in that association or its members. The speed limits within the Lake Royale Community shall be the same as those in effect at the time of ratification of this act. Any proposed change in the speed limit shall be submitted to and approved by the Boards of Commissioners of Franklin or Nash County, whichever has jurisdiction. Pursuant to G.S. 20-141, the Franklin and Nash County Boards of Commissioners may authorize by ordinance higher or lower speeds.

(d) This section applies only to the Lake Royale Community in Franklin and Nash Counties.

Section 3.2. Sections 3 and 4 of Chapter 96 of the 1995 Session Laws are amended by deleting "This act", and substituting "Sections 1 through 3 of this act'".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ 50-0 FAILED _____ TABLED _____
6/26/97 J. Pruitt

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE.**

☒ Senate Committee Substitute for
H.B. 739 A BILL TO BE ENTITLED AN ACT TO STRENGTHEN AND CLARIFY THE DEALERS AND MANUFACTURERS LICENSING LAW.

☐ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 739*
Committee Substitute Favorable 4/28/97
Senate Commerce Committee Substitute Adopted 6/25/97

Short Title: MV Dealers/Manufacturers Lic. Law. (Public)

Sponsors:

Referred to:

April 1, 1997

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN AND CLARIFY THE DEALERS AND MANUFACTURERS LICENSING LAW.

The General Assembly of North Carolina enacts:

Section 1. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-297.1. Prefiling of franchise agreements and amendments.**

Any franchise, as defined in G.S. 20-286(8a), offered to a motor vehicle dealer in this State shall provide that all terms and conditions in the agreement inconsistent with any of the laws or rules of this State are of no force and effect. On or before January 1, 1998, every manufacturer, factory branch, distributor, or distributor branch licensed by the Commissioner under this Article which uses an identical or substantially similar form franchise for its dealers or distributors in this State shall file with the Commissioner a copy of the franchise and all supplements. Any applicant for licensing by the Commissioner as a manufacturer, factory branch, distributor, or distributor branch licensed under this Article, which would use an identical or substantially similar form franchise, as defined in G.S. 20-286(8a), for its dealers or distributors in this State, shall, as a condition for the issuance of a license, file with the Commissioner a copy of the franchise and all supplements thereto. Not later than 60 days prior to the date a revision, modification, or addition to a franchise is offered generally to a licensee's franchisees in this State, the licensee shall notify the

Commissioner of the proposed revision, modification, or addition to the franchise on file with the Commissioner and include with the notification:

(1) A copy of the form franchise which incorporates all of the proposed revisions, modifications, and additions;

(2) A separate statement which identifies all substantive revisions, modifications, and additions proposed.

It shall be unlawful for a franchise or any addendum or supplement thereto to be offered to a motor vehicle dealer in this State after January 1, 1998, until an applicant or licensee has complied with all of the requirements of this section. The Commissioner is authorized and directed to investigate and prevent violations of this section, including inconsistencies of any manufacturer's franchise with the provisions of this Article."

Section 2. G.S. 20-301 reads as rewritten:

"**§ 20-301. Powers of Commissioner.**

(a) The Commissioner shall promote the interests of the retail buyer of motor vehicles.

(b) The Commissioner shall have power to prevent unfair methods of competition and unfair or deceptive acts or ~~practices.~~ practices and other violations of this Article. Any franchised new motor vehicle dealer who believes that a manufacturer, factory branch, distributor, or distributor branch with whom the dealer holds a currently valid franchise has violated or is currently violating any provision of this Article may file a petition before the Commissioner setting forth the factual and legal basis for such violations. The Commissioner shall promptly forward a copy of the petition to the named manufacturer, factory branch, distributor, or distributor branch requesting a reply to the petition within 30 days. Allowing for sufficient time for the parties to conduct discovery, the Commissioner or his designee shall then hold an evidentiary hearing and render findings of fact and conclusions of law based on the evidence presented. Any parties to a hearing by the Commissioner concerning the establishment or relocating of a new motor vehicle dealer shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150B of the General Statutes.

(c) The Commissioner shall have the power in hearings arising under this Article to enter scheduling orders and limit the time and scope of discovery; to determine the date, time, and place where ~~they shall be~~ hearings are to be held; to subpoena witnesses; to take depositions of witnesses; and to administer oaths.

(d) The Commissioner may, whenever he shall believe from evidence submitted to him that any person has been or is violating any provision of this Article, in addition to any other ~~remedy~~ remedy, bring an action in the name of the State against ~~such~~ that person and any other persons concerned or in any way participating in, or about to participate in practices or acts so in violation, to enjoin ~~such~~ any persons ~~and such other persons~~ from continuing the ~~same.~~ violations.

(e) ~~The Commissioner shall limit the time for discovery in any contested administrative hearing conducted pursuant to Article 12 to a time not to exceed 60 days. The Commissioner may extend the time for discovery beyond 60 days either~~

~~upon the consent of all parties to the proceeding or upon application of one or more parties to the proceeding for good cause shown.~~ The Commissioner may issue rules and regulations to implement the provisions of this section and to establish procedures related to administrative proceedings commenced under this section."

Section 3. G.S. 20-305 reads as rewritten:

"**§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel franchise; preventing transfer of ownership; granting additional franchises; terminating franchises without good cause; preventing family succession.**

It shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or any representative whatsoever of any of them:

(1) To require, coerce, or attempt to coerce any dealer to accept delivery of any motor vehicle or vehicles, parts or accessories therefor, or any other commodities, which shall not have been ordered by such dealer;

(2) To require, coerce, or attempt to coerce any dealer to enter into any agreement with such manufacturer, factory branch, distributor, or distributor branch, or representative thereof, or do any other act unfair to such dealer, by threatening to cancel any franchise existing between such manufacturer, factory branch, distributor, distributor branch, or representative thereof, and such dealer;

(3) Unfairly without due regard to the equities of the dealer, and without just provocation, to cancel the franchise of such dealer;

(4) Notwithstanding the terms of any franchise agreement, to prevent or refuse to approve the sale or transfer of the ownership of a dealership by the sale of the business, stock transfer, or otherwise, or the transfer, sale or assignment of a dealer franchise, or a change in the executive management or principal operator of the dealership, or relocation of the dealership to another site within the dealership's relevant market area, if the Commissioner has determined, if requested in writing by the dealer within 30 days after receipt of an objection to the proposed transfer, sale, assignment, relocation, or change, and after a hearing on the matter, that the failure to permit or honor the transfer, sale, assignment, relocation, or change is unreasonable under the circumstances. No franchise may be transferred, sold, assigned, relocated, or the executive management or principal operators changed, unless the franchisor has been given at least 30 days' prior written notice as to the identity, financial ability, and qualifications of the proposed transferee, the identity and qualifications of the persons proposed to be involved in executive management or as principal operators, and the location and site plans of any proposed relocation. The franchisor shall send the dealership notice of objection, by registered or certified mail,

return receipt requested, to the proposed transfer, sale, assignment, relocation, or change within 30 days after receipt of notice from the dealer, as provided in this section. Failure by the franchisor to send notice of objection within 30 days shall constitute waiver by the franchisor of any right to object to the proposed transfer, sale, assignment, relocation, or change. The manufacturer or distributor has the burden of proving that the proposed transfer, sale, assignment, relocation, or change is unreasonable under the circumstances.

(5) To enter into a franchise establishing an additional new motor vehicle dealer or relocating an existing new motor vehicle dealer into a relevant market area where the same line make is then represented without first notifying in writing the Commissioner and each new motor vehicle dealer in that line make in the relevant market area of the intention to establish an additional dealer or to relocate an existing dealer within or into that market area. Within 30 days of receiving such notice or within 30 days after the end of any appeal procedure provided by the manufacturer, any new motor vehicle dealer may file with the Commissioner a protest to the establishing or relocating of the new motor vehicle dealer. When a protest is filed, the Commissioner shall promptly inform the manufacturer that a timely protest has been filed, and that the manufacturer shall not establish or relocate the proposed new motor vehicle dealer until the Commissioner has held a hearing, nor thereafter, if the Commissioner has determined that there is good cause for not permitting the addition or relocation of such new motor vehicle dealer.

a. This section does not apply:

1. To the relocation of an existing new motor vehicle dealer within that dealer's relevant market area, provided that the relocation not be at a site within 10 miles of a licensed new motor vehicle dealer for the same line make of motor vehicle; or
2. If the proposed additional new motor vehicle dealer is to be established at or within two miles of a location at which a former licensed new motor vehicle dealer for the same line make of new motor vehicle had ceased operating within the previous two years;
3. To the relocation of an existing new motor vehicle dealer within two miles of the existing site of the new motor vehicle dealership;
4. To the relocation of an existing new motor vehicle dealer if the proposed site of the relocated new motor

vehicle dealership is further away from all other new motor vehicle dealers of the same line make in that relevant market area.

b. In determining whether good cause has been established for not entering into or relocating an additional new motor vehicle dealer for the same line make, the Commissioner shall take into consideration the existing circumstances, including, but not limited to:

1. The permanency of the investment of both the existing and proposed additional new motor vehicle dealers;
2. Growth or decline in population, density of population, and new car registrations in the relevant market area;
3. Effect on the consuming public in the relevant market area;
4. Whether it is injurious or beneficial to the public welfare for an additional new motor vehicle dealer to be established;
5. Whether the new motor vehicle dealers of the same line make in that relevant market area are providing adequate competition and convenient customer care for the motor vehicles of the same line make in the market area which shall include the adequacy of motor vehicle sales and service facilities, equipment, supply of motor vehicle parts, and qualified service personnel;
6. Whether the establishment of an additional new motor vehicle dealer or relocation of an existing new motor vehicle dealer in the relevant market area would increase competition in a manner such as to be in the long-term public interest; and
7. The effect on the relocating dealer of a denial of its relocation into the relevant market area.

c. The Commissioner ~~must~~ shall try to conduct the hearing and render his final determination ~~as expeditiously as possible, but in any event no later than~~ if possible, within 180 days after a protest is filed. ~~Unless waived by the parties, failure to do so shall be deemed the equivalent of a determination that good cause does not exist for refusing to permit the proposed additional or relocated motor vehicle dealer, unless such delay is caused by acts of the manufacturer, or the relocating or additional dealer.~~

d. Any parties to a hearing by the Commissioner concerning the establishment or relocating of a new motor vehicle dealer shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150B of the General Statutes.

e. In a hearing involving a proposed additional dealership, the manufacturer or distributor has the burden of proof under this section. In a proceeding involving the relocation of an existing dealership, the dealer seeking to relocate has the burden of proof under this section.

f. If the Commissioner determines, following a hearing, that good cause does not exist for refusing to permit the proposed additional or relocated motor vehicle dealership, the dealer seeking the proposed additional or relocated motor vehicle dealership must, within two years, obtain a license from the Commissioner for the sale of vehicles at the relevant site, and actually commence operations at the site selling new motor vehicles of all line makes, as permitted by the Commissioner. Failure to obtain a permit and commence sales within two years shall constitute waiver by the dealer of the dealer's right to the additional or relocated dealership, requiring renotification, a new hearing, and a new determination as provided in this section.

g. For purposes of this subdivision, the addition, creation, or operation of a 'satellite' or other facility, not physically part of or contiguous to an existing licensed new motor vehicle dealer, whether or not owned or operated by a person or other entity holding a franchise as defined by G.S. 20-286(8a), at which warranty service work authorized or reimbursed by a manufacturer is performed or at which new motor vehicles are offered for sale to the public, shall be considered an additional new motor vehicle dealer requiring a showing of good cause, prior notification to existing new motor vehicle dealers of the same line make of vehicle within the relevant market area by the manufacturer and the opportunity for a hearing before the Commissioner as provided in this subdivision.

(6) Notwithstanding the terms, provisions or conditions of any franchise or notwithstanding the terms or provisions of any waiver, to terminate, cancel or fail to renew any franchise with a licensed new motor vehicle dealer unless the manufacturer has satisfied the notice requirements of subparagraph c. and the Commissioner has determined, if requested in writing by the dealer within the time period specified in G.S. 20-305(6)c1II, III or IV, as applicable, and

after a hearing on the matter, that there is good cause for the termination, cancellation, or nonrenewal of the franchise and that the manufacturer has acted in good faith as defined in this act regarding the termination, cancellation or nonrenewal. When such a petition is made to the Commissioner by a dealer for determination as to the existence of good cause and good faith for the termination, cancellation or nonrenewal of a franchise, the Commissioner shall promptly inform the manufacturer that a timely petition has been filed, and the franchise in question shall continue in effect pending the Commissioner's decision. The Commissioner ~~must~~ shall try to conduct the hearing and render a final determination ~~no later than~~ within 180 days after a petition has been ~~filed; provided, however, that the Commissioner may extend such period of time upon application of a party and for good cause shown, or upon the consent of all parties to the proceeding.~~ filed. If the termination, cancellation or nonrenewal is pursuant to G.S. 20-305(6)c1III then the Commissioner shall give the proceeding priority consideration and shall try to render his final determination no later than 90 days after the petition has been filed. Any parties to a hearing by the Commissioner under this section shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150B of the General Statutes.

a. Notwithstanding the terms, provisions or conditions of any franchise or the terms or provisions of any waiver, good cause shall exist for the purposes of a termination, cancellation or nonrenewal when:

   1. There is a failure by the new motor vehicle dealer to comply with a provision of the franchise which provision is both reasonable and of material significance to the franchise relationship provided that the dealer has been notified in writing of the failure within 180 days after the manufacturer first acquired knowledge of such failure;
   2. If the failure by the new motor vehicle dealer relates to the performance of the new motor vehicle dealer in sales or service, then good cause shall be defined as the failure of the new motor vehicle dealer to comply with reasonable performance criteria established by the manufacturer if the new motor vehicle dealer was apprised by the manufacturer in writing of the failure; and

I. The notification stated that notice was provided of failure of performance pursuant to this section;

II. The new motor vehicle dealer was afforded a reasonable opportunity, for a period of not less than 180 days, to comply with the criteria; and

III. The new motor vehicle dealer failed to demonstrate substantial progress towards compliance with the manufacturer's performance criteria during such period and the new motor vehicle dealer's failure was not primarily due to economic or market factors within the dealer's relevant market area which were beyond the dealer's control.

b. The manufacturer shall have the burden of proof under this section.

c. Notification of Termination, Cancellation and Nonrenewal. --

1. Notwithstanding the terms, provisions or conditions of any franchise prior to the termination, cancellation or nonrenewal of any franchise, the manufacturer shall furnish notification of termination, cancellation or nonrenewal to the new motor vehicle dealer as follows:

I. In the manner described in G.S. 20-305(6)c2 below; and

II. Not less than 90 days prior to the effective date of such termination, cancellation or nonrenewal; or

III. Not less than 15 days prior to the effective date of such termination, cancellation or nonrenewal with respect to any of the following:

A. Insolvency of the new motor vehicle dealer, or filing of any petition by or against the new motor vehicle dealer under any bankruptcy or receivership law;

B. Failure of the new motor vehicle dealer to conduct its customary sales and service operations during its customary business hours for seven consecutive business days, except for acts of God or

circumstances beyond the direct control of the new motor vehicle dealer;

C. Revocation of any license which the new motor vehicle dealer is required to have to operate a dealership;

D. Conviction of a felony involving moral turpitude, under the laws of this State or any other state, or territory, or the District of Columbia.

IV. Not less than 180 days prior to the effective date of such termination or cancellation where the manufacturer or distributor is discontinuing the sale of the product line.

2. Notification under this section shall be in writing; shall be by certified mail or personally delivered to the new motor vehicle dealer; and shall contain:

I. A statement of intention to terminate, cancel or not to renew the franchise;

II. A statement of the reasons for the termination, cancellation or nonrenewal; and

III. The date on which the termination, cancellation or nonrenewal takes effect.

3. Notification provided in G.S. 20-305(6)c1II of 90 days prior to the effective date of such termination, cancellation or renewal may run concurrent with the 180 days designated in G.S. 20-305(6)a2II provided the notification is clearly designated by a separate written document mailed by certified mail or personally delivered to the new motor vehicle dealer.

d. Payments. --

1. Upon the termination, nonrenewal or cancellation of any franchise by the manufacturer or distributor, pursuant to this section, the new motor vehicle dealer shall be allowed fair and reasonable compensation by the manufacturer for the:

I. New motor vehicle inventory that has been acquired from the manufacturer within 18 months, at a price not to exceed the original manufacturer's price to the dealer, and which has not been altered or damaged, and which has not been driven more than 200 miles, and for which no certificate of title has been issued;

II. Unused, undamaged and unsold supplies and parts purchased from the manufacturer, at a

price not to exceed the original manufacturer's price to the dealer, provided such supplies and parts are currently offered for sale by the manufacturer or distributor in its current parts catalogs and are in salable condition;

III. Equipment and furnishings that have not been altered or damaged and that have been required by the manufacturer or distributor to be purchased by the new motor vehicle dealer from the manufacturer or distributor, or their approved sources; and

IV. Special tools that have not been altered or damaged and that have been required by the manufacturer or distributor to be purchased by the new motor vehicle dealer from the manufacturer or distributor, or their approved sources within five years immediately preceding the termination, nonrenewal or cancellation of the franchise.

2. Fair and reasonable compensation for the above shall be paid by the manufacturer within 90 days of the effective date of termination, cancellation or nonrenewal, provided the new motor vehicle dealer has clear title to the inventory and has conveyed title and possession to the manufacturer.

e. Dealership Facilities Assistance upon Termination, Cancellation or Nonrenewal. --

In the event of the termination, cancellation or nonrenewal by the manufacturer or distributor under this section, except termination, cancellation or nonrenewal for insolvency, license revocation, conviction of a crime involving moral turpitude, or fraud by a dealer-owner:

1. Subject to paragraph 3, if the new motor vehicle dealer is leasing the dealership facilities from a lessor other than the manufacturer, the manufacturer shall pay the new motor vehicle dealer a sum equivalent to the rent for the unexpired term of the lease or one year's rent, whichever is less, or such longer term as is provided in the franchise agreement between the dealer and manufacturer; or

2. Subject to paragraph 3, if the new motor vehicle dealer owns the dealership facilities, the manufacturer shall pay the new motor vehicle dealer a sum

equivalent to the reasonable rental value of the dealership facilities for one year.

3. Provided nothing in this paragraph e. shall relieve a lessee or owner, as the case may be, from the obligation to mitigate damages under the lease, nor prevent a manufacturer from occupying and using the dealership facilities while paying rent under subsections 1 and 2, nor prevent a manufacturer from obligations by negotiating a lease termination, a sublease or a new lease. Any amounts recovered by the lessee or owner resulting from mitigation of damages shall be deducted from the amount due from the manufacturer.

f. The provisions of paragraphs d. and e. above shall not be applicable when the termination, nonrenewal or cancellation of the franchise agreement is the result of the voluntary act of the dealer.

(7) Notwithstanding the terms of any contract or agreement, to prevent or refuse to honor the succession to a dealership, including the franchise, by a motor vehicle dealer's designated successor as provided for under this subsection.

a. Any owner of a new motor vehicle dealership may appoint by will, or any other written instrument, a designated ~~family member~~ successor to succeed in the ownership interest of the said owner in the new motor vehicle dealership, including the franchise, upon the death or incapacity of the owner.

b. Any objections by a manufacturer or distributor to an owner's appointment of a designated successor shall be asserted in accordance with the following procedure:

1. Within 30 days after receiving written notice of the identity of the owner's designated successor and general information as to the financial ability and qualifications of the designated successor, the franchisor shall send the owner and designated successor notice of objection, by registered or certified mail, return receipt requested, to the appointment of the designated successor. The notice of objection shall state in detail all facts which constitute the basis for the contention on the part of the manufacturer or distributor that good cause, as defined in this sub-subdivision below, exists for rejection of the designated ~~family member~~ successor. Failure by the franchisor to send notice of objection

within 30 days and otherwise as provided in this sub-subdivision shall constitute waiver by the franchisor of any right to object to the appointment of the designated successor.

2. Any time within 30 days of receipt of the manufacturer's notice of objection the owner or the designated successor may file a request in writing with the Commissioner that the Commissioner hold an evidentiary hearing and determine whether good cause exists for rejection of the designated successor. When such a request is filed, the Commissioner shall promptly inform the affected manufacturer or distributor that a timely request has been filed.

3. The Commissioner shall endeavor to hold the evidentiary hearing required under this sub-subdivision and render a determination within 180 days after receipt of the written request from the owner or designated successor. In determining whether good cause exists for rejection of the owner's appointed designated successor, the manufacturer or distributor has the burden of proving that the designated successor is a person who is not of good moral character or does not meet the franchisor's existing and reasonable standards and, considering the volume of sales and service of the new motor vehicle dealer, uniformly applied minimum business experience standards in the market area.

4. Any parties to a hearing by the Commissioner concerning whether good cause exists for the rejection of the dealer's designated successor shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150B of the General Statutes.

5. Nothing in this sub-subdivision shall preclude a manufacturer or distributor from, upon its receipt of written notice from a dealer of identity of the dealer's designated successor, requiring that the designated successor promptly provide personal and financial data that is reasonably necessary to determine the financial ability and qualifications of the designated successor; provided, however, that such a request for additional information shall not delay any of the time periods or constraints contained herein.

6. In the event death or incapacity of the owner occurs prior to the time a manufacturer or distributor receives notice of the owner's appointment of a designated successor or before the Commissioner has rendered a determination as provided above, the existing franchise shall remain in effect and the designated successor shall be deemed to have succeeded to all of the owner's rights and obligations in the dealership and under the franchise until a determination is made by the Commissioner or the rights of the parties have otherwise become fixed in accordance with this sub-subdivision.

c. Except as otherwise provided in sub-subdivision d. of this subdivision, any designated successor of a deceased or incapacitated owner of a new motor vehicle dealership appointed by such owner in substantial compliance with this section shall, by operation of law, succeed at the time of such death or incapacity to all of the ownership rights and obligations of the owner in the new motor vehicle dealership and under the existing franchise.

d. Within 60 days after the death or incapacity of the owner, a designated successor appointed in substantial compliance with this section shall give the affected manufacturer or distributor written notice of his or her succession to the ownership of the new motor vehicle dealership; provided, however, that the failure of the designated successor to give the manufacturer or distributor written notice as provided above within 60 days of the owner's death or incapacity shall not result in the waiver or termination of the designated successor's right to succeed to the ownership of the new motor vehicle dealership unless the manufacturer or distributor gives written notice of this provision to either the designated successor or the deceased or incapacitated owner's executor, administrator, guardian or other fiduciary by certified or registered mail, return receipt requested, and said written notice grants not less than 30 days time within which the designated successor may give the notice required hereunder, provided the designated successor or the deceased or incapacitated owner's executor, administrator, guardian or other fiduciary has given the manufacturer reasonable notice of death or incapacity. Within 30 days of receipt of the notice by the manufacturer or distributor from the designated successor provided in this paragraph, the manufacturer or distributor may request that the designated

successor complete the application forms generally utilized by the manufacturer or distributor to review the designated successor's qualifications to establish a successor dealership. Within 30 days of receipt of the completed forms, the manufacturer or distributor shall send a letter by certified or registered mail, return receipt requested, advising the designated successor of facts and circumstances which have changed since the manufacturer's or distributor's original approval of the designated successor, and which have caused the manufacturer or distributor to object to the designated successor. Upon receipt of such notice, the designated successor may either designate an alternative successor or may file a request for evidentiary hearing in accordance with the procedures provided in sub-subdivisions b. 2.-5. of this subdivision. In any such hearing, the manufacturer or distributor shall be limited to facts and circumstances which did not exist at the time the designated successor was originally approved or evidence which was originally requested to be produced by the designated successor at the time of the original request and was either not produced or the material which was produced was incorrect.

e. The designated successor shall agree to be bound by all terms and conditions of the franchise in effect between the manufacturer or distributor and the owner at the time of the owner's death or incapacity, if so requested in writing by the manufacturer or distributor subsequent to the owner's death or incapacity.

f. This section does not preclude an owner of a new motor vehicle dealership from designating any person as his successor by written instrument filed with the manufacturer or distributor, and, in the event there is an inconsistency between the successor named in such written instrument and the designated successor otherwise appointed by the owner consistent with the provisions of this section, and that written instrument has not been revoked by the owner of the new motor vehicle dealership in writing to the manufacturer or distributor, then the written instrument filed with the manufacturer or distributor shall govern as to the appointment of the successor.

(8) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to order or accept delivery of any new motor vehicle with special features, accessories or equipment not included in the list price of such motor vehicles as publicly advertised by the manufacturer or distributor.

(9) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to participate monetarily in an advertising campaign or contest, or to purchase unnecessary or unreasonable quantities of any promotional materials, training materials, training programs, showroom or other display decorations or materials at the expense of the new motor vehicle dealer, provided that nothing in this subsection shall preclude a manufacturer or distributor from including an unitemized uniform charge in the base price of the new motor vehicle charged to the dealer where such charge is attributable to advertising costs incurred or to be incurred by the manufacturer or distributor in the ordinary courses of its business.

(10) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to change the capital structure of the new motor vehicle dealer or the means by or through which the new motor vehicle dealer finances the operation of the dealership provided that the new motor vehicle dealer at all times meets any reasonable capital standards determined by the manufacturer in accordance with uniformly applied criteria; and also provided that no change in the capital structure shall cause a change in the principal management or have the effect of a sale of the franchise without the consent of the manufacturer or distributor, provided that said consent shall not be unreasonably withheld.

(11) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to refrain from participation in the management of, investment in, or the acquisition of any other line of new motor vehicle or related products; Provided, however, that this subsection does not apply unless the new motor vehicle dealer maintains a reasonable line of credit for each make or line of new motor vehicle, and the new motor vehicle dealer remains in compliance with any reasonable capital standards and facilities requirements of the manufacturer. The reasonable facilities requirements shall not include any requirement that a new motor vehicle dealer establish or maintain exclusive facilities, personnel, or display space, when such requirements, or any of them, would be unreasonable in light of current economic conditions and would not otherwise be justified by reasonable business considerations.

(12) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to change location of the dealership, or to make any substantial alterations to the dealership premises or facilities, when to do so would be unreasonable, or without written assurance of a sufficient supply of new motor vehicles so as to justify such an expansion, in light of the current market and economic conditions.

(13) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to prospectively assent to a release, assignment, novation, waiver or estoppel which would relieve any person from liability to be imposed by this law or to require any controversy between a new motor vehicle dealer and a manufacturer, distributor, or representative, to be referred to any person other than the duly constituted courts of the State or the United States of America, or to the Commissioner, if such referral would be binding upon the new motor vehicle dealer.

(14) To delay, refuse, or fail to deliver motor vehicles or motor vehicle parts or accessories in reasonable quantities relative to the new motor vehicle dealer's facilities and sales potential in the new motor vehicle dealer's relevant market area, and within a reasonable time, after receipt of an order from a dealer having a franchise for the retail sale of any new motor vehicle sold or distributed by the manufacturer or distributor, any new vehicle, parts or accessories to new vehicles as are covered by such franchise, and such vehicles, parts or accessories as are publicly advertised as being available or actually being delivered. The delivery to another dealer of a motor vehicle of the same model and similarly equipped as the vehicle ordered by a motor vehicle dealer who has not received delivery thereof, but who has placed his written order for the vehicle prior to the order of the dealer receiving the vehicle, shall be evidence of a delayed delivery of, or refusal to deliver, a new motor vehicle to a motor vehicle dealer within a reasonable time, without cause. This subsection is not violated, however, if such failure is caused by acts or causes beyond the control of the manufacturer, distributor, factory branch, or factory representative.

(15) To refuse to disclose to any new motor vehicle dealer, handling the same line make, the manner and mode of distribution of that line make within the State.

(16) To award money, goods, services, or any other benefit to any new motor vehicle dealership employee, either directly or indirectly, unless such benefit is promptly accounted for, and transmitted to, or approved by, the new motor vehicle dealer.

(17) To increase prices of new motor vehicles which the new motor vehicle dealer had ordered and which the manufacturer or distributor has accepted for immediate delivery for private retail consumers prior to the new motor vehicle dealer's receipt of the written official price increase notification. A sales contract signed by a private retail consumer shall constitute evidence of each such order provided that the vehicle is in fact delivered to that customer. Price differences applicable to new model or series shall

not be considered a price increase or price decrease. Price changes caused by either: (i) the addition to a new motor vehicle of required or optional equipment; or (ii) revaluation of the United States dollar, in the case of foreign-make vehicles or components; or (iii) an increase in transportation charges due to increased rates imposed by carriers; or (iv) new tariffs or duties imposed by the United States of America or any other governmental authority, shall not be subject to the provisions of this subsection.

(18) To prevent or attempt to prevent a dealer from receiving fair and reasonable compensation for the value of the franchised business transferred in accordance with G.S. 20-305(4) above.

(19) To offer any refunds or other types of inducements to any person for the purchase of new motor vehicles of a certain line make to be sold to the State or any political subdivision thereof without making the same offer available upon request to all other new motor vehicle dealers in the same line make within the State.

(20) To release to any outside party, except under subpoena or as otherwise required by law or in an administrative, judicial or arbitration proceeding involving the manufacturer or new motor vehicle dealer, any confidential business, financial, or personal information which may be from time to time provided by the new motor vehicle dealer to the manufacturer, without the express written consent of the new motor vehicle dealer.

(21) To deny any new motor vehicle dealer the right of free association with any other new motor vehicle dealer for any lawful purpose.

(22) To unfairly discriminate among its new motor vehicle dealers with respect to warranty reimbursements or authority granted its new motor vehicle dealers to make warranty adjustments with retail customers.

(23) To engage in any predatory practice against or unfairly compete with a new motor vehicle dealer located in this State.

(24) To terminate any franchise solely because of the death or incapacity of an owner who is not listed in the franchise as one on whose expertise and abilities the manufacturer relied in the granting of the franchise.

(25) To require, coerce, or attempt to coerce a new motor vehicle dealer in this State to either establish or maintain exclusive facilities, personnel, or display space, when such requirements, or any of them, would be unreasonable in light of current economic conditions and would not otherwise be justified by reasonable business considerations.

(26) To resort to or to use any false or misleading advertisement in the conducting of its business as a manufacturer or distributor in this State.

(27) To knowingly make, either directly or through any agent or employee, any material statement which is false or misleading and which induces any new motor vehicle dealer to enter into any agreement or franchise or to take any action which is materially prejudicial to that new motor vehicle dealer or his business.

(28) To require, coerce, or attempt to coerce any new motor vehicle dealer to purchase or order any new motor vehicle as a precondition to purchasing, ordering, or receiving any other new motor vehicle or vehicles. Nothing herein shall prevent a manufacturer from requiring that a new motor vehicle dealer fairly represent and inventory the full line of new motor vehicles which are covered by the franchise agreement.

(29) To require, coerce, or attempt to coerce any new motor vehicle dealer to sell, transfer, or otherwise issue stock or other ownership interest in the dealership corporation to a general manager or any other person involved in the management of the dealership other than the dealer principal or dealer operator named in the franchise, unless the dealer principal or dealer operator is an absentee owner who is not involved in the operation of the dealership on a regular basis.

(30) To vary the price charged to any of its franchised new motor vehicle dealers located in this State for new motor vehicles based on the dealer's purchase of new facilities, supplies, tools, equipment, or other merchandise from the manufacturer, the dealer's relocation, remodeling, repair, or renovation of existing dealerships or construction of a new facility or upon the dealer's participation in training programs sponsored, endorsed, or recommended by the manufacturer.

The price of the vehicle, for purposes of this subdivision shall include the manufacturer's use of rebates, credits, or other consideration which has the effect of causing a variance in the price of new motor vehicles offered to its franchised dealers located in the State.

Notwithstanding the foregoing, nothing in this subdivision shall be deemed to preclude a manufacturer from establishing sales contests or promotions which provide or award dealers or consumers rebates or incentives.

Nothing contained in this subdivision shall prohibit a manufacturer from providing assistance or encouragement to a franchised dealer to remodel, renovate, recondition, or relocate the dealer's existing facilities, provided that this assistance, encouragement, or rewards are not determined on a per vehicle basis.

In the event that at the time of the ratification of this act a manufacturer is currently operating a program or has in effect a policy which would violate this subdivision after the effective date of this act, it shall be lawful for that program or policy to continue in effect as to the manufacturer's franchised dealers located in this State until December 31, 1999. Any manufacturer shall be required to pay or otherwise compensate any franchise dealer who has earned the right to receive payment or other compensation under a program as of December 31, 1999, in accordance with the manufacturer's program or policy.

(31) Notwithstanding the terms of any contract, franchise, agreement, release, or waiver, to require that in any civil or administrative proceeding in which a new motor vehicle dealer asserts any claims, rights, or defenses arising under this Article or under the franchise, that the dealer or any nonprevailing party compensate the manufacturer or prevailing party for any court costs, attorneys' fees, or other expenses incurred in the litigation.

(32) To require that any of its franchised new motor vehicle dealers located in this State pay any extra fee, purchase unreasonable or unnecessary quantities of advertising displays or other materials, or remodel, renovate, or recondition the dealers' existing facilities in order to receive any particular model or series of vehicles manufactured or distributed by the manufacturer for which the dealers have a valid franchise. Notwithstanding the foregoing, nothing contained in this subdivision shall be deemed to prohibit or prevent a manufacturer from requiring that its franchised dealers located in this State purchase special tools or equipment, stock reasonable quantities of certain parts, or participate in training programs which are reasonably necessary for those dealers to sell or service any model or series of vehicles."

Section 4. G.S. 20-305.1 reads as rewritten:

"**§ 20-305.1. Automobile dealer warranty obligations.**

(a) Each motor vehicle manufacturer, factory branch, distributor or distributor branch, shall specify in writing to each of its motor vehicle dealers licensed in this State the dealer's obligations for preparation, delivery and warranty service on its products, the schedule of compensation to be paid such dealers for parts, work, and service in connection with warranty service, and the time allowances for the performance of such work and service. In no event shall such schedule of compensation fail to include reasonable compensation for diagnostic work and associated administrative requirements as well as repair service and labor. Time allowances for the performance of warranty work and service shall be reasonable and adequate for the work to be performed. The compensation which must be paid under this section must be reasonable, provided, however, that under no circumstances may the reasonable compensation under this section be in an amount less than the dealer's

current retail labor rate and the amount charged to retail customers for the manufacturer's or distributor's original parts for nonwarranty work of like kind, provided such amount is competitive with other franchised dealers within the dealer's market.

(b) Notwithstanding the terms of any franchise agreement, it is unlawful for any motor vehicle manufacturer, factory branch, distributor, or distributor branch to fail to perform any of its warranty obligations with respect to a motor vehicle, to fail to compensate its motor vehicle dealers licensed in this State for warranty parts other than parts used to repair the living facilities of recreational vehicles, at the prevailing retail rate according to the factors in subsection (a) of this section, or, in service in accordance with the schedule of compensation provided the dealer pursuant to subsection (a) above, and to fail to indemnify and hold harmless its franchised dealers licensed in this State against any judgment for damages or settlements agreed to by the manufacturer, including, but not limited to, court costs and reasonable attorneys' fees of the motor vehicle dealer, arising out of complaints, claims or lawsuits including, but not limited to, strict liability, negligence, misrepresentation, express or implied warranty, or recision or revocation of acceptance of the sale of a motor vehicle as defined in G.S. 25-2-608, to the extent that the judgment or settlement relates to the alleged defective negligent manufacture, assembly or design of new motor vehicles, parts or accessories or other functions by the manufacturer, factory branch, distributor or distributor branch, beyond the control of the dealer. Any audit for warranty parts or service compensation shall only be for the 12-month period immediately following the date of the payment of the claim by the manufacturer, factory branch, distributor, or distributor branch. Any audit for sales incentives, service incentives, rebates, or other forms of incentive compensation shall only be for the 24-month period immediately following the date of the payment of the claim by the manufacturer, factory branch, distributor, or distributor branch. Provided, however, these limitations shall not be effective in the case of fraudulent claims.

(b1) All claims made by motor vehicle dealers pursuant to this section for compensation for delivery, preparation, warranty and recall work including labor, parts, and other expenses, shall be paid by the manufacturer within 30 days after receipt of claim from the dealer. When any claim is disapproved, the dealer shall be notified in writing of the grounds for disapproval. Any claim not specifically disapproved in writing within 30 days after receipt shall be considered approved and payment is due immediately. No claim which has been approved and paid may be charged back to the dealer unless it can be shown that the claim was false or fraudulent, that the repairs were not properly made or were unnecessary to correct the defective condition, or the dealer failed to reasonably substantiate the ~~claim in accordance with the written requirements of the manufacturer or distributor in effect at the time the claim arose.~~ claim. A manufacturer or distributor shall not deny a claim or reduce the amount to be reimbursed to the dealer as long as the dealer has provided reasonably sufficient documentation that the dealer:

(1) Made a good faith attempt to perform the work in compliance with the written policies and procedures of the manufacturer; and

(2) Actually performed the work.

(c) In the event there is a dispute between the manufacturer, factory branch, distributor, or distributor branch, and the dealer with respect to any matter referred to in subsections ~~(a) and (b) above and subsection (d) below,~~ (a), (b), or (d) of this section, either party may petition the Commissioner in writing, within 30 days after either party has given written notice of the dispute to the other, for a hearing on the subject and the decision of the Commissioner shall be binding on the parties, subject to rights of judicial review and appeal as provided in Chapter 150B of the General Statutes; provided, however, that nothing contained herein shall give the Commissioner any authority as to the content of any manufacturer's or distributor's warranty. Upon the filing of a petition before the Commissioner under this subsection, any chargeback to or any payment required of a dealer by a manufacturer relating to warranty parts or service compensation, or to sales incentives, service incentives, rebates, or other forms of incentive compensation, shall be stayed during the pendency of the determination by the Commissioner.

(d) Transportation damages. --

(1) Notwithstanding the terms, provisions or conditions of any agreement or franchise, the manufacturer is liable for all damages to motor vehicles before delivery to a carrier or transporter.

(2) If a new motor vehicle dealer determines the method of transportation, the risk of loss passes to the dealer upon delivery of the vehicle to the carrier.

(3) In every other instance, the risk of loss remains with the manufacturer until such time as the new motor vehicle dealer or his designee accepts the vehicle from the carrier.

(4) Whenever a motor vehicle is damaged while in transit when the carrier or the means of transportation is designated by the manufacturer or distributor, or whenever a motor vehicle is otherwise damaged prior to delivery to the dealer, the dealer must:

a. Notify the manufacturer or distributor of such damage within three working days or within such additional time as authorized by the franchise agreement of the occurrence of the delivery of the motor vehicle as defined in subsection (1) of this section; and

b. Must request from the manufacturer or distributor authorization to repair the damages sustained or to replace the parts or accessories damaged.

(5) In the event the manufacturer or distributor refuses or fails to authorize repair or replacement of any such damage within ten working days after receipt of notification of damage by the dealer, ownership of the motor vehicle shall revert to the manufacturer or distributor, and the dealer shall incur no obligation, financial or otherwise, for such damage to the motor vehicle.

(5a) No manufacturer shall fail to disclose in writing to a new motor vehicle dealer, at the time of delivery of a new motor vehicle, the nature and extent of any and all damage and post-manufacturing repairs made to such motor vehicle while in the possession or under the control of the manufacturer if the cost of such post-manufacturing repairs exceeds three percent (3%) of the manufacturer's suggested retail price. A manufacturer is not required to disclose to a new motor vehicle dealer that any glass, tires or bumper of a new motor vehicle was damaged at any time if the damaged item has been replaced with original or comparable equipment.

(6) Nothing in this subsection (d) shall relieve the dealer of the obligation to cooperate with the manufacturer as necessary in filing any transportation damage claim with the carrier.

(e) Damage/Repair Disclosure. -- Notwithstanding the provisions of subdivision (d)(4) of this section and in supplementation thereof, a new motor vehicle dealer shall disclose in writing to a purchaser of the new motor vehicle prior to entering into a sales contract any damage and repair to the new motor vehicle if the damage exceeds five percent (5%) of the manufacturer's suggested retail price as calculated at the rate of the dealer's authorized warranty rate for labor and parts.

(1) A new motor vehicle dealer is not required to disclose to a purchaser that any glass, tires or bumper of a new motor vehicle was damaged at any time if the damaged item has been replaced with original or comparable equipment.

(2) If disclosure is not required under this section, a purchaser may not revoke or rescind a sales contract due solely to the fact that the new motor vehicle was damaged and repaired prior to completion of the sale.

(3) For purposes of this section, 'manufacturer's suggested retail price' means the retail price of the new motor vehicle suggested by the manufacturer including the retail delivered price suggested by the manufacturer for each accessory or item of optional equipment physically attached to the new motor vehicle at the time of delivery to the new motor vehicle dealer which is not included within the retail price suggested by the manufacturer for the new motor vehicle.

(f) The provisions of subsections (a), (b), (b1), (d) and (e) shall not apply to manufacturers and dealers of 'motorcycles' as defined in G.S. 20-4.01(27)."

Section 5. The amendment adding G.S. 20-305(5)(g), as set forth in Section 3 of this act, shall not apply to satellite facilities licensed before October 1, 1997. This act becomes effective October 1, 1997.

MINUTES
COMMITTEE ON RULES, CALENDAR, AND OPERATIONS OF THE HOUSE
July 9, 1997

The Committee on Rules, Calendar, and Operations of the House met July 9, 1997 at 1:10 p.m. in Room 643 in the Legislative Office Building. Representative Morgan, Committee Chair, called the meeting to order and asked the clerk to call the roll. The following members were present: Representative Bowie, Vice Chair; and Representatives Crawford, Culp, Esposito, Gulley, McMahan, Miner, Mitchell, Neely, Thompson, and Wood.

Several bills were before the Committee for concurrence. The first was House Bill 42 - A BILL TO BE ENTITLED AN ACT TO EXTEND AN ACT TO PROVIDE THAT THE LAWS RELATING TO MOTOR VEHICLES APPLY WITHIN THE CAROLINA TRACE COMMUNITY IN LEE COUNTY. Representative Davis, bill sponsor, was recognized to explain the bill. Representative Davis requested of the Chair that Representative Creech be recognized to explain a portion of the bill. Representative Creech was recognized. The Chair asked Linwood Jones, Committee Counsel, if the Committee needed to make any changes. Counsel explained that it was a Senate amendment that added a new section to the bill which extended the same language from the 1995 bill. No changes to the date of July l, l997 was needed. Once the bill is concurred, it would be reactivated. Representative Neely moved for recommendation that the House concur with the Senate amendment. Motion carried.

The next bill before the Committee was House Bill 739 - A BILL TO BE ENTITLED AN ACT TO STRENGTHEN AND CLARIFY THE DEALERS AND MANUFACTURERS LICENSING LAW. The Chair recognized Representative Dickson, Chair for the Committee on Finance and bill sponsor, to explain the Senate Committee Substitute. Representative McMahan moved for recommendation that the House concur with Senate Committee Substitute. Motion carried.

House Bill 773 - A BILL TO BE ENTITLED AN ACT TO REVISE AND CONSOLIDATE THE CHARTER OF THE VILLAGE OF BALD HEAD ISLAND AND TO EXTEND THE CORPORATE LIMITS OF THE TOWN OF LELAND was next before the Committee. Representative Redwine, bill sponsor, was recognized to explain the Senate Committee Substitute. Representative Thompson moved that the House not concur with the Senate Committee Substitute and asked that conferees be reported. Motion carried.

The next bill before the Committee was House Bill 1122 - A BILL TO BE ENTITLED AN ACT TO FACILITATE THE TRIAL OF DRUG OFFENSES BY AUTHORIZING THE USE OF LABORATORY REPORTS IN SUPERIOR COURT AND JUVENILE COURT PROCEEDINGS AND BY ELIMINATING THE NEED FOR UNNECESSARY WITNESSES IN ESTABLISHING A CHAIN OF CUSTODY WHEN THE DEFENDANT DOES NOT TIMELY OBJECT TO THE ADMISSION OF A LABORATORY REPORT OR THE CHAIN OF CUSTODY, TO AMEND THE EVIDENCE LAWS DEALING WITH THE OPTOMETRIST/PATIENT PRIVILEGE,

AND TO AUTHORIZE SUPERIOR COURT SESSIONS IN THOMASVILLE AND MOORESVILLE. The Chair recognized Representative Dockham to explain the Senate Committee Substitute. Representative Dockham was not present; therefore, the Chair recognized the Counsel to explain the bill. Representative Neely was recognized by the Chair to explain Section 3. Representative Gulley moved that the Rules Committee recommend that the House concur with the Senate Committee Substitute. Motion carried.

The first resolution before the Committee was House Joint Resolution 1236 - A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF CALVIN LEE KOONCE, JR. Representative Warner was recognized to explain the resolution. Representative McMahan moved for a favorable report. Motion carried.

The next bill before the Committee was Senate Bill 597 - A BILL TO BE ENTITLED AN ACT TO ALLOW PHYSICIANS PRACTICING PSYCHIATRY AND PSYCHOLOGISTS TO FORM PROFESSIONAL CORPORATIONS WITH LICENSED PROFESSIONAL COUNSELORS. The Chair recognized Senator Lee to explain the bill. Representative Bowie moved for a favorable report. Motion carried.

Senate Bill 564 - A BILL TO BE ENTITLED AN ACT TO AMEND THE NORTH CAROLINA FINANCIAL PRIVACY ACT TO PERMIT THE DISCLOSURE OF THE NAME, ADDRESS, AND TYPE OF ACCOUNT OF ANY CUSTOMER was the next bill before the Committee. A proposed House committee substitute bill was offered and Representative Esposito moved for its adoption for committee discussion. Motion carried. Senator Reeves was recognized to explain the bill. Chair recognized Mr. Paul Stock, representing the North Carolina Banker's Association, who spoke in support of the bill. Representative Neely moved for a favorable report for the House committee substitute, and an unfavorable report for the original bill, and have the committee substitute re-referred to the Committee of Commerce. Motion carried.

Without objection, the Chair brought before the Committee House Bill 794 -A BILL TO BE ENTITLED AN ACT TO MAKE SUBSTANTIVE CHANGES TO THE NORTH CAROLINA ENGINEERING AND LAND SURVEYING ACT Representative Culp moved to adopt the committee substitute for discussion and debate. Representative Ives, bill sponsor, was recognized to explain the changes in the bill. Mr. Paul Goodson, Executive Director of Professional Engineers in North Carolina, was recognized and spoke in favor of the bill. Representative Culp asked Mr. Goodson how the bill would affect the technicians and technical specialists that would be working with the Animal Waste Management Irrigation System. Mr. Goodson said that the bill was written especially with such groups as the technical specialists for animal waste sprayer irrigation in mind. He said the bill would authorize those qualified to do the work with out putting an exemption in the licensing law. Mr. Dewey Botts, Division Director of Soil and Water Conservation with the Department of Environment, Health, and Natural

Resources, spoke in favor of this bill. The Chair temporarily displaced House Bill 794 so Committee on Rules, Calendar, and Operations of the House that the Rules Committee could convene with the House Education Committee to discuss House Joint Resolution 1004. The Chair had the Rules Committee recessed for five minutes at 1:45 p.m. to allow the House Education Committee to get seated.

Representative Morgan, Chair, reconvened the joint meeting at 1:50 p.m. The Chair asked the clerk to call the roll for the House Education Committee and the following members were present: Representatives Russell and Shubert, Co-Chairs; and Representatives Boyd-McIntyre, Davis, Dickson, Fox, Gulley, Hall, McMahan, Morris, Nye, Oldham, Rayfield, Smith, and Tolson.

House Joint Resolution 1004 -STATE BOARD OF EDUCATION CONFIRMATION was before the joint committees for consideration. Representative Gulley moved to adopt the committee substitute entitled - A JOINT RESOLUTION PROVIDING FOR CONFIRMATION OF THE APPOINTMENTS OF EVELYN B. MONROE, JOHN R. LAURITZEN, AND JAY M. ROBINSON TO MEMBERSHIP ON THE STATE BOARD OF EDUCATION- for purpose of discussion. Motion carried. Education Committee Counsel, Robin Johnson, explained the committee substitute named the three individuals appointed by the Governor to fill terms of membership on the State Board of Education. The appointments are Evelyn B. Monroe, John R. Lauritzen, and Jay M. Robinson. Each Committee member received a packet of information about the three nominees. Each nominee was recognized to speak to the Joint Committee. At the conclusion of their remarks, Representative McMahan moved for a favorable report to the committee substitute bill and unfavorable to the original bill Motion carried.

There being no further business, the meeting adjourned.

Representative Richard T. Morgan
Committee Chair

Anne M. Cole
Acting Committee Clerk

Attachments:
Committee Reports
Bills
Packet of Nominee Information
Visitor's Sheet

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE.**

☒ Senate Committee Substitute for
H.B. 773 A BILL TO BE ENTITLED AN ACT TO REVISE AND CONSOLIDATE THE CHARTER OF THE VILLAGE OF BALD HEAD ISLAND AND TO EXTEND THE CORPORATE LIMITS OF THE TOWN OF LELAND.

☐ 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)

4/24/97

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **MORGAN** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE.**

☐ Committee Substitute for
H.B. 42 A BILL TO BE ENTITLED AN ACT TO EXTEND AN ACT TO PROVIDE THAT THE LAWS RELATING TO MOTOR VEHICLES APPLY WITHIN THE CAROLINA TRACE COMMUNITY IN LEE COUNTY.

☐ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 773
Senate Finance Committee Substitute Adopted 6/18/97
Third Edition Engrossed 6/23/97

Short Title: Bald Head Island Charter/Leland Annexation. (Local)

Sponsors:

Referred to:

April 3, 1997

A BILL TO BE ENTITLED

AN ACT TO REVISE AND CONSOLIDATE THE CHARTER OF THE VILLAGE OF BALD HEAD ISLAND AND TO EXTEND THE CORPORATE LIMITS OF THE TOWN OF LELAND.

Whereas, Bald Head Island is suitably located in a subtropic environment and blessed with temperate climates from the Atlantic Ocean and is conducive to the maintenance of permanent and retirement residences and other buildings and structures with an emphasis on environmental controls and a planned community; and

Whereas, the Village of Bald Head Island, in company with all its residents and property owners and their representatives, is fully aware of the unique nature of Bald Head Island with its combination of structures, land, and vegetation, including the oldest standing lighthouse along the coast of the State and approximately 172 acres of publicly owned prime maritime forest, that exist in a delicate ecological balance requiring careful planning, nurture, and support, as evidenced in the development plan for the island; and

Whereas, Bald Head Island is solely situated between the waters of the Atlantic Ocean and the Cape Fear River and is not connected to the mainland of the State by either natural or man-made structures, necessitating a unique form of transportation unlike any other in the State; and

Whereas, the Village of Bald Head Island recognizes the inordinately large numbers of nonresident property owners and values their past contributions to the orderly and successful development of Bald Head Island; and

Whereas, while there exists no formal arrangement to continue an ongoing obligatory relationship with the nonresident property owners, the Village of Bald Head Island has long recognized such a relationship to be beneficial to all persons who have an interest in the island and the advisability of continuing to call upon nonresidents for their expertise and counsel; and

Whereas, the Village of Bald Head Island has served and will continue to serve as a model for cooperation between government and property owners and their representatives in efficient service and good planning without duplication in expenditures or unnecessary taxation; and

Whereas, Bald Head Island with its variance in seasonal population has benefited from the advantages of a municipal form of government, with the modifications and limitations as specified herein, in order to achieve its goals as a planned community; Now, therefore,

The General Assembly of North Carolina enacts:

PART I. BALD HEAD ISLAND CHARTER

Section 1. The Charter of the Village of Bald Head Island is revised and consolidated to read as follows:

"THE CHARTER OF THE VILLAGE OF BALD HEAD ISLAND.

"ARTICLE I. INCORPORATION, CORPORATE POWERS, AND BOUNDARIES.

"Section 1.1. **Incorporation.** The Village of Bald Head Island, North Carolina, in Brunswick County, and the inhabitants thereof shall continue to be a municipal body politic and corporate, under the name of the 'Village of Bald Head Island', hereinafter at times referred to as the 'Village'.

"Section 1.2. **Powers.** The Village shall have and may exercise all of the powers, duties, rights, privileges, and immunities conferred upon the Village of Bald Head Island specifically by this Charter or upon municipal corporations by general law. The term 'general law' is employed herein as defined in G.S. 160A-1.

"Section 1.3. **Corporate Boundaries.** The corporate boundaries shall be those existing at the time of ratification of this Charter, as set forth on the official map of the Village and as they may be altered from time to time in accordance with law. An official map of the Village, showing the current municipal boundaries, shall be maintained permanently in the office of the Village Clerk and shall be available for public inspection. Upon alteration of the corporate limits pursuant to law, the appropriate changes to the official map shall be made and copies shall be filed in the offices of the Secretary of State, the Brunswick County Register of Deeds, and the appropriate board of elections.

"ARTICLE II. GOVERNING BODY.

"Section 2.1. **Village Governing Body; Composition.** The Mayor and the Village Council shall be the governing body of the Village.

"Section 2.2. **Village Council; Composition; Terms of Office.** The Council shall be composed of five members to be elected by all the qualified voters of the Village for terms of four years, or until their successors are elected and qualified.

"Section 2.3. **Mayor; Term of Office; Duties.** The Mayor shall be elected by the Council from among its membership, to serve for a term of two years. The Mayor shall be the official head of the Village government and preside at meetings of the Council, shall have the right to vote on all matters before the Council, but shall not have the power to vote again in instances where there is an equal division on a question, and shall exercise the powers and duties conferred by law or as directed by the Council.

"Section 2.4. **Mayor Pro Tempore.** The Council shall elect one of its members as Mayor Pro Tempore to perform the duties of the Mayor during the Mayor's absence or disability, in accordance with general law.

"Section 2.5. **Meetings.** In accordance with general law, the Council shall establish a suitable time and place for its regular meetings. Special and emergency meetings may be held as provided by general law.

"Section 2.6. **Quorum; Voting Requirements.** Official actions of the Council and all votes shall be taken in accordance with applicable provisions of general law, particularly G.S. 160A-75. The quorum provisions of G.S. 160A-74 shall apply.

"Section 2.7. **Qualifications for Office; Compensation; Vacancies.** The qualifications of the Mayor and Council members shall be in accordance with general law. The Mayor and Council members shall receive no compensation for their services but may be reimbursed for ordinary and necessary expenses. Vacancies shall be filled as provided in G.S. 160A-63.

"ARTICLE III. ELECTIONS.

"Section 3.1. **Regular Municipal Elections.** Regular municipal elections shall be held in each odd-numbered year in accordance with the uniform municipal election laws of North Carolina. Elections shall be conducted on a nonpartisan basis and the results determined using the nonpartisan plurality method as provided in G.S. 163-292.

"Section 3.2. **Election of Council Members.** The Council members serving on the date of ratification of this Charter shall serve until the expiration of their terms or until their successors are elected and qualified. Except for the filling of vacancies as provided for in G.S. 160A-63, two Council members shall be elected at the regular municipal election in 1997 and every four years thereafter, and three Council members shall be elected at the regular municipal election in 1999 and every four years thereafter.

"Section 3.3. **Special Elections and Referenda.** Special elections and referenda may be held only as provided by general law or applicable local acts of the General Assembly.

"ARTICLE IV. ORGANIZATION AND ADMINISTRATION.

"Section 4.1. **Form of Government.** The Village shall operate under the council-manager form of government, in accordance with G.S. 160A, Article 7, Part 2.

"Section 4.2. **Village Manager; Appointment; Powers and Duties.** The Council shall appoint a Village Manager who shall be responsible for the administration of all departments of the Village government. The Village Manager shall have all the powers and duties conferred by general law, except as expressly limited by the provisions of this Charter, and the additional powers and duties conferred by the Council, so far as authorized by general law.

"Section 4.3. **Manager's Personnel Authority; Role of Elected Officials.** As chief administrator, the Village Manager shall have the power to appoint, suspend, and remove all officers, department heads, and employees in the administrative service of the Village, with the exception of the Village Attorney, the Village Clerk, and any other official whose appointment or removal is specifically vested in the Council by this Charter or by general law. Neither the Council nor any of its members shall take part in the appointment or removal of officers and employees in the administrative service of the Village, except as provided by this Charter. Except for the purpose of inquiry, or for consultation with the Village Attorney, the Council and its members shall deal with the administrative service solely through the Village Manager, Acting Manager, or Interim Manager, and neither the Council nor any of its members shall give any specific orders to any subordinates of the Village Manager, Acting Manager, or Interim Manager, either publicly or privately.

"Section 4.4. **Village Attorney.** The Village Council shall appoint a Village Attorney licensed to practice law in North Carolina. It shall be the duty of the Village Attorney to represent the Village, advise Village officials, and perform other duties required by law or as the Council may direct.

"Section 4.5. **Village Clerk.** The Village Council shall appoint a Village Clerk to keep a journal of the proceedings of the Council, to maintain official records and documents, to give notice of meetings, and to perform such other duties required by law or as the Council may direct.

"Section 4.6. **Tax Collector.** The Village shall have a Tax Collector to collect all taxes owed to the Village, subject to general law, this Charter, and Village ordinances and to perform those duties specified in G.S. 105-350 and such other duties as prescribed by law or assigned by the Village Manager. Notwithstanding the provisions of G.S. 105-349, the Village Manager is authorized to appoint and remove the Tax Collector and any deputy tax collectors.

"Section 4.7. **Finance Director.** The Village Manager shall appoint a Finance Officer to perform the duties designated in G.S. 159-25 and such other duties as may be prescribed by law or as the Council may direct, or the Village Council may, at its election, confer the duties of Finance Officer on the Village Manager as Budget Officer. The Finance Officer may be entitled 'Accountant', 'Treasurer', 'Finance Director', 'Finance Officer', or any other reasonably descriptive title.

"Section 4.8. **Other Administrative Officers and Employees.** The Council may authorize other positions to be filled by appointment by the Village Manager and may organize the Village government as deemed appropriate, subject to the requirements of general law.

"ARTICLE V. FINANCE AND TAXATION.

"Section 5.1. **Room Occupancy and Tourism Development Tax.** The authority of the Village to levy a room occupancy and tourism tax shall continue as authorized by Chapter 664 of the 1991 Session Laws, and any subsequent acts.

"ARTICLE VI. CONTRACT POST OFFICE.

"Section 6.1. **Contract Post Office.** The authority of the Village to operate a contract post office shall continue as authorized by Chapter 16 of the 1991 Session Laws, as amended by Chapter 350 of the 1991 Session Laws, and any subsequent acts.

"ARTICLE VII. NO-WAKE SPEED ZONE.

"Section 7.1. **'No-Wake' Speed Zone.** The 'no-wake' speed zone established by Chapter 688 of the 1987 Session Laws, and any subsequent acts, shall continue as authorized.

"ARTICLE VIII. MISCELLANEOUS.

"Section 8.1. **Motorboat Operation.** The Village may regulate the speed and operation of motorboats within the Village jurisdiction to preserve the tranquillity and environment of the Village.

"Section 8.2. **Sand Dunes.** The Village may construct, reconstruct, plant, and maintain sand dunes and regulate access to and across dunes to prevent or repair damage to dunes so as to provide protection against erosion or overwash.

"Section 8.3. **Beach Regulation.** The Village may, by ordinance, establish standards of dress, conduct, and decorum on the beaches of Bald Head Island and may otherwise regulate the use of those beaches within the Village jurisdiction.

"ARTICLE IX. PHASED DEVELOPMENT PLAN.

"Section 9.1. **Phased Development Plan.** In accordance with an act to incorporate the Village of Bald Head Island, Chapter 156 of the 1985 Session Laws, the Village Council was required to adopt by ordinance plans of development consistent with the historical land-use patterns and densities in existence on Bald Head Island at the time of ratification of the act. The Village Council, after public hearing and upon recommendation of its Planning Board, adopted a zoning ordinance for the undeveloped portions of Bald Head Island consistent with those historical land-use patterns and densities. Such zoning ordinance is based upon a 'Phased Development Plan' (as that term is defined in G.S. 160A-385.1(b)(3)), which plan was prepared by Bald Head Island Limited.

"Section 9.2. **Vested Rights.** The owners of the undeveloped portions of Bald Head Island are declared hereby to have acquired vested rights in accordance with G.S. 160A-385.1 as to the 'Phased Development Plan' entitled 'Revised June 29, 1995 STAGE 2 MASTER PLAN BALD HEAD ISLAND NORTH CAROLINA BALD HEAD ISLAND PLANNING DEPARTMENT' and approved by the State Division of Coastal Management on August 7, 1995. Notwithstanding the provisions of G.S. 160A-385.1(d), these vested rights shall be valid through December 31, 1999, and no longer. Nothing in this section shall be construed to prohibit the further granting of vested rights by the Village pursuant to the provisions of G.S. 160A-385.1.

"Section 9.3. **Alteration of Vested Rights.** As specifically authorized by G.S. 160A-385.1(e)(1)a., the vested rights herein granted may only be changed, prior to December 31, 1999, as allowed by the exceptions set forth in G.S. 160A-385.1(e). In

addition, subject to the approval of the Village and within the limits established by the Village zoning and other land-use ordinances, vested densities may be transferred within the area depicted on the Stage 2 Master Plan referred to in Section 9.2 of this Charter so long as the density of development within the total area is not increased.

"Section 9.4. **Land-Use Regulation.** Except as herein expressly provided, nothing in this Charter shall be construed to prohibit the Village from amending its current land-use regulatory ordinances, in whole or in part, or otherwise regulating the use of land within the planning and zoning jurisdiction of the Village.

"ARTICLE X. MOTOR VEHICLE REGULATION.

"Section 10.1. **Motor Vehicle Regulation.** The Village may by ordinance exempt from the provisions of Articles 3, 3A, 11, and 13 of Chapter 20 of the General Statutes, in whole or in part, the registration, licensing, regulation, inspection, or equipping of motor vehicles and may regulate the use, operation, possession, and ownership of motor vehicles within the jurisdiction of the Village of Bald Head Island. Additionally, notwithstanding the provisions of Chapter 20 of the General Statutes or any other statute, and in addition to those powers now or hereafter conferred by law, the Village shall have the authority to regulate motor vehicles and other means of transportation within the jurisdiction of the Village, including the following:

(1) Regulation of the use and operation of all vehicles, as defined in G.S. 20-4.01(49).

(2) Regulation of all electrically powered vehicles or vehicles powered by fossil fuel or internal combustion engines.

(3) Regulation of the size, weight, lighting, safety standards, and engine or motor size or power characteristics of all vehicles or other means of transportation within the jurisdiction of the Village.

"Section 10.2. **Street Regulation.** In order to establish and preserve the unique character and aesthetics of Bald Head Island, the Village may adopt, by ordinance, such standards for the establishment and maintenance of streets and roads within the jurisdiction of the Village as it deems appropriate. The streets and roads within the jurisdiction of the Village shall not be under the authority of the Department of Transportation. The provisions of Articles 2 and 2A of Chapter 136 of the General Statutes shall not apply within the jurisdiction of the Village. The Village shall be exempt from the provisions of G.S. 136-66.2.

"ARTICLE XI. SEA TURTLE SANCTUARY.

"Section 11.1. **Sea Turtle Sanctuary.** The Village of Bald Head Island may create and establish a sea turtle sanctuary within the areas of the Village limits above the mean low watermark, to include the foreshore. Any ordinances adopted by the Village to regulate activities within the sea turtle sanctuary that may or will disturb or destroy a sea turtle, a sea turtle nest, or sea turtle eggs, must be consistent with the ordinance powers found in G.S. 160A-174, G.S. 160A-308, and any other law. The ordinances adopted by the Village may by cross-reference incorporate the criminal statutes regarding the taking of sea turtles in G.S. 113-189 and G.S. 113-337. It shall be unlawful for any person within the sea turtle sanctuary to disturb or destroy a sea

turtle, a sea turtle nest, or sea turtle eggs in violation of an ordinance adopted by the Village of Bald Head Island."

Section 2. The purpose of Part I of this act is to revise the Charter of the Village of Bald Head Island and to consolidate certain acts concerning the property, affairs, and government of the Village. It is intended to continue without interruption those provisions of prior acts which are expressly consolidated into Part I of this act, so that all rights and liabilities which have accrued are preserved and may be enforced.

Section 3. This act does not repeal or affect any acts concerning the property, affairs, or government of public schools or any acts validating official actions, proceedings, contracts, or obligations of any kind.

Section 4. The provisions of Chapter 156 of the 1985 Session Laws, except for the provisions of Section 4-3(f), (g), and (h), having served the purposes for which they were enacted or having been consolidated into Part I of this act, are expressly repealed. The provisions of Section 4-3f., g., and h. of Chapter 156 of the 1985 Session Laws are expressly not repealed and shall continue as authorized.

Section 5. The Mayor and Council members serving on the date of ratification of this act shall serve until the expiration of their terms or until their successors are elected and qualified. Thereafter those offices shall be filled as provided in Articles II and III of Section 1 of this Charter.

Section 6. Part I of this act does not affect any rights or interests which arose under any provisions repealed by Part I of this act.

Section 7. All existing ordinances, resolutions, and other provisions of the Village of Bald Head Island not inconsistent with the provisions of Part I of this act shall continue in effect until repealed or amended.

Section 8. No action or proceeding pending on the effective date of this act by or against the Village or any of its departments or agencies shall be abated or otherwise affected by this act.

Section 9. Whenever a reference is made in Part I of this act to a particular provision of the general statutes, and that provision is later amended, superseded, or recodified, the reference shall be deemed amended to refer to the amended general statute or to the general statute that most clearly corresponds to the statutory provision that is superseded or recodified.

PART II. LELAND CORPORATE LIMITS

Section 10. The corporate limits of the Town of Leland are extended to include the following described tract of land:

Being a tract of land located in Town Creek Township, Brunswick County, North Carolina, and being more fully described as follows:

Beginning at a Right-of-Way Monument, in the northern Right-of-Way of US 17, said monument being located on the south side of a gate leading into the property, as shown on a map titled "THE GREGORY POOLE TRACT", prepared by Stuart Gooden, R.L.S., and dated May 31, 1994; thence with said Right-of-Way

South 54 degrees 56 minutes 00 seconds West, a distance of 1111.44 feet; thence leaving said Right-of-Way North 45 degrees 36 minutes 40 seconds West, a distance of 272.41 feet; thence North 45 degrees 36 minutes 08 seconds West, a distance of 2493.87 feet; thence North 45 degrees 35 minutes 59 seconds West, a distance of 1124.67 feet; thence North 48 degrees 44 minutes 35 seconds West, a distance of 1849.91 feet; thence South 78 degrees 10 minutes 46 seconds West, a distance of 793.76 feet; thence North 66 degrees 50 minutes 57 seconds West, a distance of 1282.45 feet to a point in SR 1438 (Lanvale Road); thence North 11 degrees 09 minutes 18 seconds West, a distance of 344.20 feet to a point in the centerline of Lanvale Road thence with said centerline North 07 degrees 08 minutes 13 seconds West, a distance of 690.45 feet; thence North 06 degrees 46 minutes 34 seconds West, a distance of 441.28 feet; thence North 09 degrees 45 minutes 03 seconds West, a distance of 128.86 feet; thence North 14 degrees 28 minutes 52 seconds West, a distance of 124.97 feet; thence North 19 degrees 35 minutes 26 seconds West, a distance of 150.19 feet; thence North 26 degrees 13 minutes 01 seconds West, a distance of 150.04 feet; thence North 32 degrees 26 minutes 42 seconds West, a distance of 178.45 feet; thence North 36 degrees 09 minutes 42 seconds West, a distance of 237.57 feet; thence North 36 degrees 09 minutes 33 seconds West, a distance of 187.40 feet; thence North 36 degrees 08 minutes 44 seconds West, a distance of 246.56 feet; thence North 36 degrees 09 minutes 33 seconds West, a distance of 198.67 feet; thence North 35 degrees 57 minutes 10 seconds West, a distance of 188.63 feet; thence North 35 degrees 22 minutes 08 seconds West, a distance of 52.73 feet; thence North 30 degrees 54 minutes 08 seconds West, a distance of 193.58 feet; thence North 24 degrees 37 minutes 51 seconds West, a distance of 239.60 feet; thence leaving said centerline and with Sturgeon Branch North 72 degrees 40 minutes 07 seconds East, a distance of 30.21 feet; thence North 72 degrees 59 minutes 08 seconds East, a distance of 150.37 feet; thence North 15 degrees 10 minutes 23 seconds East, a distance of 242.76 feet; thence North 84 degrees 23 minutes 02 seconds East, a distance of 141.02 feet; thence North 55 degrees 24 minutes 41 seconds East, a distance of 313.03 feet; thence North 40 degrees 17 minutes 58 seconds East, a distance of 94.28 feet; thence North 03 degrees 42 minutes 18 seconds West, a distance of 48.90 feet; thence North 89 degrees 55 minutes 04 seconds East, a distance of 138.95 feet; thence North 63 degrees 52 minutes 03 seconds East, a distance of 108.98 feet; thence North 41 degrees 05 minutes 41 seconds East, a distance of 227.03 feet; thence North 36 degrees 48 minutes 37 seconds East, a distance of 204.72 feet; thence North 48 degrees 24 minutes 27 seconds East, a distance of 120.97 feet to a point in the run of Rice Branch thence with said branch South 51 degrees 13 minutes 24 seconds East, a distance of 35.93 feet; thence South 89 degrees 20 minutes 59 seconds East, a distance of 106.00 feet; thence North 88 degrees 41 minutes 14 seconds East, a distance of 231.37 feet; thence South 63 degrees 01 minutes 01 seconds East, a distance of 72.07 feet; thence South 30 degrees 31 minutes 05 seconds East, a distance of 88.34 feet; thence North 55 degrees 02 minutes 25 seconds East, a distance of 68.06 feet; thence South 83 degrees 07 minutes 08 seconds East, a distance of 75.12 feet; thence South

53 degrees 08 minutes 14 seconds East, a distance of 49.51 feet; thence South 37 degrees 05 minutes 03 seconds East, a distance of 77.72 feet; thence North 46 degrees 14 minutes 12 seconds East, a distance of 56.82 feet; thence South 50 degrees 58 minutes 00 seconds East, a distance of 39.22 feet; thence South 06 degrees 18 minutes 38 seconds West, a distance of 73.24 feet; thence South 17 degrees 06 minutes 48 seconds East, a distance of 38.30 feet; thence South 63 degrees 48 minutes 32 seconds East, a distance of 58.91 feet; thence North 45 degrees 05 minutes 05 seconds East, a distance of 170.10 feet; thence South 25 degrees 36 minutes 41 seconds East, a distance of 133.07 feet; thence South 08 degrees 55 minutes 12 seconds West, a distance of 56.18 feet; thence North 73 degrees 37 minutes 44 seconds East, a distance of 70.25 feet; thence South 09 degrees 39 minutes 11 seconds East, a distance of 54.37 feet; thence North 77 degrees 45 minutes 53 seconds East, a distance of 54.74 feet; thence South 65 degrees 56 minutes 51 seconds East, a distance of 118.51 feet; thence North 51 degrees 52 minutes 28 seconds East, a distance of 113.22 feet; thence South 85 degrees 54 minutes 21 seconds East, a distance of 72.82 feet; thence North 35 degrees 31 minutes 42 seconds East, a distance of 74.71 feet; thence South 80 degrees 09 minutes 57 seconds East, a distance of 94.27 feet; thence North 67 degrees 59 minutes 19 seconds East, a distance of 103.53 feet; thence South 22 degrees 55 minutes 29 seconds East, a distance of 82.62 feet; thence North 45 degrees 55 minutes 16 seconds East, a distance of 67.70 feet; thence South 37 degrees 17 minutes 37 seconds East, a distance of 68.76 feet; thence North 53 degrees 44 minutes 53 seconds East, a distance of 58.17 feet; thence North 12 degrees 52 minutes 59 seconds West, a distance of 38.98 feet; thence South 89 degrees 48 minutes 15 seconds East, a distance of 58.32 feet; thence North 58 degrees 19 minutes 43 seconds East, a distance of 93.90 feet; thence South 63 degrees 38 minutes 13 seconds East, a distance of 47.06 feet; thence South 37 degrees 24 minutes 09 seconds East, a distance of 54.13 feet; thence North 43 degrees 32 minutes 32 seconds East, a distance of 90.22 feet; thence North 83 degrees 55 minutes 19 seconds East, a distance of 54.78 feet; thence South 82 degrees 53 minutes 15 seconds East, a distance of 66.22 feet; thence North 45 degrees 30 minutes 43 seconds East, a distance of 102.03 feet; thence North 73 degrees 09 minutes 53 seconds East, a distance of 138.11 feet; thence North 20 degrees 04 minutes 19 seconds West, a distance of 80.59 feet; thence North 36 degrees 34 minutes 12 seconds East, a distance of 51.79 feet; thence North 34 degrees 47 minutes 49 seconds East, a distance of 76.72 feet; thence North 08 degrees 06 minutes 25 seconds East, a distance of 122.32 feet; thence North 71 degrees 30 minutes 52 seconds East, a distance of 75.69 feet; thence North 20 degrees 40 minutes 01 seconds West, a distance of 68.51 feet; thence North 61 degrees 42 minutes 35 seconds East, a distance of 93.25 feet; thence leaving said branch South 20 degrees 33 minutes 06 seconds East, a distance of 291.98 feet; thence South 20 degrees 32 minutes 17 seconds East, a distance of 534.90 feet; thence North 41 degrees 38 minutes 26 seconds East, a distance of 242.33 feet; thence North 53 degrees 43 minutes 59 seconds East, a distance of 347.56 feet; thence North 51 degrees 33 minutes 50 seconds East, a distance of 241.30 feet; thence North 67 degrees 45 minutes 59 seconds East, a distance of 681.05 feet; thence North 70 degrees 01 minutes 48

seconds East, a distance of 563.93 feet; thence South 53 degrees 07 minutes 47 seconds East, a distance of 1460.15 feet; thence South 05 degrees 55 minutes 43 seconds East, a distance of 3955.76 feet; thence South 05 degrees 56 minutes 16 seconds East, a distance of 830.35 feet; thence South 05 degrees 55 minutes 43 seconds East, a distance of 20.52 feet; thence South 89 degrees 43 minutes 05 seconds West, a distance of 1015.93 feet; thence South 02 degrees 20 minutes 58 seconds West, a distance of 943.79 feet; thence South 01 degrees 12 minutes 44 seconds West, a distance of 822.48 feet; thence South 84 degrees 06 minutes 28 seconds East, a distance of 1876.12 feet; thence South 35 degrees 07 minutes 22 seconds East, a distance of 277.41 feet; thence South 34 degrees 55 minutes 00 seconds East, a distance of 155.49 feet; thence South 34 degrees 41 minutes 11 seconds East, a distance of 373.23 feet; to a point in the northern Right-of-Way of US HWY 17; thence with said Right-of-Way South 54 degrees 55 minutes 59 seconds West, a distance of 397.20 feet; thence South 50 degrees 44 minutes 34 seconds West, a distance of 170.35 feet; thence South 52 degrees 40 minutes 24 seconds West, a distance of 60.36 feet; to the Point of Beginning, containing 893.64 acres, and being tract "A" as shown on a map titled "THE GREGORY POOLE TRACT", prepared by Stuart Gooden, R.L.S., and dated May 31, 1994.

Section 11. The corporate limits of the area annexed by Section 10 of this act shall be considered satellite corporate limits within the meaning of Part 4 of Article 4A of Chapter 160A of the General Statutes, except they are excluded in any calculations made under G.S. 160A-58.1(b)(5). The corporate limits of the area annexed by Section 10 of this act are not external boundaries for the purposes of Part 2 or 3 of Article 4A of Chapter 160A of the General Statutes until they are contiguous to the town.

Section 12. Real and personal property in the territory annexed pursuant to Section 10 of this act are subject to municipal taxes as provided in G.S. 160A-58.10.

PART III. EFFECTIVE DATE

Section 13. This act is effective when it becomes law.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE**.

☒ Senate Committee Substitute for
H.B. 1122 A BILL TO BE ENTITLED AN ACT TO FACILITATE THE TRIAL OF DRUG OFFENSES BY AUTHORIZING THE USE OF LABORATORY REPORTS IN SUPERIOR COURT AND JUVENILE COURT PROCEEDINGS AND BY ELIMINATING THE NEED FOR UNNECESSARY WITNESSES IN ESTABLISHING A CHAIN OF CUSTODY WHEN THE DEFENDANT DOES NOT TIMELY OBJECT TO THE ADMISSION OF A LABORATORY REPORT OR THE CHAIN OF CUSTODY, TO AMEND THE EVIDENCE LAWS DEALING WITH THE OPTOMETRIST/PATIENT PRIVILEGE, AND TO AUTHORIZE SUPERIOR COURT SESSIONS IN THOMASVILLE AND MOORESVILLE.

☐ 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.

☐

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 1122
Senate Judiciary Committee Substitute Adopted 7/8/97

Short Title: Admit Drug/Optom. Evid./Court Site. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO FACILITATE THE TRIAL OF DRUG OFFENSES BY AUTHORIZING THE USE OF LABORATORY REPORTS IN SUPERIOR COURT AND JUVENILE COURT PROCEEDINGS AND BY ELIMINATING THE NEED FOR UNNECESSARY WITNESSES IN ESTABLISHING A CHAIN OF CUSTODY WHEN THE DEFENDANT DOES NOT TIMELY OBJECT TO THE ADMISSION OF A LABORATORY REPORT OR THE CHAIN OF CUSTODY, TO AMEND THE EVIDENCE LAWS DEALING WITH THE OPTOMETRIST/PATIENT PRIVILEGE, AND TO AUTHORIZE SUPERIOR COURT SESSIONS IN THOMASVILLE AND MOORESVILLE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-95(g) reads as rewritten:

"(g) Whenever matter is submitted to the North Carolina State Bureau of Investigation Laboratory, the Charlotte, North Carolina, Police Department Laboratory or to the Toxicology Laboratory, Reynolds Health Center, Winston-Salem for chemical analysis to determine if the matter is or contains a controlled substance, the report of that analysis certified to upon a form approved by the Attorney General by the person performing the analysis shall be admissible without further authentication in all proceedings in the district court ~~division~~ and superior court divisions of the General Court of Justice as evidence of the identity, nature, and quantity of the matter analyzed. Provided, however, that a report is admissible in a criminal proceeding in the superior court division or in an adjudicatory hearing in juvenile court in the district court division only if:

(1) The State notifies the defendant at least 15 days before trial of its intention to introduce the report into evidence under this subsection and provides a copy of the report to the defendant, and

(2) The defendant fails to notify the State at least five days before trial that the defendant objects to the introduction of the report into evidence.

Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the report."

Section 2. G.S. 90-95 is amended by adding a new subsection to read:

"(g1) Procedure for establishing chain of custody without calling unnecessary witnesses. --

(1) For the purpose of establishing the chain of physical custody or control of evidence consisting of or containing a substance tested or analyzed to determine whether it is a controlled substance, a statement signed by each successive person in the chain of custody that the person delivered it to the other person indicated on or about the date stated is prima facie evidence that the person had custody and made the delivery as stated, without the necessity of a personal appearance in court by the person signing the statement.

(2) The statement shall contain a sufficient description of the material or its container so as to distinguish it as the particular item in question and shall state that the material was delivered in essentially the same condition as received. The statement may be placed on the same document as the report provided for in subsection (g) of this section.

(3) The provisions of this subsection may be utilized by the State only if:

a. The State notifies the defendant at least 15 days before trial of its intention to introduce the statement into evidence under this subsection and provides the defendant with a copy of the statement, and

b. The defendant fails to notify the State at least five days before trial that the defendant objects to the introduction of the statement into evidence.

(4) Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the statement."

Section 3. G.S. 8-53.9, as enacted in Section 4 of S.L. 1997-75, reads as rewritten:

"**§ 8-53.9. Optometrist/patient privilege.**

No person licensed pursuant to Article 6 of Chapter 90 of the General Statutes shall be required to disclose any information that may have been acquired in rendering professional optometric ~~services,~~ services and which information was

necessary to enable that person to render professional optometric services, except that the presiding judge of a superior or district court may compel this disclosure, if, in the court's opinion, disclosure is necessary to a proper administration of justice and disclosure is not prohibited by other statute or rule."

Section 4. G.S. 7A-42 is amended by adding a new subsection to read:

"(a1) In addition to the sessions of superior court authorized by subsection (a) of this section, sessions of superior court in the following counties may be held in the additional seats of court listed by order of the Senior Resident Superior Court Judge after consultation with the Chief District Court Judge:

County	Additional Seats of Court
Davidson	Thomasville
Iredell	Mooresville

The courtrooms and related judicial facilities for these sessions of superior court may be provided by the municipality, and in such cases the facilities fee collected for the State by the clerk of superior court shall be remitted to the municipality to assist in meeting the expense of providing those facilities."

Section 5. Sections 1 and 2 of this act become effective December 1, 1997, and apply to criminal offenses committed on or after that date. Section 3 of this act is effective when this act becomes law and applies to information acquired on or after that date. The remainder of this act becomes effective July 7, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 1122

Short Title: Controlled Substances Evidence. (Public)

Sponsors: Representative Gulley.

Referred to: Judiciary I.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO FACILITATE THE TRIAL OF DRUG OFFENSES BY AUTHORIZING THE USE OF LABORATORY REPORTS IN SUPERIOR COURT AND JUVENILE COURT PROCEEDINGS AND BY ELIMINATING THE NEED FOR UNNECESSARY WITNESSES IN ESTABLISHING A CHAIN OF CUSTODY, WHEN THE DEFENDANT DOES NOT TIMELY OBJECT TO THE ADMISSION OF A LABORATORY REPORT OR THE CHAIN OF CUSTODY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-95 reads as rewritten:

"**§ 90-95. Violations; penalties.**

(a) Except as authorized by this Article, it is unlawful for any person:

(1) To manufacture, sell or deliver, or possess with intent to manufacture, sell or deliver, a controlled substance;

(2) To create, sell or deliver, or possess with intent to sell or deliver, a counterfeit controlled substance;

(3) To possess a controlled substance.

(b) Except as provided in subsections (h) and (i) of this section, any person who violates G.S. 90-95(a)(1) with respect to:

(1) A controlled substance classified in Schedule I or II shall be punished as a Class H felon;

(2) A controlled substance classified in Schedule III, IV, V, or VI shall be punished as a Class I felon, but the transfer of less than 5 grams

of marijuana for no remuneration shall not constitute a delivery in violation of G.S. 90-95(a)(1).

(c) Any person who violates G.S. 90-95(a)(2) shall be punished as a Class I felon.

(d) Except as provided in subsections (h) and (i) of this section, any person who violates G.S. 90-95(a)(3) with respect to:

(1) A controlled substance classified in Schedule I shall be punished as a Class I felon;

(2) A controlled substance classified in Schedule II, III, or IV shall be guilty of a Class 1 misdemeanor. If the controlled substance exceeds four tablets, capsules, or other dosage units or equivalent quantity of hydromorphone or if the quantity of the controlled substance, or combination of the controlled substances, exceeds one hundred tablets, capsules or other dosage units, or equivalent quantity, the violation shall be punishable as a Class I felony. If the controlled substance is phencyclidine, or cocaine and any salt, isomer, salts of isomers, compound, derivative, or preparation thereof, or coca leaves and any salt, isomer, salts of isomers, compound, derivative, or preparation of coca leaves, or any salt, isomer, salts of isomers, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances (except decocanized coca leaves or any extraction of coca leaves which does not contain cocaine or ecgonine), the violation shall be punishable as a Class I felony.

(3) A controlled substance classified in Schedule V shall be guilty of a Class 2 misdemeanor;

(4) A controlled substance classified in Schedule VI shall be guilty of a Class 3 misdemeanor, but any sentence of imprisonment imposed must be suspended and the judge may not require at the time of sentencing that the defendant serve a period of imprisonment as a special condition of probation. If the quantity of the controlled substance exceeds one-half of an ounce (avoirdupois) of marijuana or one-twentieth of an ounce (avoirdupois) of the extracted resin of marijuana, commonly known as hashish, the violation shall be punishable as a Class 1 misdemeanor. If the quantity of the controlled substance exceeds one and one-half ounces (avoirdupois) of marijuana or three-twentieths of an ounce (avoirdupois) of the extracted resin of marijuana, commonly known as hashish, or if the controlled substance consists of any quantity of synthetic tetrahydrocannabinols or tetrahydrocannabinols isolated from the resin of marijuana, the violation shall be punishable as a Class I felony.

(d1) Except as authorized by this Article, it is unlawful for any person to:

(1) Possess an immediate precursor chemical with intent to manufacture a controlled substance; or

(2) Possess or distribute an immediate precursor chemical knowing, or having reasonable cause to believe, that the immediate precursor chemical will be used to manufacture a controlled substance.

Any person who violates this subsection shall be punished as a Class H felon.

(d2) The immediate precursor chemicals to which subsection (d1) of this section applies are those immediate precursor chemicals designated by the Commission pursuant to its authority under G.S. 90-88, and the following (until otherwise specified by the Commission):

(1) Anthranilic acid.
(2) Benzyl cyanide.
(3) Chloroephedrine.
(4) Chloropseudoephedrine.
(5) D-lysergic acid.
(6) Ephedrine.
(7) Ergonovine maleate.
(8) Ergotamine tartrate.
(9) Ethyl Malonate.
(10) Ethylamine.
(11) Isosafrole.
(12) Malonic acid.
(13) Methylamine.
(14) N-acetylanthranilic acid.
(15) N-ethylephedrine.
(16) N-ethylepseudoephedrine.
(17) N-methylephedrine.
(18) N-methylpseudoephedrine.
(19) Norpseudoephedrine.
(20) Phenyl-2-propane.
(21) Phenylacetic acid.
(22) Phenylpropanolamine.
(23) Piperidine.
(24) Piperonal.
(25) Propionic anhydride.
(26) Pseudoephedrine.
(27) Pyrrolidine.
(28) Safrole.
(29) Thionylchloride.

(e) The prescribed punishment and degree of any offense under this Article shall be subject to the following conditions, but the punishment for an offense may be increased only by the maximum authorized under any one of the applicable conditions:

(1), (2) Repealed by Session Laws 1979, c. 760, s. 5.

(3) If any person commits a Class 1 misdemeanor under this Article and if he has previously been convicted for one or more offenses

42 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

b. Is 200 grams or more, but less than 400 grams, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 400 grams or more, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined at least two hundred fifty thousand dollars ($250,000).

(3a) Any person who sells, manufactures, delivers, transports, or possesses 1,000 tablets, capsules or other dosage units, or the equivalent quantity, or more of amphetamine, its salts, optical isomers, and salts of its optical isomers or any mixture containing such substance, shall be guilty of a felony which felony shall be known as "trafficking in amphetamine" and if the quantity of such substance or mixture involved:

a. Is 1,000 or more dosage units, or equivalent quantity, but less than 5,000 dosage units, or equivalent quantity, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

b. Is 5,000 or more dosage units, or equivalent quantity, but less than 10,000 dosage units, or equivalent quantity, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

c. Is 10,000 or more dosage units, or equivalent quantity, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).

(3b) Any person who sells, manufactures, delivers, transports, or possesses 28 grams or more of methamphetamine shall be guilty of a felony which felony shall be known as "trafficking in methamphetamine" and if the quantity of such substance or mixture involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be punished as a Class G felon and shall be sentenced

to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

b. Is 200 grams or more, but less than 400 grams, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 400 grams or more, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined at least two hundred fifty thousand dollars ($250,000).

(4) Any person who sells, manufactures, delivers, transports, or possesses four grams or more of opium or opiate, or any salt, compound, derivative, or preparation of opium or opiate (except apomorphine, nalbuphine, analoxone and naltrexone and their respective salts), including heroin, or any mixture containing such substance, shall be guilty of a felony which felony shall be known as "trafficking in opium or heroin" and if the quantity of such controlled substance or mixture involved:

a. Is four grams or more, but less than 14 grams, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

b. Is 14 grams or more, but less than 28 grams, such person shall be punished as a Class E felon and shall be sentenced to a minimum term of 90 months and a maximum term of 117 months in the State's prison and shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 28 grams or more, such person shall be punished as a Class C felon and shall be sentenced to a minimum term of 225 months and a maximum term of 279 months in the State's prison and shall be fined not less than five hundred thousand dollars ($500,000).

(4a) Any person who sells, manufactures, delivers, transports, or possesses 100 tablets, capsules, or other dosage units, or the equivalent quantity, or more, of Lysergic Acid Diethylamide, or any mixture containing such substance, shall be guilty of a felony, which felony shall be known as "trafficking in Lysergic Acid Diethylamide". If the quantity of such substance or mixture involved:

a. Is 100 or more dosage units, or equivalent quantity, but less than 500 dosage units, or equivalent quantity, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

b. Is 500 or more dosage units, or equivalent quantity, but less than 1,000 dosage units, or equivalent quantity, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

c. Is 1,000 or more dosage units, or equivalent quantity, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).

(5) Except as provided in this subdivision, a person being sentenced under this subsection may not receive a suspended sentence or be placed on probation. The sentencing judge may reduce the fine, or impose a prison term less than the applicable minimum prison term provided by this subsection, or suspend the prison term imposed and place a person on probation when such person has, to the best of his knowledge, provided substantial assistance in the identification, arrest, or conviction of any accomplices, accessories, co-conspirators, or principals if the sentencing judge enters in the record a finding that the person to be sentenced has rendered such substantial assistance.

(6) Sentences imposed pursuant to this subsection shall run consecutively with and shall commence at the expiration of any sentence being served by the person sentenced hereunder.

(i) The penalties provided in subsection (h) of this section shall also apply to any person who is convicted of conspiracy to commit any of the offenses described in subsection (h) of this section."

Section 2. This act becomes effective December 1, 1997, and applies to criminal offenses committed on or after that date.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House**.

☐ Committee Substitute for
H.J.R. 1236 A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF CALVIN LEE KOONCE, JR.

☒ 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)

4/24/97

HOUSE JOINT RESOLUTION 1236

Sponsors: Representatives Warner; Blue, Hightower, Hurley, Kinney, McAllister, Morris, and Yongue.

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

June 18, 1997

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF CALVIN LEE KOONCE, JR.

Whereas, Calvin Lee Koonce, Jr. was born in Cumberland County, North Carolina on November 18, 1940, and was a native of the Town of Hope Mills; and

Whereas, Calvin Lee Koonce, Jr. graduated from Hope Mills High School in 1959 and attended Campbell College where he earned Junior College All-American Honors in 1961; and

Whereas, because of his outstanding baseball talent, Calvin Lee Koonce, Jr. was signed by the Chicago Cubs in 1961; and

Whereas, Calvin Lee Koonce, Jr. played the position of pitcher and won 10 games in his Rookie Season with the Cubs in 1962; and

Whereas, in 1967, Calvin Lee Koonce, Jr. joined the New York Mets and played on the 1969 Mets World Championship Team; and

Whereas, in 1971, his last year playing professional baseball, Calvin Lee Koonce, Jr. played for the Boston Red Sox; and

Whereas, after his professional career, Calvin Lee Koonce, Jr. returned to North Carolina where he coached baseball at Fayetteville Academy in 1974, South View High School from 1974 to 1979, Campbell University from 1979 to 1986, and Terry Sanford High School from 1989 to 1991; and

Whereas, Calvin Lee Koonce, Jr. served as general manager of the Fayetteville Generals from 1986 to 1988, and as a scout for the Texas Rangers from 1991 to 1992; and

Whereas, Calvin Lee Koonce, Jr. was inducted into the Campbell University Sports Hall of Fame in 1987; and

Whereas, Calvin Lee Koonce, Jr. was devoted to public service, having served as the Hope Mills Town Manager from 1992 to 1993, as an elected member of the Hope Mills Board of Commissioners, and as Mayor-Pro Tempore; and

Whereas, Calvin Lee Koonce, Jr. was an active member of the Hope Mills Methodist Church, where he served on the Administrative Board; and

Whereas, Calvin Lee Koonce, Jr. died on October 18, 1993; and

Whereas, Calvin Lee Koonce, Jr. is survived by his wife, Peggy Koonce; a son, Chris Koonce; three daughters, Kelly Taylor, Kim Owen, and Kerry Gowan; three grandchildren, Garrett Gowan, John Calvin Owen, and Lynnsey Taylor; his mother, Mary Koonce; a sister, Marilyn Koonce; and two brothers, Charles Koonce and Don Koonce;

Now, therefore, be it resolved by the House of Representatives, the Senate concurring:

Section 1. The General Assembly expresses its high regard for the life and service of Calvin Lee Koonce, Jr. and mourns the loss of this distinguished citizen.

Section 2. The Secretary of State shall transmit a certified copy of this resolution to the family of Calvin Lee Koonce, Jr.

Section 3. This resolution is effective upon ratification.

Neely
6

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/**are** presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House**.

☐ Committee Substitute for
S.B. 597 A BILL TO BE ENTITLED AN ACT TO ALLOW PHYSICIANS PRACTICING PSYCHIATRY AND PSYCHOLOGISTS TO FORM PROFESSIONAL CORPORATIONS WITH LICENSED PROFESSIONAL COUNSELORS.

☒ 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)

4/24/97

Neely

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 597

Short Title: Professional Counselors. (Public)

Sponsors: Senators Lee; Ballantine, Foxx, Gulley, Horton, Hoyle, Jordan, Martin of Guilford, McDaniel, Miller, Perdue, Phillips, Rand, and Soles.

Referred to: Commerce.

April 1, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW PHYSICIANS PRACTICING PSYCHIATRY AND PSYCHOLOGISTS TO FORM PROFESSIONAL CORPORATIONS WITH LICENSED PROFESSIONAL COUNSELORS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 55B-14(c) reads as rewritten:

"(c) A professional corporation may also be formed by and between or among:

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

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

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

(4) A physician practicing psychiatry, or a licensed psychologist, or both, and a certified clinical specialist in psychiatric and mental health nursing, ~~or~~ a certified clinical social worker, ~~or both,~~ a licensed professional counselor, or each of them, to render psychotherapeutic and related services that the respective

stockholders are licensed, certified, or otherwise approved to provide;

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

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

Section 2. G.S. 55B-2(6) reads as rewritten:

"(6) The term 'professional service' means any type of personal or professional service of the public which requires as a condition precedent to the rendering of such service the obtaining of a license from a licensing board as herein defined, and pursuant to the following provisions of the General Statutes: Chapter 83A, 'Architects'; Chapter 84, 'Attorneys-at-Law'; Chapter 93, 'Public Accountants'; and Article 1, 'Practice of Medicine,' Article 2, 'Dentistry,' Article 6, 'Optometry,' Article 7, 'Osteopathy,' Article 8, 'Chiropractic,' Article 9A, 'Nursing Practice Act,' with regard to registered nurses, Article 11, 'Veterinarians,' Article 12A, 'Podiatrists,' Article 18A, 'Practicing Psychologists,' ~~and~~ Article 18D, 'Occupational Therapy,' and Article 24, 'Licensed Professional Counselors,' of Chapter 90; Chapter 89C, 'Engineering and Land Surveying'; Chapter 89A, 'Landscape Architects'; Chapter 90B, 'Social Worker Certification Act' with regard to Certified Clinical Social Workers as defined by G.S. 90B-3; Chapter 89E, 'Geologists'; and Chapter 89B, 'Foresters.'"

Section 3. This act becomes effective October 1, 1997.

North Carolina General Assembly
Legislative Services Office

George R. Hall, Legislative Services Officer
(919) 733-7044

Elaine W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones Street
Raleigh, NC 27603-5925
(919) 733-7500

Gerry F. Cohen, Director
Bill Drafting Division
Suite 401, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

April 10, 1997

MEMORANDUM

TO: Senator R.C. Soles, Jr., Chairman
Commerce Committee

FROM: Linwood Jones, Counsel

RE: Senate Bill 597 (Licensed Professional Counselors)

Senate Bill 597 will allow psychiatrists and/or licensed psychologists to form professional corporations with licensed professional counselors for the purpose of providing psychotherapeutic and related services. This bill does not expand the scope of practice of these practitioners; they can each continue to provide only those services that their respective professions are licensed to provide.

G.S. 55B-14(c) sets ou the different combinations of professional health services that are allowed under current law. Current law already allows psychiatrists and/or psychologists to practice together in professional corporations with certified clinical specialists in psychiatric and mental health nursing and with certified clinical social workers. Section 1 of the bill adds licensed professional counselors.

Section 2 of the bill amends the definition of "professional services" under G.S. 55B-2 to include licensed professional counselors.

Section 3 of the bill makes this act effective October 1, 1997.

S597-SMRN-001

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House.**

☒ Committee Substitute for
S.B. 564 A BILL TO BE ENTITLED AN ACT TO AMEND THE NORTH CAROLINA FINANCIAL PRIVACY ACT TO PERMIT THE DISCLOSURE OF THE NAME, ADDRESS, AND TYPE OF ACCOUNT OF ANY CUSTOMER.

☐ 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 House committee substitute bill (# ~~———~~), ☐ ~~which changes the title,~~ unfavorable as to ~~original bill~~ (Senate Committee Substitute Bill ~~#———~~), (and recommendation that the committee substitute bill ~~#———~~ be re-referred to the Committee on Commerce

☐ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 564
Commerce Committee Substitute Adopted 4/30/97
Third Edition Engrossed 5/1/97
Proposed House Committee Substitute S564-PCS7834

Short Title: Amend Financial Privacy Act. (Public)

Sponsors:

Referred to:

April 1, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE NORTH CAROLINA FINANCIAL PRIVACY ACT TO PERMIT THE DISCLOSURE OF THE NAME, ADDRESS, AND EXISTENCE OF AN ACCOUNT OF ANY CUSTOMER.

The General Assembly of North Carolina enacts:

Section 1. G.S. 53B-8 reads as rewritten:

"**§ 53B-8. Disclosure of financial records.**

No financial institution or its officer, employee, or agent may disclose a customer's financial record to a government authority except as provided in this Chapter. This section does not prohibit a financial institution from giving notice of or disclosing a financial record to a government authority, as defined in G.S. 53B-2(4), to the same extent as is authorized with respect to federal government authorities in the Right to Financial Privacy Act § 1103(d), 12 U.S.C. § 3403(d). Nothing in this Chapter shall prohibit a financial institution or its officer, employee or agent from disclosing the name, address, and existence of an account of any customer to a government authority that makes a written request stating the reason for the request. Nothing in this Chapter shall prohibit a financial institution or its officer, employee, or agent from notifying a government authority that the financial institution or its officer, employee, or agent has information that may be relevant to a possible violation of law or regulation. The information shall be limited to a description of the suspected illegal activity and the name or other identifying information concerning any

individual, corporation, or account involved in the activity. Any financial institution or its officer, employee, or agent making a disclosure of information pursuant to this section shall not be liable to the customer under the laws and rules of the State of North Carolina or any political subdivision of the State for disclosure or for failure to notify the customer of the disclosure."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 3

SENATE BILL 564
Commerce Committee Substitute Adopted 4/30/97
Third Edition Engrossed 5/1/97

Short Title: Amend Financial Privacy Act. (Public)

Sponsors:

Referred to:

April 1, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE NORTH CAROLINA FINANCIAL PRIVACY ACT TO PERMIT THE DISCLOSURE OF THE NAME, ADDRESS, AND TYPE OF ACCOUNT OF ANY CUSTOMER.

The General Assembly of North Carolina enacts:

Section 1. G.S. 53B-8 reads as rewritten:

"**§ 53B-8. Disclosure of financial records.**

No financial institution or its officer, employee, or agent may disclose a customer's financial record to a government authority except as provided in this Chapter. This section does not prohibit a financial institution from giving notice of or disclosing a financial record to a government authority, as defined in G.S. 53B-2(4), to the same extent as is authorized with respect to federal government authorities in the Right to Financial Privacy Act § 1103(d), 12 U.S.C. § 3403(d). Nothing in this Chapter shall prohibit a financial institution or its officer, employee or agent from disclosing to a government authority makes the request in writing stating the reason for the request and notifies the customer of the request and the reason for it if the customer's whereabouts are known. Nothing in this Chapter shall prohibit a financial institution or its officer, employee, or agent from notifying a government authority that the financial institution or its officer, employee, or agent has information that may be relevant to a possible violation of law or regulation. The information shall be limited to a description of the suspected illegal activity and the name or other identifying information concerning any individual, corporation, or account involved in the

activity. Any financial institution or its officer, employee, or agent making a disclosure of information pursuant to this section shall not be liable to the customer under the laws and rules of the State of North Carolina or any political subdivision of the State for disclosure or for failure to notify the customer of the disclosure."

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

North Carolina General Assembly
Legislative Services Office

George R. Hall, Legislative Services Officer
(919) 733-7044

Elaine W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones Street
Raleigh, NC 27603-5925
(919) 733-7500

Gerry F. Cohen, Director
Bill Drafting Division
Suite 401, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

July 9, 1997

MEMORANDUM

TO: Committee on the Rules, Calendar and Operations of the House

FROM: Terrence D. Sullivan

RE: **SENATE BILL 564** (Proposed House Committee Substitute s564-PCS7834) – **TO AMEND THE NORTH CAROLINA FINANCIAL PRIVACY ACT TO PERMIT THE DISCLOSURE OF THE NAME, ADDRESS, AND THE EXISTENCE OF AN ACCOUNT OF ANY CUSTOMER.**

Senate Bill 564 amends the North Carolina Financial Privacy Act, enacted in 1986, to restore language allowing a financial institution to disclose the name, address, account number, and type of account of any customer to a government authority. This language was deleted from the law by Chapter 222 of the Laws of 1995.

Chapter 222 of the Laws of 1995 conformed the State law to the federal Right to Financial Privacy Act. It added the provision that the information be limited to a description of the suspected illegal activity and the name or other identifying information about the person or entity involved. It also added the provision granting immunity under state law from liability to the customer for information so provided or for failure to notify the customer of the disclosure. These provision are almost identical to those found in the federal law.

This bill would allow financial institutions to disclose the name, address, the fact of the existence of an account to a government authority upon its written request containing a reason for the request.

This act would become effective October 1, 1997.

S564-SMRA-001

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 794*
Committee Substitute Favorable 5/28/97
Committee Substitute #2 Favorable 6/25/97
Proposed Committee Substitute H794-PCS1432

Short Title: Engineering and Land Surveying Changes. (Public)

Sponsors:

Referred to:

April 3, 1997

A BILL TO BE ENTITLED

AN ACT TO MAKE SUBSTANTIVE CHANGES TO THE NORTH CAROLINA ENGINEERING AND LAND SURVEYING ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 89C-2 reads as rewritten:

"**§ 89C-2. Declarations; prohibitions.**

In order to safeguard life, health, and property, and to promote the public welfare, the practice of engineering and the practice of land surveying in this State are hereby declared to be subject to regulation in the public interest. It shall be unlawful for any person to practice or to offer to practice engineering or land surveying in this State, as defined in the provisions of this Chapter, or to use in connection with ~~his~~ the person's name or otherwise assume or advertise any title or description tending to convey the impression that ~~he~~ the person is ~~either a professional engineer or a registered~~ a professional engineer, professional land surveyor, or an engineering technologist unless ~~such~~ the person has been duly ~~registered as such.~~ licensed. The right to engage in the practice of engineering or land surveying ~~shall be deemed~~ is a personal right, based on the qualifications of the ~~individual~~ person as evidenced by ~~his~~ the person's certificate of ~~registration,~~ licensure, which shall not be transferable. Nothing in this Chapter prevents the contracting for engineering or land surveying services in ways, for types or scope of services, and according to terms that are not prohibited by statute."

Section 2. G.S. 89C-3 reads as rewritten:

"**§ 89C-3. Definitions.**

The following definitions apply in this Chapter:

(1) Board. -- The North Carolina State Board of ~~Registration~~ Examiners for ~~Professional~~ Engineers and ~~Land~~ Surveyors provided for by this Chapter.

(1a) Business firm. -- A partnership, firm, association, or another organization or group that is not a corporation and is acting as a unit.

(2) Engineer. -- A person who, by reason of ~~his~~ special knowledge and use of the mathematical, physical and engineering sciences and the principles and methods of engineering analysis and design, acquired by engineering education and engineering experience, is qualified to practice engineering.

(3) ~~Engineer-in-training.~~ Engineering intern. -- A person who complies with the requirements for education, experience and character, and has passed an examination in the fundamental engineering subjects, as provided in this Chapter.

(3a) Inactive licensee. -- Licensees who are not engaged in the practice of engineering or land surveying in this State.

(4) ~~Land surveyor-in-training.~~ Land surveyor intern. -- A person who has qualified for, taken, and passed an examination on the basic disciplines of land surveying as provided in this Chapter.

(5) Person. -- Any natural person, firm, partnership, corporation or other legal entity.

(6) Practice of engineering. --

a. Any service or creative work, the adequate performance of which requires engineering education, training, and experience, in the application of special knowledge of the mathematical, physical, and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning, and design of engineering works and systems, planning the use of land and water, engineering surveys, and the observation of construction for the purposes of assuring compliance with drawings and specifications, including the consultation, investigation, evaluation, planning, and design for either private or public use, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects, and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, pneumatic or thermal nature, insofar as they involve safeguarding life, health or property, and including such other professional services as may be

necessary to the planning, progress and completion of any engineering services.

A person shall be construed to practice or offer to practice engineering, within the meaning and intent of this Chapter, who practices any branch of the profession of engineering; or who, by verbal claim, sign, advertisement, letterhead, card, or in any other way represents ~~himself~~ the person to be a professional engineer, or through the use of some other title implies that ~~he~~ the person is a professional engineer or that ~~he~~ the person is ~~registered~~ licensed under this Chapter; or who holds ~~himself~~ the person out as able to perform, or who does perform any engineering service or work not exempted by this Chapter, or any other service designated by the practitioner which is recognized as engineering.

b. The term 'practice of engineering' shall not be construed to permit the location, description, establishment or reestablishment of property lines or descriptions of land boundaries for conveyance. The term does not include the assessment of an underground storage tank required by applicable rules at closure or change in service unless there has been a discharge or release of the product from the tank.

(7) Practice of land ~~surveying by registered land surveyors.~~ surveying. --

a. ~~Any service or work, the adequate performance of which involves the application of special knowledge of the principles of mathematics, the related physical and applied sciences, and the relevant requirements of law for adequate evidence to the act of measuring and locating lines, angles, elevations, natural and man-made features in the air, on the surface of the earth, within underground workings, and on the beds of bodies of water for the purpose of determining areas and volumes, for the monumenting of property boundaries, and for the platting and layout of lands and subdivisions thereof, including the topography, alignment and grades of street and incidental drainage within the subdivision, and for the preparation and perpetuation of maps, record plats, field note records, and property descriptions that represent these surveys.~~ Providing professional services such as consultation, investigation, testimony, evaluation, planning, mapping, assembling, and interpreting reliable scientific measurements and information relative to the location, size, shape, or physical features of

the earth, improvements on the earth, the space above the earth, or any part of the earth, whether the gathering of information for the providing of these services is accomplished by conventional ground measurements, by aerial photography, by global positioning via satellites, or by a combination of any of these methods, and the utilization and development of these facts and interpretations into an orderly survey map, plan, report, description, or project. The practice of land surveying includes the following:

1. Locating, relocating, establishing, laying out, or retracing any property line, easement, or boundary of any tract of land;
2. Locating, relocating, establishing, or laying out the alignment or elevation of any of the fixed works embraced within the practice of professional engineering;
3. Making any survey for the subdivision of any tract of land, including the topography, alignment and grades of streets and incidental drainage within the subdivision, and the preparation and perpetuation of maps, record plats, field note records, and property descriptions that represent these surveys;
4. Determining, by the use of the principles of land surveying, the position for any survey monument or reference point, or setting, resetting, or replacing any survey monument or reference point;
5. Determining the configuration or contour of the earth's surface or the position of fixed objects on the earth's surface by measuring lines and angles and applying the principles of mathematics or photogrammetry;
6. Providing geodetic surveying which includes surveying for determination of the size and shape of the earth both horizontally and vertically and the precise positioning of points on the earth utilizing angular and linear measurements through spatially oriented spherical geometry; and
7. Creating, preparing, or modifying electronic or computerized data, including land information systems and geographic information systems relative to the performance of the practice of land surveying.

b. The term 'practice of land surveying' shall not be construed to permit the design or preparation of specifications for (i) major highways; (ii) wastewater systems; (iii) wastewater or

industrial waste treatment works; (iv) pumping or lift stations; (v) water supply, treatment, or distribution systems; (vi) streets or storm sewer systems except as incidental to a subdivision.

(8) Professional engineer. -- A person who has been duly ~~registered and~~ licensed as a professional engineer by the Board established by this Chapter.

(8a) Professional engineer, retired. -- A person who has been duly licensed as a professional engineer by the Board and who chooses to relinquish or not to renew a license and who applies to and is approved by the Board to be granted the use of the honorific title 'Professional Engineer, Retired'.

(9) ~~Registered~~ Professional land surveyor. -- A person who, by reason of ~~his~~ special knowledge of mathematics, surveying principles and methods, and legal requirements which are acquired by education and/or practical experience, is qualified to engage in the practice of land surveying, ~~as herein defined,~~ as attested by ~~his registration~~ the person's licensure as a ~~registered~~ professional land surveyor by the Board.

(9a) Professional land surveyor, retired. -- A person who has been duly licensed as a professional land surveyor by the Board and who chooses to relinquish or not to renew a license and who applies to and is approved by the Board to be granted the use of the honorific title 'Professional Land Surveyor, Retired'.

(10) Responsible charge. -- Direct control and personal supervision, either of engineering work or of land surveying, as the case may be.

(11) Technologist. -- A person deemed by the Board to be qualified for the limited practice of a technical specialty within engineering."

Section 3. G.S. 89C-4 reads as rewritten:

"**§ 89C-4. State Board of ~~Registration;~~ Examiners for Engineers and Surveyors; appointment; terms.**

A State Board of ~~Registration~~ Examiners for ~~Professional~~ Engineers and ~~Land~~ Surveyors, whose duty it is to administer the provisions of this Chapter, is created. The Board shall consist of four ~~registered~~ licensed professional engineers, three ~~registered~~ licensed professional land surveyors and two public members, who are neither professional engineers nor professional land surveyors. Of the land surveyor members, one and only one may hold dual ~~registration~~ licenses as a professional land surveyor and professional engineer. All of the members shall be appointed by the Governor. Appointments of the engineer and land surveyor members shall preferably, but not necessarily, be made from a list of nominees submitted by the professional societies for engineers and land surveyors in this State. Each member of the Board shall receive a certificate of appointment from the Governor and shall file with the

Secretary of State ~~his~~ a written oath or affirmation for the faithful discharge of ~~his~~ the duties.

Members of the Board serve for staggered five-year terms, and no member may be appointed for more than two full terms. Members serve until the expiration of their respective terms and until their respective successors are appointed. If a vacancy occurs during a term, the Governor shall appoint a successor from the same classification as the person causing the vacancy to serve for the remainder of the unexpired term. If the vacancy is not filled within 90 days after it occurs, the Board may appoint a provisional member to serve until the appointment by the Governor becomes effective. The provisional member during his tenure has all the powers and duties of a regular member."

Section 4. G.S. 89C-5 reads as rewritten:

"**§ 89C-5. Board members; qualifications.**

Each engineer member of the Board shall be a resident of North Carolina and shall be a ~~registered~~ licensed professional engineer engaged in the lawful practice of engineering in North Carolina for at least six years.

Each land surveyor member of the Board shall be a resident of North Carolina and shall be a ~~registered~~ licensed professional land surveyor engaged in the lawful practice of land surveying in North Carolina for at least six years.

Each public member of the Board shall be a resident of North Carolina."

Section 5. G.S. 89C-6 reads as rewritten:

"**§ 89C-6. Compensation and expenses of Board members.**

Each member of the Board, when attending to the work of the Board or any of its committees, shall receive as compensation for ~~his service~~ services the per diem and, in ~~addition thereto,~~ addition, shall be reimbursed for travel expenses and incidentals not exceeding the maximum set forth by law. In addition to per diem allowances, travel and incidentals, the secretary of the Board may, with the approval of the Board, receive such reasonable additional compensation as is compatible with the actual hours of work required by the duties of ~~his~~ the office."

Section 6. G.S. 89C-8 reads as rewritten:

"**§ 89C-8. Organization of the Board; meetings; election of officers.**

The Board shall hold at least two regular meetings each year. Special meetings may be held at such times and upon such notice as the rules and regulations of the Board may provide. The Board shall elect annually from its members a ~~chairman,~~ chair, a ~~vice-chairman,~~ vice-chair, and a secretary. A quorum of the Board shall consist of not less than five members. The Board shall operate under its rules and regulations supplemented by Robert's Rules of Order."

Section 7. G.S. 89C-9 reads as rewritten:

"**§ 89C-9. Executive ~~secretary;~~ director; duties and liabilities.**

The Board shall employ an executive ~~secretary~~ director who is not a member of the Board. The executive ~~secretary~~ director shall be a full-time employee of the Board and perform ~~such~~ the duties assigned to ~~him~~ the director by the secretary subject to the approval of the Board. The executive ~~secretary~~ director shall receive a salary and compensation fixed by the Board. The executive ~~secretary~~ director shall

give a surety bond satisfactory to the Board conditioned upon the faithful performance of ~~his~~ the director's ~~duties.~~ duties assigned. The premium on ~~said~~ the bond shall be a necessary and proper expense of the Board."

Section 8. G.S. 89C-10 reads as rewritten:

"**§ 89C-10. Board powers.**

(a) The Board ~~shall have the power to~~ may adopt and amend all ~~rules and regulations. Additionally, the Board shall have the power to adopt such rules,~~ rules and rules of ~~procedure, and regulations,~~ procedure as may be reasonably necessary for the proper performance of its duties, the regulation of its procedures, meetings, records, the ~~giving of~~ administration of ~~examinations and the conduct thereof,~~ examinations, and the ~~power~~ authority to enforce ~~such~~ the rules of professional conduct as ~~may, from time to time,~~ may be adopted by the Board pursuant to G.S. 89C-20.

The action by the Board in carrying out any of the powers specified ~~above~~ in this section shall be binding upon all persons ~~registered~~ licensed under this Chapter, including corporations and business firms holding certificates of authorization.

(b) The Board shall adopt and have an official seal, which shall be affixed to each certificate issued.

(c) The Board ~~is hereby authorized~~ may in the name of the State ~~to~~ apply for relief, by injunction, in the established manner provided in cases of civil procedure, without bond, to enforce the provisions of this Chapter, or to restrain any violation ~~thereof.~~ of the provisions of this Chapter. In ~~such proceedings,~~ proceedings for injunctive relief, it shall not be necessary to allege or prove either that an adequate remedy at law does not exist, or that substantial or irreparable damage would result from the continued violation ~~thereof.~~ of the provisions of this Chapter. The members of the Board shall not be personally liable under this proceeding.

(d) The Board may subject an applicant for ~~registration~~ licensure to ~~such~~ any examination ~~as it deems~~ necessary to determine ~~his~~ the applicant's qualifications.

(e) The Board ~~shall have the power to~~ may issue an appropriate certificate of ~~registration~~ licensure to any applicant who, in the opinion of the Board, has met the requirements of this Chapter. The Board may issue a certificate of licensure for the limited or provisional practice of engineering to an applicant who, in the opinion of the Board, has demonstrated substantially equivalent engineering qualifications for that limited or provisional practice. The Board shall provide guidance to the public and other authorities in determining the types of work or services that require licensure, limited licensure, or provisional licensure under this Chapter. The Board may discontinue the acceptance of applications for any category of provisional or limited licensure upon 90 days notice to the public.

(f) It shall be the responsibility and duty of the Board to conduct a regular program of investigation concerning all matters within its jurisdiction under the provisions of this Chapter. The investigation of a ~~registrant~~ licensee is confidential until the Board issues a citation to the ~~registrant.~~ licensee. The Board may expend its funds for salaries, fees, and per diem expenses, in connection with its investigations, provided that no ~~such~~ funds other than per diem expenses shall be paid to any

member of the Board in connection with its investigations, nor may any member of the Board give testimony and ~~thereafter~~ later sit in deciding on any matter which may directly involve punitive action ~~under such~~ for the testimony.

(g) The Board ~~is authorized and empowered to~~ may use its funds to establish and conduct instructional programs for persons who are currently ~~registered~~ licensed to practice engineering or land surveying, as well as refresher courses for persons interested in obtaining adequate instruction or programs of study to qualify them for ~~registration~~ licensure to practice engineering or land surveying. The Board may expend its funds for these purposes and ~~is authorized and empowered~~ may not only ~~to~~ conduct, sponsor, and arrange for instructional programs, but also ~~to~~ may carry out ~~such~~ instructional programs through extension courses or other ~~media, and the~~ media. The Board may enter into plans or agreements with community colleges, public or private institutions of higher learning, ~~both public and private,~~ State and county boards of education, or with the governing authority of any industrial education center for the purpose of planning, scheduling or arranging ~~such~~ courses, instruction, extension courses, or in assisting in obtaining courses of study or programs in the field of engineering and land surveying. The Board shall ~~make every effort practical to~~ encourage the educational institutions in this State to offer courses necessary to complete the educational requirements of this Chapter. For the purpose of carrying out these objectives, the Board ~~is authorized to make and promulgate such~~ may adopt rules ~~and regulations~~ as may be necessary for ~~such~~ the educational programs, instruction, extension services, or for entering into plans or contracts with persons or educational and industrial institutions.

(h) The Board may license sponsors of continuing professional competency activities who agree to conduct programs in accordance with standards adopted by the Board. Sponsors shall pay a license fee established by the Board, not to exceed two hundred fifty dollars ($250.00) for licensure under this subsection. The license fee shall accompany the application. Sponsors shall renew their licenses annually on a form provided by the Board.

(i) The Board shall create a methodology for evaluating and licensing engineering specialties. The Board may, in its discretion and at any time, create a technologist license for the limited practice of any engineering specialty it deems appropriate. The Board may impose educational, experience, examination, references, and other requirements for each technologist license. A licensed technologist is subject to all applicable rules governing engineers except as specifically modified by the Board."

Section 9. G.S. 89C-11 reads as rewritten:

"**§ 89C-11. Secretary; duties and liabilities; expenditures.**

The secretary of the Board shall receive and account for all moneys derived from the operation of the Board as provided in this Chapter, and shall deposit them in one or more special funds in banks or other financial institutions carrying deposit insurance and authorized to do business in North Carolina. The fund or funds shall be designated as 'Fund of the Board of ~~Registration~~ Examiners for ~~Professional~~ Engineers and ~~Land~~ Surveyors' and shall be drawn against only for the purpose of implementing provisions of this Chapter as herein provided. All expenses certified by

the Board as properly and necessarily incurred in the discharge of its duties, including authorized compensation, shall be paid out of ~~said~~ this fund on the warrant signed by the secretary of the ~~Board; provided, however, that at~~ Board. At no time shall the total of warrants issued exceed the total amount of funds accumulated under this Chapter. The secretary of the Board shall give a surety bond satisfactory to the State Board of ~~Registration~~ Examiners for ~~Professional~~ Engineers and ~~Land~~ Surveyors, conditioned upon the faithful performance of ~~his duties.~~ the duties assigned. The premium on ~~said~~ the bond ~~shall be regarded as~~ is a proper and necessary expense of the Board. The secretary of the Board may delegate to the executive ~~secretary~~ director certain routine duties, such as receipt and disbursement of funds in stated amounts by a written authorization, which has the unanimous approval of the Board."

Section 10. G.S. 89C-12 reads as rewritten:

"**§ 89C-12. Records and reports of Board; evidence.**

The Board shall keep a record of its proceedings and a register of all applicants for ~~registration,~~ licensure, showing for each the date of application, name, age, education, and other qualifications, place of business and place of residence, whether the applicant was rejected or a certificate of ~~registration~~ licensure granted, and the date ~~of such action.~~ licensure was rejected or granted. The books and register of the Board shall be prima facie evidence of all matters recorded ~~therein,~~ by the Board, and a copy duly certified by the secretary of the Board under seal shall be admissible in evidence as if the original were produced. A roster showing the names and places of business and of residence of all ~~registered~~ licensed professional engineers and all ~~registered~~ licensed professional land surveyors shall be prepared by the secretary of the Board current to the month of January of each ~~year; such~~ year. The roster shall be printed by the Board out of the Board's fund ~~of said Board~~ and distributed as ~~set forth~~ described in the Board's ~~rules and regulations.~~ rules. On or before the first day of May of each year, the Board shall submit to the Governor a report on its transactions for the preceding year, and shall file with the Secretary of State a copy of ~~such~~ the report, together with a complete statement of the receipts and expenditures of the ~~Board,~~ Board attested by the ~~affidavits of the chairman~~ chair and the ~~secretary,~~ secretary and a copy of the ~~said~~ the roster of ~~registered~~ licensed professional engineers and ~~registered~~ professional land surveyors."

Section 11. G.S. 89C-13 reads as rewritten:

"**§ 89C-13. General requirements for ~~registration.~~ licensure.**

(a) Engineer Applicant. -- To be eligible for ~~admission to examination for~~ licensure as a professional ~~engineer~~ engineer, an applicant must be of good character and reputation. An applicant desiring to take the examination in the fundamentals of engineering ~~only~~ must submit three character ~~references.~~ references, one of whom shall be a professional engineer. An applicant desiring to take the examination in the principles and practice of engineering must submit five references, two of whom shall be professional engineers having personal knowledge of ~~his~~ the applicant's engineering experiences.

The following shall be considered as minimum evidence satisfactory to the Board that the applicant is qualified for ~~registration:~~ licensure:

(1) As a professional engineer (shall meet one):

a. ~~Registration~~ Licensure by Comity or Endorsement. -- A person holding a certificate of ~~registration~~ licensure to engage in the practice of engineering, on the basis of comparable qualifications, issued to ~~him~~ the person by a proper authority of a state, territory, or possession of the United States, the District of Columbia, or of Canada, who completes an application for licensure and submits five references, two of which shall be from professional engineers having personal knowledge of the applicant's engineering experience, and ~~who~~ who, in the opinion of the Board, meets the requirements of this Chapter, based on verified evidence may, upon application, be ~~registered~~ licensed without further examination.

A person holding a certificate of qualification issued by the Committee on National Engineering Certification of the National Council of ~~Engineering Examiners,~~ Examiners for Engineering and Surveying whose qualifications meet the requirements of this Chapter, may upon application, be ~~registered~~ licensed without further examination.

b. ~~E.I.T.~~ E.I. Certificate, Experience, and Examination. -- A holder of a certificate of ~~engineer-in-training~~ engineering intern issued by the Board, and with a specific record of an additional four years or more of progressive experience on engineering projects of a grade and character which indicates to the Board that the applicant may be competent to practice engineering, shall be admitted to ~~an eight-hour examination in~~ the principles and practice of ~~engineering.~~ engineering examination. Upon passing ~~such~~ the examination, the applicant shall be granted a certificate of ~~registration~~ licensure to practice professional engineering in this State, provided ~~he~~ the applicant is otherwise qualified.

c. Graduation, Experience, and Examination. -- A graduate of an engineering curriculum of four years or more approved by the Board as being of satisfactory standing, and with a specific record of an additional four years or more of progressive experience on engineering projects of a grade and character which indicates to the Board that the applicant may be competent to practice engineering, shall be admitted to ~~an eight-hour written examination in~~ the fundamentals of ~~engineering,~~ engineering examination, and ~~an eight-hour written examination in~~ the principles and

practice of ~~engineering.~~ engineering examination. Upon passing ~~such~~ the examinations, the applicant shall be granted a certificate of ~~registration~~ licensure to practice professional engineering in this State, provided ~~he~~ the applicant is otherwise qualified.

d. Graduation, Experience, and Examination. -- A graduate of an engineering or related science curriculum of four years or more, other than the ones approved by the Board as being of satisfactory standing or with an equivalent education and engineering experience satisfactory to the Board and with a specific record of eight years or more of progressive experience on engineering projects of a grade and character which indicates to the Board that the applicant may be competent in the fundamentals of engineering, shall be admitted to ~~an eight-hour written examination in~~ the fundamentals of ~~engineering,~~ engineering examination and ~~an eight-hour written examination in~~ the principles and practice of ~~engineering.~~ engineering examination. Upon passing ~~such~~ the examinations, the applicant shall be granted a certificate of ~~registration~~ licensure to practice professional engineering in this State, provided ~~he~~ the applicant is otherwise qualified.

e. Long-Established Practice. -- ~~An individual~~ A person with a specific record of 20 years or more of progressive experience on engineering projects of a grade and character which indicates to the Board that the applicant may be competent to practice engineering shall be admitted to ~~an eight-hour written examination in~~ the principles and practice of ~~engineering.~~ engineering examination. Upon passing ~~such~~ the examination, the applicant shall be granted a certificate of ~~registration~~ licensure to practice professional engineering in this State, provided ~~he~~ the applicant is otherwise qualified.

At its discretion the Board may require an applicant to submit exhibits, drawings, designs, or other tangible evidence of engineering work ~~executed by him and~~ which ~~he~~ the applicant personally accomplished or supervised.

The following shall be considered as minimum evidence that the applicant is qualified for certification:

(2) As an ~~engineer-in-training~~ engineering intern (shall meet one):

a. Graduation and Examination. -- A graduate of an engineering curriculum or related science curriculum of four years or more, approved by the Board as being of satisfactory standing, or a student who has attained senior status in an accredited engineering program, shall be

admitted to ~~an eight-hour written examination in~~ the fundamentals of ~~engineering.~~ engineering examination. The applicant shall be notified if the examination was passed or not passed and if passed he shall be certified as an ~~engineer-in-training,~~ engineering intern if ~~he~~ the applicant is otherwise qualified.

b. Graduation, Experience, and Examination. -- A graduate of an engineering or related science curriculum of four years or more, other than the ones approved by the Board as being of satisfactory standing, or with equivalent education and engineering experience satisfactory to the Board and with a specific record of four or more years of progressive experience on engineering projects of a grade and character satisfactory to the Board, shall be admitted to ~~an eight-hour written examination in~~ the fundamentals of ~~engineering.~~ engineering examination. The applicant shall be notified if the examination was passed or not passed and if ~~passed he~~ passed, the applicant shall be certified as an ~~engineer-in-training~~ engineering intern if ~~he~~ the applicant is otherwise qualified.

(b) Land Surveyor Applicant. -- To be eligible for admission to examination for land ~~surveyor-in-training,~~ surveyor intern or ~~registered~~ professional land surveyor, an applicant must be of good character and reputation and shall submit five references with ~~his~~ the application for ~~registration~~ licensure as a land surveyor, two of which references shall be ~~registered~~ professional land surveyors having personal knowledge of ~~his~~ the applicant's land surveying experience, or in the case of an application for certification as a land ~~surveyor-in-training~~ surveyor intern by three references, one of which shall be a ~~registered~~ licensed land surveyor having personal knowledge of the applicant's land surveying experience.

The evaluation of a land surveyor applicant's qualifications shall involve a consideration of ~~his~~ the applicant's education, technical and land surveying experience, exhibits of land surveying projects with which ~~he~~ the applicant has been associated, and recommendations by ~~references, and reviewing of these categories during an oral examination.~~ references. The land surveyor applicant's qualifications may be reviewed at an interview if the Board ~~deems~~ determines it necessary. Educational credit for institute courses, correspondence courses, ~~etc.,~~ or other courses shall be determined by the Board.

The following shall be considered a minimum evidence satisfactory to the Board that the applicant is qualified for ~~registration~~ licensure as a professional land surveyor or for certification as a land ~~surveyor-in-training,~~ surveyor intern respectively:

(1) As a ~~registered~~ professional land surveyor (shall meet one):

a. Rightful possession of a ~~B.S.~~ bachelor of science degree in surveying or other equivalent curricula, all approved by the Board and a record satisfactory to the Board of ~~one year~~ two

years or more of progressive practical ~~experience~~ experience, one year of which shall have been under a practicing ~~registered~~ professional land surveyor and satisfactorily passing ~~such~~ any oral and written ~~examination, taken in the presence of and~~ examination required by the Board, all of which shall determine and indicate that the ~~candidate~~ applicant is competent to practice land surveying. The applicant may ~~elect~~ be qualified by the Board to take the first examination (Surveying Fundamentals) immediately after obtaining the ~~B.S.~~ bachelor of science degree at the first regularly scheduled examination thereafter. Upon passing the first examination and successful completion of the experience required by this subdivision, the applicant may apply to take the second examination (Principles and Practice of Land Surveying). An applicant who passes both examinations and completes the educational and experience requirements of this subdivision shall be granted ~~registration~~ licensure as a professional land surveyor.

b. Rightful possession of an associate degree in surveying technology approved by the Board and a record satisfactory to the Board of ~~three~~ four years of progressive practical experience, ~~two~~ three years of which shall have been under a practicing ~~registered~~ licensed land surveyor, and satisfactorily passing ~~such~~ any written and oral examination ~~taken in the presence of and as~~ required by the Board, all of which shall determine and indicate that the ~~candidate~~ applicant is competent to practice land surveying. The applicant may ~~elect~~ apply to the Board to take the first examination (Surveying Fundamentals) immediately after obtaining the associate degree at the first regularly scheduled examination thereafter. Upon passing the first examination and successfully completing ~~years of progressive practical experience under a practicing registered land surveyor,~~ the practical experience required under this subdivision, the applicant may ~~elect~~ apply to the Board to take the second examination ~~(Principles and Practice of Land Surveying) prior to, during, or after completion of the additional experience required by this subdivision.~~ (Principles and Practice of Land Surveying). An applicant who passes both examinations and successfully completes the educational and experience requirements of this subdivision shall be granted ~~registration~~ licensure as a professional land surveyor.

~~c. Land Surveyor-in-Training Certificate, Experience, and Examination. -- A holder of a certificate of land surveyor-in-training issued by the Board, and with a specific record of an additional two years or more of progressive surveying experience, one year of which shall have been under a practicing registered land surveyor, of a grade and character which indicates to the Board that the applicant may be competent to practice land surveying, shall be admitted to two four-hour examinations. Upon passing such examinations, the applicant shall be granted a certificate of registration to practice land surveying in this State, provided he is otherwise qualified.~~

d. Graduation from a high school or the completion of a high school equivalency certificate and a record satisfactory to the Board of seven years of progressive practical experience, ~~six~~ seven years of which shall have been under a practicing ~~registered~~ licensed land surveyor, and satisfactorily passing ~~such~~ any oral and written ~~examination written in the presence of and~~ examinations required by the Board, all of which shall determine and indicate that the candidate is competent to practice land surveying. The applicant may be qualified by the Board to take the first examination (Surveying Fundamentals) upon graduation from high school or the completion of a high school equivalency certificate and successfully completing six years of progressive practice experience, five of which shall have been under a practicing licensed land surveyor. The applicant may apply to take the second examination (Principles and Practice of Land Surveying) upon passing the first examination and successfully completing four years of progressive practical experience, two of which shall have been under a practicing licensed land surveyor.

e. Repealed by Session Laws 1985 (Regular Session, 1986), c. 977, s. 7.

f. ~~Registration~~ Licensure by Comity or Endorsement. -- A person holding a certificate of ~~registration~~ licensure to engage in the practice of land surveying issued on comparable qualifications from a state, territory, or possession of the United States will be given comity considerations. However, ~~he~~ the applicant may be asked to take ~~such~~ any examinations as the Board ~~deems necessary~~ requires to determine ~~his~~ the applicant's qualifications, but in any event, ~~he~~ the applicant shall be required to pass ~~a written~~ an examination which shall include questions on

laws, procedures, and practices pertaining to the practice of land surveying in North Carolina.

g. A licensed professional engineer who can satisfactorily demonstrate to the Board that ~~his~~ the professional engineer's formal academic training in acquiring a degree and field experience in engineering includes land surveying, to the extent necessary to reasonably qualify the applicant in the practice of land surveying, may apply for and may be granted permission to take the ~~two four-hour examinations on the~~ principles and practice of land surveying examination and the ~~two four-hour examinations on the~~ fundamentals of land ~~surveying.~~ surveying examination. Upon satisfactorily passing the examinations, the applicant ~~will~~ shall be granted a license to practice land surveying in the State of North Carolina.

h. Professional Engineers in Land Surveying. -- Any person presently licensed to practice professional engineering under this Chapter shall upon ~~his~~ application be licensed to practice land surveying, providing ~~his~~ a written application is filed with the Board within one year next after June 19, 1975.

i. Photogrammetrists. -- Any person presently practicing photogrammetry with at least seven years of experience in the profession, two or more of which shall have been in responsible charge of photogrammetric mapping projects meeting National Map Accuracy Standards shall, upon application, be licensed to practice land surveying, provided:

1. The applicant submit certified proof of graduation from high school, high school equivalency, or higher degree;
2. The applicant submit proof of employment in responsible charge as a photogrammetrist practicing within the State of North Carolina to include itemized reports detailing methods, procedures, amount of applicant's personal involvement and the name, address, and telephone numbers of the client for five projects completed by the applicant with the State. A final map for one of the five projects shall also be submitted;
3. Five references to the applicant's character and quality of work, three of which shall be from professional land surveyors, are submitted to the Board; and

4. The application is submitted to the Board by July 1, 1998. After July 1, 1998, no photogrammetrist shall be licensed without meeting the same requirements as to education, length of experience, and testing required of all land surveying applicants.

The Board shall require an applicant to submit exhibits, drawings, plats or other tangible evidence of land surveying work executed by ~~him~~ the applicant under proper supervision and which ~~he~~ the applicant has personally accomplished or supervised.

Land surveying encompasses a number of disciplines including geodetic surveying, hydrographic surveying, cadastral surveying, engineering surveying, route surveying, photogrammetric (aerial) surveying, and topographic surveying. A professional land surveyor shall practice only within the surveyor's area of expertise.

(2) As a land ~~surveyor-in-training~~ surveyor intern (shall meet one):

a. Rightful possession of an associate degree in surveying technology approved by the Board and satisfactorily passing a written ~~or~~ and oral examination ~~taken in the presence of and~~ as required by the Board.

b. Rightful possession of a ~~B.S.~~ bachelors degree in surveying or other equivalent curricula in surveying all approved by the Board and satisfactorily passing ~~such~~ any oral and written examinations ~~written in the presence of and~~ required by the Board.

c. Graduation from high school or the completion of a high school equivalency certificate and a record satisfactory to the Board of ~~five~~ six years of progressive, practical experience, ~~four~~ five years of which shall have been under a practicing ~~registered~~ licensed land surveyor and satisfactorily passing any oral and written examinations ~~taken in the presence of and as~~ required by the Board.

The Board shall require an applicant to submit exhibits, drawings, plats, or other tangible evidence of land surveying work executed by ~~him~~ the applicant under proper supervision and which ~~he~~ the applicant has personally accomplished or supervised."

Section 12. G.S. 89C-14 reads as rewritten:

"**§ 89C-14. Application for ~~registration; registration~~ licensure; license fees.**

(a) Application for ~~registration as a professional engineer or registered land surveyor~~ licensure shall be on a form prescribed and furnished by the Board. It shall contain statements made under oath, showing the applicant's education and a detailed summary of ~~his~~ the applicant's technical and engineering or land surveying experience, and shall include the names and complete mailing addresses of the references, none of whom ~~should~~ may be immediate members of the applicant's family or members of the Board.

The Board may accept the certified information on the copy of a current formal certificate of qualifications issued by the National Council of ~~Engineering Examiners Committee or National Engineering Certification for Professional Engineer applicants~~ Examiners for Engineering and Surveying in lieu of the same information that is required for the form prescribed and furnished by the Board.

(b) An applicant for ~~registration~~ licensure who is required to take the written examination shall pay ~~a fee equal to the cost of the examination to the Board plus an additional amount~~ to the Board an application fee not to exceed one hundred dollars ($100.00). The Board may charge any fee necessary to defray the cost of any required examinations. The fee shall accompany the application. The fee for comity ~~registration~~ licensure of engineers and land surveyors who hold unexpired certificates in another state or a territory of the United States or in Canada shall be the total current fee as fixed by the Board.

(c) The certification fee for a corporation is the amount set by the Board ~~in accordance with G.S. 55B-10.~~ but shall not exceed one hundred dollars ($100.00). The fee shall accompany the application. The certification fee for a business firm is the same as the fee for a corporation. The fee for renewal of a certificate of ~~registration~~ licensure of a corporation is the amount set by the Board ~~in accordance with G.S. 55B-11.~~ but shall not exceed seventy-five dollars ($75.00). The fee for renewal of a certificate of ~~registration~~ licensure for a business firm is the same as the renewal fee for a corporation.

(d) Should the Board deny the issuance of a certificate of ~~registration~~ licensure to any applicant, the unobligated portion of fees paid shall be returned by the Board to the applicant.

(e) A candidate failing an examination may apply, and be considered by the Board, for reexamination at the end of six months. The Board shall make such reexamination charge as is necessary to defray the cost of the examination.

A candidate ~~failing an examination three times will not be permitted to take a reexamination until he has made a written appeal to the Board and his tentative qualifications for the examination are reviewed and reaffirmed by the Board.~~ with a combination of three failures or unexcused absences on an examination shall only be eligible after submitting a new application with appropriate application fee, and be considered by the Board for reexamination at the end of 12 months. After the end of the 12-month period, the applicant may take the examination no more than once every calendar year."

Section 13. G.S. 89C-15 reads as rewritten:

"**§ 89C-15. Examinations.**

(a) The examinations will be held at ~~such~~ the times and places as the Board directs. The Board shall determine the passing grade on examinations. All examinations shall be approved by the entire Board.

(b) Written examinations will be given in sections and may be taken only after the applicant has met the other minimum requirements as given in ~~G.S. 89C-13,~~ G.S. 89C-13 and has been approved by the Board for admission to the examination as follows:

(1) Engineering Fundamentals. -- Consists of an eight-hour examination on the fundamentals of engineering. Passing this examination qualifies the ~~examinee~~ applicant for an ~~engineer-in-training~~ engineering intern certificate, provided ~~he~~ the applicant has met all other requirements for ~~certification~~ licensure required by this Chapter.

(2) Principles and Practice of Engineering. -- Consists of an eight-hour examination on applied engineering. Passing this examination qualifies the ~~examinee~~ applicant for ~~registration~~ licensure as a professional engineer, provided ~~he~~ the applicant has met the other requirements for registration required by this Chapter.

(3) Surveying Fundamentals. -- Consists of ~~two four-hour examinations~~ an eight-hour examination on the elementary disciplines of land surveying. Passing ~~both of these examinations~~ this examination qualifies the ~~examinee~~ applicant for a land ~~surveyor-in-training~~ surveyor intern certificate provided ~~he~~ the applicant has met all other requirements for certification required by this Chapter.

(4) Principles and Practices of Land Surveying. -- Consists of ~~two four-hour examinations~~ a six-hour examination on the basic and applied disciplines of land ~~surveying, one examination on basic disciplines and the other examination covering applied disciplines.~~ surveying and a two-hour examination on requirements specific to the practice of land surveying in North Carolina. Passing each of these examinations qualifies the ~~examinee~~ applicant for a ~~registered~~ professional land surveyor certificate provided ~~he~~ the applicant has met all other requirements for certification required by this Chapter."

Section 14. G.S. 89C-16 reads as rewritten:

"**§ 89C-16. Certificates of ~~registration;~~ licensure; effect; seals.**

(a) The Board shall issue to any applicant, who, in the opinion of the Board, has met the requirements of this Chapter, a certificate of ~~registration~~ licensure giving the ~~registrant~~ licensee proper authority to practice ~~his~~ the profession in this State. The certificate of ~~registration for a professional engineer~~ licensure shall carry the designation 'professional engineer,' ~~and for a land surveyor, 'registered~~ 'professional land surveyor,' or 'engineering technologist', as deemed appropriate by the Board. The certificate of licensure shall identify any special limits or provisions of the license as deemed appropriate by the Board. The certificate shall give the full name of the ~~registrant~~ licensee with ~~his serial~~ the Board designated licensure number and title and shall be signed by the ~~chairman~~ chair and the secretary under the seal of the Board.

(b) This certificate shall be prima facie evidence that the person named ~~thereon~~ on the certificate is entitled to all rights, privileges and responsibilities of a professional engineer or a ~~registered~~ professional land surveyor, or engineering technologist while the ~~said~~ certificate of ~~registration~~ licensure remains unrevoked or unexpired.

(c) Each ~~registrant hereunder~~ licensee shall upon ~~registration~~ licensure obtain a seal of a design authorized by the Board bearing the ~~registrant's~~ licensee's name, ~~serial~~ Board-designated licensure number, and ~~the legend, 'professional engineer,' or 'registered land surveyor.'~~ title. Final drawings, specifications, plans and reports prepared by a ~~registrant~~ licensee shall, when issued, be certified and stamped with the ~~said~~ seal or facsimile ~~thereof~~ of the seal unless the ~~registrant~~ licensee is exempt under the provisions of G.S. 89C-25(7). It shall be unlawful for a ~~registrant~~ licensee to affix, or permit ~~his~~ the licensee's seal and signature or facsimile ~~thereof~~ of the seal and signature to be affixed to any drawings, specifications, plans or reports after the expiration of a certificate or for the purpose of aiding or abetting any other person to evade or attempt to evade any provision of this Chapter. ~~A professional engineer practicing land surveying shall use his registered land surveyor seal.~~ A person holding multiple licenses shall maintain a seal for each license and use the applicable seal for each area of practice."

Section 15. G.S. 89C-17 reads as rewritten:

"**§ 89C-17. Expirations and renewals of certificates.**

Certificates for ~~registration~~ licensure shall expire on the last day of the month of December next following their issuance or renewal, and shall become invalid on that date unless renewed. When necessary to protect the public health, safety, or welfare, the Board shall require ~~such~~ any evidence ~~as it deems~~ necessary to establish the continuing competency of engineers and land surveyors as a condition of renewal of licenses. When the Board is satisfied as to the continuing competency of an applicant, it shall issue a renewal of the certificate upon payment by the applicant of a fee fixed by the Board but not to exceed ~~fifty dollars ($50.00).~~ seventy-five dollars ($75.00). The secretary of the Board shall notify by mail every person ~~registered~~ licensed under this Chapter of the date of expiration of ~~his~~ the certificate, the amount of the fee required for its renewal for one year, and any requirement as to evidence of continued competency. The notice shall be mailed at least one month in advance of the expiration date of the certificate. Renewal shall be effected at any time during the month of January immediately following, by payment to the secretary of the Board of a renewal fee, as determined by the Board, which shall not exceed ~~fifty dollars ($50.00).~~ seventy-five dollars ($75.00). Failure on the part of any registrant to renew ~~his~~ the certificate annually in the month of January, as required above, shall deprive the registrant of the right to practice until renewal has been effected. Renewal may be effected at any time during the first ~~36~~ 12 months immediately following its invalidation ~~of payment of the renewal fee increased ten percent (10%) for each month or fraction of a month that payment for renewal is delayed.~~ by payment of the established renewal fee and a late penalty of one hundred dollars ($100.00). Failure of a ~~registrant~~ licensee to renew ~~his registration~~ the license for a period of ~~36~~ 12 months shall require the individual, prior to resuming practice in North Carolina, to submit an application ~~therefor~~ on the prescribed form, and to meet all other requirements for ~~registration~~ licensure as set forth in Chapter 89C. The secretary of the Board is instructed to remove from the official roster ~~of engineers and land surveyors~~ the names of all ~~registrants~~ licensees who have not effected their renewal

by the first day of February immediately following the date of their expiration. The Board may ~~enact~~ adopt rules to provide for renewals in distress or hardship cases due to military service, prolonged illness, or prolonged absence from the State, where the applicant for renewal demonstrates to the Board that ~~he~~ the applicant has maintained ~~his~~ active knowledge and professional status as an ~~engineer or~~ engineer, land surveyor, or engineering technologist, as the case may be. It shall be the responsibility of each ~~registrant~~ licensee to inform the Board promptly concerning change in address. A licensee may request and be granted inactive status. No inactive licensee may practice in this State unless otherwise exempted in this Chapter. A licensee granted inactive status shall pay annual renewal fees but shall not be subject to annual continuing professional competency requirements. A licensee granted inactive status may return to active status by meeting all requirements of the Board, including demonstration of continuing professional competency as a condition of reinstatement."

Section 16. G.S. 89C-18 reads as rewritten:

"**§ 89C-18. Duplicate certificates.**

The Board may issue a duplicate certificate of ~~registration~~ licensure or certificate of authorization to replace any certificate that has been lost, destroyed, or mutilated and may charge a fee of up to twenty-five dollars ($25.00) for issuing the certificate."

Section 17. G.S. 89C-19 reads as rewritten:

"**§ 89C-19. Public works; requirements where public safety involved.**

This State and its political subdivisions such as counties, cities, towns, or other political entities or legally constituted boards, commissions, public utility companies, or authorities, or officials, or employees ~~thereof~~ of these entities shall not engage in the practice of engineering or land surveying involving either public or private property where the safety of the public is directly involved without the project being under the supervision of a professional engineer for the preparations of plans and specifications for engineering projects, or a ~~registered~~ professional land surveyor for land surveying projects, as provided for the practice of the respective professions by this Chapter.

An official or employee of the State or any political subdivision specified in this section, holding the positions set out in this section as of June 19, 1975, shall be exempt from the provisions of this section so long as such official or employee is engaged in substantially the same type of work as is involved in ~~his~~ the present position.

Nothing in this section shall be construed to prohibit inspection, maintenance and service work done by employees of the State of North Carolina, any political subdivision ~~thereof,~~ of the State, or any municipality ~~therein~~ including construction, installation, servicing, and maintenance by regular full-time employees of, secondary roads and drawings incidental ~~thereto,~~ to work on secondary roads, streets, street lighting, traffic-control signals, police and fire alarm systems, waterworks, steam, electric and sewage treatment and disposal plants, the services of superintendents, inspectors or foremen regularly employed by the State of North Carolina or any

political subdivision ~~thereof,~~ of the State, or municipal ~~corporation therein.~~ corporation.

The provisions in this section shall not be construed to alter or modify the requirements of Article 1 of Chapter 133 of the General Statutes."

Section 18. G.S. 89C-20 reads as rewritten:

"**§ 89C-20. Rules of professional conduct.**

In the interest of protecting the safety, health, and welfare of the public, the Board shall ~~promulgate and~~ adopt rules of professional conduct applicable to the practice of engineering and land surveying. These rules, when adopted, shall be construed to be a reasonable exercise of the police power vested in the Board of ~~Registration~~ Examiners for ~~Professional~~ Engineers and Land Surveyors. Every person ~~registered~~ licensed by the Board shall subscribe to and observe the adopted rules as the standard of professional conduct for the practice of engineering and land ~~surveying.~~ surveying and shall cooperate fully with the Board in the course of any investigation. In the case of violation of the rules of professional conduct, the Board shall ~~have the responsibility and duty to~~ proceed in accordance with G.S. 89C-22."

Section 19. G.S. 89C-21 reads as rewritten:

"**§ 89C-21. Disciplinary action -- Reexamination, revocation, suspension, reprimand, or civil penalty.**

(a) The Board may reprimand the licensee, suspend, refuse to renew, or revoke the certificate of ~~registration,~~ licensure, or, as appropriate, require reexamination, for any ~~engineer or~~ engineer, land surveyor, or engineering technologist who is found:

(1) Guilty of the practice of any fraud or deceit in obtaining a certificate of ~~registration~~ licensure or certificate of authorization.

(2) Guilty of any gross negligence or misconduct in the practice of ~~his~~ the profession.

(3) Guilty of any felony or any crime involving moral turpitude.

(4) Guilty of violation of the Rules of Professional Conduct, as adopted by the Board.

(5) To have been declared insane or incompetent by a court of competent jurisdiction and has not ~~thereafter~~ later been lawfully declared sane or competent.

(6) Guilty of professional incompetence. In the event the Board finds that a certificate holder is incompetent the Board may, in its discretion, require oral or written examinations, or other indication of the certificate holder's fitness to practice ~~his profession~~ engineering or land surveying and suspend ~~his~~ the license during any such period.

(b) The Board ~~shall have the power to~~ may (i) revoke a certificate of authorization, or (ii) to suspend a certificate of authorization for a period of time not exceeding two years, of any corporation or business firm where one or more of its officers or directors have committed any act or have been guilty of any conduct which would authorize a revocation or suspension of their certificates of ~~registration~~ licensure under the provision of this section.

(c) The Board may levy a civil penalty not in excess of two thousand dollars ($2,000) for any ~~engineer or~~ engineer, land surveyor, or engineering technologist who violates any of the provisions of subdivisions (1) through (4) of subsection (a) of this section. All civil penalties collected by the Board shall be deposited in the General Fund of North Carolina.

(d) Before imposing and assessing a civil penalty and fixing the ~~amount thereof,~~ amount, the Board shall, as a part of its deliberation, take into consideration the following factors:

(1) The nature, gravity, and persistence of the particular violations;

(2) The appropriateness of the imposition of a civil penalty when considered alone or in combination with other punishment;

(3) Whether the violation(s) were done willfully and maliciously; and

(4) Any other factors which would tend to either mitigate or aggravate the violation(s) found to exist."

Section 20. G.S. 89C-22 reads as rewritten:

"**§ 89C-22. Disciplinary action -- Charges; procedure.**

(a) Any person may prefer charges of fraud, deceit, gross negligence, incompetence, misconduct, or violation of the rules of professional conduct, against any Board registrant. The charges shall be in writing and shall be sworn to by the person or persons making them and shall be filed with ~~the secretary of~~ the Board.

(b) All charges, unless dismissed by the Board as unfounded or trivial, shall be heard by the Board as provided under the requirements of Chapter 150B of the General Statutes.

(c) If, after ~~such~~ a hearing, a majority of the Board votes in favor of sustaining the charges, the Board shall reprimand, levy a civil penalty, suspend, refuse to renew, or revoke the ~~registrant's certificate of registration.~~ licensee's certificate.

(d) A ~~registrant~~ licensee who is aggrieved by a final decision of the Board may appeal for judicial review as provided by Article 4 of Chapter 150B.

(e) The Board may, upon petition of an individual or an entity whose certificate has been revoked, for sufficient ~~reasons it may deem sufficient,~~ reasons as it may determine, reissue a certificate of ~~registration~~ licensure or authorization, provided that a majority of the members of the Board vote in favor of such issuance."

Section 21. G.S. 89C-23 reads as rewritten:

"**§ 89C-23. Unlawful to practice engineering or land surveying without ~~registration;~~ licensure; unlawful use of title or terms; penalties; Attorney General to be legal adviser.**

Any person who shall practice, or offer to practice, engineering or land surveying in this State without first being ~~registered~~ licensed in accordance with the provisions of this Chapter, or any person, firm, partnership, organization, association, corporation, or other entity using or employing the words 'engineer' or 'engineering' or 'professional engineer' or 'professional engineering' or 'land surveyor' or 'land surveying,' or any modification or derivative ~~thereof~~ of those words in its name or form of business or activity except as ~~registered~~ licensed under this Chapter or in pursuit of activities exempted by this Chapter, or any person presenting or attempting

to use the certificate of ~~registration~~ licensure or the seal of another, or any person who shall give any false or forged evidence of any kind to the Board or to any member ~~thereof~~ of the Board in obtaining or attempting to obtain a certificate of ~~registration,~~ licensure, or any person who shall falsely impersonate any other ~~registrant~~ licensee of like or different name, or any person who shall attempt to use an expired or revoked or nonexistent certificate of ~~registration,~~ licensure, or who shall practice or offer to practice when not qualified, or any person who falsely claims that ~~he~~ the person is registered under this Chapter, or any person who shall violate any of the provisions of this Chapter, in addition to injunctive procedures set out hereinbefore, shall be guilty of a Class 2 misdemeanor. In no event shall there be representation of or holding out to the public of any engineering expertise by ~~unregistered~~ unlicensed persons. It shall be the duty of all duly constituted officers of the State and all political subdivisions ~~thereof~~ of the State to enforce the provisions of this Chapter and to prosecute any persons violating ~~same.~~ them.

The Attorney General of the State or ~~his~~ an assistant shall act as legal adviser to the Board and render ~~such~~ any legal assistance ~~as may be~~ necessary ~~in carrying~~ to carry out the provisions of this Chapter. The Board may employ counsel and necessary assistance to aid in the enforcement of this Chapter, and the compensation and expenses ~~therefor~~ for the assistance shall be paid from funds of the Board."

Section 22. G.S. 89C-24 reads as rewritten:

"**§ 89C-24. ~~Registration~~ Licensure of corporations and business firms that engage in the practice of engineering or land surveying.**

A corporation or business firm may not engage in the practice of engineering or land surveying in this State unless it is ~~registered with~~ licensed by the Board and has paid ~~the required registration fee.~~ an application fee established by the Board in an amount not to exceed two hundred fifty dollars ($250.00). A corporation or business firm is subject to the same duties and responsibilities as an individual ~~registrant. Registration~~ licensee. Licensure of a corporation or business firm does not affect the requirement that all engineering or land surveying work done by the corporation or business firm be performed by or under the responsible charge of individual registrants, nor does it relieve the individual registrants within a corporation or business firm of their design and supervision responsibilities.

This section applies to every corporation that is engaged in the practice of engineering or land surveying, regardless of when it was incorporated. A corporation that is not exempt from Chapter 55B of the General Statutes by application of G.S. 55B-15 must be incorporated under that Chapter."

Section 23. G.S. 89C-25 reads as rewritten:

"**§ 89C-25. Limitations on application of Chapter.**

This Chapter shall not be construed to prevent or affect:

(1) The practice of architecture, landscape architecture, or contracting or any other legally recognized profession or trade; or

(2) The practice of professional engineering or land surveying in this State or by any person not a resident of this State and having no established place of business in this State when this practice does

not aggregate more than 90 days in any calendar year, whether performed in this State or elsewhere, or involve more than one specific project; provided, however, that ~~such~~ the person is ~~legally qualified by registration~~ licensed to practice the ~~said~~ profession in ~~his~~ the person's own state or country, in which the requirements and qualifications for obtaining a certificate of ~~registration~~ licensure are satisfactory to the Board; in which case the person shall apply for and the Board will issue a temporary permit; or

(3) The practice of professional engineering or land surveying in this State not to aggregate more than 90 days by any person residing in this State, but whose residence has not been of sufficient duration for the Board to grant or deny ~~registration;~~ licensure; provided, however, ~~such~~ the person shall have filed an application for ~~registration~~ licensure as a professional engineer or ~~registered~~ professional land surveyor and shall have paid the fee provided for in G.S. 89C-14, and provided that ~~such a~~ the person is ~~legally qualified by registration~~ licensed to practice professional engineering or professional land surveying in ~~his~~ the person's own state or country in which the requirements and qualifications for obtaining a certificate of ~~registration~~ licensure are satisfactory to the Board, in which case the person shall apply for and the Board will issue a temporary permit; or

(4) Engaging in engineering or land surveying as an employee or assistant under the responsible charge of a professional engineer or ~~registered~~ professional land surveyor or as an employee or assistant of a nonresident professional engineer or a nonresident ~~registered~~ professional land surveyor provided for in subdivisions (2) and (3) of this section, provided that ~~said~~ the work as an employee may not include responsible charge of design or supervision; or

(5) The practice of professional engineering or land surveying by any person not a resident of, and having no established place of business in this State, as a consulting associate of a professional engineer or ~~registered~~ professional land surveyor ~~registered~~ licensed under the provisions of this Chapter; provided, the nonresident is qualified for ~~such~~ performing the professional service in ~~his~~ the person's own state or country; or

(6) Practice by members of the armed forces or employees of the government of the United States while engaged in the practice of engineering or land surveying solely for ~~said~~ the government on government-owned works and projects; or

(7) The internal engineering or surveying activities of a person, firm or corporation engaged in manufacturing, processing, or producing a product, including the activities of public service corporations, public utility companies, authorities, State agencies, railroads, or

membership cooperatives, or the installation and servicing of their product in the field; or research and development in connection with the manufacture of that product or their service; or of their research affiliates; or their employees in the course of their employment in connection with the manufacture, installation, or servicing of their product or service in the field, or on-the-premises maintenance of machinery, equipment, or apparatus incidental to the manufacture or installation of the product or service of a firm by the employees of the firm upon property owned, leased or used by the firm; inspection, maintenance and service work done by employees of the State of North Carolina, any political subdivision ~~thereof,~~ of the State, or any municipality ~~therein~~ including construction, installation, servicing, maintenance by regular full-time employees of streets, street lighting, traffic-control signals, police and fire alarm systems, waterworks, steam, electric and sewage treatment and disposal plants; the services of superintendents, inspectors or foremen regularly employed by the State of North Carolina or any political subdivision ~~thereof,~~ of the State or a municipal ~~corporation therein;~~ corporation; provided, however, that the internal engineering or surveying activity is not a holding out to or an offer to the public of engineering or any service thereof as prohibited by this Chapter. Engineering work, not related to the foregoing exemptions, where the safety of the public is directly involved shall be under the responsible charge of a ~~registered~~ licensed professional engineer, or in accordance with standards prepared or approved by a ~~registered~~ licensed professional engineer.

(8) The (i) preparation of fire sprinkler planning and design drawings by a fire sprinkler contractor licensed under Article 2 of Chapter 87 of the General Statutes, or (ii) the performance of internal engineering or survey work by a manufacturing or communications common carrier company, or by a research and development company, or by employees of ~~such~~ those corporations provided that ~~such~~ the work is in connection with, or incidental to products of, or nonengineering services rendered by ~~such~~ those corporations or their affiliates.

(9) The routine maintenance or servicing of machinery, equipment, facilities or structures, the work of mechanics in the performance of their established functions, or the inspection or supervision of construction by a foreman, superintendent, or agent of the architect or professional engineer, or services of an operational nature performed by an employee of a laboratory, a manufacturing plant, a public service corporation, or governmental operation."

Section 24. G.S. 89C-25.1 reads as rewritten:

"**§ 89C-25.1. Supervision of ~~unregistered~~ unlicensed individuals by ~~registered~~ licensed person.**

In all circumstances in which ~~unregistered~~ unlicensed individuals are permitted under this Chapter to perform engineering or land surveying work, or both, under the supervision of a ~~registered~~ licensed engineer, land surveyor, or both, the Board may by regulation establish a reasonable limit on the number of ~~unregistered~~ unlicensed individuals which a ~~registrant~~ licensee of the Board may directly or personally supervise at one time."

Section 25. G.S. 89C-26 reads as rewritten:

"**§ 89C-26. Duties of register of deeds.**

The register of deeds or any other county or proper public authority may not file or record any map, plat, survey, or other documents, within the definition of land surveying, which do not contain an original personal signature and original seal of a ~~registered~~ licensed land surveyor by whom, or under whose responsible charge, the map, plat, survey, or other documents were prepared, except as provided in G.S. 47-30(m) and (n)."

Section 26. G.S. 89C-28 reads as rewritten:

"**§ 89C-28. Existing ~~registration~~ licensure not affected.**

Nothing in this Chapter shall be construed as affecting the status of ~~registration~~ licensure of any professional engineer or ~~registered~~ land surveyor who is rightfully in possession of a certificate of ~~registration~~ licensure duly issued by the Board and valid as of July 1, 1975."

Section 27. This act is effective when it becomes law and applies to persons applying for licenses on or after that date and to persons practicing engineering and land surveying on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 794*
Committee Substitute Favorable 5/28/97
Committee Substitute #2 Favorable 6/25/97

Short Title: Engineering and Land Surveying Changes. (Public)

Sponsors:

Referred to:

April 3, 1997

A BILL TO BE ENTITLED

AN ACT TO MAKE SUBSTANTIVE CHANGES TO THE NORTH CAROLINA ENGINEERING AND LAND SURVEYING ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 89C-2 reads as rewritten:

"**§ 89C-2. Declarations; prohibitions.**

In order to safeguard life, health, and property, and to promote the public welfare, the practice of engineering and the practice of land surveying in this State are hereby declared to be subject to regulation in the public interest. It shall be unlawful for any person to practice or to offer to practice engineering or land surveying in this State, as defined in the provisions of this Chapter, or to use in connection with ~~his~~ the person's name or otherwise assume or advertise any title or description tending to convey the impression that ~~he~~ the person is either a professional engineer or a ~~registered~~ professional land surveyor, unless ~~such~~ the person has been duly ~~registered as such.~~ licensed. The right to engage in the practice of engineering or land surveying ~~shall be deemed~~ is a personal right, based on the qualifications of the ~~individual~~ person as evidenced by ~~his~~ the person's certificate of ~~registration,~~ licensure, which shall not be transferable."

Section 2. G.S. 89C-3 reads as rewritten:

"**§ 89C-3. Definitions.**

The following definitions apply in this Chapter:

(1) Board. -- The North Carolina State Board of ~~Registration~~ Examiners for ~~Professional~~ Engineers and ~~Land~~ Surveyors provided for by this Chapter.

(1a) Business firm. -- A partnership, firm, association, or another organization or group that is not a corporation and is acting as a unit.

(2) Engineer. -- A person who, by reason of ~~his~~ special knowledge and use of the mathematical, physical and engineering sciences and the principles and methods of engineering analysis and design, acquired by engineering education and engineering experience, is qualified to practice engineering.

(3) ~~Engineer-in-training.~~ Engineering intern. -- A person who complies with the requirements for education, experience and character, and has passed an examination in the fundamental engineering subjects, as provided in this Chapter.

(3a) Inactive licensee. -- Licensees who are not engaged in the practice of engineering or land surveying in this State.

(4) ~~Land surveyor-in-training.~~ Land surveyor intern. -- A person who has qualified for, taken, and passed an examination on the basic disciplines of land surveying as provided in this Chapter.

(5) Person. -- Any natural person, firm, partnership, corporation or other legal entity.

(6) Practice of engineering. --

a. Any service or creative work, the adequate performance of which requires engineering education, training, and experience, in the application of special knowledge of the mathematical, physical, and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning, and design of engineering works and systems, planning the use of land and water, engineering surveys, and the observation of construction for the purposes of assuring compliance with drawings and specifications, including the consultation, investigation, evaluation, planning, and design for either private or public use, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects, and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, pneumatic or thermal nature, insofar as they involve safeguarding life, health or property, and including such other professional services as may be necessary to the planning, progress and completion of any engineering services.

A person shall be construed to practice or offer to practice engineering, within the meaning and intent of this

Chapter, who practices any branch of the profession of engineering; or who, by verbal claim, sign, advertisement, letterhead, card, or in any other way represents ~~himself~~ the person to be a professional engineer, or through the use of some other title implies that ~~he~~ the person is a professional engineer or that ~~he~~ the person is ~~registered~~ licensed under this Chapter; or who holds ~~himself~~ the person out as able to perform, or who does perform any engineering service or work not exempted by this Chapter, or any other service designated by the practitioner which is recognized as engineering.

b. The term 'practice of engineering' shall not be construed to permit the location, description, establishment or reestablishment of property lines or descriptions of land boundaries for conveyance. The term does not include the assessment of an underground storage tank required by applicable rules at closure or change in service unless there has been a discharge or release of the product from the tank.

(7) Practice of land ~~surveying by registered land surveyors.~~ surveying.

--

a. ~~Any service or work, the adequate performance of which involves the application of special knowledge of the principles of mathematics, the related physical and applied sciences, and the relevant requirements of law for adequate evidence to the act of measuring and locating lines, angles, elevations, natural and man-made features in the air, on the surface of the earth, within underground workings, and on the beds of bodies of water for the purpose of determining areas and volumes, for the monumenting of property boundaries, and for the platting and layout of lands and subdivisions thereof, including the topography, alignment and grades of street and incidental drainage within the subdivision, and for the preparation and perpetuation of maps, record plats, field note records, and property descriptions that represent these surveys.~~ Providing professional services such as consultation, investigation, testimony, evaluation, planning, mapping, assembling, and interpreting reliable scientific measurements and information relative to the location, size, shape, or physical features of the earth, improvements on the earth, the space above the earth, or any part of the earth, whether the gathering of information for the providing of these services is accomplished by conventional ground measurements, by

aerial photography, by global positioning via satellites, or by a combination of any of these methods, and the utilization and development of these facts and interpretations into an orderly survey map, plan, report, description, or project. The practice of land surveying includes the following:

1. Locating, relocating, establishing, laying out, or retracing any property line, easement, or boundary of any tract of land;
2. Locating, relocating, establishing, or laying out the alignment or elevation of any of the fixed works embraced within the practice of professional engineering;
3. Making any survey for the subdivision of any tract of land, including the topography, alignment and grades of streets and incidental drainage within the subdivision, and the preparation and perpetuation of maps, record plats, field note records, and property descriptions that represent these surveys;
4. Determining, by the use of the principles of land surveying, the position for any survey monument or reference point, or setting, resetting, or replacing any survey monument or reference point;
5. Determining the configuration or contour of the earth's surface or the position of fixed objects on the earth's surface by measuring lines and angles and applying the principles of mathematics or photogrammetry;
6. Providing geodetic surveying which includes surveying for determination of the size and shape of the earth both horizontally and vertically and the precise positioning of points on the earth utilizing angular and linear measurements through spatially oriented spherical geometry; and
7. Creating, preparing, or modifying electronic or computerized data, including land information systems and geographic information systems relative to the performance of the practice of land surveying.

b. The term 'practice of land surveying' shall not be construed to permit the design or preparation of specifications for (i) major highways; (ii) wastewater systems; (iii) wastewater or industrial waste treatment works; (iv) pumping or lift stations; (v) water supply, treatment, or distribution systems; (vi) streets or storm sewer systems except as incidental to a subdivision.

(8) Professional engineer. -- A person who has been duly ~~registered and~~ licensed as a professional engineer by the Board established by this Chapter.

(8a) Professional engineer, retired. -- A person who has been duly licensed as a professional engineer by the Board and who chooses to relinquish or not to renew a license and who applies to and is approved by the Board to be granted the use of the honorific title 'Professional Engineer, Retired'.

(9) ~~Registered~~ Professional land surveyor. -- A person who, by reason of ~~his~~ special knowledge of mathematics, surveying principles and methods, and legal requirements which are acquired by education and/or practical experience, is qualified to engage in the practice of land surveying, ~~as herein defined,~~ as attested by ~~his registration~~ the person's licensure as a ~~registered~~ professional land surveyor by the Board.

(9a) Professional land surveyor, retired. -- A person who has been duly licensed as a professional land surveyor by the Board and who chooses to relinquish or not to renew a license and who applies to and is approved by the Board to be granted the use of the honorific title 'Professional Land Surveyor, Retired'.

(10) Responsible charge. -- Direct control and personal supervision, either of engineering work or of land surveying, as the case may be."

Section 3. G.S. 89C-4 reads as rewritten:

"**§ 89C-4. State Board of ~~Registration;~~ Examiners for Engineers and Surveyors; appointment; terms.**

A State Board of ~~Registration~~ Examiners for ~~Professional~~ Engineers and ~~Land~~ Surveyors, whose duty it is to administer the provisions of this Chapter, is created. The Board shall consist of four ~~registered~~ licensed professional engineers, three ~~registered~~ licensed professional land surveyors and two public members, who are neither professional engineers nor professional land surveyors. Of the land surveyor members, one and only one may hold dual ~~registration~~ licenses as a professional land surveyor and professional engineer. All of the members shall be appointed by the Governor. Appointments of the engineer and land surveyor members shall preferably, but not necessarily, be made from a list of nominees submitted by the professional societies for engineers and land surveyors in this State. Each member of the Board shall receive a certificate of appointment from the Governor and shall file with the Secretary of State ~~his~~ a written oath or affirmation for the faithful discharge of ~~his~~ the duties.

Members of the Board serve for staggered five-year terms, and no member may be appointed for more than two full terms. Members serve until the expiration of their respective terms and until their respective successors are appointed. If a vacancy occurs during a term, the Governor shall appoint a successor from the same classification as the person causing the vacancy to serve for the remainder of the

unexpired term. If the vacancy is not filled within 90 days after it occurs, the Board may appoint a provisional member to serve until the appointment by the Governor becomes effective. The provisional member during his tenure has all the powers and duties of a regular member."

Section 4. G.S. 89C-5 reads as rewritten:

"**§ 89C-5. Board members; qualifications.**

Each engineer member of the Board shall be a resident of North Carolina and shall be a ~~registered~~ licensed professional engineer engaged in the lawful practice of engineering in North Carolina for at least six years.

Each land surveyor member of the Board shall be a resident of North Carolina and shall be a ~~registered~~ licensed professional land surveyor engaged in the lawful practice of land surveying in North Carolina for at least six years.

Each public member of the Board shall be a resident of North Carolina."

Section 5. G.S. 89C-6 reads as rewritten:

"**§ 89C-6. Compensation and expenses of Board members.**

Each member of the Board, when attending to the work of the Board or any of its committees, shall receive as compensation for ~~his service~~ services the per diem and, in ~~addition thereto,~~ addition, shall be reimbursed for travel expenses and incidentals not exceeding the maximum set forth by law. In addition to per diem allowances, travel and incidentals, the secretary of the Board may, with the approval of the Board, receive such reasonable additional compensation as is compatible with the actual hours of work required by the duties of ~~his~~ the office."

Section 6. G.S. 89C-8 reads as rewritten:

"**§ 89C-8. Organization of the Board; meetings; election of officers.**

The Board shall hold at least two regular meetings each year. Special meetings may be held at such times and upon such notice as the rules and regulations of the Board may provide. The Board shall elect annually from its members a ~~chairman,~~ chair, a ~~vice-chairman,~~ vice-chair, and a secretary. A quorum of the Board shall consist of not less than five members. The Board shall operate under its rules and regulations supplemented by Robert's Rules of Order."

Section 7. G.S. 89C-9 reads as rewritten:

"**§ 89C-9. Executive ~~secretary;~~ director; duties and liabilities.**

The Board shall employ an executive ~~secretary~~ director who is not a member of the Board. The executive ~~secretary~~ director shall be a full-time employee of the Board and perform ~~such~~ the duties assigned to ~~him~~ the director by the secretary subject to the approval of the Board. The executive ~~secretary~~ director shall receive a salary and compensation fixed by the Board. The executive ~~secretary~~ director shall give a surety bond satisfactory to the Board conditioned upon the faithful performance of ~~his~~ the director's ~~duties.~~ duties assigned. The premium on ~~said~~ the bond shall be a necessary and proper expense of the Board."

Section 8. G.S. 89C-10 reads as rewritten:

"**§ 89C-10. Board powers.**

(a) The Board ~~shall have the power to~~ may adopt and amend all ~~rules and regulations. Additionally, the Board shall have the power to adopt such rules,~~ rules

and rules of ~~procedure, and regulations,~~ procedure as may be reasonably necessary for the proper performance of its duties, the regulation of its procedures, meetings, records, the ~~giving of~~ administration of ~~examinations and the conduct thereof,~~ examinations, and the ~~power~~ authority to enforce ~~such~~ the rules of professional conduct as ~~may, from time to time,~~ may be adopted by the Board pursuant to G.S. 89C-20.

The action by the Board in carrying out any of the powers specified ~~above~~ in this section shall be binding upon all persons ~~registered~~ licensed under this Chapter, including corporations and business firms holding certificates of authorization.

(b) The Board shall adopt and have an official seal, which shall be affixed to each certificate issued.

(c) The Board ~~is hereby authorized~~ may in the name of the State ~~to~~ apply for relief, by injunction, in the established manner provided in cases of civil procedure, without bond, to enforce the provisions of this Chapter, or to restrain any violation ~~thereof.~~ of the provisions of this Chapter. In ~~such proceedings,~~ proceedings for injunctive relief, it shall not be necessary to allege or prove either that an adequate remedy at law does not exist, or that substantial or irreparable damage would result from the continued violation ~~thereof.~~ of the provisions of this Chapter. The members of the Board shall not be personally liable under this proceeding.

(d) The Board may subject an applicant for ~~registration~~ licensure to ~~such~~ any examination ~~as it deems~~ necessary to determine ~~his~~ the applicant's qualifications.

(e) The Board ~~shall have the power to~~ may issue an appropriate certificate of ~~registration~~ licensure to any applicant who, in the opinion of the Board, has met the requirements of this Chapter.

(f) It shall be the responsibility and duty of the Board to conduct a regular program of investigation concerning all matters within its jurisdiction under the provisions of this Chapter. The investigation of a ~~registrant~~ licensee is confidential until the Board issues a citation to the ~~registrant.~~ licensee. The Board may expend its funds for salaries, fees, and per diem expenses, in connection with its investigations, provided that no ~~such~~ funds other than per diem expenses shall be paid to any member of the Board in connection with its investigations, nor may any member of the Board give testimony and ~~thereafter~~ later sit in deciding on any matter which may directly involve punitive action ~~under such~~ for the testimony.

(g) The Board ~~is authorized and empowered to~~ may use its funds to establish and conduct instructional programs for persons who are currently ~~registered~~ licensed to practice engineering or land surveying, as well as refresher courses for persons interested in obtaining adequate instruction or programs of study to qualify them for ~~registration~~ licensure to practice engineering or land surveying. The Board may expend its funds for these purposes and ~~is authorized and empowered~~ may not only ~~to~~ conduct, sponsor, and arrange for instructional programs, but also ~~to~~ may carry out ~~such~~ instructional programs through extension courses or other ~~media, and the~~ media. The Board may enter into plans or agreements with community colleges, public or private institutions of higher learning, ~~both public and private,~~ State and county boards of education, or with the governing authority of any industrial education

center for the purpose of planning, scheduling or arranging ~~such~~ courses, instruction, extension courses, or in assisting in obtaining courses of study or programs in the field of engineering and land surveying. The Board shall ~~make every effort practical to~~ encourage the educational institutions in this State to offer courses necessary to complete the educational requirements of this Chapter. For the purpose of carrying out these objectives, the Board ~~is authorized to make and promulgate such~~ may adopt rules ~~and regulations~~ as may be necessary for ~~such~~ the educational programs, instruction, extension services, or for entering into plans or contracts with persons or educational and industrial institutions.

(h) The Board may license sponsors of continuing professional competency activities who agree to conduct programs in accordance with standards adopted by the Board. Sponsors shall pay a license fee established by the Board, not to exceed two hundred fifty dollars ($250.00) for licensure under this subsection. The license fee shall accompany the application. Sponsors shall renew their licenses annually on a form provided by the Board."

Section 9. G.S. 89C-11 reads as rewritten:

"**§ 89C-11. Secretary; duties and liabilities; expenditures.**

The secretary of the Board shall receive and account for all moneys derived from the operation of the Board as provided in this Chapter, and shall deposit them in one or more special funds in banks or other financial institutions carrying deposit insurance and authorized to do business in North Carolina. The fund or funds shall be designated as 'Fund of the Board of ~~Registration~~ Examiners for ~~Professional~~ Engineers and ~~Land~~ Surveyors' and shall be drawn against only for the purpose of implementing provisions of this Chapter as herein provided. All expenses certified by the Board as properly and necessarily incurred in the discharge of its duties, including authorized compensation, shall be paid out of ~~said~~ this fund on the warrant signed by the secretary of the ~~Board; provided, however, that at~~ Board. At no time shall the total of warrants issued exceed the total amount of funds accumulated under this Chapter. The secretary of the Board shall give a surety bond satisfactory to the State Board of ~~Registration~~ Examiners for ~~Professional~~ Engineers and ~~Land~~ Surveyors, conditioned upon the faithful performance of ~~his duties.~~ the duties assigned. The premium on ~~said~~ the bond ~~shall be regarded as~~ is a proper and necessary expense of the Board. The secretary of the Board may delegate to the executive ~~secretary~~ director certain routine duties, such as receipt and disbursement of funds in stated amounts by a written authorization, which has the unanimous approval of the Board."

Section 10. G.S. 89C-12 reads as rewritten:

"**§ 89C-12. Records and reports of Board; evidence.**

The Board shall keep a record of its proceedings and a register of all applicants for ~~registration,~~ licensure, showing for each the date of application, name, age, education, and other qualifications, place of business and place of residence, whether the applicant was rejected or a certificate of ~~registration~~ licensure granted, and the date ~~of such action.~~ licensure was rejected or granted. The books and register of the Board shall be prima facie evidence of all matters recorded ~~therein,~~ by the Board,

and a copy duly certified by the secretary of the Board under seal shall be admissible in evidence as if the original were produced. A roster showing the names and places of business and of residence of all ~~registered~~ licensed professional engineers and all ~~registered~~ licensed professional land surveyors shall be prepared by the secretary of the Board current to the month of January of each ~~year; such~~ year. The roster shall be printed by the Board out of the Board's fund ~~of said Board~~ and distributed as ~~set forth~~ described in the Board's ~~rules and regulations.~~ rules. On or before the first day of May of each year, the Board shall submit to the Governor a report on its transactions for the preceding year, and shall file with the Secretary of State a copy of ~~such~~ the report, together with a complete statement of the receipts and expenditures of the ~~Board,~~ Board attested by the ~~affidavits of the chairman~~ chair and the ~~secretary,~~ secretary and a copy of the ~~said~~ the roster of ~~registered~~ licensed professional engineers and ~~registered~~ professional land surveyors."

Section 11. G.S. 89C-13 reads as rewritten:

"**§ 89C-13. General requirements for ~~registration.~~ licensure.**

(a) Engineer Applicant. -- To be eligible for ~~admission to examination for~~ licensure as a professional ~~engineer~~ engineer, an applicant must be of good character and reputation. An applicant desiring to take the examination in the fundamentals of engineering ~~only~~ must submit three character ~~references.~~ references, one of whom shall be a professional engineer. An applicant desiring to take the examination in the principles and practice of engineering must submit five references, two of whom shall be professional engineers having personal knowledge of ~~his~~ the applicant's engineering experiences.

The following shall be considered as minimum evidence satisfactory to the Board that the applicant is qualified for ~~registration:~~ licensure:

(1) As a professional engineer (shall meet one):

a. ~~Registration~~ Licensure by Comity or Endorsement. -- A person holding a certificate of ~~registration~~ licensure to engage in the practice of engineering, on the basis of comparable qualifications, issued to ~~him~~ the person by a proper authority of a state, territory, or possession of the United States, the District of Columbia, or of Canada, who completes an application for licensure and submits five references, two of which shall be from professional engineers having personal knowledge of the applicant's engineering experience, and ~~who~~ who, in the opinion of the Board, meets the requirements of this Chapter, based on verified evidence may, upon application, be ~~registered~~ licensed without further examination.

A person holding a certificate of qualification issued by the Committee on National Engineering Certification of the National Council of ~~Engineering Examiners,~~ Examiners for Engineering and Surveying whose qualifications meet the

requirements of this Chapter, may upon application, be ~~registered~~ licensed without further examination.

b. ~~E.I.T.~~ E.I. Certificate, Experience, and Examination. -- A holder of a certificate of ~~engineer-in-training~~ engineering intern issued by the Board, and with a specific record of an additional four years or more of progressive experience on engineering projects of a grade and character which indicates to the Board that the applicant may be competent to practice engineering, shall be admitted to ~~an eight-hour examination in~~ the principles and practice of ~~engineering.~~ engineering examination. Upon passing ~~such~~ the examination, the applicant shall be granted a certificate of ~~registration~~ licensure to practice professional engineering in this State, provided ~~he~~ the applicant is otherwise qualified.

c. Graduation, Experience, and Examination. -- A graduate of an engineering curriculum of four years or more approved by the Board as being of satisfactory standing, and with a specific record of an additional four years or more of progressive experience on engineering projects of a grade and character which indicates to the Board that the applicant may be competent to practice engineering, shall be admitted to ~~an eight-hour written examination in~~ the fundamentals of ~~engineering,~~ engineering examination, and ~~an eight-hour written examination in~~ the principles and practice of ~~engineering.~~ engineering examination. Upon passing ~~such~~ the examinations, the applicant shall be granted a certificate of ~~registration~~ licensure to practice professional engineering in this State, provided ~~he~~ the applicant is otherwise qualified.

d. Graduation, Experience, and Examination. -- A graduate of an engineering or related science curriculum of four years or more, other than the ones approved by the Board as being of satisfactory standing or with an equivalent education and engineering experience satisfactory to the Board and with a specific record of eight years or more of progressive experience on engineering projects of a grade and character which indicates to the Board that the applicant may be competent in the fundamentals of engineering, shall be admitted to ~~an eight-hour written examination in~~ the fundamentals of ~~engineering,~~ engineering examination and ~~an eight-hour written examination in~~ the principles and practice of ~~engineering.~~ engineering examination. Upon passing ~~such~~ the examinations, the applicant shall be granted a certificate of ~~registration~~ licensure to practice professional

engineering in this State, provided ~~he~~ the applicant is otherwise qualified.

e. Long-Established Practice. -- ~~An individual~~ A person with a specific record of 20 years or more of progressive experience on engineering projects of a grade and character which indicates to the Board that the applicant may be competent to practice engineering shall be admitted to ~~an eight-hour written examination in~~ the principles and practice of ~~engineering.~~ engineering examination. Upon passing ~~such~~ the examination, the applicant shall be granted a certificate of ~~registration~~ licensure to practice professional engineering in this State, provided ~~he~~ the applicant is otherwise qualified.

At its discretion the Board may require an applicant to submit exhibits, drawings, designs, or other tangible evidence of engineering work ~~executed by him and~~ which ~~he~~ the applicant personally accomplished or supervised.

The following shall be considered as minimum evidence that the applicant is qualified for certification:

(2) As an ~~engineer-in-training~~ engineering intern (shall meet one):

a. Graduation and Examination. -- A graduate of an engineering curriculum or related science curriculum of four years or more, approved by the Board as being of satisfactory standing, or a student who has attained senior status in an accredited engineering program, shall be admitted to ~~an eight-hour written examination in~~ the fundamentals of ~~engineering.~~ engineering examination. The applicant shall be notified if the examination was passed or not passed and if passed he shall be certified as an ~~engineer-in-training,~~ engineering intern if ~~he~~ the applicant is otherwise qualified.

b. Graduation, Experience, and Examination. -- A graduate of an engineering or related science curriculum of four years or more, other than the ones approved by the Board as being of satisfactory standing, or with equivalent education and engineering experience satisfactory to the Board and with a specific record of four or more years of progressive experience on engineering projects of a grade and character satisfactory to the Board, shall be admitted to ~~an eight-hour written examination in~~ the fundamentals of ~~engineering.~~ engineering examination. The applicant shall be notified if the examination was passed or not passed and if ~~passed he~~ passed, the applicant shall be certified as an ~~engineer-in-training~~ engineering intern if ~~he~~ the applicant is otherwise qualified.

(b) Land Surveyor Applicant. -- To be eligible for admission to examination for land ~~surveyor-in-training,~~ surveyor intern or ~~registered~~ professional land surveyor, an applicant must be of good character and reputation and shall submit five references with ~~his~~ the application for ~~registration~~ licensure as a land surveyor, two of which references shall be ~~registered~~ professional land surveyors having personal knowledge of ~~his~~ the applicant's land surveying experience, or in the case of an application for certification as a land ~~surveyor-in-training~~ surveyor intern by three references, one of which shall be a ~~registered~~ licensed land surveyor having personal knowledge of the applicant's land surveying experience.

The evaluation of a land surveyor applicant's qualifications shall involve a consideration of ~~his~~ the applicant's education, technical and land surveying experience, exhibits of land surveying projects with which ~~he~~ the applicant has been associated, and recommendations by ~~references, and reviewing of these categories during an oral examination.~~ references. The land surveyor applicant's qualifications may be reviewed at an interview if the Board ~~deems~~ determines it necessary. Educational credit for institute courses, correspondence courses, ~~etc.,~~ or other courses shall be determined by the Board.

The following shall be considered a minimum evidence satisfactory to the Board that the applicant is qualified for ~~registration~~ licensure as a professional land surveyor or for certification as a land ~~surveyor-in-training,~~ surveyor intern respectively:

(1) As a ~~registered~~ professional land surveyor (shall meet one):

a. Rightful possession of a ~~B.S.~~ bachelor of science degree in surveying or other equivalent curricula, all approved by the Board and a record satisfactory to the Board of ~~one year~~ two years or more of progressive practical ~~experience~~ experience, one year of which shall have been under a practicing ~~registered~~ professional land surveyor and satisfactorily passing ~~such~~ any oral and written ~~examination, taken in the presence of and~~ examination required by the Board, all of which shall determine and indicate that the ~~candidate~~ applicant is competent to practice land surveying. The applicant may ~~elect~~ be qualified by the Board to take the first examination (Surveying Fundamentals) immediately after obtaining the ~~B.S.~~ bachelor of science degree at the first regularly scheduled examination thereafter. Upon passing the first examination and successful completion of the experience required by this subdivision, the applicant may apply to take the second examination (Principles and Practice of Land Surveying). An applicant who passes both examinations and completes the educational and experience requirements of this subdivision shall be granted ~~registration~~ licensure as a professional land surveyor.

b. Rightful possession of an associate degree in surveying technology approved by the Board and a record satisfactory

to the Board of ~~three~~ four years of progressive practical experience, ~~two~~ three years of which shall have been under a practicing ~~registered~~ licensed land surveyor, and satisfactorily passing ~~such~~ any written and oral examination ~~taken in the presence of and as~~ required by the Board, all of which shall determine and indicate that the ~~candidate~~ applicant is competent to practice land surveying. The applicant may ~~elect~~ apply to the Board to take the first examination (Surveying Fundamentals) immediately after obtaining the associate degree at the first regularly scheduled examination thereafter. Upon passing the first examination and successfully completing ~~years of progressive practical experience under a practicing registered land surveyor,~~ the practical experience required under this subdivision, the applicant may ~~elect~~ apply to the Board to take the second examination ~~(Principles and Practice of Land Surveying) prior to, during, or after completion of the additional experience required by this subdivision.~~ (Principles and Practice of Land Surveying). An applicant who passes both examinations and successfully completes the educational and experience requirements of this subdivision shall be granted ~~registration~~ licensure as a professional land surveyor.

~~e. Land Surveyor-in-Training Certificate, Experience, and Examination. — A holder of a certificate of land surveyor-in-training issued by the Board, and with a specific record of an additional two years or more of progressive surveying experience, one year of which shall have been under a practicing registered land surveyor, of a grade and character which indicates to the Board that the applicant may be competent to practice land surveying, shall be admitted to two four-hour examinations. Upon passing such examinations, the applicant shall be granted a certificate of registration to practice land surveying in this State, provided he is otherwise qualified.~~

d. Graduation from a high school or the completion of a high school equivalency certificate and a record satisfactory to the Board of seven years of progressive practical experience, ~~six~~ seven years of which shall have been under a practicing ~~registered~~ licensed land surveyor, and satisfactorily passing ~~such~~ any oral and written ~~examination written in the presence of and~~ examinations required by the Board, all of which shall determine and indicate that the candidate is competent to practice land surveying. The applicant may be

qualified by the Board to take the first examination (Surveying Fundamentals) upon graduation from high school or the completion of a high school equivalency certificate and successfully completing six years of progressive practice experience, five of which shall have been under a practicing licensed land surveyor. The applicant may apply to take the second examination (Principles and Practice of Land Surveying) upon passing the first examination and successfully completing four years of progressive practical experience, two of which shall have been under a practicing licensed land surveyor.

e. Repealed by Session Laws 1985 (Regular Session, 1986), c. 977, s. 7.

f. ~~Registration~~ Licensure by Comity or Endorsement. -- A person holding a certificate of ~~registration~~ licensure to engage in the practice of land surveying issued on comparable qualifications from a state, territory, or possession of the United States will be given comity considerations. However, ~~he~~ the applicant may be asked to take ~~such~~ any examinations as the Board ~~deems necessary~~ requires to determine ~~his~~ the applicant's qualifications, but in any event, ~~he~~ the applicant shall be required to pass ~~a written~~ an examination which shall include questions on laws, procedures, and practices pertaining to the practice of land surveying in North Carolina.

g. A licensed professional engineer who can satisfactorily demonstrate to the Board that ~~his~~ the professional engineer's formal academic training in acquiring a degree and field experience in engineering includes land surveying, to the extent necessary to reasonably qualify the applicant in the practice of land surveying, may apply for and may be granted permission to take the ~~two four-hour examinations on the~~ principles and practice of land surveying examination and the ~~two four-hour examinations on the~~ fundamentals of land ~~surveying.~~ surveying examination. Upon satisfactorily passing the examinations, the applicant ~~will~~ shall be granted a license to practice land surveying in the State of North Carolina.

h. Professional Engineers in Land Surveying. -- Any person presently licensed to practice professional engineering under this Chapter shall upon ~~his~~ application be licensed to practice land surveying, providing ~~his~~ a written application is filed with the Board within one year next after June 19, 1975.

i. Photogrammetrists. -- Any person presently practicing photogrammetry with at least seven years of experience in the profession, two or more of which shall have been in responsible charge of photogrammetric mapping projects meeting National Map Accuracy Standards shall, upon application, be licensed to practice land surveying, provided:

1. The applicant submit certified proof of graduation from high school, high school equivalency, or higher degree;
2. The applicant submit proof of employment in responsible charge as a photogrammetrist practicing within the State of North Carolina to include itemized reports detailing methods, procedures, amount of applicant's personal involvement and the name, address, and telephone numbers of the client for five projects completed by the applicant with the State. A final map for one of the five projects shall also be submitted;
3. Five references to the applicant's character and quality of work, three of which shall be from professional land surveyors, are submitted to the Board; and
4. The application is submitted to the Board by July 1, 1998. After July 1, 1998, no photogrammetrist shall be licensed without meeting the same requirements as to education, length of experience, and testing required of all land surveying applicants.

The Board shall require an applicant to submit exhibits, drawings, plats or other tangible evidence of land surveying work executed by ~~him~~ the applicant under proper supervision and which ~~he~~ the applicant has personally accomplished or supervised.

Land surveying encompasses a number of disciplines including geodetic surveying, hydrographic surveying, cadastral surveying, engineering surveying, route surveying, photogrammetric (aerial) surveying, and topographic surveying. A professional land surveyor shall practice only within the surveyor's area of expertise.

(2) As a land ~~surveyor-in-training~~ surveyor intern (shall meet one):

a. Rightful possession of an associate degree in surveying technology approved by the Board and satisfactorily passing a written ~~or~~ and oral examination ~~taken in the presence of~~ and as required by the Board.
b. Rightful possession of a ~~B.S.~~ bachelors degree in surveying or other equivalent curricula in surveying all approved by the Board and satisfactorily passing ~~such~~ any oral and

written examinations ~~written in the presence of and~~ required by the Board.

c. Graduation from high school or the completion of a high school equivalency certificate and a record satisfactory to the Board of ~~five~~ six years of progressive, practical experience, ~~four~~ five years of which shall have been under a practicing ~~registered~~ licensed land surveyor and satisfactorily passing any oral and written examinations ~~taken in the presence of and as~~ required by the Board.

The Board shall require an applicant to submit exhibits, drawings, plats, or other tangible evidence of land surveying work executed by ~~him~~ the applicant under proper supervision and which ~~he~~ the applicant has personally accomplished or supervised."

Section 12. G.S. 89C-14 reads as rewritten:

"**§ 89C-14. Application for ~~registration; registration~~ licensure; license fees.**

(a) Application for ~~registration~~ licensure as a professional engineer or ~~registered~~ professional land surveyor shall be on a form prescribed and furnished by the Board. It shall contain statements made under oath, showing the applicant's education and a detailed summary of ~~his~~ the applicant's technical and engineering or land surveying experience, and shall include the names and complete mailing addresses of the references, none of whom ~~should~~ may be immediate members of the applicant's family or members of the Board.

The Board may accept the certified information on the copy of a current formal certificate of qualifications issued by the National Council of ~~Engineering Examiners Committee or National Engineering Certification for Professional Engineer applicants~~ Examiners for Engineering and Surveying in lieu of the same information that is required for the form prescribed and furnished by the Board.

(b) An applicant for ~~registration~~ licensure who is required to take the written examination shall pay ~~a fee equal to the cost of the examination to the Board plus an additional amount~~ to the Board an application fee not to exceed one hundred dollars ($100.00). The Board may charge any fee necessary to defray the cost of any required examinations. The fee shall accompany the application. The fee for comity ~~registration~~ licensure of engineers and land surveyors who hold unexpired certificates in another state or a territory of the United States or in Canada shall be the total current fee as fixed by the Board.

(c) The certification fee for a corporation is the amount set by the Board ~~in accordance with G.S. 55B-10.~~ but shall not exceed one hundred dollars ($100.00). The fee shall accompany the application. The certification fee for a business firm is the same as the fee for a corporation. The fee for renewal of a certificate of ~~registration~~ licensure of a corporation is the amount set by the Board ~~in accordance with G.S. 55B-11.~~ but shall not exceed seventy-five dollars ($75.00). The fee for renewal of a certificate of ~~registration~~ licensure for a business firm is the same as the renewal fee for a corporation.

(d) Should the Board deny the issuance of a certificate of ~~registration~~ licensure to any applicant, the unobligated portion of fees paid shall be returned by the Board to the applicant.

(e) A candidate failing an examination may apply, and be considered by the Board, for reexamination at the end of six months. The Board shall make such reexamination charge as is necessary to defray the cost of the examination.

A candidate ~~failing an examination three times will not be permitted to take a reexamination until he has made a written appeal to the Board and his tentative qualifications for the examination are reviewed and reaffirmed by the Board.~~ with a combination of three failures or unexcused absences on an examination shall only be eligible after submitting a new application with appropriate application fee, and be considered by the Board for reexamination at the end of 12 months. After the end of the 12-month period, the applicant may take the examination no more than once every calendar year."

Section 13. G.S. 89C-15 reads as rewritten:

"**§ 89C-15. Examinations.**

(a) The examinations will be held at ~~such~~ the times and places as the Board directs. The Board shall determine the passing grade on examinations. All examinations shall be approved by the entire Board.

(b) Written examinations will be given in sections and may be taken only after the applicant has met the other minimum requirements as given in ~~G.S. 89C-13,~~ G.S. 89C-13 and has been approved by the Board for admission to the examination as follows:

(1) Engineering Fundamentals. -- Consists of an eight-hour examination on the fundamentals of engineering. Passing this examination qualifies the ~~examinee~~ applicant for an ~~engineer-in-training~~ engineering intern certificate, provided ~~he~~ the applicant has met all other requirements for ~~certification~~ licensure required by this Chapter.

(2) Principles and Practice of Engineering. -- Consists of an eight-hour examination on applied engineering. Passing this examination qualifies the ~~examinee~~ applicant for ~~registration~~ licensure as a professional engineer, provided ~~he~~ the applicant has met the other requirements for registration required by this Chapter.

(3) Surveying Fundamentals. -- Consists of ~~two four-hour examinations~~ an eight-hour examination on the elementary disciplines of land surveying. Passing ~~both of these examinations~~ this examination qualifies the ~~examinee~~ applicant for a land ~~surveyor-in-training~~ surveyor intern certificate provided ~~he~~ the applicant has met all other requirements for certification required by this Chapter.

(4) Principles and Practices of Land Surveying. -- Consists of ~~two four-hour examinations~~ a six-hour examination on the basic and applied disciplines of land ~~surveying, one examination on basic disciplines and the other examination covering applied disciplines.~~

surveying and a two-hour examination on requirements specific to the practice of land surveying in North Carolina. Passing each of these examinations qualifies the ~~examinee~~ applicant for a ~~registered~~ professional land surveyor certificate provided ~~he~~ the applicant has met all other requirements for certification required by this Chapter."

Section 14. G.S. 89C-16 reads as rewritten:

"**§ 89C-16. Certificates of ~~registration;~~ licensure; effect; seals.**

(a) The Board shall issue to any applicant, who, in the opinion of the Board, has met the requirements of this Chapter, a certificate of ~~registration~~ licensure giving the ~~registrant~~ licensee proper authority to practice ~~his~~ the profession in this State. The certificate of ~~registration~~ licensure for a professional engineer shall carry the designation 'professional engineer,' and for a land surveyor, ~~'registered~~ 'professional land surveyor,' shall give the full name of the ~~registrant~~ licensee with ~~his serial~~ the Board designated licensure number and shall be signed by the ~~chairman~~ chair and the secretary under the seal of the Board.

(b) This certificate shall be prima facie evidence that the person named ~~thereon~~ on the certificate is entitled to all rights, privileges and responsibilities of a professional engineer or a ~~registered~~ professional land surveyor, while the ~~said~~ certificate of ~~registration~~ licensure remains unrevoked or unexpired.

(c) Each ~~registrant hereunder~~ licensee shall upon ~~registration~~ licensure obtain a seal of a design authorized by the Board bearing the ~~registrant's~~ licensee's name, ~~serial~~ license number, and the legend, 'professional engineer,' or ~~'registered~~ 'professional land surveyor.' Final drawings, specifications, plans and reports prepared by a ~~registrant~~ licensee shall, when issued, be certified and stamped with the ~~said~~ seal or facsimile ~~thereof~~ of the seal unless the ~~registrant~~ licensee is exempt under the provisions of G.S. 89C-25(7). It shall be unlawful for a ~~registrant~~ licensee to affix, or permit ~~his~~ the licensee's seal and signature or facsimile ~~thereof~~ of the seal and signature to be affixed to any drawings, specifications, plans or reports after the expiration of a certificate or for the purpose of aiding or abetting any other person to evade or attempt to evade any provision of this Chapter. A professional engineer practicing land surveying shall use ~~his registered~~ the licensee's land surveyor seal."

Section 15. G.S. 89C-17 reads as rewritten:

"**§ 89C-17. Expirations and renewals of certificates.**

Certificates for ~~registration~~ licensure shall expire on the last day of the month of December next following their issuance or renewal, and shall become invalid on that date unless renewed. When necessary to protect the public health, safety, or welfare, the Board shall require ~~such~~ any evidence ~~as it deems~~ necessary to establish the continuing competency of engineers and land surveyors as a condition of renewal of licenses. When the Board is satisfied as to the continuing competency of an applicant, it shall issue a renewal of the certificate upon payment by the applicant of a fee fixed by the Board but not to exceed ~~fifty dollars ($50.00).~~ seventy-five dollars ($75.00). The secretary of the Board shall notify by mail every person ~~registered~~ licensed under this Chapter of the date of expiration of ~~his~~ the certificate, the amount of the fee

required for its renewal for one year, and any requirement as to evidence of continued competency. The notice shall be mailed at least one month in advance of the expiration date of the certificate. Renewal shall be effected at any time during the month of January immediately following, by payment to the secretary of the Board of a renewal fee, as determined by the Board, which shall not exceed ~~fifty dollars ($50.00).~~ seventy-five dollars ($75.00). Failure on the part of any registrant to renew ~~his~~ the certificate annually in the month of January, as required above, shall deprive the registrant of the right to practice until renewal has been effected. Renewal may be effected at any time during the first ~~36~~ 12 months immediately following its invalidation ~~of payment of the renewal fee increased ten percent (10%) for each month or fraction of a month that payment for renewal is delayed.~~ by payment of the established renewal fee and a late penalty of one hundred dollars ($100.00). Failure of a ~~registrant~~ licensee to renew ~~his registration~~ the license for a period of ~~36~~ 12 months shall require the individual, prior to resuming practice in North Carolina, to submit an application ~~therefor~~ on the prescribed form, and to meet all other requirements for ~~registration~~ licensure as set forth in Chapter 89C. The secretary of the Board is instructed to remove from the official roster of engineers and land surveyors the names of all ~~registrants~~ licensees who have not effected their renewal by the first day of February immediately following the date of their expiration. The Board may ~~enact~~ adopt rules to provide for renewals in distress or hardship cases due to military service, prolonged illness, or prolonged absence from the State, where the applicant for renewal demonstrates to the Board that ~~he~~ the applicant has maintained ~~his~~ active knowledge and professional status as an engineer or land surveyor, as the case may be. It shall be the responsibility of each ~~registrant~~ licensee to inform the Board promptly concerning change in address. A licensee may request and be granted inactive status. No inactive licensee may practice in this State unless otherwise exempted in this Chapter. A licensee granted inactive status shall pay annual renewal fees but shall not be subject to annual continuing professional competency requirements. A licensee granted inactive status may return to active status by meeting all requirements of the Board, including demonstration of continuing professional competency as a condition of reinstatement."

Section 16. G.S. 89C-18 reads as rewritten:

"**§ 89C-18. Duplicate certificates.**

The Board may issue a duplicate certificate of ~~registration~~ licensure or certificate of authorization to replace any certificate that has been lost, destroyed, or mutilated and may charge a fee of up to twenty-five dollars ($25.00) for issuing the certificate."

Section 17. G.S. 89C-19 reads as rewritten:

"**§ 89C-19. Public works; requirements where public safety involved.**

This State and its political subdivisions such as counties, cities, towns, or other political entities or legally constituted boards, commissions, public utility companies, or authorities, or officials, or employees ~~thereof~~ of these entities shall not engage in the practice of engineering or land surveying involving either public or private property where the safety of the public is directly involved without the project being under the supervision of a professional engineer for the preparations of plans and

specifications for engineering projects, or a ~~registered~~ professional land surveyor for land surveying projects, as provided for the practice of the respective professions by this Chapter.

An official or employee of the State or any political subdivision specified in this section, holding the positions set out in this section as of June 19, 1975, shall be exempt from the provisions of this section so long as such official or employee is engaged in substantially the same type of work as is involved in ~~his~~ the present position.

Nothing in this section shall be construed to prohibit inspection, maintenance and service work done by employees of the State of North Carolina, any political subdivision ~~thereof,~~ of the State, or any municipality ~~therein~~ including construction, installation, servicing, and maintenance by regular full-time employees of, secondary roads and drawings incidental ~~thereto,~~ to work on secondary roads, streets, street lighting, traffic-control signals, police and fire alarm systems, waterworks, steam, electric and sewage treatment and disposal plants, the services of superintendents, inspectors or foremen regularly employed by the State of North Carolina or any political subdivision ~~thereof,~~ of the State, or municipal ~~corporation therein.~~ corporation.

The provisions in this section shall not be construed to alter or modify the requirements of Article 1 of Chapter 133 of the General Statutes."

Section 18. G.S. 89C-20 reads as rewritten:

"**§ 89C-20. Rules of professional conduct.**

In the interest of protecting the safety, health, and welfare of the public, the Board shall ~~promulgate and~~ adopt rules of professional conduct applicable to the practice of engineering and land surveying. These rules, when adopted, shall be construed to be a reasonable exercise of the police power vested in the Board of ~~Registration~~ Examiners for ~~Professional~~ Engineers and Land Surveyors. Every person ~~registered~~ licensed by the Board shall subscribe to and observe the adopted rules as the standard of professional conduct for the practice of engineering and land ~~surveying.~~ surveying and shall cooperate fully with the Board in the course of any investigation. In the case of violation of the rules of professional conduct, the Board shall ~~have the responsibility and duty to~~ proceed in accordance with G.S. 89C-22."

Section 19. G.S. 89C-21 reads as rewritten:

"**§ 89C-21. Disciplinary action -- Reexamination, revocation, suspension, reprimand, or civil penalty.**

(a) The Board may reprimand the licensee, suspend, refuse to renew, or revoke the certificate of ~~registration,~~ licensure, or, as appropriate, require reexamination, for any engineer or land surveyor, who is found:

(1) Guilty of the practice of any fraud or deceit in obtaining a certificate of ~~registration~~ licensure or certificate of authorization.

(2) Guilty of any gross negligence or misconduct in the practice of ~~his~~ the profession.

(3) Guilty of any felony or any crime involving moral turpitude.

(4) Guilty of violation of the Rules of Professional Conduct, as adopted by the Board.

(5) To have been declared insane or incompetent by a court of competent jurisdiction and has not ~~thereafter~~ later been lawfully declared sane or competent.

(6) Guilty of professional incompetence. In the event the Board finds that a certificate holder is incompetent the Board may, in its discretion, require oral or written examinations, or other indication of the certificate holder's fitness to practice ~~his profession~~ engineering or land surveying and suspend ~~his~~ the license during any such period.

(b) The Board ~~shall have the power to~~ may (i) revoke a certificate of authorization, or (ii) to suspend a certificate of authorization for a period of time not exceeding two years, of any corporation or business firm where one or more of its officers or directors have committed any act or have been guilty of any conduct which would authorize a revocation or suspension of their certificates of ~~registration~~ licensure under the provision of this section.

(c) The Board may levy a civil penalty not in excess of two thousand dollars ($2,000) for any engineer or land surveyor who violates any of the provisions of subdivisions (1) through (4) of subsection (a) of this section. All civil penalties collected by the Board shall be deposited in the General Fund of North Carolina.

(d) Before imposing and assessing a civil penalty and fixing the ~~amount thereof,~~ amount, the Board shall, as a part of its deliberation, take into consideration the following factors:

(1) The nature, gravity, and persistence of the particular violations;

(2) The appropriateness of the imposition of a civil penalty when considered alone or in combination with other punishment;

(3) Whether the violation(s) were done willfully and maliciously; and

(4) Any other factors which would tend to either mitigate or aggravate the violation(s) found to exist."

Section 20. G.S. 89C-22 reads as rewritten:

"**§ 89C-22. Disciplinary action -- Charges; procedure.**

(a) Any person may prefer charges of fraud, deceit, gross negligence, incompetence, misconduct, or violation of the rules of professional conduct, against any Board registrant. The charges shall be in writing and shall be sworn to by the person or persons making them and shall be filed with ~~the secretary of~~ the Board.

(b) All charges, unless dismissed by the Board as unfounded or trivial, shall be heard by the Board as provided under the requirements of Chapter 150B of the General Statutes.

(c) If, after ~~such~~ a hearing, a majority of the Board votes in favor of sustaining the charges, the Board shall reprimand, levy a civil penalty, suspend, refuse to renew, or revoke the ~~registrant's certificate of registration.~~ licensee's certificate.

(d) A ~~registrant~~ licensee who is aggrieved by a final decision of the Board may appeal for judicial review as provided by Article 4 of Chapter 150B.

(e) The Board may, upon petition of an individual or an entity whose certificate has been revoked, for sufficient ~~reasons it may deem sufficient,~~ reasons as it may determine, reissue a certificate of ~~registration~~ licensure or authorization, provided that a majority of the members of the Board vote in favor of such issuance."

Section 21. G.S. 89C-23 reads as rewritten:

"**§ 89C-23. Unlawful to practice engineering or land surveying without ~~registration;~~ licensure; unlawful use of title or terms; penalties; Attorney General to be legal adviser.**

Any person who shall practice, or offer to practice, engineering or land surveying in this State without first being ~~registered~~ licensed in accordance with the provisions of this Chapter, or any person, firm, partnership, organization, association, corporation, or other entity using or employing the words 'engineer' or 'engineering' or 'professional engineer' or 'professional engineering' or 'land surveyor' or 'land surveying,' or any modification or derivative ~~thereof~~ of those words in its name or form of business or activity except as ~~registered~~ licensed under this Chapter or in pursuit of activities exempted by this Chapter, or any person presenting or attempting to use the certificate of ~~registration~~ licensure or the seal of another, or any person who shall give any false or forged evidence of any kind to the Board or to any member ~~thereof~~ of the Board in obtaining or attempting to obtain a certificate of ~~registration,~~ licensure, or any person who shall falsely impersonate any other ~~registrant~~ licensee of like or different name, or any person who shall attempt to use an expired or revoked or nonexistent certificate of ~~registration,~~ licensure, or who shall practice or offer to practice when not qualified, or any person who falsely claims that ~~he~~ the person is registered under this Chapter, or any person who shall violate any of the provisions of this Chapter, in addition to injunctive procedures set out hereinbefore, shall be guilty of a Class 2 misdemeanor. In no event shall there be representation of or holding out to the public of any engineering expertise by ~~unregistered~~ unlicensed persons. It shall be the duty of all duly constituted officers of the State and all political subdivisions ~~thereof~~ of the State to enforce the provisions of this Chapter and to prosecute any persons violating ~~same.~~ them.

The Attorney General of the State or ~~his~~ an assistant shall act as legal adviser to the Board and render ~~such~~ any legal assistance ~~as may be~~ necessary ~~in carrying~~ to carry out the provisions of this Chapter. The Board may employ counsel and necessary assistance to aid in the enforcement of this Chapter, and the compensation and expenses ~~therefor~~ for the assistance shall be paid from funds of the Board."

Section 22. G.S. 89C-24 reads as rewritten:

"**§ 89C-24. ~~Registration~~ Licensure of corporations and business firms that engage in the practice of engineering or land surveying.**

A corporation or business firm may not engage in the practice of engineering or land surveying in this State unless it is ~~registered with~~ licensed by the Board and has paid ~~the required registration fee.~~ an application fee established by the Board in an amount not to exceed two hundred fifty dollars ($250.00). A corporation or business firm is subject to the same duties and responsibilities as an individual ~~registrant. Registration~~ licensee. Licensure of a corporation or business firm does not affect the

requirement that all engineering or land surveying work done by the corporation or business firm be performed by or under the responsible charge of individual registrants, nor does it relieve the individual registrants within a corporation or business firm of their design and supervision responsibilities.

This section applies to every corporation that is engaged in the practice of engineering or land surveying, regardless of when it was incorporated. A corporation that is not exempt from Chapter 55B of the General Statutes by application of G.S. 55B-15 must be incorporated under that Chapter."

Section 23. G.S. 89C-25 reads as rewritten:

"**§ 89C-25. Limitations on application of Chapter.**

This Chapter shall not be construed to prevent or affect:

(1) The practice of architecture, landscape architecture, or contracting or any other legally recognized profession or trade; or

(2) The practice of professional engineering or land surveying in this State or by any person not a resident of this State and having no established place of business in this State when this practice does not aggregate more than 90 days in any calendar year, whether performed in this State or elsewhere, or involve more than one specific project; provided, however, that ~~such~~ the person is ~~legally qualified by registration~~ licensed to practice the ~~said~~ profession in ~~his~~ the person's own state or country, in which the requirements and qualifications for obtaining a certificate of ~~registration~~ licensure are satisfactory to the Board; in which case the person shall apply for and the Board will issue a temporary permit; or

(3) The practice of professional engineering or land surveying in this State not to aggregate more than 90 days by any person residing in this State, but whose residence has not been of sufficient duration for the Board to grant or deny ~~registration;~~ licensure; provided, however, ~~such~~ the person shall have filed an application for ~~registration~~ licensure as a professional engineer or ~~registered~~ professional land surveyor and shall have paid the fee provided for in G.S. 89C-14, and provided that ~~such a~~ the person is ~~legally qualified by registration~~ licensed to practice professional engineering or professional land surveying in ~~his~~ the person's own state or country in which the requirements and qualifications for obtaining a certificate of ~~registration~~ licensure are satisfactory to the Board, in which case the person shall apply for and the Board will issue a temporary permit; or

(4) Engaging in engineering or land surveying as an employee or assistant under the responsible charge of a professional engineer or ~~registered~~ professional land surveyor or as an employee or assistant of a nonresident professional engineer or a nonresident ~~registered~~ professional land surveyor provided for in subdivisions (2) and (3)

of this section, provided that ~~said~~ the work as an employee may not include responsible charge of design or supervision; or

(5) The practice of professional engineering or land surveying by any person not a resident of, and having no established place of business in this State, as a consulting associate of a professional engineer or ~~registered~~ professional land surveyor ~~registered~~ licensed under the provisions of this Chapter; provided, the nonresident is qualified for ~~such~~ performing the professional service in ~~his~~ the person's own state or country; or

(6) Practice by members of the armed forces or employees of the government of the United States while engaged in the practice of engineering or land surveying solely for ~~said~~ the government on government-owned works and projects; or

(7) The internal engineering or surveying activities of a person, firm or corporation engaged in manufacturing, processing, or producing a product, including the activities of public service corporations, public utility companies, authorities, State agencies, railroads, or membership cooperatives, or the installation and servicing of their product in the field; or research and development in connection with the manufacture of that product or their service; or of their research affiliates; or their employees in the course of their employment in connection with the manufacture, installation, or servicing of their product or service in the field, or on-the-premises maintenance of machinery, equipment, or apparatus incidental to the manufacture or installation of the product or service of a firm by the employees of the firm upon property owned, leased or used by the firm; inspection, maintenance and service work done by employees of the State of North Carolina, any political subdivision ~~thereof,~~ of the State, or any municipality ~~therein~~ including construction, installation, servicing, maintenance by regular full-time employees of streets, street lighting, traffic-control signals, police and fire alarm systems, waterworks, steam, electric and sewage treatment and disposal plants; the services of superintendents, inspectors or foremen regularly employed by the State of North Carolina or any political subdivision ~~thereof,~~ of the State or a municipal ~~corporation therein;~~ corporation; provided, however, that the internal engineering or surveying activity is not a holding out to or an offer to the public of engineering or any service thereof as prohibited by this Chapter. Engineering work, not related to the foregoing exemptions, where the safety of the public is directly involved shall be under the responsible charge of a ~~registered~~ licensed professional engineer, or in accordance with standards prepared or approved by a ~~registered~~ licensed professional engineer.

(8) The (i) preparation of fire sprinkler planning and design drawings by a fire sprinkler contractor licensed under Article 2 of Chapter 87 of the General Statutes, or (ii) the performance of internal engineering or survey work by a manufacturing or communications common carrier company, or by a research and development company, or by employees of ~~such~~ those corporations provided that ~~such~~ the work is in connection with, or incidental to products of, or nonengineering services rendered by ~~such~~ those corporations or their affiliates.

(9) The routine maintenance or servicing of machinery, equipment, facilities or structures, the work of mechanics in the performance of their established functions, or the inspection or supervision of construction by a foreman, superintendent, or agent of the architect or professional engineer, or services of an operational nature performed by an employee of a laboratory, a manufacturing plant, a public service corporation, or governmental operation."

Section 24. G.S. 89C-25.1 reads as rewritten:

"**§ 89C-25.1. Supervision of ~~unregistered~~ unlicensed individuals by ~~registered~~ licensed person.**

In all circumstances in which ~~unregistered~~ unlicensed individuals are permitted under this Chapter to perform engineering or land surveying work, or both, under the supervision of a ~~registered~~ licensed engineer, land surveyor, or both, the Board may by regulation establish a reasonable limit on the number of ~~unregistered~~ unlicensed individuals which a ~~registrant~~ licensee of the Board may directly or personally supervise at one time."

Section 25. G.S. 89C-26 reads as rewritten:

"**§ 89C-26. Duties of register of deeds.**

The register of deeds or any other county or proper public authority may not file or record any map, plat, survey, or other documents, within the definition of land surveying, which do not contain an original personal signature and original seal of a ~~registered~~ licensed land surveyor by whom, or under whose responsible charge, the map, plat, survey, or other documents were prepared, except as provided in G.S. 47-30(m) and (n)."

Section 26. G.S. 89C-28 reads as rewritten:

"**§ 89C-28. Existing ~~registration~~ licensure not affected.**

Nothing in this Chapter shall be construed as affecting the status of ~~registration~~ licensure of any professional engineer or ~~registered~~ land surveyor who is rightfully in possession of a certificate of ~~registration~~ licensure duly issued by the Board and valid as of July 1, 1975."

Section 27. This act becomes effective July 1, 1997, and applies to persons applying for licenses on or after that date and to persons practicing engineering and land surveying on or after that date.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House**.

☐ Committee Substitute for
H.J.R. 1004 A JOINT RESOLUTION PROVIDING FOR CONFIRMATION OF THREE APPOINTMENTS BY THE GOVERNOR OF NEW MEMBERS TO THE STATE BOARD OF EDUCATION.

☐ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE JOINT RESOLUTION 1004

Sponsors: Representatives Russell and Shubert.

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

April 17, 1997

A JOINT RESOLUTION PROVIDING FOR CONFIRMATION OF THREE APPOINTMENTS BY THE GOVERNOR OF NEW MEMBERS TO THE STATE BOARD OF EDUCATION.

Whereas, under the provisions of the Constitution of North Carolina and G.S. 115C-10, appointments by the Governor to membership on the State Board of Education are subject to confirmation by the General Assembly in joint session; and

Whereas, vacancies have occurred on the State Board of Education; and

Whereas, the Governor has transmitted to the presiding officers of the House of Representatives and the Senate, the names of his appointees to fill the terms of membership on the State Board of Education which expire March 31, 2005.

Now, therefore, be it resolved by the House of Representatives, the Senate concurring:

Section 1. The appointments of three persons to membership on the State Board of Education for terms to expire March 31, 2005, are confirmed.

Section 2. This resolution is effective upon ratification.

comm sub

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

H1004-PCSRH-001
PROPOSED COMMITTEE SUBSTITUTE
HOUSE JOINT RESOLUTION 1004
THIS IS A DRAFT 8-JUL-97 17:33:31
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Sponsors:

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

April 17, 1997

A JOINT RESOLUTION PROVIDING FOR CONFIRMATION OF THE APPOINTMENTS OF EVELYN B. MONROE, JOHN R. LAURITZEN, AND JAY M. ROBINSON TO MEMBERSHIP ON THE STATE BOARD OF EDUCATION.

Whereas, under the provisions of the Constitution of North Carolina and G.S. 115C-10, appointments by the Governor to membership on the State Board of Education are subject to confirmation by the General Assembly in joint session; and

Whereas, vacancies have occurred on the State Board of Education; and

Whereas, the Governor has transmitted to the presiding officers of the House of Representatives and the Senate, the names of his appointees to fill the terms of membership on the State Board of Education which expire March 31, 2005.

Now, therefore, be it resolved by the House of Representatives, the Senate concurring:

Section 1. The appointments of Evelyn B. Monroe, John R. Lauritzen, and Jay M. Robinson to membership on the State Board of Education for terms to expire March 31, 2005, are confirmed.

Section 2. This resolution is effective upon ratification.

North Carolina General Assembly
Legislative Services Office

George R. Hall, Legislative Services Officer
(919) 733-7044

Elaine W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones Street
Raleigh, NC 27603-5925
(919) 733-7500

Gerry F. Cohen, Director
Bill Drafting Division
Suite 401, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

TO: Members of the House Committee on Rules and the House Committee on Education
FROM: Robin S. Johnson, Education Committee Counsel Robin
DATE: July 9, 1997
RE: **HOUSE JOINT RESOLUTION 1004: State Board of Education Confirmation**

The proposed committee substitute for House Joint Resolution names the three individuals appointed by the Governor to fill terms of membership on the State Board of Education. These terms will expire March 31, 2005. The three appointments are Evelyn B. Monroe, John R. Lauritzen, and Jay M. Robinson.

House Joint Resolution 1004 must be adopted in a joint session of the General Assembly. **House Joint Resolution 1054,** which has been ratified, provided for the General Assembly to meet in joint session, upon the call of the Speaker and the President Pro Tempore, for the purpose of acting upon a separate joint resolution confirming the Governor's appointments of new members to the State Board of Education. The Speaker and the President Pro Tempore have scheduled this joint session for July 16, 1997.

Section 4(1) of Article IX of the NC Constitution directs the Governor to appoint 11 members to the State Board of Education for overlapping terms of eight years. Eight members represent the eight educational districts set out in G.S. 115C-65 and three members are at-large. These appointments are subject to confirmation by the General Assembly in joint session. G.S. 115C-10 requires the Governor to submit the names of his appointees to the presiding officers of each chamber, on or before the 60th legislative day, and the General Assembly, pursuant to joint resolution, to meet in joint session to consider the appointments.

This year there are three vacancies: (1) Jay M. Robinson, at-large; (2) Evelyn Bruton Monroe, 4th Education District, which includes Bladen, Columbus, Cumberland, Harnett, Hoke, Lee, Montgomery, Moore, Richmond, Robeson, and Scotland Counties; and (3) Barbara M. Tapscott, 5th Education District, which includes Alamance, Caswell, Chatham, Davidson, Forsyth, Guilford, Orange, Person, Randolph, Rockingham, and Stokes Counties. There is no limit on the number of terms an individual may serve. **This year the following individuals are ineligible for appointment to the State Board:**

(1) Public school employees[1] paid from State or local funds and their spouses;
(2) Employees of the Department of Public Instruction and their spouses; and
(3) Individuals who already hold two appointive offices in State or local government or who hold one elective[2] and one appointive State or local office.

H1004-SMRH-002

---

[1] One public school employee may serve as an appointed member of the Board; currently, Eddie Davis, a public school teacher, is a member of the Board.

The term 'elective' means filled by an election of the people.

Jay M. Robinson
6612 Pleasant Pines Court
Wilmington, N.C. 28403
910/256-1170

Business Address/Telephone:	**Chairman, North Carolina State Board of Education** Office of the State Board of Education Education Building, 301 North Wilmington Street Raleigh, N.C. 27601-2825 919/715-1318 919/256-1170
Date/Place of Birth:	May 8, 1929 Mitchell County, North Carolina
Married:	Elizabeth Holland on July 25, 1951
Children:	Deborah R. Emmons and Jay M. Robinson, Jr.

EDUCATION:

Bowman High School, Bakersville, N.C.
Mars Hill Junior College, Mars Hill, N.C.
Appalachian State University, B.S. - Mathematics and Physical Education
East Tennessee State, Graduate Study - Mathematics
University of North Carolina, Chapel Hill, M.A. - School Administration
Duke University, Advanced School Administration Certificate
Duke University, Ed.D. - School Administration
American Management Association, Special Management Training for School Executives
National Academy for School Executives (Six Academies)

PROFESSIONAL EXPERIENCE:

Math Teacher and Coach, Odell School	1950 - 1954
Math Teacher and Coach, Winecoff School	1954 - 1956
Principal, Winecoff School	1956 - 1962
Principal, South Stanley High School	1962 - 1964
Assistant Superintendent, Cabarrus County Schools	1964 - 1965
Superintendent, Cabarrus County Schools	1965 - 1977
Superintendent, Charlotte-Mecklenburg Schools	1977 - 1986
Vice President for Public Affairs, UNC General Administration	1986 - 1993
Vice President for Special Projects, UNC General Administration	1993 - 1994

SPECIAL AWARDS AND RECOGNITIONS:

Liberty Bell Award, Mecklenburg Bar Association, 1983
William Spurgeon III Award, Boy Scouts of America, 1983
Davidson College, Honorary Doctor of Laws 1983
Queens College, Honorary Doctor of Humane Letters, 1983
Charlotte News, Man of the Year, 1983
Silver Beaver Award, Boy Scouts of America, 1984
Honor Superintendent, N.C. Music Educators Award, 1984
Blue Ribbon Award for Excellence in School Communications, N.C. Public Relations Association, 1984
Oak Leaf Award, N.C. Council of PTAs, 1984
U.S. Delegate, 39th Session of the International Conference on Education, UNESCO, Geneva, Switzerland, 1984
Distinguished Alumni Award, Appalachian State University, 1984
Leadership for Learning Award, American Association of School Administrators, 1985

5/5/97

SPECIAL AWARDS AND RECOGNITIONS CONTINUED

Tar Heel of the Week, *The News and Observer*, Raleigh, N.C. , 1985
U.S. Delegate to the International Seminar on Schooling, Stockholm, Sweden, 1985
Johnson C. Smith University, Honorary Doctor of Humane Letters, 1986
Catawba College, Honorary Doctor of Pedagogy, 1988
Professional Educators of North Carolina, PENC 1992 Outstanding Educator Award
North Carolina Citizens for Business and Industry, Distinguished Service Award 1993
University of North Carolina Board of Governors, University Award, 1994
The Razar Walker Award, University of North Carolina - Wilmington, 1995
The National Association of State Boards of Education, Distinguished Service Award, 1996
The J. M. Robinson Distinguished Professorship in Educational Technology, Western Carolina University, 1997

Evelyn Bruton Monroe
"Ebbie"

Graduate- University of North Carolina- Greensboro. B.S.H.E.
Former teacher
Math & Science-Chapel Hill Junior High School. Chapel Hill. NC
Vocational Home Economics-Terry Sanford High School. Fayetteville. NC
Homemaker-Married to John L. Monroe. M.D. Otolatyngologist. Pinehurst Surgical Clinic
Four sons- All four attended Moore County Public Schools
John L. Monroe. Jr.. Graduate-UNC-CH Law School with honors.Lawyer. Ford & Harrison in Atlanta
Clement C. Monroe-Graduate UNC-CH School of Dentistry-Practicing Dentistry in Fayetteville will locate in the Sandhills next year.
Fred B. Monroe-Graduate Mercer University. Macon. Ga. Law Review - Began working last fall for the North Carolina Court of Appeals.
Edward C. Monroe-Graduate UNC-CH. A.B.Chemistry- Will enter the School of Dentistry at UNC-CH this fall.
Home Address- 525 Hardee Branch Road. West End. NC 27376

Member of Community Presbyterian Church

Current Volunteer Activities - 1996-97

Have served on the Moore County Vocational Advisory Council for many years. Strong advocate of tech prep and programs for the gifted.

Serves on the Joint Committee of the Moore County Board of Education and the Sandhills Community College Board of Trustees.

Trustee-Sandhills Community College- Has chaired the personnel. finance.curriculum and student committees. Co-chaired the committee for screening applications for the search committee for selection of the college president. John Dempsey. Trustee representative on the steering committee for accreditation by Southern Association of Colleges and Schools. Served on the systems planning and missions committees for the State Board of Community Colleges. Currently chairs personnel committee. Appointed to the Sandhills Community College Board by the Moore County Board of Commissioners and Board of Education. Have served for 17 years.

Member-State Board of Education- Appointed by Governor James B. Hunt in September 1995 Member of the Program Committee. Joint Liason Committee of the Education Governing Boards and Child Fatality Task Force.

Volunteer Service Beneficial to Children

Established organized volunteer program for the public schools. Shortly after the establishment of the open classroom program. responding to a request by the superintendent of schools. I wrote and established an organized volunteer program for Southern Pines Elementary Schools. Interviewed and trained volunteers for placement in the classroom for specific tasks requested by the teaching staff. The program had its beginning when teachers at the elementary school reported needing help with students during recess. After writing a play oriented physical education program for elementary children. securing approval of the plan from the principal and teachers I recruited and trained volunteers to work with youngsters during recess. Seeing a successful program the teachers soon requested other help. Volunteers were then secured to assist in many areas such as reading. special demonstrations and school plays. Volunteer program then spread throughout the county.

Moore County School Advisory Council 14 years. Served as Chairman 7 of the 14 years.

2 years-Southern Pines Elementary School
6 years-Pinehurst Middle School
6 years-Pinecrest High School

First Woman Chairman of the Moore County Recreation Commission--responsibilities of the commission included hiring the first staff with C.E.T.A. funds. establishing senior citizens centers and summer camp programs for children.

Served on a Moore County School study committee for gifted and talented.
Committee recommended the implementation of the expansion of the program from the seventh and eight graded down to the second grade.

Pinehurst Recreation Association. Chairman. Accomplishments of the association included building the little league ball field and installing lights for the softball field. The little league field was used by the Pinecrest High School girls softball team until the softball field at Pinecrest was recently completed.

Taught Red cross swimming. life saving. boating and canoeing.

Cub Scout Den Mother for 12 years. Brownson Presbyterian Church and Community Presbyterian Church.

Co-sponsored. organized and managed the Pinehurst-West End football league for 6-8th graders.

Former Sunday School teacher for first graders and teenagers. Southern Pines Methodist and Pinehurst Community Presbyterian Church.

Board of directors for the Moore County Arts Council.

Chaired the committee for raising funds for the purchase of a grand piano for Pinehurst Middle School.

Accepted the chairmanship of Pinecrest Athletic Boosters when they were $25,000 in debt. Sponsored fund-raising activities to pay off debt.

Served on the selection committee for the Z. Smith Reynolds Scholarship Foundation

Former secretary for the United Way of Moore County.

Was an active participant in the successful campaign for the passing of the 1986 local school bond for improvement of school facilities throughout the county.

Co-ordinated a pre-event nutrition program for Pinecrest wrestlers. The program was designed to help wrestlers understand when and what foods they should eat in order to have peak performance at the time of competition.

Charter member -Parents Council of the University of North Carolina. 1985-1993
Co-chaired Parents Fund Co-chaired Council

UNC-Dental Parents Fund-Raising Committee 1993

5-97

JOHN R. LAURITZEN

604 Staunton Drive
Greensboro, NC 27410
910-855-6379
gsojohn@msn.com

John R. Lauritzen is a recently retired AT&T senior executive in the Piedmont Triad. He was AT&T's Strategic Support Services Vice President and Chairman of the Board of AT&T Services Company, Inc., a locally headquarted subsidiary.

During his 35 years with AT&T, Lauritzen held engineering and general management positions in a number of locations. During the past year, he functioned as a "loaned executive" to North Carolina A&T State University where he filled roles in strategic planning and as Acting Vice Chancellor for Development and University Relations.

Lauritzen has been based in the Triad area for 13 years. He is active in the leadership of numerous civic groups, including the Greensboro Area Chamber of Commerce (1995 Chairman); the Greensboro Development Corporation; the Guilford County Economic Development Council (Vice Chairman); the Greensboro Development Corporation; the North Carolina Citizens for Business and Industry; and the YMCA (Vice Chairman).

At the national level, he is a member of the Institute of Electronics and Electrical Engineers, served as chairman of the Electronic Industries Association Government Sector, and is a member of the Electronic Industries Foundation board of directors.

Lauritzen's active support of education includes serving as chairman of the Guilford County Workforce Investment Advisory Board, co-chairman of the Guilford County Partnership for Children; chairman of the Industry Advisory Group to North Carolina A&T State University's College of Engineering; executive board member of the Piedmont Triad Center for Advanced Manufacturing and the Guilford Institute for Leadership Development; Board of Visitors member of Greensboro College and the Center for Creative Leadership; Advisory Board member of Reading Connections, Cities in Schools, and the Southeastern University and College Coalition for Engineering Education; and a member of the University of North Carolina at Greensboro Planning Council.

VISITOR REGISTRATION SHEET

RULES, CALENDAR, AND OPERATIONS OF THE HOUSE **July 9, 1997**

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
R. Paul Wilms	NCHBA
J. Michael Carpenter	NCMBA
Tommy Jones	Attorney Raleigh
Paul B. Gordon	Professional Engineers of NC
Roslyn Sawyer	NC Coalition Against Domestic Violence
Ken Eudy	Capital Strategies
Jim Keith	DA - 21st Dist
Greg Williams	Bone & Associates
Rita J. Vinson	attorney - Durham
Sam Johnson	ATTY
Tommy Herndon	Lobbyist
Harold Webb	"
John McMillan	Manning, Fulton & Skinner P.A.
Adam Parker	Barley & Dixon LLP
Jim Cooley	BP MHL
Paul Stock	NC Bankers Assn.
Steve Keene	NC Med Soc.
Doug Jo Bason	Smith Anderson
Bill Sloggin	NCBA
Carmen Hooker Buell	Carolinas Health Care System
Tommy Worth	Carolinas Health Care System
Evelyn Hawthorne	NC HA
Mark Smith	NCSA
Jacqueline Reed	NC Med Soc
[illegible]	[illegible]
Bobby Cox	Atlanta Braves
Stan Williams	HHS Dept.
Robert Redford	Hollywood CA

VISITOR REGISTRATION SHEET

RULES, CALENDAR, AND OPERATIONS OF THE HOUSE **July 9, 1997**

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Joanna Mills	for Rep. Jerry Dockham
Lynn Lee	Moore; Van Allen
John Boodrich	Zeb Alley P.A.
Ron Akins	CNANC
Ed Scott	PSNC
Jerry Carter	NC Bd. of Registration
Ed Cooke	CSE/NC
Laurea Hartsell	MCIC
Brenda Dougherty	Sprint
Jeanne Wisnice	EdHeds
Nancy Bradley	NCCBO
Lloyd Peters	APPA
Alice Garland	Electric Cities
Curt Williams	Gov's Office
David Simmons	20/20, PA
Lucius Pullen	Attorney
Andy Romanet	N.C.L.M.

MINUTES
COMMITTEE ON RULES CALENDAR, AND OPERATION OS THE HOUSE
July 16, 1997

The Committee on Rules, Calendar, and Operation of the House met July 16, 1997 at 2:00 p.m. in Room 421 of the Legislative Office Building. Representative Morgan, Committee Chair, called the meeting to order and asked the clerk to call the roll. The following members were present: Representative Bowie, Vice Chair; and Representatives Crawford, Culp, Dockham, Esposito, Gulley, Hill, McMahan, Miner, Mitchell, Neely, and Thompson.

The first bill before the Committee was House Bill 1241 - A JOINT RESOLUTION INVITING DR. JOHN HOPE FRANKLIN TO ADDRESS A JOINT SESSION OF THE HOUSE OF REPRESENTATIVES AND THE SENATE AND INVITING GOVERNOR JAMES B. HUNT, JR. Representative Michaux, bill sponsor, was recognized to explain the bill. Representative Crawford moved for a favorable report. Motion carried.

The next bill before the Committee was House Joint Resolution 1239 - A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF BARNEY PAUL WOODARD, FORMER MEMBER OF THE GENERAL ASSEMBLY. Staff Counsel, Terrence Sullivan, was recognized to explain the resolution. Representative Neely moved for a favorable report. Motion carried.

House Joint Resolution 1240 - A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF DAVID E. REYNOLDS, FORMER EXECUTIVE DIRECTOR OF THE NORTH CAROLINA LEAGUE OF MUNICIPALITIES - was the next bill before the Committee. Representative Hackney, bill sponsor, was recognized by the Chair to explain the bill. Representative Hill moved for a favorable report. Motion carried.

The next bill before the Committee was House Bill 420 -A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE CITY OF KINGS MOUNTAIN TO ANNEX CERTAIN NONCONTIGUOUS PROPERTY, CREATING THE MOSS LAKE AUTHORITY TO ADDRESS ISSUES RELATED TO THE LAKE, AND PROVIDING GUIDELINES FOR THE COLLECTION AND DISBURSEMENT OF FEES GENERATED FROM THE RECREATIONAL USE OF MOSS LAKE. Representative Thompson moved to place the proposed House committee substitute before the Committee for discussion. Motion carried. Representative Clary was recognized to explain the committee substitute and she asked the Chair to recognize Counsel to explain the committee substitute. Giles Perry, staff counsel, was recognized to explain the committee substitute.

Representative Clary was then recognized to further explain the committee substitute. The committee substitute reflected the wishes of a negotiating team that was comprised of representatives from Kings Mountain and homeowners of Moss Lake that met last weekend. Sole annexation of the Moss Lake property that was noncontiguous was the only provision not included in the committee substitute because it would require

a statewide bill to do that. Representative Hill moved for a favorable report to the committee substitute, and an unfavorable report to the original bill, and re-refer the committee substitute to the Committee on Finance. Representative Clary stated that the primary purpose of the committee substitute was to insure that moneys collected by the City of Kings Mountain from the Moss Lake homeowners for lake fees would be spent on patrol and security of Moss Lake. Motion carried.

House Bill 418 - A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE CITY OF MOUNT AIRY TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX, TO MODIFY THE DISTRIBUTION OF THE AVERY COUNTY OCCUPANCY TAX, AND TO REQUIRE PAYMENT OF DELINQUENT TAXES FOR THE TOWNS OF NEWLAND AND SPRUCE PINES AND FOR THE COUNTY OF ALLEGHANY BEFORE RECORDING DEEDS CONVEYING PROPERTY SUBJECT TO THE DELINQUENT TAXES, AND TO VALIDATE BUDGET PROCEDURES OF THE TOWN OF NORWOOD IN STANLY COUNTY- was the next bill before the Committee. Representative Thompson moved that the committee substitute be placed before the Committee for the purpose of discussion. Motion carried. Representative Thompson, bill sponsor, and Staff Committee Counsel were recognized to explain the bill. Representative Mitchell moved for a favorable report for the committee substitute, and an unfavorable report to the original bill, and the committee substitute be re-referred to Committee on Finance. Motion carried.

The next bill before the Committee was Senate Bill 648 - A BILL TO BE ENTITLED AN ACT TO PROVIDE A FOUR-YEAR TERM FOR THE MAYOR OF THE TOWN OF WALLACE. Committee Staff Counsel, Linwwod Jones, was recognized to explain the bill. Representative Dockham moved for a favorable report. Motion carried.

The Committee adjourned.

Representative Richard T. Morgan
Committee Chair

Anne M. Cole
Acting Committee Clerk

Attachments:
Committee Reports
Bills
Visitor's Sheet

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House**.

☐ Committee Substitute for
H.J.R. 1241 A JOINT RESOLUTION INVITING DR. JOHN HOPE FRANKLIN TO ADDRESS A JOINT SESSION OF THE HOUSE OF REPRESENTATIVES AND THE SENATE AND INVITING GOVERNOR JAMES B. HUNT, JR.

☒ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

HOUSE JOINT RESOLUTION DRHJR7351*-LG250(7.15)

Sponsors: Representative Michaux.

Referred to:

A JOINT RESOLUTION INVITING DR. JOHN HOPE FRANKLIN TO ADDRESS A JOINT SESSION OF THE HOUSE OF REPRESENTATIVES AND THE SENATE AND INVITING GOVERNOR JAMES B. HUNT, JR.

Whereas, John Hope Franklin is a world renowned historian, researcher, author, and speaker and has particularly distinguished himself in African-American history and race relations; and

Whereas, John Hope Franklin grew up in segregated Rentiesville, Oklahoma, and then in Tulsa, Oklahoma, graduated from Fisk University in 1935 and earned his masters degree from Harvard University in 1936 and doctorate in 1941; he became a North Carolinian in 1943; and

Whereas, John Hope Franklin has taught at Fisk University, St. Augustine's College, North Carolina College, Howard University, and Duke University and has served as chairman of the history departments at Brooklyn College and the University of Chicago; and

Whereas, John Hope Franklin was instrumental in numerous major historical events of the United States, including the fact that he conducted historical research for NAACP attorney Thurgood Marshall who wrote the legal brief in the 1954 Brown vs. Board of Education concerning public school desegregation; and

Whereas, for more than 50 years, John Hope Franklin has chronicled the history of the South and the roles of African-Americans in the nation's development; and

Whereas, in 1947 John Hope Franklin's definitive text on the African-American experience, From Slavery to Freedom: A History of Negro Americans, was published, and is now in its seventh edition and has been translated into French, German, Portuguese, Japanese, and Chinese; and

Whereas, John Hope Franklin has received numerous honors and awards, including the Presidential Medal of Freedom, the nation's highest civilian honor, on September 29, 1995, and has been awarded more than 105 honorary degrees from colleges and universities; and

Whereas, John Hope Franklin has been appointed by President William J. Clinton as chairman of a panel that will lead his national initiative on improving race relations; and

Whereas, John Hope Franklin is a resident of Durham where he tends his orchid collection in his backyard greenhouse and has developed a new variety of orchid;

Now, therefore, be it resolved by the House of Representatives, the Senate concurring:

Section 1. Dr. John Hope Franklin is invited to address a joint session of the House of Representatives and the Senate in the Hall of the House of Representatives at 11:00 a.m., Tuesday, July 22, 1997.

Section 2. The Honorable James B. Hunt, Jr., Governor, is invited to the joint session.

Section 3. The Secretary of State shall transmit a certified copy of this resolution to Dr. John Hope Franklin and the Governor of the State of North Carolina.

Section 4. This resolution is effective upon ratification.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House**.

☐ Committee Substitute for
H.J.R. 1239 A JOINT RESOLUTION . HONORING THE LIFE AND MEMORY OF BARNEY PAUL WOODARD, FORMER MEMBER OF THE GENERAL ASSEMBLY.

☒ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE JOINT RESOLUTION 1239*

Sponsors: Representatives Daughtry and Creech.

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

July 14, 1997

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF BARNEY PAUL WOODARD, FORMER MEMBER OF THE GENERAL ASSEMBLY.

Whereas, Barney Paul Woodard was born in Princeton, North Carolina, on November 23, 1914, to John Richard Woodard and Elizabeth Wall Woodard; and

Whereas, Barney Paul Woodard graduated from Princeton High School and the University of North Carolina at Chapel Hill, where he received a degree in pharmacy in 1938; and

Whereas, following graduation from college, Barney Paul Woodard returned to his native Princeton where he became a successful pharmacist and owner of Woodard Pharmacy; and

Whereas, Barney Paul Woodard was a trusted and valued pharmacist in Princeton for 54 years, giving freely of his time and attention to his customers and never turning away those who were sick; and

Whereas, Barney Paul Woodard served his community in many worthwhile capacities as a member of numerous organizations, including the Johnston County Mental Health Association; Johnston County Drug Club; Princeton Lions Club; Johnston County Shrine Club; Keep Johnston County Beautiful; and Princeton School Advisory Committee; and

Whereas, Barney Paul Woodard served his profession proudly as a member of the National Association of Retail Druggists and the North Carolina Pharmaceutical Association; and

Whereas, Barney Paul Woodard was dedicated to the Princeton United Methodist Church, serving as a trustee and a Sunday School teacher; and

Whereas, Barney Paul Woodard served with honor and distinction in the North Carolina House of Representatives for over 20 years, where he sponsored bills requiring lower cost for generic drugs and labeling on prescription drug bottles; and

Whereas, Barney Paul Woodard represented the people of Johnston County longer than any other member of the General Assembly; and

Whereas, Barney Paul Woodard received the Bowl of Hygea Award for Outstanding Community Service in Pharmacy in 1978 and was honored as Pharmacist of the Year by the North Carolina Pharmaceutical Association in 1988; and

Whereas, Barney Paul Woodard died on February 15, 1997, and left to mourn his wife of over 50 years, Annie Louise Sugg Woodard; and his children, Barney Paul Woodard, Jr., Dianne Woodard Taylor, Michael Sugg Woodard, and Joy Woodard MacLeod; and

Whereas, the General Assembly wishes to record its appreciation of the full and rewarding life and service of Barney Paul Woodard to his community and State and to express its sympathy to his family;

Now, therefore, be it resolved by the House of Representatives, the Senate concurring:

Section 1. The General Assembly honors the memory of Barney Paul Woodard and expresses the gratitude and appreciation of this State and its citizens for his life and devoted service to North Carolina.

Section 2. The General Assembly extends its deepest sympathy to the family of Barney Paul Woodard for the loss of such a distinguished family member.

Section 3. The Secretary of State shall transmit a certified copy of this resolution to the family and friends of Barney Paul Woodard.

Section 4. This resolution is effective upon ratification.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House.**

☐ Committee Substitute for
H.J.R. 1240 A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF DAVID E. REYNOLDS, FORMER EXECUTIVE DIRECTOR OF THE NORTH CAROLINA LEAGUE OF MUNICIPALITIES.

☒ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE JOINT RESOLUTION 1240

Sponsors: Representatives Hackney; and Hurley.

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

July 14, 1997

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF DAVID E. REYNOLDS, FORMER EXECUTIVE DIRECTOR OF THE NORTH CAROLINA LEAGUE OF MUNICIPALITIES.

Whereas, David E. Reynolds received a bachelors degree in geology from Campbell University in 1970 and a masters degree in geology from the University of South Carolina in 1972 and developed an expertise in water resource management issues; and

Whereas, David E. Reynolds began his career at the North Carolina League of Municipalities in 1980 as Director of Intergovernmental Programs after service with the state of South Carolina and the Triangle J Council of Government; and

Whereas, from April 1980 to October 1986, David E. Reynolds provided assistance to municipalities concerning State and federal programs and regulations, represented municipal interests before State and federal departments and agencies, and developed League policies and programs; and

Whereas, in October of 1986, David E. Reynolds became the Executive Director of the North Carolina League of Municipalities and was responsible for the overall management of the activities of the League, a nonpartisan federation of cities, towns, and villages; and

Whereas, during David E. Reynolds' tenure at the League, its membership increased from 472 to 510, and it greatly expanded its services to its member municipalities; and

Whereas, David E. Reynolds served as an effective and respected advocate for North Carolina's cities, towns, and villages for 16 years; and

Whereas, municipal officials and all with whom he worked respected and admired David E. Reynolds for his diligence, his integrity, his friendly manner and

genuine concern for others, and his high level of commitment to excellence in local government, and a continued strong State-local government partnership; and

Whereas, Don Borut, Executive Director of the National League of Cities, recognized David E. Reynolds as "an enormously gifted person whose outlook, efforts, and achievements represent all the very best in public service"; and

Whereas, David E. Reynolds was gentle by nature, but persistent when necessary; and

Whereas, David E. Reynolds conducted himself at all times with dignity, grace, optimism, and integrity; and

Whereas, David E. Reynolds died on September 24, 1996; and

Whereas, David E. Reynolds was a loving and devoted husband and proud father and is survived by his wife, Emily Warren Reynolds, and a son, David Jason Reynolds, to whom he was a wonderful role model and friend; and

Whereas, David E. Reynolds will long be remembered for his excellent leadership skills, vision, compassion, and unwavering dedication to our municipalities and the League, which he used to help make North Carolina a better place to live;

Now, therefore, be it resolved by the House of Representatives, the Senate concurring:

Section 1. The General Assembly expresses its appreciation for the life and accomplishments of David E. Reynolds for the devoted and tireless service he rendered on behalf of North Carolina's cities, towns, and villages.

Section 2. The General Assembly extends its deepest sympathy to the family and friends of David E. Reynolds for the loss of a beloved husband, father, and friend.

Section 3. The Secretary of State shall transmit a certified copy of this resolution to the family of David E. Reynolds.

Section 4. This resolution is effective upon ratification.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House**.

☐ Committee Substitute for
H.B. 420 A BILL TO BE ENTITLED AN ACT REGARDING CALDWELL COUNTY AND INCORPORATED MUNICIPALITIES LOCATED THEREIN.

☐ 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 Finance.

☐ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 420
Committee Substitute Favorable 7/17/97

Short Title: Kings Mt./Moss Lake Amendments. (Local)

Sponsors:

Referred to:

March 6, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CITY OF KINGS MOUNTAIN TO ANNEX CERTAIN NONCONTIGUOUS PROPERTY, CREATING THE MOSS LAKE AUTHORITY TO ADDRESS ISSUES RELATED TO THE LAKE, AND PROVIDING GUIDELINES FOR THE COLLECTION AND DISBURSEMENT OF FEES GENERATED FROM THE RECREATIONAL USE OF MOSS LAKE.

The General Assembly of North Carolina enacts:

PART 1. ANNEXATION OF A PORTION OF THE MOSS LAKE PROPERTY.

Section 1. Notwithstanding the provisions of G.S. 160A-58.7 and G.S. 160A-58.1(b), the City of Kings Mountain may annex under Part 4 of Article 4A of Chapter 160A of the General Statutes the property on which the John Henry Moss Water Treatment Plant and Moss Lake Dam are situated.

Section 2. The boundaries of any area annexed under this act shall not be considered the primary corporate limits of the City for the purpose of Part 4 of Article 4A of Chapter 160A of the General Statutes and shall not be considered the boundary of the municipality for the purpose of Part 1, 2, or 3 of that Article, even if the area becomes contiguous due to annexation of the intervening property.

PART 2. MOSS LAKE AUTHORITY; CREATION; MEMBERS.

Section 3. There is established the Moss Lake Authority, to be composed of five members: three shall be residents of the City of Kings Mountain who are not elected officials or City employees, appointed by the City Council; one shall be a member of the Moss Lake Property Owners' Association, appointed by the Association; and one shall be a member of the Cleveland County Board of

Commissioners, who is neither a resident of Moss Lake nor of the City of Kings Mountain, appointed by the Board. Members shall serve for a term of three years, except that the city clerk of the City of Kings Mountain shall randomly designate two of the initial members to serve initial two-year terms and one of the initial members to serve an initial one-year term.

POWERS AND DUTIES OF THE AUTHORITY AND THE CITY OF KINGS MOUNTAIN.

Section 4. (a) The Authority shall be responsible for addressing issues related to recreation user fees as described in Section 5 of this act, lake patrol, and the recreation-related operation, maintenance, and improvement of the Lake. Any recommendations of the Authority related to the listed issues shall be implemented by the City unless the Council cannot implement the recommendation due to compelling reasons documented in a finding of fact.

(b) The Authority, at the expense of the City, shall biennially conduct an independent audit of the Moss Lake Fund receipts and disbursements.

(c) Except as provided by Chapter 166A of the General Statutes or any safety ordinances, homeowners who are current on any user fees or assessments shall have unlimited access to the waterfront contiguous to their property.

(d) Homeowners may make improvements on the control strip that both enhance recreational use of the lake and do not violate any City ordinance in effect on June 1, 1997.

(e) The City of Kings Mountain may not lower the water level of Moss Lake, unless required by Chapter 166A of the General Statutes, Part 3 of Article 21 of Chapter 143 of the General Statutes, other safety or maintenance requirements, or otherwise by law. The City of Kings Mountain shall give Moss Lake homeowners at least 10 days' prior notice before changing the water level of the Lake, unless prevented from giving notice by emergency.

MOSS LAKE FEES; USE AND RESTRICTIONS.

Section 5. (a) The Authority shall annually develop a fee schedule for all recreational uses of Moss Lake and the eight-foot control strip around the Lake. No fee increase shall be recommended by the Authority if a surplus exists in the Moss Lake Fund. The fee schedule shall be adopted and collected by the City as recommended by the Authority. In developing a recommended fee schedule, the Moss Lake Authority shall determine an equitable method for allocation of pro rata cost based on boat registration of homeowners of lakefront property and nonlake resident registration from the preceding year accounting reports of the City of Kings Mountain.

(b) The City shall establish and maintain a separate fund for all user fees collected from Moss Lake property owners and nonresidents (the "Moss Lake Fund"). Use of this Fund is limited to recreation-related operation of Moss Lake and cannot be transferred to any other Fund of the City.

(c) Fees charged to property owners surrounding Moss Lake shall not be used for expenses relating to:

(1) Public swimming areas and buildings utilized for public swimming and concessions for public swimming; or

(2) Water treatment and reservoir functions; or maintenance of the dam.

These items are the responsibility of the City of Kings Mountain.

(d) Any fees applicable to homeowners on Moss Lake shall be charged on an equal basis per developed lot, according to plats of the Lake and surrounding property recorded in the Cleveland County Registry of Deeds.

PART 3. EFFECTIVE DATE.

Section 6. This act becomes effective June 30, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 420
Proposed Committee Substitute H420-PCS1442

Short Title: Kings Mt./Moss Lake Amendments. (Local)

Sponsors:

Referred to:

March 6, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CITY OF KINGS MOUNTAIN TO ANNEX CERTAIN NONCONTIGUOUS PROPERTY, CREATING THE MOSS LAKE AUTHORITY TO ADDRESS ISSUES RELATED TO THE LAKE, AND PROVIDING GUIDELINES FOR THE COLLECTION AND DISBURSEMENT OF FEES GENERATED FROM THE RECREATIONAL USE OF MOSS LAKE.

The General Assembly of North Carolina enacts:

PART 1. ANNEXATION OF A PORTION OF THE MOSS LAKE PROPERTY.

Section 1. Notwithstanding the provisions of G.S. 160A-58.7 and G.S. 160A-58.1(b), the City of Kings Mountain may annex under Part 4 of Article 4A of Chapter 160A of the General Statutes the property on which the John Henry Moss Water Treatment Plant and Moss Lake Dam are situated.

Section 2. The boundaries of any area annexed under this act shall not be considered the primary corporate limits of the City for the purpose of Part 4 of Article 4A of Chapter 160A of the General Statutes and shall not be considered the boundary of the municipality for the purpose of Part 1, 2, or 3 of that Article, even if the area becomes contiguous due to annexation of the intervening property.

PART 2. MOSS LAKE AUTHORITY; CREATION; MEMBERS.

Section 3. There is established the Moss Lake Authority, to be composed of five members: three shall be residents of the City of Kings Mountain who are not elected officials or City employees, appointed by the City Council; one shall be a member of the Moss Lake Property Owners' Association, appointed by the Association; and one shall be a member of the Cleveland County Board of

Commissioners, who is neither a resident of Moss Lake nor of the City of Kings Mountain, appointed by the Board. Members shall serve for a term of three years, except that the city clerk of the City of Kings Mountain shall randomly designate two of the initial members to serve initial two-year terms and one of the initial members to serve an initial one-year term.

POWERS AND DUTIES OF THE AUTHORITY AND THE CITY OF KINGS MOUNTAIN.

Section 4. (a) The Authority shall be responsible for addressing issues related to recreation user fees as described in Section 5 of this act, lake patrol, and the recreation-related operation, maintenance, and improvement of the Lake. Any recommendations of the Authority related to the listed issues shall be implemented by the City unless the Council cannot implement the recommendation due to compelling reasons documented in a finding of fact.

(b) The Authority, at the expense of the City, shall biennially conduct an independent audit of the Moss Lake Fund receipts and disbursements.

(c) Except as provided by Chapter 166A of the General Statutes or any safety ordinances, homeowners who are current on any user fees or assessments shall have unlimited access to the waterfront contiguous to their property.

(d) Homeowners may make improvements on the control strip that both enhance recreational use of the lake and do not violate any City ordinance in effect on June 1, 1997.

(e) The City of Kings Mountain may not lower the water level of Moss Lake, unless required by Chapter 166A of the General Statutes, Part 3 of Article 21 of Chapter 143 of the General Statutes, other safety or maintenance requirements, or otherwise by law. The City of Kings Mountain shall give Moss Lake homeowners at least 10 days' prior notice before changing the water level of the Lake, unless prevented from giving notice by emergency.

MOSS LAKE FEES; USE AND RESTRICTIONS.

Section 5. (a) The Authority shall annually develop a fee schedule for all recreational uses of Moss Lake and the eight-foot control strip around the Lake. No fee increase shall be recommended by the Authority if a surplus exists in the Moss Lake Fund. The fee schedule shall be adopted and collected by the City as recommended by the Authority. In developing a recommended fee schedule, the Moss Lake Authority shall determine an equitable method for allocation of pro rata cost based on boat registration of homeowners of lakefront property and nonlake resident registration from the preceding year accounting reports of the City of Kings Mountain.

(b) The City shall establish and maintain a separate fund for all user fees collected from Moss Lake property owners and nonresidents (the "Moss Lake Fund"). Use of this Fund is limited to recreation-related operation of Moss Lake and cannot be transferred to any other Fund of the City.

(c) Fees charged to property owners surrounding Moss Lake shall not be used for expenses relating to:

(1) Public swimming areas and buildings utilized for public swimming and concessions for public swimming; or

(2) Water treatment and reservoir functions; or maintenance of the dam.

These items are the responsibility of the City of Kings Mountain.

(d) Any fees applicable to homeowners on Moss Lake shall be charged on an equal basis per developed lot, according to plats of the Lake and surrounding property recorded in the Cleveland County Registry of Deeds.

PART 3. EFFECTIVE DATE.

Section 6. This act becomes effective June 30, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 420
H420-CSRW-001
PROPOSED COMMITTEE SUBSTITUTE

Short Title: Kings Mt./Moss Lake amendments (Local)

Sponsors:

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

March 6, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CITY OF KINGS MOUNTAIN TO ANNEX CERTAIN NONCONTIGUOUS PROPERTY, CREATING THE MOSS LAKE AUTHORITY TO ADDRESS ISSUES RELATED TO THE LAKE, AND PROVIDING GUIDELINES FOR THE COLLECTION AND DISBURSEMENT OF FEES GENERATED FROM THE RECREATIONAL USE OF MOSS LAKE..

"PART 1. ANNEXATION OF A PORTION OF THE MOSS LAKE PROPERTY.

Section 1. Notwithstanding the provisions of G.S. 160A-58.7 and G.S. 160A-58.1(b), the City of Kings Mountain may annex under Part 4 of Article 4A of Chapter 160A of the General

Statutes the property on which the John Henry Moss Water Treatment Plant and Moss Lake Dam are situated.

Section 2. The boundaries of any area annexed under this act shall not be considered the primary corporate limits of the City for the purpose of Part 4 of Article 4A of Chapter 160A of the General Statutes and shall not be considered the boundary of the municipality for the purpose of Part 1, 2, or 3 of that Article, even if the area becomes contiguous due to annexation of the intervening property.

PART 2. MOSS LAKE AUTHORITY.

CREATION; MEMBERS.

Section 3. There is established the Moss Lake Authority, to be composed of five members: three shall be residents of the City of Kings Mountain who are not elected officials or City employees, appointed by the City Council; one shall be a member of the Moss Lake Property Owners' Association, appointed by the Association; and one shall be a member of the Cleveland County Board of Commissioners, who is neither a resident of Moss Lake nor of the City of Kings Mountain, appointed by the Board. Members shall serve for a term of three years, except that the city clerk of the City of Kings Mountain shall randomly designate two of the initial members to serve initial two-year terms and one of the initial members to serve an initial one-year term.

POWERS AND DUTIES OF THE AUTHORITY AND THE CITY OF KINGS MOUNTAIN.

Section 4.

(a) The Authority shall be responsible for addressing issues related to recreation user fees, as described in Section 5 of this act, lake patrol, and the recreation-related operation, maintenance, and improvement of the Lake. Any recommendations of the Authority related to the listed issues shall be

implemented by the City unless the Council cannot implement the recommendation due to compelling reasons documented in a finding of fact.

(b) The Authority, at the expense of the City, shall biennially conduct an independent audit of the Moss Lake Fund receipts and disbursements.

(c) Except as provided by Chapter 166A of the General Statutes or any safety ordinances, homeowners who are current on any user fees or assessments shall have unlimited access to the waterfront contiguous to their property.

(d) Homeowners may make improvements on the control strip that both enhance recreational use of the lake and do not violate any city ordinance in effect on June 1, 1997.

(e) The City of Kings Mountain may not lower the water level of Moss Lake, unless required by Chapter 166A of the General Statutes, Part 3 of Article 21 of Chapter 143 of the General Statutes, other safety or maintenance requirements, or otherwise by law. The City of Kings Mountain shall give Moss Lake homeowners at least 10 days prior notice before changing the water level of the Lake, unless prevented from giving notice by emergency.

MOSS LAKE FEES: USE AND RESTRICTIONS.

Section 5.

(a) The Authority shall annually develop a fee schedule for all recreational uses of Moss Lake and the eight-foot control strip around the Lake. No fee increase shall be recommended by the Authority if a surplus exists in the Moss Lake fund. The fee schedule shall be adopted and collected by the City as recommended by the Authority. In developing a recommended fee schedule, the Moss Lake Authority shall determine an equitable method for allocation of pro rata cost based on boat registration of homeowners of lakefront property and nonlake

resident registration from the preceding year accounting reports of the City of Kings Mountain.

(b) The City shall establish and maintain a separate fund for all user fees collected from Moss Lake property owners and nonresidents (the "Moss Lake Fund"). Use of this Fund is limited to recreation-related operation of Moss Lake and cannot be transferred to any other fund of the City.

(c) Fees charged to property owners surrounding Moss Lake shall not be used for expenses relating to:

(1) Public swimming areas and buildings utilized for public swimming and concessions for public swimming; or

(2) Water treatment and reservoir functions; or maintenance of the dam.

These items are the responsibility of the City of Kings Mountain.

(d) Any fees applicable to homeowners on Moss Lake shall be charged on a equal basis per developed lot, according to plats of the Lake and surrounding property recorded in the Cleveland County Register of Deeds.

PART 3.

EFFECTIVE DATE.

Section 6. This act becomes effective June 30, 1997."

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House**.

☐ Committee Substitute for
H.B. 418 A BILL TO BE ENTITLED AN ACT REGARDING AVERY COUNTY AND INCORPORATED MUNICIPALITIES LOCATED THEREIN.

☐ 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 Finance.

☐ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 418
Committee Substitute Favorable 7/17/97

Short Title: Mt. Airy/Avery Occup. Tax Alleghany/Norwood. (Local)

Sponsors:

Referred to:

March 6, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CITY OF MOUNT AIRY TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX, TO MODIFY THE DISTRIBUTION OF THE AVERY COUNTY OCCUPANCY TAX, AND TO REQUIRE PAYMENT OF DELINQUENT TAXES FOR THE TOWNS OF NEWLAND AND SPRUCE PINE AND FOR THE COUNTY OF ALLEGHANY BEFORE RECORDING DEEDS CONVEYING PROPERTY SUBJECT TO THE DELINQUENT TAXES, AND TO VALIDATE BUDGET PROCEDURES OF THE TOWN OF NORWOOD IN STANLY COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Mount Airy Occupancy Tax. (a) Authorization and scope. The Mount Airy Board of Commissioners may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the city that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations or by nonprofit summer camps when the accommodations are furnished in furtherance of their nonprofit purpose.

(b) Administration. A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

(c) Distribution and use of tax revenue. The City of Mount Airy shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Mount Airy Tourism Development Authority. The Authority shall use the funds remitted to it under this subsection only to promote travel and tourism in the Mount Airy area. The following definitions apply in this section:

(1) Net proceeds. -- Gross proceeds less the cost to the city of administering and collecting the tax, as determined by the finance officer, not to exceed seven percent (7%) of the gross proceeds.

(2) Promote travel and tourism. -- Advertise and market activities, develop and distribute promotional materials, conduct market research, and engage in other similar promotional activities that attract tourists or business travelers to the area. The term also includes administration of the Mount Airy Tourism Development Authority.

Section 2. Mount Airy Tourism Development Authority. (a) Appointment and membership. When the board of commissioners adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a Mount Airy Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The board of commissioners shall appoint the following eight members to the Authority:

(1) Two individuals who are owners or operators of taxable tourist accommodations in the city.

(2) Two residents of the city who have experience in the promotion of travel and tourism.

(3) Two residents of the city who are members of the Mount Airy Chamber of Commerce, selected by the Mount Airy Chamber of Commerce.

(4) One member of the board of commissioners.

(5) The city finance officer, who shall serve as an ex officio, nonvoting member.

Members of the Authority shall serve without compensation and shall serve for a term of three years. Vacancies shall be filled in the same manner as the original appointment. Members appointed to fill vacancies shall serve for the remainder of the unexpired term. An individual may serve as a member for no more than two consecutive terms. The members shall elect a chair from among the membership, who shall serve for three years. The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings.

(b) Duties. The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 1 of this act. The Authority shall promote travel and tourism in the Mount Airy area. In performing its duties, the Authority may contract with any person, firm, or agency to advise and assist it and may recommend to the board of commissioners that city staff be employed for this advice and assistance. Any city staff employed upon a

recommendation of the Authority shall be hired and supervised by the Authority, which shall pay the salaries and expenses of this staff.

(c) Reports. The Authority shall report quarterly and at the close of the fiscal year to the board of commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

Section 3. Municipal Administrative Provisions. (a) Article 9 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-215. Uniform provisions for room occupancy taxes.**

(a) Scope. -- This section applies only to municipalities the General Assembly has authorized to levy room occupancy taxes. For the purpose of this section, the term 'city' means a municipality.

(b) Levy. -- A room occupancy tax may be levied only by resolution after not less than 10 days' public notice and after a public hearing held pursuant thereto. A room occupancy tax shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(c) Collection. -- Every operator of a business subject to a room occupancy tax shall, on and after the effective date of the levy of the tax, collect the tax. The tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records and shall be paid by the purchaser to the operator of the business as trustee for and on account of the taxing city. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The taxing city shall design, print, and furnish to all appropriate businesses and persons in the city the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects a room occupancy tax may deduct from the amount remitted to the taxing city a discount equal to the discount the State allows the operator for State sales and use tax.

(d) Administration. -- The taxing city shall administer a room occupancy tax it levies. A room occupancy tax is due and payable to the city finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the taxing city. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A room occupancy tax return filed with the city finance officer is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1.

(e) Penalties. -- A person, firm, corporation, or association who fails or refuses to file a room occupancy tax return or pay a room occupancy tax as required by law is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The governing board of the taxing city has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.

(f) Repeal or Reduction. -- A room occupancy tax levied by a city may be repealed or reduced by a resolution adopted by the governing body of the city. Repeal or reduction of a room occupancy tax shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the resolution was adopted. Repeal or reduction of a room occupancy tax does not affect a liability for a tax that was attached before the effective date of the repeal or reduction, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal or reduction."

(b) This section applies only to the City of Mount Airy.

Section 4. Avery County Occupancy Tax. Section 1 of Chapter 472 of the 1993 Session Laws reads as rewritten:

"Section 1. Avery County Occupancy tax.

(a) **Authorization and Scope.**

The Avery County Board of Commissioners may ~~by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto,~~ levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3) and is not subject to a room occupancy tax levied by a municipality. This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations. The occupancy tax rate payable on accommodations furnished within Avery County may not exceed six percent (6%).

(b) ~~**Collection.**~~ **Administration.**

A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

~~Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects the occupancy tax levied under this section may deduct from the amount remitted to the county a discount equal to the discount the State allows the operator for collecting State sales and use taxes.~~

~~(c) **Administration.**~~

~~The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before~~

~~the 15th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.~~

~~A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~

~~(d) **Penalties.**~~

~~A person, firm, corporation, or association who fails or refuses to file the return required by this section is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The board of commissioners has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.~~

(e) **Distribution and Use of Tax Revenue.**

Avery County ~~shall use at least~~ shall, on a quarterly basis, distribute two-thirds of the net proceeds of the occupancy tax revenue to the Avery Tourism Development Authority created pursuant to Section 1.1 of this act to be used only to promote travel and tourism in Avery County and ~~shall spend~~ distribute the remainder ~~on~~ to the Avery County Chamber of Commerce to be used only for tourism-related expenditures. The chamber of commerce shall report quarterly and at the close of the fiscal year to the board of commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

The following definitions apply in this subsection:

(1) Net proceeds. -- Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed seven percent (7%) of the amount collected.

(2) Promote travel and tourism. -- To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. -- ~~Expenditures that are designed to increase the use of lodging facilities in a county or to attract tourists or business travelers to the county and expenditures incurred by the county in collecting the tax. The term includes expenditures to construct, maintain, operate, or market a convention center and other expenditures that, in the judgment of the board of commissioners, will facilitate and support tourism.~~ Expenditures that, in the judgment of the entity making the expenditures, are designed to increase the use of lodging facilities, meeting facilities, and convention facilities in a county by attracting tourists or business travelers to the county. The term includes tourism-related capital expenditures.

~~(f) **Effective Date of Levy.**~~

~~A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.~~

~~(g) Repeal.~~

~~A tax levied under this section may be repealed by a resolution adopted by the Avery County Board of Commissioners. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.~~"

Section 5. Avery Tourism Development Authority. Chapter 472 of the 1993 Session Laws is amended by adding a new section to read:

"Sec. 1.1. Avery Tourism Development Authority. (a) Appointment and membership. The board of commissioners of Avery County shall adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The Authority shall have nine voting members appointed by the board of commissioners as follows:

(1) Four individuals selected by the Avery County Lodging Association.

(2) Two individuals selected by the Avery County Chamber of Commerce.

(3) One member of the Avery County Board of Commissioners, to serve ex officio.

(4) Two members of the public.

The resolution shall provide for four-year terms of office for the members other than the county commissioner, except that the initial terms of four members shall be set at three years to provide for staggered terms. The resolution shall also provide for the filling of vacancies on the Authority. The board of commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Avery County shall be the ex officio finance officer of the Authority and shall serve as an ex officio, nonvoting member of the Authority.

(b) Duties. The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 1 of this act. The Authority shall promote travel and tourism in the county.

(c) Reports. The Authority shall report quarterly and at the close of the fiscal year to the board of commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require."

Section 6. County Administrative Provisions. Section 3(b) of S.L. 1997-102, as amended by Section 2 of S.L. 1997-255, reads as rewritten:

"(b) This section applies only to ~~Madison~~ Avery, Madison, and Nash Counties."

Section 7. Section 1 of Chapter 305 of the 1963 Session Laws is rewritten to read:

"Section 1. The Register of Deeds of Avery County shall not receive for recordation any deed unless the following conditions are met:

(1) The deed is accompanied by a certificate from the Avery County Tax Collector to the effect that all delinquent county taxes and all delinquent taxes for municipalities for which the county collects taxes have been paid with respect to the property described in the deed.

(2) If the property described in the deed is located in whole or in part in the Town of Newland, the deed is accompanied by a certificate from the tax collector for the town to the effect that all delinquent municipal taxes have been paid with respect to the property."

Section 8. Section 1 of Chapter 537 of the 1987 Session Laws is rewritten to read:

"Section 1. The Register of Deeds of Mitchell County shall not receive for recordation any deed unless the following conditions are met:

(1) The deed is accompanied by a certificate from the Mitchell County Tax Collector to the effect that all delinquent county taxes and all delinquent taxes for municipalities for which the county collects taxes have been paid with respect to the property described in the deed.

(2) If the property described in the deed is located in whole or in part in the Town of Spruce Pine, the deed is accompanied by a certificate from the tax collector for the town to the effect that all delinquent municipal taxes have been paid with respect to the property."

Section 9. Section 1 of Chapter 657 of the 1993 Session Laws reads as rewritten:

"Section 1. The ~~Register~~ Registers of Deeds of ~~Ashe County~~ Alleghany and Ashe Counties shall not receive for recordation any deed unless the deed is accompanied by a certificate from the ~~Ashe~~ County Tax Collector to the effect that all delinquent taxes upon the property described in the deed offered for recordation have been paid."

Section 10. For the 1986-87 through 1996-97 fiscal years, the Town of Norwood, through the budgetary procedures it adopted and followed, is deemed to have adopted a budget ordinance and to have complied with all the requirements of the Local Government Budget and Fiscal Control Act, Article 3 of Chapter 159 of the General Statutes. Taxes levied and collected by the Town of Norwood for those fiscal years are in all respects validated and confirmed. Appropriations and expenditures by the Town of Norwood for those fiscal years are in all respects validated and confirmed.

Section 11. Sections 4, 5, and 6 of this act become effective August 1, 1997, and apply to taxes paid on or after that date. Sections 7, 8, and 9 of this act become effective October 1, 1997, and apply to deeds recorded on or after that date. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 418
Proposed Committee Substitute H418-PCSX6303

Short Title: Mt. Airy/Avery Occup. Tax Alleghany/Norwood. (Local)

Sponsors:

Referred to:

March 6, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CITY OF MOUNT AIRY TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX, TO MODIFY THE DISTRIBUTION OF THE AVERY COUNTY OCCUPANCY TAX, AND TO REQUIRE PAYMENT OF DELINQUENT TAXES FOR THE TOWNS OF NEWLAND AND SPRUCE PINE AND FOR THE COUNTY OF ALLEGHANY BEFORE RECORDING DEEDS CONVEYING PROPERTY SUBJECT TO THE DELINQUENT TAXES, AND TO VALIDATE BUDGET PROCEDURES OF THE TOWN OF NORWOOD IN STANLY COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Mount Airy Occupancy Tax. (a) Authorization and scope. The Mount Airy Board of Commissioners may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the city that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations or by nonprofit summer camps when the accommodations are furnished in furtherance of their nonprofit purpose.

(b) Administration. A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

(c) Distribution and use of tax revenue. The City of Mount Airy shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Mount Airy Tourism Development Authority. The Authority shall use the funds remitted to it under this subsection only to promote travel and tourism in the Mount Airy area. The following definitions apply in this section:

(1) Net proceeds. -- Gross proceeds less the cost to the city of administering and collecting the tax, as determined by the finance officer, not to exceed seven percent (7%) of the gross proceeds.

(2) Promote travel and tourism. -- Advertise and market activities, develop and distribute promotional materials, conduct market research, and engage in other similar promotional activities that attract tourists or business travelers to the area. The term also includes administration of the Mount Airy Tourism Development Authority.

Section 2. Mount Airy Tourism Development Authority. (a) Appointment and membership. When the board of commissioners adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a Mount Airy Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The board of commissioners shall appoint the following eight members to the Authority:

(1) Two individuals who are owners or operators of taxable tourist accommodations in the city.

(2) Two residents of the city who have experience in the promotion of travel and tourism.

(3) Two residents of the city who are members of the Mount Airy Chamber of Commerce, selected by the Mount Airy Chamber of Commerce.

(4) One member of the board of commissioners.

(5) The city finance officer, who shall serve as an ex officio, nonvoting member.

Members of the Authority shall serve without compensation and shall serve for a term of three years. Vacancies shall be filled in the same manner as the original appointment. Members appointed to fill vacancies shall serve for the remainder of the unexpired term. An individual may serve as a member for no more than two consecutive terms. The members shall elect a chair from among the membership, who shall serve for three years. The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings.

(b) Duties. The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 1 of this act. The Authority shall promote travel and tourism in the Mount Airy area. In performing its duties, the Authority may contract with any person, firm, or agency to advise and assist it and may recommend to the board of commissioners that city staff be employed for this advice and assistance. Any city staff employed upon a

recommendation of the Authority shall be hired and supervised by the Authority, which shall pay the salaries and expenses of this staff.

(c) Reports. The Authority shall report quarterly and at the close of the fiscal year to the board of commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

Section 3. Municipal Administrative Provisions. (a) Article 9 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-215. Uniform provisions for room occupancy taxes.**

(a) Scope. -- This section applies only to municipalities the General Assembly has authorized to levy room occupancy taxes. For the purpose of this section, the term 'city' means a municipality.

(b) Levy. -- A room occupancy tax may be levied only by resolution after not less than 10 days' public notice and after a public hearing held pursuant thereto. A room occupancy tax shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(c) Collection. -- Every operator of a business subject to a room occupancy tax shall, on and after the effective date of the levy of the tax, collect the tax. The tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records and shall be paid by the purchaser to the operator of the business as trustee for and on account of the taxing city. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The taxing city shall design, print, and furnish to all appropriate businesses and persons in the city the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects a room occupancy tax may deduct from the amount remitted to the taxing city a discount equal to the discount the State allows the operator for State sales and use tax.

(d) Administration. -- The taxing city shall administer a room occupancy tax it levies. A room occupancy tax is due and payable to the city finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the taxing city. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A room occupancy tax return filed with the city finance officer is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1.

(e) Penalties. -- A person, firm, corporation, or association who fails or refuses to file a room occupancy tax return or pay a room occupancy tax as required by law is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The governing board of the taxing city has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.

(f) Repeal or Reduction. -- A room occupancy tax levied by a city may be repealed or reduced by a resolution adopted by the governing body of the city. Repeal or reduction of a room occupancy tax shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the resolution was adopted. Repeal or reduction of a room occupancy tax does not affect a liability for a tax that was attached before the effective date of the repeal or reduction, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal or reduction."

(b) This section applies only to the City of Mount Airy.

Section 4. Avery County Occupancy Tax. Section 1 of Chapter 472 of the 1993 Session Laws reads as rewritten:

"Section 1. Avery County Occupancy tax.

(a) **Authorization and Scope.**

The Avery County Board of Commissioners may ~~by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto,~~ levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3) and is not subject to a room occupancy tax levied by a municipality. This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations. The occupancy tax rate payable on accommodations furnished within Avery County may not exceed six percent (6%).

(b) ~~Collection.~~ **Administration.**

A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

~~Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects the occupancy tax levied under this section may deduct from the amount remitted to the county a discount equal to the discount the State allows the operator for collecting State sales and use taxes.~~

~~(c) Administration.~~

~~The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before~~

~~the 15th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.~~

~~A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~

~~(d) **Penalties.**~~

~~A person, firm, corporation, or association who fails or refuses to file the return required by this section is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The board of commissioners has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.~~

(e) **Distribution and Use of Tax Revenue.**

Avery County ~~shall use at least~~ shall, on a quarterly basis, distribute two-thirds of the net proceeds of the occupancy tax revenue to the Avery Tourism Development Authority created pursuant to Section 1.1 of this act to be used only to promote travel and tourism in Avery County and ~~shall spend~~ distribute the remainder ~~on~~ to the Avery County Chamber of Commerce to be used only for tourism-related expenditures. The chamber of commerce shall report quarterly and at the close of the fiscal year to the board of commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

The following definitions apply in this subsection:

(1) Net proceeds. -- Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed seven percent (7%) of the amount collected.

(2) Promote travel and tourism. -- To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. -- ~~Expenditures that are designed to increase the use of lodging facilities in a county or to attract tourists or business travelers to the county and expenditures incurred by the county in collecting the tax. The term includes expenditures to construct, maintain, operate, or market a convention center and other expenditures that, in the judgment of the board of commissioners, will facilitate and support tourism.~~ Expenditures that, in the judgment of the entity making the expenditures, are designed to increase the use of lodging facilities, meeting facilities, and convention facilities in a county by attracting tourists or business travelers to the county. The term includes tourism-related capital expenditures.

~~(f) **Effective Date of Levy.**~~

~~A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.~~

~~(g) Repeal.~~

~~A tax levied under this section may be repealed by a resolution adopted by the Avery County Board of Commissioners. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.~~"

Section 5. Avery Tourism Development Authority. Chapter 472 of the 1993 Session Laws is amended by adding a new section to read:

"Sec. 1.1. Avery Tourism Development Authority. (a) Appointment and membership. The board of commissioners of Avery County shall adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The Authority shall have nine voting members appointed by the board of commissioners as follows:

(1) Four individuals selected by the Avery County Lodging Association.

(2) Two individuals selected by the Avery County Chamber of Commerce.

(3) One member of the Avery County Board of Commissioners, to serve ex officio.

(4) Two members of the public.

The resolution shall provide for four-year terms of office for the members other than the county commissioner, except that the initial terms of four members shall be set at three years to provide for staggered terms. The resolution shall also provide for the filling of vacancies on the Authority. The board of commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Avery County shall be the ex officio finance officer of the Authority and shall serve as an ex officio, nonvoting member of the Authority.

(b) Duties. The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 1 of this act. The Authority shall promote travel and tourism in the county.

(c) Reports. The Authority shall report quarterly and at the close of the fiscal year to the board of commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require."

Section 6. County Administrative Provisions. Section 3(b) of S.L. 1997-102, as amended by Section 2 of S.L. 1997-255, reads as rewritten:

"(b) This section applies only to ~~Madison~~ Avery, Madison, and Nash Counties."

Section 7. Section 1 of Chapter 305 of the 1963 Session Laws is rewritten to read:

"Section 1. The Register of Deeds of Avery County shall not receive for recordation any deed unless the following conditions are met:

(1) The deed is accompanied by a certificate from the Avery County Tax Collector to the effect that all delinquent county taxes and all delinquent taxes for municipalities for which the county collects taxes have been paid with respect to the property described in the deed.

(2) If the property described in the deed is located in whole or in part in the Town of Newland, the deed is accompanied by a certificate from the tax collector for the town to the effect that all delinquent municipal taxes have been paid with respect to the property."

Section 8. Section 1 of Chapter 537 of the 1987 Session Laws is rewritten to read:

"Section 1. The Register of Deeds of Mitchell County shall not receive for recordation any deed unless the following conditions are met:

(1) The deed is accompanied by a certificate from the Mitchell County Tax Collector to the effect that all delinquent county taxes and all delinquent taxes for municipalities for which the county collects taxes have been paid with respect to the property described in the deed.

(2) If the property described in the deed is located in whole or in part in the Town of Spruce Pine, the deed is accompanied by a certificate from the tax collector for the town to the effect that all delinquent municipal taxes have been paid with respect to the property."

Section 9. Section 1 of Chapter 657 of the 1993 Session Laws reads as rewritten:

"Section 1. The ~~Register~~ Registers of Deeds of ~~Ashe County~~ Alleghany and Ashe Counties shall not receive for recordation any deed unless the deed is accompanied by a certificate from the ~~Ashe~~ County Tax Collector to the effect that all delinquent taxes upon the property described in the deed offered for recordation have been paid."

Section 10. For the 1986-87 through 1996-97 fiscal years, the Town of Norwood, through the budgetary procedures it adopted and followed, is deemed to have adopted a budget ordinance and to have complied with all the requirements of the Local Government Budget and Fiscal Control Act, Article 3 of Chapter 159 of the General Statutes. Taxes levied and collected by the Town of Norwood for those fiscal years are in all respects validated and confirmed. Appropriations and expenditures by the Town of Norwood for those fiscal years are in all respects validated and confirmed.

Section 11. Sections 4, 5, and 6 of this act become effective August 1, 1997, and apply to taxes paid on or after that date. Sections 7, 8, and 9 of this act become effective October 1, 1997, and apply to deeds recorded on or after that date. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 418
Proposed Committee Substitute H418-PCSX6303

Short Title: Mt. Airy/Avery Occup. Tax Alleghany/Norwood. (Local)

Sponsors:

Referred to:

March 6, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CITY OF MOUNT AIRY TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX, TO MODIFY THE DISTRIBUTION OF THE AVERY COUNTY OCCUPANCY TAX, AND TO REQUIRE PAYMENT OF DELINQUENT TAXES FOR THE TOWNS OF NEWLAND AND SPRUCE PINE AND FOR THE COUNTY OF ALLEGHANY BEFORE RECORDING DEEDS CONVEYING PROPERTY SUBJECT TO THE DELINQUENT TAXES, AND TO VALIDATE BUDGET PROCEDURES OF THE TOWN OF NORWOOD IN STANLY COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Mount Airy Occupancy Tax. (a) Authorization and scope. The Mount Airy Board of Commissioners may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the city that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations or by nonprofit summer camps when the accommodations are furnished in furtherance of their nonprofit purpose.

(b) Administration. A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

(c) Distribution and use of tax revenue. The City of Mount Airy shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Mount Airy Tourism Development Authority. The Authority shall use the funds remitted to it under this subsection only to promote travel and tourism in the Mount Airy area. The following definitions apply in this section:

(1) Net proceeds. -- Gross proceeds less the cost to the city of administering and collecting the tax, as determined by the finance officer, not to exceed seven percent (7%) of the gross proceeds.

(2) Promote travel and tourism. -- Advertise and market activities, develop and distribute promotional materials, conduct market research, and engage in other similar promotional activities that attract tourists or business travelers to the area. The term also includes administration of the Mount Airy Tourism Development Authority.

Section 2. Mount Airy Tourism Development Authority. (a) Appointment and membership. When the board of commissioners adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a Mount Airy Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The board of commissioners shall appoint the following eight members to the Authority:

(1) Two individuals who are owners or operators of taxable tourist accommodations in the city.

(2) Two residents of the city who have experience in the promotion of travel and tourism.

(3) Two residents of the city who are members of the Mount Airy Chamber of Commerce, selected by the Mount Airy Chamber of Commerce.

(4) One member of the board of commissioners.

(5) The city finance officer, who shall serve as an ex officio, nonvoting member.

Members of the Authority shall serve without compensation and shall serve for a term of three years. Vacancies shall be filled in the same manner as the original appointment. Members appointed to fill vacancies shall serve for the remainder of the unexpired term. An individual may serve as a member for no more than two consecutive terms. The members shall elect a chair from among the membership, who shall serve for three years. The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings.

(b) Duties. The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 1 of this act. The Authority shall promote travel and tourism in the Mount Airy area. In performing its duties, the Authority may contract with any person, firm, or agency to advise and assist it and may recommend to the board of commissioners that city staff be employed for this advice and assistance. Any city staff employed upon a

recommendation of the Authority shall be hired and supervised by the Authority, which shall pay the salaries and expenses of this staff.

(c) Reports. The Authority shall report quarterly and at the close of the fiscal year to the board of commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

Section 3. Municipal Administrative Provisions. (a) Article 9 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-215. Uniform provisions for room occupancy taxes.**

(a) Scope. -- This section applies only to municipalities the General Assembly has authorized to levy room occupancy taxes. For the purpose of this section, the term 'city' means a municipality.

(b) Levy. -- A room occupancy tax may be levied only by resolution after not less than 10 days' public notice and after a public hearing held pursuant thereto. A room occupancy tax shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(c) Collection. -- Every operator of a business subject to a room occupancy tax shall, on and after the effective date of the levy of the tax, collect the tax. The tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records and shall be paid by the purchaser to the operator of the business as trustee for and on account of the taxing city. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The taxing city shall design, print, and furnish to all appropriate businesses and persons in the city the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects a room occupancy tax may deduct from the amount remitted to the taxing city a discount equal to the discount the State allows the operator for State sales and use tax.

(d) Administration. -- The taxing city shall administer a room occupancy tax it levies. A room occupancy tax is due and payable to the city finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the taxing city. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A room occupancy tax return filed with the city finance officer is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1.

(e) Penalties. -- A person, firm, corporation, or association who fails or refuses to file a room occupancy tax return or pay a room occupancy tax as required by law is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The governing board of the taxing city has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.

(f) Repeal or Reduction. -- A room occupancy tax levied by a city may be repealed or reduced by a resolution adopted by the governing body of the city. Repeal or reduction of a room occupancy tax shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the resolution was adopted. Repeal or reduction of a room occupancy tax does not affect a liability for a tax that was attached before the effective date of the repeal or reduction, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal or reduction."

(b) This section applies only to the City of Mount Airy.

Section 4. Avery County Occupancy Tax. Section 1 of Chapter 472 of the 1993 Session Laws reads as rewritten:

"Section 1. Avery County Occupancy tax.

(a) **Authorization and Scope.**

The Avery County Board of Commissioners may ~~by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto,~~ levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3) and is not subject to a room occupancy tax levied by a municipality. This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations. The occupancy tax rate payable on accommodations furnished within Avery County may not exceed six percent (6%).

(b) ~~Collection.~~ **Administration.**

A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

~~Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects the occupancy tax levied under this section may deduct from the amount remitted to the county a discount equal to the discount the State allows the operator for collecting State sales and use taxes.~~

~~(c) Administration.~~

~~The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before~~

~~the 15th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.~~

~~A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~

~~(d) Penalties.~~

~~A person, firm, corporation, or association who fails or refuses to file the return required by this section is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The board of commissioners has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.~~

(e) **Distribution and Use of Tax Revenue.**

Avery County ~~shall use at least~~ shall, on a quarterly basis, distribute two-thirds of the net proceeds of the occupancy tax revenue to the Avery Tourism Development Authority created pursuant to Section 1.1 of this act to be used only to promote travel and tourism in Avery County and ~~shall spend~~ distribute the remainder ~~on~~ to the Avery County Chamber of Commerce to be used only for tourism-related expenditures. The chamber of commerce shall report quarterly and at the close of the fiscal year to the board of commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

The following definitions apply in this subsection:

(1) Net proceeds. -- Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed seven percent (7%) of the amount collected.

(2) Promote travel and tourism. -- To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. -- ~~Expenditures that are designed to increase the use of lodging facilities in a county or to attract tourists or business travelers to the county and expenditures incurred by the county in collecting the tax. The term includes expenditures to construct, maintain, operate, or market a convention center and other expenditures that, in the judgment of the board of commissioners, will facilitate and support tourism.~~ Expenditures that, in the judgment of the entity making the expenditures, are designed to increase the use of lodging facilities, meeting facilities, and convention facilities in a county by attracting tourists or business travelers to the county. The term includes tourism-related capital expenditures.

~~(f) Effective Date of Levy.~~

~~A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.~~

~~(g) Repeal.~~

~~A tax levied under this section may be repealed by a resolution adopted by the Avery County Board of Commissioners. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.~~"

Section 5. Avery Tourism Development Authority. Chapter 472 of the 1993 Session Laws is amended by adding a new section to read:

"Sec. 1.1. Avery Tourism Development Authority. (a) Appointment and membership. The board of commissioners of Avery County shall adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The Authority shall have nine voting members appointed by the board of commissioners as follows:

(1) Four individuals selected by the Avery County Lodging Association.

(2) Two individuals selected by the Avery County Chamber of Commerce.

(3) One member of the Avery County Board of Commissioners, to serve ex officio.

(4) Two members of the public.

The resolution shall provide for four-year terms of office for the members other than the county commissioner, except that the initial terms of four members shall be set at three years to provide for staggered terms. The resolution shall also provide for the filling of vacancies on the Authority. The board of commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Avery County shall be the ex officio finance officer of the Authority and shall serve as an ex officio, nonvoting member of the Authority.

(b) Duties. The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 1 of this act. The Authority shall promote travel and tourism in the county.

(c) Reports. The Authority shall report quarterly and at the close of the fiscal year to the board of commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require."

Section 6. County Administrative Provisions. Section 3(b) of S.L. 1997-102, as amended by Section 2 of S.L. 1997-255, reads as rewritten:

"(b) This section applies only to ~~Madison~~ Avery, Madison, and Nash Counties."

Section 7. Section 1 of Chapter 305 of the 1963 Session Laws is rewritten to read:

"Section 1. The Register of Deeds of Avery County shall not receive for recordation any deed unless the following conditions are met:

(1) The deed is accompanied by a certificate from the Avery County Tax Collector to the effect that all delinquent county taxes and all delinquent taxes for municipalities for which the county collects taxes have been paid with respect to the property described in the deed.

(2) If the property described in the deed is located in whole or in part in the Town of Newland, the deed is accompanied by a certificate from the tax collector for the town to the effect that all delinquent municipal taxes have been paid with respect to the property."

Section 8. Section 1 of Chapter 537 of the 1987 Session Laws is rewritten to read:

"Section 1. The Register of Deeds of Mitchell County shall not receive for recordation any deed unless the following conditions are met:

(1) The deed is accompanied by a certificate from the Mitchell County Tax Collector to the effect that all delinquent county taxes and all delinquent taxes for municipalities for which the county collects taxes have been paid with respect to the property described in the deed.

(2) If the property described in the deed is located in whole or in part in the Town of Spruce Pine, the deed is accompanied by a certificate from the tax collector for the town to the effect that all delinquent municipal taxes have been paid with respect to the property."

Section 9. Section 1 of Chapter 657 of the 1993 Session Laws reads as rewritten:

"Section 1. The ~~Register~~ Registers of Deeds of ~~Ashe County~~ Alleghany and Ashe Counties shall not receive for recordation any deed unless the deed is accompanied by a certificate from the ~~Ashe~~ County Tax Collector to the effect that all delinquent taxes upon the property described in the deed offered for recordation have been paid."

Section 10. For the 1986-87 through 1996-97 fiscal years, the Town of Norwood, through the budgetary procedures it adopted and followed, is deemed to have adopted a budget ordinance and to have complied with all the requirements of the Local Government Budget and Fiscal Control Act, Article 3 of Chapter 159 of the General Statutes. Taxes levied and collected by the Town of Norwood for those fiscal years are in all respects validated and confirmed. Appropriations and expenditures by the Town of Norwood for those fiscal years are in all respects validated and confirmed.

Section 11. Sections 4, 5, and 6 of this act become effective August 1, 1997, and apply to taxes paid on or after that date. Sections 7, 8, and 9 of this act become effective October 1, 1997, and apply to deeds recorded on or after that date. The remainder of this act is effective when it becomes law.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House.**

☐ Committee Substitute for
S.B. 648 A BILL TO BE ENTITLED AN ACT TO PROVIDE A FOUR-YEAR TERM FOR THE MAYOR OF THE TOWN OF WALLACE.

☒ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 648*

Short Title: Wallace Mayor. (Local)

Sponsors: Senator Albertson.

Referred to: State Government, Local Government, and Personnel.

April 2, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE A FOUR-YEAR TERM FOR THE MAYOR OF THE TOWN OF WALLACE.

The General Assembly of North Carolina enacts:

Section 1. Section 2.3 of the Charter of the Town of Wallace, being Chapter 94 of the 1987 Session Laws, reads as rewritten:

"Section 2.3. **Mayor; Term of Office; Duties.** The Mayor shall be elected by all the qualified voters of the Town for a term of ~~two~~ four years; shall be the official head of the Town government and preside at meetings of the Council; shall have the right to vote only when there is an equal division on any question or matter before the Council; and shall exercise the powers and duties conferred by law or as directed by the Council."

Section 2. This act applies beginning with the Mayor elected in 1997.

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

VISITOR REGISTRATION SHEET

RULES, CALENDAR, AND OPERATIONS OF THE HOUSE **JULY 16, 1997**

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Carroll Pierce	Division Soil & Water
Jerry Carter	N.C. Bd. of Registration
Curt Williams	Governor's Office
Bill Breeze	N C Medical Board
Rushwood Laughinghouse	NS
DS	NCPJ
Brenda Doughett	Sprint
LEIGHTON POPE	ZDA, PA
Tommy WORTH	Carolinas Healthcare System
Emilson Hawthorne	NCHA
Cami Ayer	BPMHC
Sandra Long	Nanderson & Long
Natalie Hopkins	Charlotte Chamber
Amy Jo Baum	Smith Anderson
Joyce Peters	APPSOE
Lucius W Pullen	Attorney
Jim Brown	NC State Ports
Mary Scott	NCSEPS
John Bowdish	Zeb Alley P.A.
David Anderson	DFA NC Farm Bureau
Ivy Holmes	
Melinda C Brooks	Oxford, NC
Carol Cartrette	Oxford, N.C.
Ed Ed	NRCSA/NE
Anne Dunn	NCBA
Peri Morgan	NFIB
Tom Dixon	NCDR

VISITOR REGISTRATION SHEET

RULES, CALENDAR, AND OPERATIONS OF THE HOUSE **JULY 16, 1997**

Name of Committee Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Rich Caddell	N.C.D.O.R.
Ben Nelson	NCPA
Richard E. Clark	NCALH
Jovita Masic	Carolina Professional Insurance Agents
Eugene Hafer	CAPIA
Douglas H. Van Essen	NC State Board of Cosmetic Art
Susan Watson	NC State Board of Cosmetic Art
Glen Peterson	NC DOA
Troy Jackson	NC Assoc. of Life Underwriters
Jerry Hardesty	NCPE
[illegible]	[illegible]
Paul P. Bodnar	Professional Engineers of NC
Henry Jones	Attorney Dale
TD Kent	American Inst. of Architects

MINUTES
COMMITTEE ON RULES, CALENDAR, AND OPERATIONS OF THE HOUSE
July 23, 1997

The Committee on Rules, Calendar, and Operations of the House met July 23, 1997 at 3:00 p.m. in Room 421 of the Legislative Office Building. Representative Morgan, Committee Chair, called the meeting to order and asked the clerk to call the roll. The following members were present: Representative Bowie, Vice Chair; and Representatives Crawford, Culp, Dockham, Esposito, Gulley, Hill, McMahan, Miner, Neely, Thompson, and C. Wilson

The first bill before the Committee was Senate Committee Substitute for House Bill 699 - BILL TO BE ENTITLED AN ACT TO GRANT AUTHORITY TO THE CITY OF GREENVILLE AND THE TOWNS OF BETHEL, FARMVILLE, AND NEWPORT TO ADDRESS ABANDONED STRUCTURES IN THE SAME MANNER AS MUNICIPALITIES IN COUNTIES WITH A POPULATION OF OVER ONE HUNDRED SIXTY-THREE THOUSAND. The Chair recognized Representative Smith, bill sponsor, to explain the bill. Counsel Jerry Cohen explained the changes in the Senate committee substitute for House Bill 699. Several of the sections conflicted with one ratified bill and another bill. Representative Hill recommended that the Committee not concur with the Senate committee substitute bill that the go to conference. Motion carried.

The next bill before the Committee was the Senate committee substitute for House Bill 967 - A BILL TO BE ENTITLED AN ACT TO PROVIDE SELECTION OF EITHER OF THE TWO NEAREST ROUTES TO A NON-LIGHT-TRAFFIC ROAD, AND TO SPECIFY THAT THE DEPARTMENT OF TRANSPORTATION MAY ADOPT A RULE ALLOWING SPECIAL WEIGHT PERMITS TO BE ISSUED FOR VEHICLES TRANSPORTING WOOD RESIDUALS ON NON-INTERSTATE HIGHWAYS, AS AUTHORIZED BY EXISTING STATE LAW. Representative Buchanan, bill sponsor, was recognized to explain the bill. Representative Thompson moved that the Committee recommend that the House concur with the Senate committee substitute for House Bill 967. Motion carried.

Senate committee substitute for House Bill 1032 - A BILL TO BE ENTITLED AN ACT TO DIRECT THE COMMISSION FOR HEALTH SERVICES TO ADOPT A RULE TO AUTHORIZE THE USE OF DESIGN CRITERIA FOR MUNICIPAL SOLID WASTE LANDFILLS THAT COMPLIES WITH FEDERAL LAW AND THAT PROVIDES FOR ALTERNATE LANDFILL LINERS THAT ARE AT LEAST AS PROTECTIVE AS THE CURRENTLY AUTHORIZED LANDFILL LINER. Chair Morgan recognized Representative Allred, bill sponsor, to explain the changes in the Senate committee substitute. Representative Wilson moved that the Committee recommend the House do concur with the Senate committee substitute for House Bill 1032. Motion carried.

The next bill before the Committee was Senate Bill 826 - A BILL TO BE ENTITLED AN ACT TO PROVIDE "QUICK TAKE" PROCEDURES IN EMINENT DOMAIN PROCEEDINGS BY SCHOOL BOARDS. Senator Miller, bill sponsor, was recognized to explain the bill. Representative Dockham moved that the Proposed House committee substitute for Senate Bill 826-A BILL TO BE ENTITLED AN ACT TO PROVIDE "QUICK TAKE: PROCEDURES IN EMINENT DOMAIN PROCEEDINGS BY SCHOOL BOARDS; AND TO EXPAND THE CARTERET COUNTY BOARD OF EDUCATION FROM FIVE TO SEVEN MEMBERS AND TO PROVIDE THAT THEIR DISTRICTS ARE THE SAME AS FOR THE BOARD OF COMMISSIONERS, SUBJECT TO A REFERENDUM, AND TO PROVIDE THAT FIVE MEMBERS OF THE MOORE COUNTY BOARD OF EDUCATION BE ELECTED FROM THE SAME DISTRICTS AS ARE THE MEMBERS OF THE BOARD OF COMMISSIONERS AND THE REMAINING THREE MEMBERS OF THE MOORE COUNTY BOARD OF EDUCATION BE ELECTED AT LARGE, SUBJECT TO A REFERENDUM, AND TO PROVIDE FOR PARTISAN ELECTIONS, SUBJECT TO A REFERENDUM- be adopted for Committee discussion. Motion carried. Counsel Jerry Cohen was recognized to explain the differences in the committee substitute. Representative Thompson moved for a favorable report as to the House committee substitute, and an unfavorable report as to the original bill. Motion carried.

Senate Bill 455 - A BILL TO BE ENTITLED AN ACT TO IMPROVE HMO SERVICES BY PROTECTING PHYSICIAN COMMUNICATIONS REGARDING TREATMENT, REQUIRING COVERAGE FOR EMERGENCY CARE, AND REDUCING THE APPROVAL PERIOD FOR RATE FILINGS.
Chair Morgan recognized Senator Hoyle, bill sponsor, to explain the bill. Representative Dockham moved for the adoption of the proposed House committee substitute for SB 455 - A BILL TO BE ENTITLED AN ACT TO IMPROVE HMO SERVICES BY PROTECTING PHYSICIAN COMMUNICATIONS REGARDING TREATMENT, REQUIRING COVERAGE FOR EMERGENCY CARE, REDUCING THE APPROVAL PERIOD FOR RATE FILINGS, AND PROMOTING COLLABORATION BETWEEN HMOS AND PUBLIC HEALTH DEPARTMENTS - for the purpose of discussion. Motion carried. Representative Dockham was recognized to explain the bill. A handout explaining the bill was presented. Representative McMahan moved for a favorable report as to the House committee substitute and an unfavorable report as to the original bill. Motion carried.

Senate Bill 565 -A BILL TO BE ENTITLED AN ACT TO CLARIFY THE APPLICATION OF THE COMMISSIONER OF BANK'S RATE TO VARIABLE RATE LOANS WITH ADJUSTMENT PERIODS GREATER THAN ONE MONTH AND TO REPEAL THE LAWS GOVERNING VARIABLE RATE LOANS OF MANUFACTURED HOMES AND INSTALLMENT RATES AND FEES was next

before the Committee. Representative Miner moved for the adoption of the committee substitute for Senate Bill 565 - A BILL TO BE ENTITLED AN ACT TO CLARIFY THE APPLICATION OF THE COMMISSIONER OF BANK'S RATE TO VARIABLE RATE LOANS WITH ADJUSTMENT PERIODS GREATER THAN ONE MONTH, TO REPEAL THE LAWS GOVERNING VARIABLE RATE LOANS OF MANUFACTURED HOMES AND INSTALLMENT RATES AND FEES, AND TO ESTABLISH FINANCE CHARGE RATES FOR CONSUMER CREDIT INSTALLMENT SALES CONTRACTS FOR WATERCRAFTS - for purpose of Committee discussion. Motion carried. The Chair recognized Representative Church, bill sponsor, to explain the bill. Representative Miner moved for a favorable report as to the committee substitute bill, unfavorable as to original bill. Motion carried.

Next bill before the Committee was Senate Bill 627 - A BILL TO BE ENTITLED AN ACT TO CLARIFY AND EXPAND THE CLASSIFICATION OF PERSONS WHO MAY OBTAIN A DOMESTIC VIOLENCE PROTECTIVE ORDER, AND TO CLARIFY THE CIRCUMSTANCES UNDER WHICH MAGISTRATES MAY ISSUE PROTECTIVE ORDERS. Senator Miller, bill sponsor, was recognized to explain the bill. There was a companion bill passed in the House that was sponsored by Representative Morris. Ms. Roz Savitt, North Carolina Coalition on Domestic Violence, was recognized to speak on the bill. Chair Morgan appointed the following sub-committee on SB 627: Representatives Neely, Chair; Esposito and Wilson. The sub-committee will report back to the Committee next week.

The Committee adjourned at 3:30 p.m.

Representative Richard T. .Morgan
Committee Chair

Anne M. Cole
Acting Committee Clerk

Attachments:
Committee Reports
Bills
Senate Bill 455 Explanation
Visitor 's Sheet

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House**.

☒ Committee Substitute for
H.B. 699 A BILL TO BE ENTITLED AN ACT TO GRANT AUTHORITY TO THE CITY OF GREENVILLE AND THE TOWNS OF BETHEL, FARMVILLE, AND NEWPORT TO ADDRESS ABANDONED STRUCTURES IN THE SAME MANNER AS MUNICIPALITIES IN COUNTIES WITH A POPULATION OF OVER ONE HUNDRED SIXTY-THREE THOUSAND.

☐ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 699
Committee Substitute Favorable 4/29/97
Senate State Government, Local Government, and Personnel Committee Substitute Adopted 7/10/97

Short Title: Newport Minimum Housing. (Local)

Sponsors:

Referred to:

March 31, 1997

A BILL TO BE ENTITLED

AN ACT TO GRANT AUTHORITY TO THE CITY OF GREENVILLE AND THE TOWNS OF BETHEL, FARMVILLE, AND NEWPORT TO ADDRESS ABANDONED STRUCTURES IN THE SAME MANNER AS MUNICIPALITIES IN COUNTIES WITH A POPULATION OF OVER ONE HUNDRED SIXTY-THREE THOUSAND.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 733 of the 1995 Session Laws reads as rewritten:

"Sec. 2. This applies to the ~~City~~ Cities of Greenville and Lumberton and the Towns of Bethel, Farmville, and Newport only."

Section 2. Section 1 of Chapter 733 of the 1995 Session Laws, which applied only to the City of Lumberton, reads as rewritten:

"Section 1. G.S. 160A-443(5a) reads as rewritten:

'(5a) If the governing body shall have adopted an ordinance, or the public officer shall have:

a. In a municipality ~~located in counties which have a population in excess of 163,000 by the last federal census,~~ other than municipalities with a population in excess of 190,000 by the last federal census, issued an order, ordering a dwelling to be repaired or vacated and closed, as provided

in subdivision (3)a, and if the owner has vacated and closed such dwelling and kept such dwelling vacated and closed for a period of one year pursuant to the ordinance or order;

b. In a municipality with a population in excess of 190,000 by the last federal census, commenced proceedings under the substandard housing regulations regarding a dwelling to be repaired or vacated and closed, as provided in subdivision (3)a., and if the owner has vacated and closed such dwelling and kept such dwelling vacated and closed for a period of one year pursuant to the ordinance or after such proceedings have commenced,

then if the governing body shall find that the owner has abandoned the intent and purpose to repair, alter or improve the dwelling in order to render it fit for human habitation and that the continuation of the dwelling in its vacated and closed status would be inimical to the health, safety, morals and welfare of the municipality in that the dwelling would continue to deteriorate, would create a fire and safety hazard, would be a threat to children and vagrants, would attract persons intent on criminal activities, would cause or contribute to blight and the deterioration of property values in the area, and would render unavailable property and a dwelling which might otherwise have been made available to ease the persistent shortage of decent and affordable housing in this State, then in such circumstances, the governing body may, after the expiration of such one year period, enact an ordinance and serve such ordinance on the owner, setting forth the following:

a. If it is determined that the repair of the dwelling to render it fit for human habitation can be made at a cost not exceeding fifty percent (50%) of the then current value of the dwelling, the ordinance shall require that the owner either repair or demolish and remove the dwelling within 90 days; or

b. If it is determined that the repair of the dwelling to render it fit for human habitation cannot be made at a cost not exceeding fifty percent (50%) of the then current value of the dwelling, the ordinance shall require the owner to demolish and remove the dwelling within 90 days.

This ordinance shall be recorded in the Office of the Register of Deeds in the county wherein the property or properties are located and shall be indexed in the name of the property owner in the grantor index. If the owner fails to comply with this ordinance, the public officer shall effectuate the purpose of the ordinance.

~~This subdivision only applies to municipalities located in counties which have a population in excess of 163,000 by the last federal census.~~'"

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

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House.**

☒ Committee Substitute for

H.B. 967 A BILL TO BE ENTITLED AN ACT TO PROVIDE SELECTION OF EITHER OF THE TWO NEAREST ROUTES TO A NON-LIGHT-TRAFFIC ROAD, AND TO SPECIFY THAT THE DEPARTMENT OF TRANSPORTATION MAY ADOPT A RULE ALLOWING SPECIAL WEIGHT PERMITS TO BE ISSUED FOR VEHICLES TRANSPORTING WOOD RESIDUALS ON NON-INTERSTATE HIGHWAYS, AS AUTHORIZED BY EXISTING STATE LAW.

☐ 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 2

HOUSE BILL 967
Senate Transportation Committee Substitute Adopted 7/14/97

Short Title: Light Duty Road Use. (Public)

Sponsors:

Referred to:

April 16, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE SELECTION OF EITHER OF THE TWO NEAREST ROUTES TO A NON-LIGHT-TRAFFIC ROAD, AND TO SPECIFY THAT THE DEPARTMENT OF TRANSPORTATION MAY ADOPT A RULE ALLOWING SPECIAL WEIGHT PERMITS TO BE ISSUED FOR VEHICLES TRANSPORTING WOOD RESIDUALS ON NON-INTERSTATE HIGHWAYS, AS AUTHORIZED BY EXISTING STATE LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-118(c) reads as rewritten:

"(c) Exceptions. -- The following exceptions apply to G.S. 20-118(b) and 20-118(e).

(1) Two consecutive sets of tandem axles may carry a gross weight of 34,000 pounds each without penalty provided the overall distance between the first and last axles of the consecutive sets of tandem axles is 36 feet or more.

(2) When a vehicle is operated in violation of G.S. 20-118(b)(1), 20-118(b)(2), or 20-118(b)(3), but the gross weight of the vehicle or combination of vehicles does not exceed that permitted by G.S. 20-118(b)(3), the owner of the vehicle shall be permitted to shift the load within the vehicle, without penalty, from one axle to another to comply with the weight limits in the following cases:

a. Where the single-axle load exceeds the statutory limits, but does not exceed 21,000 pounds.

b. Where the vehicle or combination of vehicles has tandem axles, but the tandem-axle weight does not exceed 40,000 pounds.

(3) When a vehicle is operated in violation of G.S. 20-118(b)(4) the owner of the vehicle shall be permitted, without penalty, to shift the load within the vehicle from one axle to another to comply with the weight limits where the single-axle weight does not exceed the posted limit by 2,500 pounds.

(4) A truck or other motor vehicle shall be exempt from such light-traffic road limitations provided for pursuant to G.S. 20-118(b)(4), when transporting supplies, material or equipment necessary to carry out a farming operation engaged in the production of meats and agricultural crops and livestock or poultry by-products or a business engaged in the harvest or processing of seafood when the destination of such vehicle and load is located solely upon said light-traffic road.

(5) The light-traffic road limitations provided for pursuant to subdivision (b)(4) of this section do not apply to a vehicle while that vehicle is transporting only the following from its point of origin on a light-traffic road to either one of the two nearest ~~highway~~ highways that is not a light-traffic road:

a. Processed or unprocessed seafood from boats or any other point of origin to a processing plant or a point of further distribution.

b. Meats or agricultural crop products originating from a farm to first market.

c. Unprocessed forest products originating from a farm or from woodlands to first market.

d. Livestock or poultry from their point of origin to first market.

e. Livestock by-products or poultry by-products from their point of origin to a rendering plant.

f. Recyclable material from its point of origin to a scrap-processing facility for processing. As used in this subpart, the terms 'recyclable' and 'processing' have the same meaning as in G.S. 130A-290(a).

g. Garbage collected by the vehicle from residences or garbage dumpsters if the vehicle is fully enclosed and is designed specifically for collecting, compacting, and hauling garbage from residences or from garbage dumpsters. As used in this subpart, the term 'garbage' does not include hazardous waste as defined in G.S. 130A-290(a), spent nuclear fuel regulated under G.S. 20-167.1, low-level radioactive waste as

defined in G.S. 104E-5, or radioactive material as defined in G.S. 104E-5.

(6) A truck or other motor vehicle shall be exempt from such light-traffic road limitations provided by G.S. 20-118(b)(4) when such motor vehicles are owned, operated by or under contract to a public utility, electric or telephone membership corporation or municipality and such motor vehicles are used in connection with installation, restoration or emergency maintenance of utility services.

(7) A wrecker may tow a disabled vehicle or combination of vehicles in an emergency to the nearest feasible point for parking or storage without being in violation of G.S. 20-118 provided that the wrecker and towed vehicle or combination of vehicles otherwise meet all requirements of this section.

(8) A firefighting vehicle operated by any member of a municipal or rural fire department in the performance of his duties, regardless of whether members of that fire department are paid or voluntary and any vehicle of a voluntary lifesaving organization, when operated by a member of that organization while answering an official call shall be exempt from such light-traffic road limitations provided by G.S. 20-118(b)(4).

(9) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 12.

(10) Fully enclosed motor vehicles designed specifically for collecting, compacting and hauling garbage from residences, or from garbage dumpsters shall, when operating for those purposes, be allowed a single axle weight not to exceed 23,500 pounds on the steering axle on vehicles equipped with a boom, or on the rear axle on vehicles loaded from the rear. This exemption shall not apply to vehicles transporting hazardous waste as defined in G.S. 130A-290(a)(8), spent nuclear fuel regulated under G.S. 20-167.1, low-level radioactive waste as defined in G.S. 104E-5(9a), or radioactive material as defined in G.S. 104E-5(14).

(11) A truck or other motor vehicle shall be exempt for light-traffic road limitations issued under subdivision (b)(4) of this section when transporting heating fuel for on-premises use at a destination located on the light-traffic road.

(12) Subsections (b) and (e) of this section do not apply to a vehicle that meets one of the following descriptions, is hauling agricultural crops from the farm where they were grown to first market, is within 35 miles of that farm, does not operate on an interstate highway while hauling the crops, and does not exceed its registered weight:

a. Is a five-axle combination with a gross weight of no more than 88,000 pounds, a single-axle weight of no more than

22,000 pounds, a tandem-axle weight of no more than 42,000 pounds, and a length of at least 51 feet between the first and last axles of the combination.

b. Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 13.

c. Is a four-axle combination with a gross weight that does not exceed the limit set in subdivision (b)(3) of this section, a single-axle weight of no more than 22,000 pounds, and a tandem-axle weight of no more than 42,000 pounds."

Section 2. The Department of Transportation may adopt a rule authorizing issuance of special weight permits for vehicles transporting wood residuals on non-interstate highways, as authorized by existing State law, G.S. 20-119.

Section 3. This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. The Department may adopt the rule authorized by Section 2 of this act as a temporary rule no later than September 1, 1997.

Section 4. This act is effective when it becomes law.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House**.

☒ Committee Substitute for

H.B. 1032 A BILL TO BE ENTITLED AN ACT TO DIRECT THE COMMISSION FOR HEALTH SERVICES TO ADOPT A RULE TO AUTHORIZE THE USE OF DESIGN CRITERIA FOR MUNICIPAL SOLID WASTE LANDFILLS THAT COMPLIES WITH FEDERAL LAW AND THAT PROVIDES FOR ALTERNATE LANDFILL LINERS THAT ARE AT LEAST AS PROTECTIVE AS THE CURRENTLY AUTHORIZED LANDFILL LINER.

☐ 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 3

HOUSE BILL 1032
Committee Substitute Favorable 4/24/97
Senate Agriculture, Environment, and Natural Resources Committee Substitute Adopted 6/26/97

Short Title: Authorize Alternate Landfill Liners. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE COMMISSION FOR HEALTH SERVICES TO ADOPT A RULE TO AUTHORIZE THE USE OF DESIGN CRITERIA FOR MUNICIPAL SOLID WASTE LANDFILLS THAT COMPLIES WITH FEDERAL LAW AND THAT PROVIDES FOR ALTERNATE LANDFILL LINERS THAT ARE AT LEAST AS PROTECTIVE AS THE CURRENTLY AUTHORIZED LANDFILL LINER.

The General Assembly of North Carolina enacts:

Section 1. The Commission for Health Services shall adopt a rule regarding design criteria for municipal solid waste landfills that complies with 40 C.F.R. Part 258.40 (1 July 1996 Edition) and that provides for alternate landfill liners that are at least as protective as the liner currently authorized under the rules of the Commission for Health Services.

Section 2. This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. The Commission for Health Services shall adopt the rule required by Section 1 of this act as a temporary rule no later than 1 July 1998.

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

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House**.

☐ Committee Substitute for
S.B. 826 A BILL TO BE ENTITLED AN ACT TO PROVIDE "QUICK TAKE" PROCEDURES IN EMINENT DOMAIN PROCEEDINGS BY SCHOOL BOARDS.

☐ 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 House 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 826*
Second Edition Engrossed 4/30/97
Proposed House Committee Substitute S826-PCS1855

Short Title: School Board Changes. (Public)

Sponsors:

Referred to:

April 14, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE "QUICK TAKE" PROCEDURES IN EMINENT DOMAIN PROCEEDINGS BY SCHOOL BOARDS; AND TO EXPAND THE CARTERET COUNTY BOARD OF EDUCATION FROM FIVE TO SEVEN MEMBERS AND TO PROVIDE THAT THEIR DISTRICTS ARE THE SAME AS FOR THE BOARD OF COMMISSIONERS, SUBJECT TO A REFERENDUM, AND TO PROVIDE FOR PARTISAN ELECTIONS, SUBJECT TO A REFERENDUM; AND TO PROVIDE THAT FIVE MEMBERS OF THE MOORE COUNTY BOARD OF EDUCATION BE ELECTED FROM THE SAME DISTRICTS AS ARE THE MEMBERS OF THE BOARD OF COMMISSIONERS AND THE REMAINING THREE MEMBERS OF THE MOORE COUNTY BOARD OF EDUCATION BE ELECTED AT LARGE, SUBJECT TO A REFERENDUM, AND TO PROVIDE FOR PARTISAN ELECTIONS, SUBJECT TO A REFERENDUM.

The General Assembly of North Carolina enacts:

PART I. SCHOOL BOARD QUICK TAKE

Section 1. G.S. 40A-42(a) reads as rewritten:

"(a) When a local public condemnor is acquiring property by condemnation for a purpose set out in G.S. 40A-3(b)(1), (4) or (7), or when a city is acquiring property for a purpose set out in G.S. 160A-311(1), (2), (3), (4), (6), or (7), or when a county is acquiring property for a purpose set out in G.S. 153A-274(1), (2) or (3), or when a municipal or county board of education or any combination of those boards is

acquiring property for any purpose set forth in G.S. 115C-517, or when a condemnor is acquiring property by condemnation as authorized by G.S. 40A-3(c)(8), (9), (10) or (12), title to the property and the right to immediate possession shall vest pursuant to this subsection. Unless an action for injunctive relief has been initiated, title to the property specified in the complaint, together with the right to immediate possession thereof, shall vest in the condemnor upon the filing of the complaint and the making of the deposit in accordance with G.S. 40A-41."

Section 2. G.S. 115C-517 reads as rewritten:

"**§ 115C-517. Acquisition of sites.**

Local boards of education may acquire suitable sites for schoolhouses or other school facilities either within or without the local school administrative unit; but no school may be operated by a local school administrative unit outside its own boundaries, although other school facilities such as repair shops, may be operated outside the boundaries of the local school administrative unit. Whenever any such board is unable to acquire or enlarge a suitable site or right-of-way for a school, school building, school bus garage or for a parking area or access road suitable for school buses or for other school facilities by gift or purchase, condemnation proceedings to acquire same may be instituted by such board under the provisions of Chapter 40A of the General Statutes, including the rights and procedures pursuant to G.S. 40A-42, et seq., and the determination of the local board of education of the land necessary for such purposes shall be conclusive. A local board shall not initiate a proceeding under G.S. 40A-42(a) unless the action is approved by a resolution adopted by the board of county commissioners."

PART II. CARTERET COUNTY BOARD OF EDUCATION

Section 3. (a) Effective July 1, 1998, the Board of Education of Carteret County consists of seven members.

(b) One member of the Carteret County Board of Education shall be elected each from Districts 1, 2, 4, 5, and 6 as established for the Carteret County Board of Commissioners by Chapter 113 of the Session Laws of 1993, and two members of the Carteret County Board of Education shall be elected from District 3 as established for the Carteret County Board of Commissioners by Chapter 113 of the Session Laws of 1993.

(c) Of the existing members, Roger Newby is assigned to District 2, Rodney Kemp and Kim Willis are assigned to District 3, Ellen Piner is assigned to District 5, and June Fulcher is assigned to District 6. In 1998, one member shall be elected from each of Districts 1, 3, 5, and 6 for a four-year term, and one member from District 4 for a two-year term. In 2000 and quadrennially thereafter, one member shall be elected from Districts 2, 3, and 4 for a four-year term. In 2002 and quadrennially thereafter, one member shall be elected from Districts 1, 3, 5, and 6 for a four-year term.

(d) Members shall reside in and represent the districts, but all members are elected by the voters of the county at large in nonpartisan plurality elections at

the time of the primary election and take office on July 1 of the year of election, all as previously provided by law.

Section 4. The Carteret County Board of Elections shall conduct an election on November 4, 1997, on the question of approval of Section 3 of this act. The question on the ballot shall be:

"[ ] FOR [ ] AGAINST

Expansion of the Carteret County Board of Education to seven members and election from the same districts as the Carteret County Board of Commissioners."

If a majority of the votes cast are FOR the question, then Section 3 of this act becomes effective. If less than a majority of the votes cast are FOR the question, then Section 3 of this act does not become effective.

Section 5. Notwithstanding any provision of Section 3(d) of this act or Chapter 774 of the 1991 Session Laws, the members of the Carteret County Board of Education shall be elected on a partisan basis at the same time as county officers. To the extent that they do not conflict with this act and that act, the elections shall be conducted in accordance with Chapters 115C and 163 of the General Statutes. Vacancies on the Board of Education for positions elected on a nonpartisan basis in 1994 and 1996 shall be filled in accordance with G.S. 115C-37(f). Vacancies on the Board of Education for positions elected on a partisan basis shall be filled in accordance with G.S. 115C-37.1. Beginning in 1998, members elected shall take office and qualify on the first Monday in December of the year of their election, and the terms of their predecessors shall expire at that same time.

Section 6. The Carteret County Board of Elections shall conduct an election on November 4, 1997, on the question of approval of Section 5 of this act. The question on the ballot shall be:

"[ ] FOR [ ] AGAINST

Election of the Carteret County Board of Education on a partisan basis."

If a majority of the votes cast are FOR the question, then Section 5 of this act becomes effective. If less than a majority of the votes cast are FOR the question, then Section 5 of this act does not become effective.

PART III. MOORE COUNTY BOARD OF EDUCATION

Section 7. (a) The Board of Education of Moore County consists of eight members.

(b) One member of the Moore County Board of Education shall be elected each from Electoral Districts 1, 2, 3, 4, and 5 for members of the Moore County Board of Commissioners as those districts existed on January 1, 1997, and three members of the Moore County Board of Education shall be elected from the County at large.

(c) Of the existing Moore County Board of Education members, Mike Ritter is assigned to District 1; Ken Baer is assigned to District 2; Bill Garner is assigned to District 3; Linda McCaskill is assigned to District 4; and Dianne Lawrence is assigned to District 5. In 1998 and quadrennially thereafter, a member shall be elected from District 3, and three members shall be elected from the county at large

for four-year terms. In 2000 and quadrennially thereafter, members shall be elected from Districts 1, 2, 4, and 5 for four-year terms.

(d) Members shall reside in and represent the districts, but all members are elected by the voters of the county at large by the nonpartisan primary and election method, all as previously provided by law.

Section 8. The Moore County Board of Elections shall conduct an election on November 4, 1997, on the question of approval of Section 7 of this act. The question on the ballot shall be:

"[ ] FOR [ ] AGAINST

Providing that five of the Moore County Board of Education members have the same districts as the Moore County Board of County Commissioners and that three of the Moore County Board of Education members be elected at large."

If a majority of the votes cast are FOR the question, then Section 7 of this act becomes effective. If less than a majority of the votes cast are FOR the question, then Section 7 of this act does not become effective.

Section 9. Notwithstanding any provision of Section 7(d) of this act, Chapter 882 of the 1967 Session Laws, or Chapter 442 of the 1977 Session Laws, the members of the Moore County Board of Education shall be elected on a partisan basis at the same time as county officers. To the extent that they do not conflict with this act, Chapter 882 of the 1967 Session Laws, or Chapter 442 of the 1977 Session Laws, the elections shall be conducted in accordance with Chapters 115C and 163 of the General Statutes. Vacancies on the Board of Education for positions elected on a nonpartisan basis in 1994 and 1996 shall be filled in accordance with G.S. 115C-37(f). Vacancies on the Board of Education for positions elected on a partisan basis shall be filled in accordance with G.S. 115C-37.1.

Section 10. The Moore County Board of Elections shall conduct an election on November 4, 1997, on the question of approval of Section 9 of this act. The question on the ballot shall be:

"[ ] FOR [ ] AGAINST

Election of the Moore County Board of Education on a partisan basis."

If a majority of the votes cast are FOR the question, then Section 9 of this act becomes effective. If less than a majority of the votes cast are FOR the question, then Section 9 of this act does not become effective.

Section 11. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 826*
Second Edition Engrossed 4/30/97

Short Title: School Board "Quick Take". (Public)

Sponsors: Senator Miller.

Referred to: Finance.

April 14, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE "QUICK TAKE" PROCEDURES IN EMINENT DOMAIN PROCEEDINGS BY SCHOOL BOARDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 40A-42(a) reads as rewritten:

"(a) When a local public condemnor is acquiring property by condemnation for a purpose set out in G.S. 40A-3(b)(1), (4) or (7), or when a city is acquiring property for a purpose set out in G.S. 160A-311(1), (2), (3), (4), (6), or (7), or when a county is acquiring property for a purpose set out in G.S. 153A-274(1), (2) or (3), or when a municipal or county board of education or any combination of those boards is acquiring property for any purpose set forth in G.S. 115C-517, or when a condemnor is acquiring property by condemnation as authorized by G.S. 40A-3(c)(8), (9), (10) or (12), title to the property and the right to immediate possession shall vest pursuant to this subsection. Unless an action for injunctive relief has been initiated, title to the property specified in the complaint, together with the right to immediate possession thereof, shall vest in the condemnor upon the filing of the complaint and the making of the deposit in accordance with G.S. 40A-41."

Section 2. G.S. 115C-517 reads as rewritten:

"**§ 115C-517. Acquisition of sites.**

Local boards of education may acquire suitable sites for schoolhouses or other school facilities either within or without the local school administrative unit; but no school may be operated by a local school administrative unit outside its own boundaries, although other school facilities such as repair shops, may be operated

outside the boundaries of the local school administrative unit. Whenever any such board is unable to acquire or enlarge a suitable site or right-of-way for a school, school building, school bus garage or for a parking area or access road suitable for school buses or for other school facilities by gift or purchase, condemnation proceedings to acquire same may be instituted by such board under the provisions of Chapter 40A of the General Statutes, including the rights and procedures pursuant to G.S. 40A-42, et seq., and the determination of the local board of education of the land necessary for such purposes shall be conclusive. A local board shall not initiate a proceeding under G.S. 40A-42(a) unless the action is approved by a resolution adopted by the board of county commissioners."

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

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House**.

☒ Committee Substitute for
S.B. 455 A BILL TO BE ENTITLED AN ACT TO IMPROVE HMO SERVICES BY PROTECTING PHYSICIAN COMMUNICATIONS REGARDING TREATMENT, REQUIRING COVERAGE FOR EMERGENCY CARE, AND REDUCING THE APPROVAL PERIOD FOR RATE FILINGS.

☐ 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 House committee substitute bill (# 2), ☑ which changes the title, unfavorable as to ~~original bill~~ (House Committee Substitute Bill # 1), ~~(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 D

SENATE BILL 455*
Pensions & Retirement and Insurance Committee Substitute Adopted 4/29/97
Third Edition Engrossed 4/30/97
House Committee Substitute Favorable 7/7/97
Proposed Committee Substitute S455-PCS1870

Short Title: Improve HMO Services. (Public)

Sponsors:

Referred to:

March 24, 1997

A BILL TO BE ENTITLED

AN ACT TO IMPROVE HMO SERVICES BY PROTECTING PHYSICIAN COMMUNICATIONS REGARDING TREATMENT, REQUIRING COVERAGE FOR EMERGENCY CARE, REDUCING THE APPROVAL PERIOD FOR RATE FILINGS, AND PROMOTING COLLABORATION BETWEEN HMOS AND PUBLIC HEALTH DEPARTMENTS.

The General Assembly of North Carolina enacts:

Section 1. Article 3 of Chapter 58 of the General Statutes is amended by adding the following new section to read:

"**§ 58-3-176. Treatment discussions not limited.**

(a) An insurer shall not limit either of the following:

(1) The participating plan provider's ability to discuss with an enrollee the clinical treatment options medically available, the risks associated with the treatments, or a recommended course of treatment.

(2) The participating plan provider's professional obligations to patients as specified under the provider's professional license.

(b) Nothing in this section shall be construed to expand or revise the scope of benefits covered by a health benefit plan.

(c) As used in this section:

(1) 'Health benefit plan' means any of the following if written by an insurer: an accident and health insurance policy or certificate; a nonprofit hospital or medical service corporation contract; a health maintenance organization subscriber contract; or a plan provided by a multiple employer welfare arrangement. 'Health benefit plan' does not mean any plan implemented or administered through the Department of Human Resources or its representatives. 'Health benefit plan' also does not mean any of the following kinds of insurance:

a. Accident.
b. Credit.
c. Disability income.
d. Long-term or nursing home care.
e. Medicare supplement.
f. Specified disease.
g. Dental or vision.
h. Coverage issued as a supplement to liability insurance.
i. Workers' compensation.
j. Medical payments under automobile or homeowners insurance.
k. Hospital income or indemnity.
l. Insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability policy or equivalent self-insurance.

(2) 'Insurer' means an entity that writes a health benefit plan and that is an insurance company subject to this Chapter, a service corporation under Article 65 of this Chapter, a health maintenance organization under Article 67 of this Chapter, or a multiple employer welfare arrangement under Article 49 of this Chapter."

Section 2. Chapter 58 of the General Statutes is amended by adding the following new section to read:

"**§ 58-3-190. Coverage required for emergency care.**

(a) Every insurer shall provide coverage for emergency services to the extent necessary to screen and to stabilize the person covered under the plan and shall not require prior authorization of the services if a prudent layperson acting reasonably would have believed that an emergency medical condition existed. Payment of claims for emergency services shall be based on the retrospective review of the presenting history and symptoms of the covered person.

(b) With respect to emergency services provided by a health care provider who is not under contract with the insurer, the services shall be covered if:

(1) A prudent layperson acting reasonably would have believed that a delay would worsen the emergency, or

(2) The covered person did not seek services from a provider under contract with the insurer because of circumstances beyond the control of the covered person.

(c) An insurer that has given prior authorization for emergency services shall cover the services and shall not retract the authorization after the services have been provided unless the authorization was based on a material misrepresentation about the covered person's health condition made by the provider of the emergency services or the covered person.

(d) Coverage of emergency services shall be subject to coinsurance, co-payments, and deductibles applicable under the health benefit plan. An insurer shall not impose cost-sharing for emergency services provided under this section that differs from the cost-sharing that would have been imposed if the physician or provider furnishing the services were a provider contracting with the insurer.

(e) Both the emergency department and the insurer shall make a good faith effort to communicate with each other in a timely fashion to expedite postevaluation or poststabilization services in order to avoid material deterioration of the covered person's condition within a reasonable clinical confidence, or with respect to a pregnant woman, to avoid material deterioration of the condition of the unborn child within a reasonable clinical confidence.

(f) Insurers shall provide information to their covered persons on all of the following:

(1) Coverage of emergency medical services.

(2) The appropriate use of emergency services, including the use of the '911' system and other telephone access systems utilized to access prehospital emergency services.

(3) Any cost-sharing provisions for emergency medical services.

(4) The process and procedures for obtaining emergency services, so that covered persons are familiar with the location of in-plan emergency departments and with the location and availability of other in-plan settings at which covered persons may receive medical care.

(g) As used in this section, the term:

(1) 'Emergency medical condition' means a medical condition manifesting itself by acute symptoms of sufficient severity, including, but not limited to, severe pain, or by acute symptoms developing from a chronic medical condition that would lead a prudent layperson, possessing an average knowledge of health and medicine, to reasonably expect the absence of immediate medical attention to result in any of the following:

a. Placing the health of an individual, or with respect to a pregnant woman, the health of the woman or her unborn child, in serious jeopardy.

b. Serious impairment to bodily functions.

c. Serious dysfunction of any bodily organ or part.

(2) 'Emergency services' means health care items and services furnished or required to screen for or treat an emergency medical condition until the condition is stabilized, including prehospital care and ancillary services routinely available to the emergency department.

(3) 'Health benefit plan' means any of the following if written by an insurer: an accident and health insurance policy or certificate; a nonprofit hospital or medical service corporation contract; a health maintenance organization subscriber contract; or a plan provided by a multiple employer welfare arrangement. 'Health benefit plan' does not mean any plan implemented or administered through the Department of Human Resources or its representatives. 'Health benefit plan' also does not mean any of the following kinds of insurance:

a. Accident.
b. Credit.
c. Disability income.
d. Long-term or nursing home care.
e. Medicare supplement.
f. Specified disease.
g. Dental or vision.
h. Coverage issued as a supplement to liability insurance.
i. Workers' compensation.
j. Medical payments under automobile or homeowners insurance.
k. Hospital income or indemnity.
l. Insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability policy or equivalent self-insurance.

(4) 'Insurer' means an entity that writes a health benefit plan and that is an insurance company subject to this Chapter, a service corporation under Article 65 of this Chapter, a health maintenance organization under Article 67 of this Chapter, or a multiple employer welfare arrangement under Article 49 of this Chapter.

(5) 'To stabilize' means to provide medical care that is appropriate to prevent a material deterioration of the person's condition, within reasonable medical probability, in accordance with the HCFA (Health Care Financing Administration) interpretative guidelines, policies and regulations pertaining to responsibilities of hospitals in emergency cases (as provided under the Emergency Medical Treatment and Labor Act, section 1867 of the Social Security Act, 42 U.S.C.S. 1395dd), including medically necessary services and supplies to maintain stabilization until the person is transferred."

Section 3. G.S. 58-67-50(c) reads as rewritten:

"(c) The Commissioner shall, within a reasonable period, approve any form if the requirements of subsection (a) of this section are met and any schedule of premiums if the requirements of subsection (b) of this section are met. It shall be unlawful to issue the form or to use the schedule of premiums until approved. If the Commissioner disapproves the filing, the Commissioner shall notify the filer. In the notice, the Commissioner shall specify the reasons for disapproval. A hearing will be granted within 30 days after a request in writing by the person filing. If the Commissioner does not approve or disapprove any form or schedule of premiums within 90 days after the filing for forms and within ~~60~~ 45 days after the filing for premiums, they shall be deemed to be approved."

Section 4. Article 67 of Chapter 58 of the General Statutes is amended by adding the following new section:

"**§ 58-67-66. Collaboration with local health departments.**

A health maintenance organization and a local health department shall collaborate and cooperate within available resources regarding health promotion and disease prevention efforts that are necessary to protect the public health."

Section 5. Section 2 of this act becomes effective January 1, 1998, and applies to health benefit plans issued, renewed, or amended on or after that date. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 4

SENATE BILL 455*
Pensions & Retirement and Insurance Committee Substitute Adopted 4/29/97
Third Edition Engrossed 4/30/97
House Committee Substitute Favorable 7/7/97

Short Title: Improve HMO Services. (Public)

Sponsors:

Referred to:

March 24, 1997

A BILL TO BE ENTITLED

AN ACT TO IMPROVE HMO SERVICES BY PROTECTING PHYSICIAN COMMUNICATIONS REGARDING TREATMENT, REQUIRING COVERAGE FOR EMERGENCY CARE, AND REDUCING THE APPROVAL PERIOD FOR RATE FILINGS.

The General Assembly of North Carolina enacts:

Section 1. Article 3 of Chapter 58 of the General Statutes is amended by adding the following new section to read:

"**§ 58-3-176. Treatment discussions not limited.**

(a) An insurer shall not limit either of the following:

(1) The participating plan provider's ability to discuss with an enrollee the clinical treatment options medically available, the risks associated with the treatments, or a recommended course of treatment.

(2) The participating plan provider's professional obligations to patients as specified under the provider's professional license.

(b) Nothing in this section shall be construed to expand or revise the scope of benefits covered by a health benefit plan.

(c) As used in this section:

(1) 'Health benefit plan' means any of the following if written by an insurer: an accident and health insurance policy or certificate; a

nonprofit hospital or medical service corporation contract; a health maintenance organization subscriber contract; or a plan provided by a multiple employer welfare arrangement. 'Health benefit plan' does not mean any plan implemented or administered through the Department of Human Resources or its representatives. 'Health benefit plan' also does not mean any of the following kinds of insurance:

a. Accident.
b. Credit.
c. Disability income.
d. Long-term or nursing home care.
e. Medicare supplement.
f. Specified disease.
g. Dental or vision.
h. Coverage issued as a supplement to liability insurance.
i. Workers' compensation.
j. Medical payments under automobile or homeowners insurance.
k. Hospital income or indemnity.
l. Insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability policy or equivalent self-insurance.

(2) 'Insurer' means an entity that writes a health benefit plan and that is an insurance company subject to this Chapter, a service corporation under Article 65 of this Chapter, a health maintenance organization under Article 67 of this Chapter, or a multiple employer welfare arrangement under Article 49 of this Chapter."

Section 2. Chapter 58 of the General Statutes is amended by adding the following new section to read:

"**§ 58-3-190. Coverage required for emergency care.**

(a) Every insurer shall provide coverage for emergency services to the extent necessary to screen and to stabilize the person covered under the plan and shall not require prior authorization of the services if a prudent layperson acting reasonably would have believed that an emergency medical condition existed. Payment of claims for emergency services shall be based on the retrospective review of the presenting history and symptoms of the covered person.

(b) With respect to emergency services provided by a health care provider who is not under contract with the insurer, the services shall be covered if:

(1) A prudent layperson acting reasonably would have believed that a delay would worsen the emergency, or

(2) The covered person did not seek services from a provider under contract with the insurer because of circumstances beyond the control of the covered person.

(c) An insurer that has given prior authorization for emergency services shall cover the services and shall not retract the authorization after the services have been provided unless the authorization was based on a material misrepresentation about the covered person's health condition made by the provider of the emergency services or the covered person.

(d) Coverage of emergency services shall be subject to coinsurance, co-payments, and deductibles applicable under the health benefit plan. An insurer shall not impose cost-sharing for emergency services provided under this section that differs from the cost-sharing that would have been imposed if the physician or provider furnishing the services were a provider contracting with the insurer.

(e) Both the emergency department and the insurer shall make a good faith effort to communicate with each other in a timely fashion to expedite postevaluation or poststabilization services in order to avoid material deterioration of the covered person's condition within a reasonable clinical confidence, or with respect to a pregnant woman, to avoid material deterioration of the condition of the unborn child within a reasonable clinical confidence.

(f) Insurers shall provide information to their covered persons on all of the following:

(1) Coverage of emergency medical services.

(2) The appropriate use of emergency services, including the use of the '911' system and other telephone access systems utilized to access prehospital emergency services.

(3) Any cost-sharing provisions for emergency medical services.

(4) The process and procedures for obtaining emergency services, so that covered persons are familiar with the location of in-plan emergency departments and with the location and availability of other in-plan settings at which covered persons may receive medical care.

(g) As used in this section, the term:

(1) 'Emergency medical condition' means a medical condition manifesting itself by acute symptoms of sufficient severity, including, but not limited to, severe pain, or by acute symptoms developing from a chronic medical condition that would lead a prudent layperson, possessing an average knowledge of health and medicine, to reasonably expect the absence of immediate medical attention to result in any of the following:

a. Placing the health of an individual, or with respect to a pregnant woman, the health of the woman or her unborn child, in serious jeopardy.

b. Serious impairment to bodily functions.

c. Serious dysfunction of any bodily organ or part.

(2) 'Emergency services' means health care items and services furnished or required to screen for or treat an emergency medical condition until the condition is stabilized, including prehospital

care and ancillary services routinely available to the emergency department.

(3) 'Health benefit plan' means any of the following if written by an insurer: an accident and health insurance policy or certificate; a nonprofit hospital or medical service corporation contract; a health maintenance organization subscriber contract; or a plan provided by a multiple employer welfare arrangement. 'Health benefit plan' does not mean any plan implemented or administered through the Department of Human Resources or its representatives. 'Health benefit plan' also does not mean any of the following kinds of insurance:

a. Accident.
b. Credit.
c. Disability income.
d. Long-term or nursing home care.
e. Medicare supplement.
f. Specified disease.
g. Dental or vision.
h. Coverage issued as a supplement to liability insurance.
i. Workers' compensation.
j. Medical payments under automobile or homeowners insurance.
k. Hospital income or indemnity.
l. Insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability policy or equivalent self-insurance.

(4) 'Insurer' means an entity that writes a health benefit plan and that is an insurance company subject to this Chapter, a service corporation under Article 65 of this Chapter, a health maintenance organization under Article 67 of this Chapter, or a multiple employer welfare arrangement under Article 49 of this Chapter.

(5) 'To stabilize' means to provide medical care that is appropriate to prevent a material deterioration of the person's condition, within reasonable medical probability, in accordance with the HCFA (Health Care Financing Administration) interpretative guidelines, policies and regulations pertaining to responsibilities of hospitals in emergency cases (as provided under the Emergency Medical Treatment and Labor Act, section 1867 of the Social Security Act, 42 U.S.C.S. 1395dd), including medically necessary services and supplies to maintain stabilization until the person is transferred."

Section 3. G.S. 58-67-50(c) reads as rewritten:

"(c) The Commissioner shall, within a reasonable period, approve any form if the requirements of subsection (a) of this section are met and any schedule of premiums if the requirements of subsection (b) of this section are met. It shall be unlawful to

issue the form or to use the schedule of premiums until approved. If the Commissioner disapproves the filing, the Commissioner shall notify the filer. In the notice, the Commissioner shall specify the reasons for disapproval. A hearing will be granted within 30 days after a request in writing by the person filing. If the Commissioner does not approve or disapprove any form or schedule of premiums within 90 days after the filing for forms and within ~~60~~ 45 days after the filing for premiums, they shall be deemed to be approved."

Section 4. Section 2 of this act becomes effective January 1, 1998, and applies to health benefit plans issued, renewed, or amended on or after that date. The remainder of this act is effective when it becomes law.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House.**

X Committee Substitute for
S.B. 565 A BILL TO BE ENTITLED AN ACT TO CLARIFY THE APPLICATION OF THE COMMISSIONER OF BANK'S RATE TO VARIABLE RATE LOANS WITH ADJUSTMENT PERIODS GREATER THAN ONE MONTH AND TO REPEAL THE LAWS GOVERNING VARIABLE RATE LOANS OF MANUFACTURED HOMES AND INSTALLMENT RATES AND FEES.

☐ 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 House committee substitute bill (#____), ☑ which changes the title, unfavorable as to ~~original bill~~ (Senate 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 565
Commerce Committee Substitute Adopted 4/30/97
Proposed House Committee Substitute S565-PCS2791

Short Title: Variable Rate Loans. (Public)

Sponsors:

Referred to:

April 1, 1997

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE APPLICATION OF THE COMMISSIONER OF BANKS' RATE TO VARIABLE RATE LOANS WITH ADJUSTMENT PERIODS GREATER THAN ONE MONTH, TO REPEAL THE LAWS GOVERNING VARIABLE RATE LOANS OF MANUFACTURED HOMES AND INSTALLMENT RATES AND FEES, AND TO ESTABLISH FINANCE CHARGE RATES FOR CONSUMER CREDIT INSTALLMENT SALES CONTRACTS FOR WATERCRAFTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 24-1.1(c) reads as rewritten:

"(c) On the fifteenth day of each month, the Commissioner of Banks shall announce and publish the maximum rate of interest permitted by subdivision (1) of subsection (a) of this section on that date. Such rate shall be the latest published noncompetitive rate for U.S. Treasury bills with a six-month maturity as of the fifteenth day of the month plus six percent (6%), rounded upward or downward, as the case may be, to the nearest one-half of one percent (1/2 of 1%) or sixteen percent (16%), whichever is greater. If there is no nearest one-half of one percent (1/2 of 1%), the Commissioner shall round downward to the lower one-half of one percent (1/2 of 1%). The rate so announced shall be the maximum rate permitted for the term of loans made under this section during the following calendar month when the parties to such loans have agreed that the rate of interest to be charged by the lender and paid by the borrower shall not vary or be adjusted during the term of the loan.

The parties to a loan made under this section may agree to a rate of interest which shall vary or be adjusted during the term of the loan in which case the maximum rate of interest permitted on such loans during a month during the term of the loan shall be the greater of the rate announced by the Commissioner in (i) the preceding calendar ~~month.~~ month or (ii) the calendar month preceding that in which the rate is varied or adjusted."

Section 2. G.S. 24-1.1C and G.S. 24-1.2 are repealed.

Section 2.1. G.S. 24-1.2A reads as rewritten:

"**§ 24-1.2A. Equity lines of credit.**

(a) Notwithstanding any other provision of this Chapter, the parties to an equity line of credit, as defined in G.S. 45-81, may contract in writing for interest at rates which shall not exceed the maximum rates permitted under ~~G.S. 24-1.2(2a);~~ G.S. 24-1.1(c); provided, however, that the parties may contract for interest rates which shall be adjustable or variable, so long as for adjustable or variable rate contracts the rate in effect for a given period does not exceed the maximum rate permitted under ~~G.S. 24-1.2(2a)~~ G.S. 24-1.1(c) for the same period.

(b) Fees may be charged on equity lines of credit which in the aggregate, over the life of the contract based on the maximum limit of the line of credit, do not exceed those permitted under G.S. 24-10. Any lender may charge a party to a loan or extension of credit governed by this section a fee for the modification, renewal, extension, or amendment of any terms of the loan or extension of credit, such fee not to exceed the greater of one-quarter of one percent (1/4 of 1%) of the balance outstanding at the time of the modification, renewal, extension, or amendment of terms, or fifty dollars ($50.00)."

Section 3. G.S. 25A-15(c) reads as rewritten:

"(c) A finance charge rate not to exceed the higher of the rate established in subsection (b) or the rate set forth below may be imposed in a consumer credit installment sale contract repayable in not less than six installments for a self-propelled motor ~~vehicle:~~ vehicle or a watercraft as defined in G.S. 75A-33(2):

(1) Eighteen percent (18%) per annum for vehicles or watercraft one and two model years old;

(2) Twenty percent (20%) per annum for vehicles or watercraft three model years old;

(3) Twenty-two percent (22%) per annum for vehicles or watercraft four model years old; and

(4) Twenty-nine percent (29%) per annum for vehicles or watercraft five model years old and older.

A motor vehicle or watercraft is one model year old on January 1 of the year following the designated year model of the vehicle."

Section 4. This act becomes effective October 1, 1997, and applies to loans made on or after that date, and Section 1 of this act applies to variations or adjustments in rates occurring on or after that date regardless of the date on which the loan was made.

DRAFT
FOR REVIEW ONLY

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 565
Commerce Committee Substitute Adopted 4/30/97
Proposed House Committee Substitute
S565-CSRO-002
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION.

Short Title: Variable Rate Loans. (Public)

Sponsors:

Referred to:

April 1, 1997

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE APPLICATION OF THE COMMISSIONER OF BANK'S RATE TO VARIABLE RATE LOANS WITH ADJUSTMENT PERIODS GREATER THAN ONE MONTH, TO REPEAL THE LAWS GOVERNING VARIABLE RATE LOANS OF MANUFACTURED HOMES AND INSTALLMENT RATES AND FEES, AND TO ESTABLISH FINANCE CHARGE RATES FOR CONSUMER CREDIT INSTALLMENT SALES CONTRACTS FOR WATERCRAFTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 24-1.1(c) reads as rewritten:

"(c) On the fifteenth day of each month, the Commissioner of Banks shall announce and publish the maximum rate of interest permitted by subdivision (1) of subsection (a) of this section on that date. Such rate shall be the latest published noncompetitive rate for U.S. Treasury bills with a six-month maturity as of the fifteenth day of the month plus six percent (6%), rounded upward or downward, as the case may be, to the nearest one-half of one percent (1/2 of 1%) or sixteen percent (16%), whichever is greater. If there is no nearest one-half of one percent (1/2 of 1%), the Commissioner shall round downward to the lower one-half of one percent (1/2 of 1%). The rate so

announced shall be the maximum rate permitted for the term of loans made under this section during the following calendar month when the parties to such loans have agreed that the rate of interest to be charged by the lender and paid by the borrower shall not vary or be adjusted during the term of the loan. The parties to a loan made under this section may agree to a rate of interest which shall vary or be adjusted during the term of the loan in which case the maximum rate of interest permitted on such loans during a month during the term of the loan shall be the greater of the rate announced by the Commissioner in (i) the preceding calendar ~~month.~~ month or (ii) the calendar month preceding that in which the rate is varied or adjusted."

Section 2. G.S. 24-1.1C and G.S. 24-1.2 are repealed.

Section 2.1. G.S. 24-1.2A reads as rewritten:

"**§ 24-1.2A. Equity lines of credit.**

(a) Notwithstanding any other provision of this Chapter, the parties to an equity line of credit, as defined in G.S. 45-81, may contract in writing for interest at rates which shall not exceed the maximum rates permitted under ~~G.S. 24-1.2(2a);~~ G.S. 24-1.1(c); provided, however, that the parties may contract for interest rates which shall be adjustable or variable, so long as for adjustable or variable rate contracts the rate in effect for a given period does not exceed the maximum rate permitted under ~~G.S. 24-1.2(2a)~~ G.S. 24-1.1(c) for the same period.

(b) Fees may be charged on equity lines of credit which in the aggregate, over the life of the contract based on the maximum limit of the line of credit, do not exceed those permitted under G.S. 24-10. Any lender may charge a party to a loan or extension of credit governed by this section a fee for the modification, renewal, extension, or amendment of any terms of the loan or extension of credit, such fee not to exceed the greater of one-quarter of one percent (1/4 of 1%) of the balance outstanding at the time of the modification, renewal, extension, or amendment of terms, or fifty dollars ($50.00)."

Section 3. G.S. 25A-15(c) reads as rewritten:

"(c) A finance charge rate not to exceed the higher of the rate established in subsection (b) or the rate set forth below may be imposed in a consumer credit installment sale contract repayable in not less than six installments for a self-propelled motor ~~vehicle:~~ vehicle or a watercraft as defined in G.S. 75A-33(2):

(1) Eighteen percent (18%) per annum for vehicles or watercraft one and two model years old;

(2) Twenty percent (20%) per annum for vehicles or watercraft three model years old;

(3) Twenty-two percent (22%) per annum for vehicles or watercraft four model years old; and

(4) Twenty-nine percent (29%) per annum for vehicles or watercraft five model years old and older.

A motor vehicle or watercraft is one model year old on January 1 of the year following the designated year model of the vehicle."

Section 4. This act becomes effective October 1, 1997, and applies to loans made on or after that date, and Section 1 of this act applies to variations or adjustments in rates occurring on or after that date regardless of the date on which the loan was made.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 565
Commerce Committee Substitute Adopted 4/30/97

Short Title: Variable Rate Loans. (Public)

Sponsors:

Referred to:

April 1, 1997

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE APPLICATION OF THE COMMISSIONER OF BANK'S RATE TO VARIABLE RATE LOANS WITH ADJUSTMENT PERIODS GREATER THAN ONE MONTH AND TO REPEAL THE LAWS GOVERNING VARIABLE RATE LOANS OF MANUFACTURED HOMES AND INSTALLMENT RATES AND FEES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 24-1.1(c) reads as rewritten:

"(c) On the fifteenth day of each month, the Commissioner of Banks shall announce and publish the maximum rate of interest permitted by subdivision (1) of subsection (a) of this section on that date. Such rate shall be the latest published noncompetitive rate for U.S. Treasury bills with a six-month maturity as of the fifteenth day of the month plus six percent (6%), rounded upward or downward, as the case may be, to the nearest one-half of one percent (1/2 of 1%) or sixteen percent (16%), whichever is greater. If there is no nearest one-half of one percent (1/2 of 1%), the Commissioner shall round downward to the lower one-half of one percent (1/2 of 1%). The rate so announced shall be the maximum rate permitted for the term of loans made under this section during the following calendar month when the parties to such loans have agreed that the rate of interest to be charged by the lender and paid by the borrower shall not vary or be adjusted during the term of the loan. The parties to a loan made under this section may agree to a rate of interest which shall vary or be adjusted during the term of the loan in which case the maximum rate of interest permitted on such loans during a month during the term of the loan shall

be the greater of the rate announced by the Commissioner in (i) the preceding calendar ~~month.~~ month or (ii) the calendar month preceding that in which the rate is varied or adjusted."

Section 2. G.S. 24-1.1C and G.S. 24-1.2 are repealed.

Section 2.1. G.S. 24-1.2A reads as rewritten:

"**§ 24-1.2A. Equity lines of credit.**

(a) Notwithstanding any other provision of this Chapter, the parties to an equity line of credit, as defined in G.S. 45-81, may contract in writing for interest at rates which shall not exceed the maximum rates permitted under ~~G.S. 24-1.2(2a);~~ G.S. 24-1.1(c); provided, however, that the parties may contract for interest rates which shall be adjustable or variable, so long as for adjustable or variable rate contracts the rate in effect for a given period does not exceed the maximum rate permitted under ~~G.S. 24-1.2(2a)~~ G.S. 24-1.1(c) for the same period.

(b) Fees may be charged on equity lines of credit which in the aggregate, over the life of the contract based on the maximum limit of the line of credit, do not exceed those permitted under G.S. 24-10. Any lender may charge a party to a loan or extension of credit governed by this section a fee for the modification, renewal, extension, or amendment of any terms of the loan or extension of credit, such fee not to exceed the greater of one-quarter of one percent (1/4 of 1%) of the balance outstanding at the time of the modification, renewal, extension, or amendment of terms, or fifty dollars ($50.00)."

Section 3. This act becomes effective October 1, 1997, and applies to loans made on or after that date, and Section 1 of this act applies to variations or adjustments in rates occurring on or after that date regardless of the date on which the loan was made.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 3

SENATE BILL 627
Judiciary Committee Substitute Adopted 4/16/97
Third Edition Engrossed 4/23/97

Short Title: Domestic Violence Changes. (Public)

Sponsors:

Referred to:

April 1, 1997

A BILL TO BE ENTITLED

AN ACT TO CLARIFY AND EXPAND THE CLASSIFICATION OF PERSONS WHO MAY OBTAIN A DOMESTIC VIOLENCE PROTECTIVE ORDER, AND TO CLARIFY THE CIRCUMSTANCES UNDER WHICH MAGISTRATES MAY ISSUE PROTECTIVE ORDERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 50B-1 reads as rewritten:

"**§ 50B-1. Domestic violence; definition.**

(a) Domestic violence means the commission of one or more of the following acts upon an aggrieved party or upon a minor child residing with or in the custody of the aggrieved party by a person with whom the aggrieved party has or has had a ~~familial~~ personal relationship, but does not include acts of self-defense:

(1) Attempting to cause bodily injury, or intentionally causing bodily injury; or

(2) Placing the aggrieved party or a member of the aggrieved party's family or household in fear of imminent serious bodily injury; or

(3) Committing any act defined in G.S. 14-27.2 through G.S. 14-27.7.

(b) For purposes of this section, the term '~~familial~~ personal relationship' means a relationship wherein the parties involved:

(1) Are current or former spouses;

(2) Are persons of opposite sex who live together or have lived together;

(3) ~~Are parents, grandparents, or others acting in loco parentis to a minor child, or children and grandchildren;~~ Are related as parents and children, including others acting in loco parentis to a minor child, or as grandparents and grandchildren. For purposes of this subdivision, an aggrieved party may not obtain an order of protection against a child or grandchild under the age of 16;

(4) Have a child in ~~common.~~ common;

(5) Are current or former household members;

(6) Are persons of the opposite sex who are in a dating relationship or have been in a dating relationship. For purposes of this subdivision, a dating relationship is one wherein the parties are romantically involved over time and on a continuous basis during the course of the relationship. A casual acquaintance or ordinary fraternization between persons in a business or social context is not a dating relationship."

Section 2. G.S. 50B-2(c1) reads as rewritten:

"(c1) Ex Parte Orders by Authorized Magistrate. -- The chief district court judge may authorize a magistrate or magistrates to hear any motions for emergency relief ex parte. Prior to the hearing, if the magistrate determines that at the time the party is seeking emergency relief ex parte ~~the clerk of superior court is not available,~~ the district court is not in ~~session,~~ session and a district court judge is not and will not be available to hear the motion for a period of four or more hours, the motion may be heard by the magistrate. If it clearly appears to the magistrate from specific facts shown that there is a danger of acts of domestic violence against the aggrieved party or a minor child, the magistrate may enter such orders as it deems necessary to protect the aggrieved party or minor children from such acts, except that a temporary order for custody ex parte and prior to service of process and notice shall not be entered unless the magistrate finds that the child is exposed to a substantial risk of bodily injury or sexual abuse. An ex parte order entered under this subsection shall expire and the magistrate shall schedule an ex parte hearing before a district court judge within 72 hours of the filing for relief under this subsection, or by the end of the next day on which the district court is in session in the county in which the action was filed, whichever occurs first. A party who has paid court costs due for seeking an order from the magistrate under this subsection shall not be liable for court costs for a hearing before the district court judge scheduled and heard pursuant to an order entered by the magistrate under this subsection. Ex parte orders entered by the district court judge pursuant to this subsection shall be entered and scheduled in accordance with subsection (c) of this section."

Section 3. This act becomes effective December 1, 1997, and applies to offenses committed on or after that date.

VISITOR REGISTRATION SHEET

RULES, CALENDAR, AND OPERATIONS OF THE HOUSE **JULY 23, 1997**

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ken Wright	BCBSNC
John Boardish	Zeb Alley P.A.
Roslyn Savitt	NC Coalition Against Domestic Violence
Zeb Alley	The World
Ken Eudy	Capital Strategies
	Bode Call & Stroupe
David S. Mimms	ZDA PA
Tommy Hunt	Carolinas HealthCare Sys
Leighton Popey	ZDA, PA.
Ali Mare	DEHNR
Bill Swoggin	NCBA
Susan Harrison	WCPSS
Amy Hunderman	Hunton & Williams
Susan Valaoras	Nationwide
John McMillan	Manning, Fulton & Skinner PA.
Bill Breeze	NC Medical Board
A.B. Swindell IV	BFT
Carmen Hooker Buell	Carolinas HealthCare System
Otis Carter	Carter & Assoc.
Katherine Davis	Electric Cities
	Moore & Van Allen
Natalie Haskins	Charlotte Chamber
John McAlister	Duke Energy

VISITOR REGISTRATION SHEET

RULES, CALENDAR, AND OPERATIONS OF THE HOUSE **JULY 23, 1997**

Name of Committee Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
DANNY FARINA	JONES COUNTY
MICHAEL THOMPSON	NC POWER
Amy Jo Bain	Smith Anderson
Steve Keene	NCMS
David Ferrell	Hafer, McNamara, Caldwell, McElroy & Cathey, PA
Eddie Caldwell	NCCCP
Alan Miles	Bailey & Dixon LLP
George Hearn	AIA/NC
Mike Carpenter	NCHBA
L. ROGERS	EHNR
[illegible]	EHNR
Harry Kaplan	
[illegible]	CP&L
Ed Regan	N.C.A.C.C.
[illegible]	NCMS

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House.**

Senate

☒ Committee Substitute for

H.B. 515 A BILL TO BE ENTITLED AN ACT TO ENACT THE CLEAN WATER RESPONSIBILITY ACT, A COMPREHENSIVE AND BALANCED PROGRAM TO PROTECT WATER QUALITY, PUBLIC HEALTH, AND THE ENVIRONMENT AND TO IMPLEMENT A RECOMMENDATION OF THE GOVERNMENT PERFORMANCE AUDIT COMMITTEE TO MODIFY THE PROCEDURES CONCERNING FINAL ADMINISTRATIVE DECISIONS IN CONTESTED CASES HEARD BY THE OFFICE OF ADMINISTRATIVE HEARINGS.

☐ 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.

☐

MINUTES
COMMITTEE ON RULES, CALENDAR, AND OPERATIONS OF THE HOUSE
July 28, 1997

The Committee on Rules, Calendar, and Operations of the House met on Monday, July 28, 1997 at 5:30 p.m. in the House Conference Room. Representative Morgan called the meeting to order and asked the clerk to call the roll. The following members were present: Representative Bowie, Vice Chair; and Representatives Culp, Gulley, Hill, Mitchell, Neely, and Thompson.

Chairman Morgan turned the gavel over to Representative Bowie, Vice-Chair. Representative Bowie brought forward the Senate Committee Substitute for House Bill 515 CLEAN WATER RESPONSIBILITY ACT, for concurrence with the Senate changes. Representative Morgan stated that the House had passed House Bill 515. The Senate made numerous changes and as the bill sponsor he found some of changes to be unacceptable; therefore, he thinks the House should not concur with the Senate Committee Substitute.

Representative Mitchell was recognized, agreed with Representative Morgan that too many changes had been made in the bill and made the motion that the House not concur with the Senate Committee Substitute.

Representative Neely asked to be excused from the vote per House Rule 24.1.

Representative Bowie stated that the motion was for recommendation of non-concurrence and conferees be appointed. Motion carried.

The meeting adjourned at 5:35 p.m.

Representative Richard T. Morgan, Committee Chair

Dixie Epps, Committee Clerk

Attachments:
Committee Report
Bill

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 5

HOUSE BILL 515
Committee Substitute Favorable 4/23/97
Third Edition Engrossed 4/29/97
Senate Agriculture/Environment/Natural Resources Committee Substitute Adopted 6/9/97
Fifth Edition Engrossed 6/19/97

Short Title: Clean Water Responsibility Act. (Public)

Sponsors:

Referred to:

March 13, 1997

A BILL TO BE ENTITLED

AN ACT TO ENACT THE CLEAN WATER RESPONSIBILITY ACT, A COMPREHENSIVE AND BALANCED PROGRAM TO PROTECT WATER QUALITY, PUBLIC HEALTH, AND THE ENVIRONMENT AND TO IMPLEMENT A RECOMMENDATION OF THE GOVERNMENT PERFORMANCE AUDIT COMMITTEE TO MODIFY THE PROCEDURES CONCERNING FINAL ADMINISTRATIVE DECISIONS IN CONTESTED CASES HEARD BY THE OFFICE OF ADMINISTRATIVE HEARINGS.

The General Assembly of North Carolina enacts:

PART I. MORATORIUM ON CONSTRUCTION OR EXPANSION OF SWINE FARMS

Section 1.1. (a) Moratorium Established. -- As used in this section, "swine farm" and "lagoon" have the same meaning as in G.S. 106-802. As used in this section, "animal waste management system" has the same meaning as in G.S. 143-215.10B. There is hereby established a moratorium on the construction or expansion of swine farms and on lagoons and animal waste management systems for swine farms. The purposes of this moratorium are to allow counties time to adopt zoning ordinances under G.S. 153A-340, as amended by Section 2.1 of this act; to

allow time for the completion of the studies authorized by the 1995 General Assembly (1996 Second Extra Session); and to allow the 1999 General Assembly to receive and act on the findings and recommendations of those studies. Except as provided in subsection (b) of this section, the Environmental Management Commission shall not issue a permit for an animal waste management system for a new swine farm or the expansion of an existing swine farm for a period beginning on 1 March 1997 and ending on 1 March 1999. The construction or expansion of a swine farm or animal waste management system for a swine farm is prohibited during the period of the moratorium regardless of the date on which a site evaluation for the swine farm is completed and regardless of whether the animal waste management system is deemed permitted under 15A North Carolina Administrative Code 2H.0217.

(b) Exceptions. -- The moratorium established by subsection (a) of this section does not prohibit:

(1) Construction to repair a component of an existing swine farm or lagoon.

(2) Construction to replace a component of an existing swine farm or lagoon if the replacement does not result in an increase in swine population, except as provided in subdivision (3) or (7) of this section.

(3) Construction or expansion for the purpose of increasing the swine population to the projected population or to the population that the animal waste management system serving that swine farm is designed to accommodate, as set forth in a certified animal waste management plan filed with the Department of Environment, Health, and Natural Resources prior to 1 March 1997.

(4) Construction or expansion for the purpose of complying with applicable animal waste management rules and not for the purpose of increasing the swine population.

(5) Construction or expansion, if the person undertaking the construction or expansion of the swine farm, lagoon, or animal waste management system has been issued a permit under G.S. 143-215.1(a) or Part 1A of Article 21 of Chapter 143 of the General Statutes prior to the date this act becomes effective.

(6) Construction or expansion, if the person undertaking the construction or expansion of the swine farm, lagoon, or animal waste management system has, prior to 1 March 1997, either:

a. Laid a foundation for a component of the swine farm, lagoon, or animal waste management system.

b. Entered into a bona fide written contract for the construction or expansion of the swine farm, lagoon, or animal waste management system.

c. Been approved for a loan or line of credit to finance the construction or expansion of the swine farm, lagoon, or

animal waste management system and has obligated or expended funds derived from the loan or line of credit.

(7) Construction or expansion of an innovative animal waste management system that does not employ an anaerobic lagoon and that has been approved by the Department of Environment, Health, and Natural Resources.

(c) Establishing Eligibility for an Exemption. -- It shall be the responsibility of an applicant for a permit for an animal waste management system for a new swine farm or for the expansion of an existing swine farm under subdivisions (1) through (7) of subsection (b) of this section to provide information and documentation to the Department of Environment, Health, and Natural Resources that establishes, to the satisfaction of the Department, that the applicant is eligible for the permit. In demonstrating eligibility for a permit under this section, the burden of proof shall be on the applicant.

PART II. AGRICULTURAL ZONING BY COUNTIES

Section 2.1. G.S. 153A-340 reads as rewritten:

"**§ 153A-340. Grant of power.**

(a) For the purpose of promoting health, safety, morals, or the general welfare, a county may regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lots that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes, and to provide density credits or severable development rights for dedicated rights-of-way pursuant to G.S. 136-66.10 or G.S. 136-66.11.

(b) (1) These regulations may ~~not~~ affect property used for bona fide ~~farms, but any~~ farm purposes only as provided in subdivision (3) of this subsection. This subsection does not limit regulation under this Part with respect to the use of farm property for nonfarm ~~purposes is subject to the regulations.~~ purposes.

(2) Bona fide farm purposes include the production and activities relating or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agricultural products having a domestic or foreign market.

(3) The definitions set out in G.S. 106-802 apply to this subdivision. A county may adopt zoning regulations governing swine farms served by animal waste management systems having a design capacity of 600,000 pounds steady state live weight (SSLW) or greater provided that the zoning regulations may not have the effect of excluding swine farms served by an animal waste management system having a design capacity of 600,000 pounds SSLW or greater from the entire zoning jurisdiction.

(c) The regulations may provide that a board of adjustment may determine and vary their application in harmony with their general purpose and intent and in accordance with general or specific rules therein contained. The regulations may also provide that the board of adjustment or the board of commissioners may issue special use permits or conditional use permits in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified therein and may impose reasonable and appropriate conditions and safeguards upon these permits. Where appropriate, the conditions may include requirements that street and utility rights-of-way be dedicated to the public and that recreational space be provided. When issuing or denying special use permits or conditional use permits, the board of commissioners shall follow the procedures for boards of adjustment except that no vote greater than a majority vote shall be required for the board of commissioners to issue such permits, and every such decision of the board of commissioners shall be subject to review by the superior court by proceedings in the nature of certiorari.

(d) A county may regulate the development over estuarine waters and over lands covered by navigable waters owned by the State pursuant to G.S. 146-12, within the bounds of that county.

(e) For the purpose of this section, the term 'structures' shall include floating homes.

(f) Any petition for review by the superior court shall be filed with the clerk of superior court within 30 days after the decision of the board of commissioners is filed in such office as the ordinance specifies, or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the clerk at the time of the hearing of the case, whichever is later. The decision of the board of commissioners may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested."

Section 2.2. Zoning regulations governing swine farms served by animal waste management systems having a design capacity of 600,000 pounds steady state live weight (SSLW) or greater adopted under G.S. 153A-340(b), as amended by Section 2.1 of this act, shall not, with respect to a swine farm in existence at the time the zoning ordinance is adopted:

(1) Prohibit the continued existence of the swine farm.

(2) Require the amortization of the swine farm.

(3) Prohibit the repair or replacement on the same site of the swine farm so long as the repair or replacement does not increase the swine population beyond the population that the animal waste management system serving the swine farm is designed to accommodate, as set forth in the permit for the animal waste management system.

PART III. CONTROL OF ODOR EMISSIONS FROM ANIMAL OPERATIONS

Section 3.1. G.S. 143-215.107(a) is amended by adding a new subdivision to read:

"(11) To develop and adopt standards and plans necessary to implement programs to control the emission of odors from animal operations, as defined in G.S. 143-215.10B. Standards and plans adopted under this subdivision shall be required only to the extent that economically feasible technology sufficient to satisfy these standards and plans is available."

Section 3.2. The Board of Governors of The University of North Carolina shall present its final report and recommendations on economically feasible odor control technologies, as provided in Section 27.3 of Chapter 18 of the 1995 Session Laws (1996 Second Extra Session), to the Environmental Review Commission and the Environmental Management Commission not later than 1 November 1997. The Environmental Management Commission shall publish the text of a proposed rule to regulate the emission of odors from animal operations under G.S. 143-215.107(a)(11), as enacted by Section 3.1 of this act, within six months after the date on which the North Carolina Agricultural Research Service at North Carolina State University issues its final report on economically feasible odor control technologies if the report establishes that economically feasible odor control technology for animal operations is available. If economically feasible odor control technology for animal operations is available, the Environmental Management Commission shall adopt a rule to regulate the emission of odors from animal waste management systems no later than 1 March 1999. The Environmental Management Commission shall not adopt a temporary rule to regulate the emission of odors from animal waste management systems. The Environmental Management Commission shall report on its progress in developing and adopting a rule to regulate the emission of odors from animal waste management systems as a part of each quarterly report the Environmental Management Commission makes to the Environmental Review Commission pursuant to G.S. 143B-282(b).

PART IV. SWINE FARM SITING ACT AMENDMENTS

Section 4.1. Article 67 of Chapter 106 of the General Statutes reads as rewritten:

"ARTICLE 67.
"Swine Farms.

"§ 106-800. Title.

This Article shall be known as the 'Swine Farm Siting Act'.

"§ 106-801. Purpose.

The General Assembly finds that certain limitations on the siting of swine houses and lagoons for swine farms can assist in the development of pork production, which contributes to the economic development of the State, by lessening the interference with the use and enjoyment of adjoining property.

"§ 106-802. Definitions.

As used in this Article, unless the context clearly requires otherwise:

(1) 'Lagoon' means a confined body of water to hold animal byproducts including bodily waste from animals or a mixture of waste with feed, bedding, litter or other agricultural materials.

(2) Repealed by Session Laws 1997 (Regular Session, 1996), c. 626, s. 7.

(3) 'Occupied residence' means a dwelling actually inhabited by a person on a continuous basis as exemplified by a person living in his or her home.

(4) 'Site evaluation' means an investigation to determine if a site meets all federal and State standards as evidenced by the Waste Management Facility Site Evaluation Report on file with the Soil and Water Conservation District office or a comparable report certified by a professional engineer or a comparable report certified by a technical specialist approved by the North Carolina Soil and Water Conservation Commission.

~~Department of Environment, Health and Natural Resources~~

(5) 'Swine farm' means a tract of land devoted to raising 250 or more animals of the porcine species.

(6) 'Swine house' means a building that shelters porcine animals on a continuous basis.

"§ 106-803. Siting requirements for swine houses, lagoons, and land areas onto which waste is applied at swine farms.

(a) A swine house or a lagoon that is a component of a swine farm shall be ~~located~~ located:

(1) ~~at~~ At least 1,500 feet from any occupied ~~residence;~~ residence.

(2) ~~at~~ At least 2,500 feet from any school, hospital, or ~~church; and~~ church.

(3) ~~at~~ At least 500 feet from any property boundary.

(a1) The outer perimeter of the land area onto which waste is applied from a lagoon that is a component of a swine farm shall be at least 50 feet from any boundary of property on which an occupied residence is located and from any perennial stream or river, other than an irrigation ditch or canal.

(a2) No component of a liquid animal waste management system for which a permit is required under Part 1A of Article 21 of Chapter 143 of the General Statutes, other than a land application site, shall be constructed on land that is located within the 100-year floodplain.

(b) A swine house or a lagoon that is a component of a swine farm may be located closer to a residence, school, hospital, church, or a property boundary than is allowed under subsection (a) of this section if written permission is given by the owner of the property and recorded with the Register of Deeds.

"§ 106-804. Enforcement.

(a) Any person ~~owning~~ who owns property directly affected by the siting requirements of G.S. 106-803 pursuant to subsection (b) of this section may bring a

civil action against ~~a swine farmer~~ the owner or operator of a swine farm who has violated G.S. 106-803 and may seek any one or more of the following:

(1) Injunctive relief.

(2) An order enforcing the siting requirements under G.S. 106-803.

(3) Damages caused by the violation.

(b) A person is directly affected by the siting requirements of G.S. 106-803 only if the person ~~owns:~~ owns a facility or property located within the siting requirements specified under G.S. 106-803.

~~(1) An occupied residence located less than 1,500 feet from a swine house or lagoon in violation of G.S. 106-803.~~

~~(2) A school, hospital, or church located less than 2,500 feet from a swine house or lagoon in violation of G.S. 106-803.~~

~~(3) Property whose boundary is located less than 500 feet from a swine house or lagoon in violation of G.S. 106-803.~~

~~(4) Property on which an occupied residence is located and whose boundary is less than 50 feet from the outer perimeter of the land area onto which waste is applied from a lagoon that is a component of a swine farm in violation of G.S. 106-803.~~

~~(5) Property that abuts a perennial stream or river, or on which a perennial stream or river is located, and that property and that perennial stream or river are less than 50 feet from the outer perimeter of the land area onto which waste is applied from a lagoon that is a component of a swine farm in violation of G.S. 106-803.~~

(c) If the court determines it is appropriate, the court may award court costs, including reasonable attorneys' fees and expert witnesses' fees, to any party. If a temporary restraining order or preliminary injunction is sought, the court may require the filing of a bond or equivalent security. The court shall determine the amount of the bond or security.

(d) Nothing in this section shall restrict any other right that any person may have under any statute or common law to seek injunctive or other relief.

"**§ 106-805. Written notice of swine farms.**

Any person who intends to construct a swine farm whose animal waste management system is subject to a permit under Part 1A of Article 21 of Chapter 143 of the General Statutes shall, after completing a site evaluation and before the farm site is modified, ~~attempt to~~ notify all adjoining property ~~owners and~~ owners; all property owners who own property located across a public road, street, or highway from the swine ~~farm~~ farm; the county or counties in which the farm site is located; and the local health department or departments having jurisdiction over the farm site of that person's intent to construct the swine farm. This notice shall be by certified mail sent to the address on record at the property tax office in the county in which the land is ~~located.~~ located. Notice to a county shall be sent to the county manager or, if there is no county manager, to the chair of the board of county commissioners.

Notice to a local health department shall be sent to the local health director. The written notice shall include all of the following:

(1) The name and address of the person intending to construct a swine farm.

(2) The type of swine farm and the design capacity of the animal waste management system.

(3) The name and address of the technical specialist preparing the waste management plan.

(4) The address of the local Soil and Water Conservation District office.

(5) Information informing the adjoining property owners and the property owners who own property located across a public road, street, or highway from the swine farm that they may submit written comments to the Division of Water Quality, Department of Environment, Health, and Natural Resources."

Section 4.2. G.S. 106-803(a2), added to G.S. 106-803 by Section 4.1 of this act, applies to any new liquid animal waste management system for which construction commences on or after the date this act becomes law and to any expansion of an existing liquid animal waste management system for which construction commences on or after the date this act becomes law.

PART V. PRIORITY FOR LOANS OR GRANTS FROM THE CLEAN WATER REVOLVING LOAN AND GRANT FUND TO ASSIST LOCAL GOVERNMENTS IN MEETING THE NITROGEN AND PHOSPHOROUS LIMITS FOR SURFACE WATERS; PRIORITY FOR FUNDING FROM VARIOUS FUNDING SOURCES BASED ON COMPREHENSIVE LAND-USE PLANNING BY LOCAL GOVERNMENTS

Section 5.1. G.S. 159G-10 reads as rewritten:

"**§ 159G-10. Priorities.**

(a) Determination. -- Determination of priorities to be assigned each eligible application shall be made semiannually by each receiving agency during each fiscal year. Every eligible application filed under G.S. 159G-5(c), G.S. 159G-6(b)(1) or G.S. 159G-6(c)(1) shall be considered by the receiving agency with every other application filed under G.S. 159G-5(c), G.S. 159G-6(b)(1) or G.S. 159G-6(c)(1), respectively, and eligible for consideration during the same priority period, to determine the priority to be assigned to each application. The same procedure shall apply to every eligible application filed under G.S. 159G-6(b)(3) and G.S. 159G-6(c)(3) of this Chapter. Any application which does not contain the information required by this Chapter or regulations adopted by the receiving agency(s) shall not be deemed received until such information is furnished by the applicant to the receiving agency.

(a1) **(See note)** Expired.

(b) Priority Factors. -- All applications for revolving loans or grants under this Chapter eligible for consideration during each priority period shall be assigned a priority for such funds by the receiving agency. The priority factors shall be similar to those developed under the North Carolina Clean Water Bond Act of 1977, as provided in and modified by this subsection.

(1) General Criteria. --

a. The general criteria provided in 1 NCAC 22.0401 through .0403 on January 1, 1987, shall apply, except that 1 NCAC 22.0401(c) shall apply only to State funds appropriated to match available federal funds.

b. The existence of a comprehensive land-use plan that meets the requirements of subsection (e) of this section is a general criterion for determining which local government units will receive a loan or grant. A local government unit that is not authorized to adopt a comprehensive land-use plan but that is located in whole or in part in another local government unit that has adopted a comprehensive land-use plan shall receive the same priority treatment as a local government unit that has authority to adopt a comprehensive land-use plan. A comprehensive land-use plan that meets the requirements of subsection (e) of this section and that exceeds the minimum State standards for protection of water resources shall receive more points than a plan that does not exceed those standards.

(2) Wastewater Treatment Work Projects. -- The priority criteria provided in 1 NCAC 22.0501 through .0506 on January 1, 1987, shall apply to applications for wastewater treatment work projects, except that 1 NCAC 22.0503 shall not apply.

(3) Wastewater Collection System Projects. -- The priority criteria provided in 1 NCAC 22.0601 through .0606 on January 1, 1987, shall apply to applications for wastewater collection system projects, except that 1 NCAC 22.0601(2)(a) and (3), and 1 NCAC 22.0605(2), (3) and (4) shall not apply.

(4) Water Supply System Projects. -- The priority criteria provided in 1 NCAC 22.0701 through .0704 on January 1, 1987, shall apply to applications for water supply system projects.

(5) Wastewater Treatment Works Improvements to Meet Nitrogen and Phosphorous Limits. -- The Environmental Management Commission shall adopt a rule specifying priority criteria for modifications to existing permitted wastewater treatment facilities that are owned or operated by local government units and that are subject to G.S. 143-215.1(c1) or G.S. 143-215.1(c2) to enable local government units to comply with G.S. 143-215.1(c1) and G.S. 143-215.1(c2).

~~(5)~~ (6) The total number of points available in the respective categories shall be deemed adjusted in accordance with the provisions of subdivisions (1) through ~~(4)~~ (5) of this subsection.

(c) Assignment of Priority. -- A written statement relative to each priority assigned shall be prepared by the receiving agency and shall be attached to the application. The priority assigned shall be conclusive.

(d) Failure to Qualify. -- Any application filed under G.S. 159G-5(c), G.S. 159G-6(b) or G.S. 159G-6(c) that does not qualify for a revolving loan or grant as of the priority period in which the application was eligible for consideration by reason of the priority assigned the application shall be considered for a revolving loan or grant during the next succeeding priority period upon request of the applicant. If such application should again fail to qualify for a revolving loan or grant during the second priority period by reason of the priority assigned, the application shall receive no further consideration. An applicant may file a new application at any time, and may amend any pending application to include additional data or information.

(e) Land-Use Plan. -- Local government units are encouraged to adopt comprehensive land-use plans. The Division of Community Assistance in the Department of Commerce shall, upon request, provide technical assistance to any economically distressed local government unit in preparing a comprehensive land-use plan. To qualify as a comprehensive land-use plan, a plan must meet all of the following requirements:

(1) Be adopted by the governing body of the local government unit covered by the plan.

(2) Promote economically and environmentally sustainable development.

(3) Establish verifiable goals to be met through compliance with the plan.

(4) Be approved by the Office of State Planning."

Section 5.2. G.S. 159G-3 is amended by adding a new subdivision to read:

"(7a) 'Economically distressed local government unit' means a local government unit located, in whole or in part, in a county designated as economically distressed by the Secretary of Commerce under G.S. 143B-437A."

PART VI. NITROGEN AND PHOSPHOROUS LIMITS FOR SURFACE WATERS

Section 6.1. G.S. 143-215.1 is amended by adding four new subsections to read:

"(c1) Any person who is required to obtain an individual wastewater permit under this section for a facility discharging either to the surface waters of the State that have been classified as nutrient sensitive waters (NSW) under rules adopted by the Commission or to other surface water bodies of the State specifically designated by the Commission by rule where nitrogen is a nutrient of concern shall not

discharge more than an average annual mass load of total nitrogen than would result from a discharge of the permitted flow having a total nitrogen concentration of four milligrams of nitrogen per liter (4.0 mg/l). If the Commission determines that the assimilative capacity for nitrogen of a water body has been exceeded, the Commission shall establish by rule a maximum mass load for total nitrogen for that water body. The maximum mass load for total nitrogen established by the Commission may require permitted flows to have a total nitrogen concentration less than those set out in this subsection. The maximum mass load of total nitrogen for all wastewater discharges into a water body shall not exceed that required to meet the wastewater discharge allocation or the annual mass load for nitrogen based on the permitted flow and total nitrogen concentration required by this subsection, whichever is less. The total nitrogen concentration of 4.0 mg/l for NSW and other waters required by this subsection apply only to:

(1) Facilities that were placed into operation prior to 1 July 1997 or for which an authorization to construct was issued prior to 1 July 1997 and that have a design capacity to discharge 500,000 gallons per day or more.

(2) Facilities for which an authorization to construct is issued on or after 1 July 1997.

(c2) Any person who is required to obtain an individual wastewater permit under this section for a facility discharging to surface water bodies of the State specifically designated by the Commission by rule where phosphorous is a nutrient of concern shall not discharge more than an average annual mass load of total phosphorous than would result from a discharge of the permitted flow having a total phosphorous concentration of two milligrams of phosphorous per liter (2.0 mg/l). If the Commission determines that the assimilative capacity for phosphorous of a water body has been exceeded, the Commission shall establish by rule a maximum mass load for total phosphorous for that water body. The maximum mass load for total phosphorous established by the Commission may require permitted flows to have a total phosphorous concentration less than that set out in this subsection. The maximum mass load of total phosphorous for all wastewater discharges into a water body shall not exceed that required to meet the wastewater discharge allocation or the annual mass load for phosphorous based on the permitted flow and total phosphorous concentration required by this subsection, whichever is less.

(c3) A person to whom subsection (c1) or (c2) of this section applies may meet the limits established under those subsections either individually or on the basis of a cooperative agreement with other persons who hold individual wastewater permits if the cooperative agreement is approved by the Commission. A person to whom subsection (c1) or (c2) of this section applies whose agreement to accept wastewater from another wastewater treatment facility that discharges into the same water body and that results in the elimination of the discharge from that wastewater treatment facility shall be allowed to increase the average annual mass load of total nitrogen and total phosphorous that person discharges by the average annual mass load of total nitrogen and total phosphorous of the wastewater treatment facility that is eliminated.

If the wastewater treatment facility that is eliminated has a permitted flow of less than 500,000 gallons per day, the average annual mass load of total nitrogen or phosphorous shall be calculated from the most recent available data. A person to whom this subsection applies shall comply with nitrogen and phosphorous discharge monitoring requirements established by the Commission. This average annual load of nitrogen or phosphorous shall be assigned to the wastewater discharge allocation of the wastewater treatment facility that accepts the wastewater.

(c4) A person to whom subsection (c1) of this section applies may request the Commission to approve a total nitrogen concentration greater than that set out in subsection (c1) of this section at a decreased permitted flow so long as the average annual mass load of total nitrogen is equal to or is less than that required under subsection (c1) of this section. A person to whom subsection (c2) of this section applies may request the Commission to approve a total phosphorous concentration greater than that set out in subsection (c2) of this section at a decreased permitted flow so long as the average annual mass load of total phosphorous is equal to or is less than that required under subsection (c2) of this section. If, after any 12-month period following approval of a greater concentration at a decreased permitted flow, the Commission finds that the greater concentration at a decreased permitted flow does not result in an average annual mass load of total nitrogen or total phosphorous equal to or less than those that would be achieved under subsections (c1) and (c2) of this section, the Commission shall rescind its approval of the greater concentration at a decreased permitted flow and the requirements of subsections (c1) and (c2) of this section shall apply."

Section 6.2. G.S. 143-215.6A(a) is amended by adding a new subdivision to read:

"(10) Violates G.S. 143-215.1(c1), G.S. 143-215.1(c2), or a rule adopted pursuant to G.S. 143-215.1(c1) or G.S. 143-215.1(c2)."

Section 6.3. By 1 November 1997, the Environmental Management Commission shall develop a schedule of dates between 1 January 1998, and 1 January 2003, by which existing facilities must comply with G.S. 143-215.1(c1) and G.S. 143-215.1(c2), as enacted by Section 6.1 of this act. The schedule of compliance dates shall follow as closely as possible the dates on which permits for existing facilities must be renewed. New facilities and expansions of existing facilities for which an application for a permit is received by the Department of Environment, Health, and Natural Resources on behalf of the Environmental Management Commission prior to the date this act becomes effective shall be treated as existing facilities.

PART VII. STORMWATER MANAGEMENT

Section 7.1. G.S. 143-214.7 reads as rewritten:

"**§ 143-214.7. Stormwater runoff rules and programs.**

(a) Policy, Purpose and Intent. -- The Commission shall undertake a continuing planning process to develop and adopt a statewide plan with regard to establishing

and enforcing stormwater rules for the purpose of protecting the surface waters of the State. It is the purpose and intent of this section that, in developing stormwater runoff rules and programs, the Commission may utilize stormwater rules established by the Commission to protect classified shellfish waters, water supply watersheds, and outstanding resource waters; and to control stormwater runoff disposal in coastal counties and other nonpoint sources. Further, it is the intent of this section that the Commission phase in the stormwater rules on a priority basis for all sources of pollution to the water. The plan shall be applied evenhandedly throughout the State to address the State's water quality needs. The Commission shall continually monitor water quality in the State and shall revise stormwater runoff rules as necessary to protect water quality. As necessary, the stormwater rules shall be modified to comply with federal regulations.

(b) The Commission shall ~~be authorized and directed to~~ implement stormwater runoff rules and programs for point and nonpoint sources on a phased-in statewide basis. The Commission shall consider standards and best management practices for the protection of the State's water resources in the following order of priority:

(1) Classified shellfish ~~waters;~~ waters.
(2) Water supply ~~watersheds;~~ watersheds.
(3) Outstanding resource ~~waters;~~ waters.
(4) High quality ~~waters; and~~ waters.
(5) ~~Other waters where~~ All other waters of the State to the extent that the Commission finds control of stormwater is needed to meet the purposes of this Article. ~~Provided however, that prior to implementation of rules under this subdivision (5), the Commission shall consult with the Environmental Review Commission.~~

(c) ~~Chapter 150B of the General Statutes governs adoption of rules by the Commission.~~ The Commission shall develop model stormwater management programs that may be implemented by State agencies and units of local government. A State agency or unit of local government may submit to the Commission for its approval a stormwater control program for implementation within its jurisdiction. To this end, State agencies are authorized to adopt rules, and units of local government are authorized to adopt ordinances and regulations necessary to establish and enforce stormwater control programs. Units of local government are authorized to create or designate agencies or subdivisions to administer and enforce the programs. Two or more units of local government are authorized to establish a joint program and to enter into any agreements that are necessary for the proper administration and enforcement of the program.

(d) The Commission shall review each stormwater management program submitted by a State agency or unit of local government and shall notify the State agency or unit of local government that submitted the program that the program has been approved, approved with modifications, or disapproved. The Commission shall approve a program only if it finds that the standards of the program equal or exceed those of the model program adopted by the Commission pursuant to this section.

(e) The Commission shall annually report to the Environmental Review Commission on the implementation of this section, including the status of any stormwater control programs administered by State agencies and units of local government, on or before 1 October of each year."

Section 7.2. The Environmental Management Commission shall make the first annual report required by G.S. 143-214.7(e), as enacted by Section 7.1 of this act, on or before 1 October 1998.

Section 7.3. The Department of Transportation shall work diligently and in full cooperation with the Division of Water Quality of the Department of Environment, Health, and Natural Resources, using whatever resources may be necessary, to complete the development of a statewide stormwater management permit under the National Pollutant Discharge Elimination System (NPDES). The General Assembly intends that this permit govern all programs administered by the Department of Transportation and that the permit will be issued no later than 1 October 1997. The Department of Transportation and the Division of Water Quality shall jointly report to the Environmental Review Commission as to their progress in meeting the mandate of this section no later than 1 October 1997.

PART VIII. COMPLETION OF BASINWIDE WATER QUALITY MANAGEMENT PLANS FOR EACH OF THE STATE'S SEVENTEEN RIVER BASINS; ADDITIONAL REQUIREMENTS FOR BASINWIDE WATER QUALITY MANAGEMENT PLANS; ADOPTION OF TOTAL MAXIMUM DAILY LOADS FOR EACH RIVER BASIN

Section 8.1. The General Assembly makes the following findings:

(1) There are 17 major river basins in the State.

(2) Many activities occur in the vicinity of each of these river basins, and the activities and conditions in one river basin may vary greatly from those in another river basin.

(3) The public is focusing on the swine industry's role in degrading water quality, but, in fact, numerous other industries and even private citizens are responsible for contributing nutrients and toxins to the waters of the State. Among the point source and nonpoint sources of nutrients and toxins in our State's waters are: municipal wastewater facilities, industrial wastewater systems, septic tank systems, stormwater management systems, golf courses, farms that use fertilizers and pesticides for crops, public and commercial lawns and gardens, as well as animal operations.

(4) The best and most effective approach to protecting and improving water quality is a comprehensive, systemwide management approach.

(5) Basinwide water quality management is an approach already being taken by the Department of Environment, Health, and Natural Resources to improve the efficiency, effectiveness, and consistency

of its water quality protection program. It is not a new regulatory program; it is a watershed-based approach that provides for basinwide permitting and integration of point and nonpoint source controls through existing regulatory and cooperative programs. The Neuse River Basinwide Management Plan has already been released. Seventeen basinwide plans are planned to be prepared by the Department over the next five years.

(6) The better solution to improving water quality lies not in abandoning efforts under way in an effort to find a new solution, but to accelerate effective efforts currently in progress by establishing a deadline for completing, and expediting the implementation of, the 17 comprehensive conservation and management plans for each major river basin in the State.

(7) The public should be informed of the complexity of the problems regarding water quality so that the public can appreciate the effectiveness of a systemwide approach and the degree of effort that has already been expended to address these problems. Public involvement should be encouraged, and public education should be enhanced.

Section 8.2. Part 1 of Article 21 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-215.8B. Basinwide water quality management plans.**

(a) The Commission shall develop and implement a basinwide water quality management plan for each of the 17 major river basins in the State. In developing and implementing each plan, the Commission shall consider the cumulative impacts of all activities across a river basin and all point sources and nonpoint sources of nutrients and toxins, including municipal wastewater facilities, industrial wastewater systems, septic tank systems, stormwater management systems, golf courses, farms that use fertilizers and pesticides for crops, public and commercial lawns and gardens, and animal operations.

(b) Each basinwide water quality management plan shall:

(1) Provide that all point sources and nonpoint sources of pollutants jointly share the responsibility of reducing the nutrients and toxins in the State's waters in a fair, reasonable, and proportionate manner, using computer modeling and the best science and technology reasonably available and considering future anticipated population growth and economic development.

(2) Incorporate protective buffers along all perennial bodies of water for new developmental activities. The Commission shall consider the ecological reasons for each buffer and shall base any requirements for the buffer on those reasons. The Commission shall also consider and adopt an equitable approach for determining which developmental activities shall be defined as 'new developmental activities.'

(3) Require appropriate management of any new developmental activity that is agricultural, residential, commercial, or industrial in nature, if the new developmental activity is to occur on land that is located within a 100-year floodplain.

(4) If any of the waters located within the river basin are designated as nutrient sensitive water, then the basinwide water quality management plan shall establish a goal to reduce the average annual load of nutrients delivered to surface waters within the river basin from point and nonpoint sources. The Commission shall establish a nutrient reduction goal for the nutrient or nutrients of concern that will result in improvements to water quality such that the designated uses of the water, as provided in the classification of the water under G.S. 143-214.1(d), are not impaired. The plan shall require that incremental progress toward achieving the goal be demonstrated each year. The Commission shall develop a five-year plan to achieve the goal. In developing the plan, the Commission shall determine and allow appropriate credit toward achieving the goal for reductions of water pollution by point and nonpoint sources through voluntary measures.

(5) Any other components of the plan that the Commission determines to be necessary.

(c) The Commission shall review and revise its 17 basinwide water quality management plans at least every five years to reflect changes in permits that have been renewed during the previous five-year permit renewal cycle, improvements in modeling methods, improvements in wastewater treatment technology, and advances in scientific knowledge.

(d) The Commission and the Department shall each report on a quarterly basis to the Environmental Review Commission on the progress in developing and implementing basinwide water quality management plans and on increasing public involvement and public education in connection with basinwide water quality management planning. The report by the Department shall include a written statement as to all concentrations of heavy metals and other pollutants in the surface waters of the State that are identified in the course of preparing the basinwide water quality management plans. The report under this section by the Commission shall be made as a part of the quarterly report required under G.S. 143B-282(b). The report under this section by the Department shall be made on or before the first day of each calendar quarter."

Section 8.3. The Environmental Management Commission shall increase its current efforts to involve the public in the development and implementation of the basinwide water quality management plans, including conducting public hearings throughout the State. The Department of Environment, Health, and Natural Resources shall increase public education efforts to inform the public of the complexity of the problems related to water quality, the benefits of taking a comprehensive, systemwide approach to water quality improvement, and the need for

all point and nonpoint sources of pollutants to have an active role in reducing nutrients and toxins, either by reducing the amount of nutrients and toxins used or by improving the treatment and disposal of wastewater, or both. The Department shall provide press releases on at least a monthly basis for the purpose of keeping the public well-informed of water quality issues in the State.

Section 8.4. G.S. 143B-282 is amended by adding a new subsection to read:

"(c) The Environmental Management Commission shall implement the provisions of subsections (d) and (e) of 33 U.S.C. § 1313 by identifying and prioritizing impaired waters and by developing, on a basinwide basis, appropriate total maximum daily loads of pollutants for those targeted waters. The Commission shall incorporate those total maximum daily loads approved by the United States Environmental Protection Agency into its continuing planning process and shall adopt rules setting out strategies necessary for assuring that water quality standards are met by any point or nonpoint source or by any category of point or nonpoint sources that is determined by the Commission to be contributing to the water quality impairment. These strategies may include, but are not limited to, additional monitoring, effluent limitations, supplemental standards or classifications, best management practices, schedules of compliance, and the establishment of and delegations to intergovernmental basinwide groups."

Section 8.5. G.S. 143B-282(a)(2) is amended by adding a new sub-subdivision to read:

"j. To implement basinwide water quality management plans developed pursuant to G.S. 143-215.8B."

Section 8.6. The Environmental Management Commission may adopt rules to implement this Part as provided in Article 2A of Chapter 150B of the General Statutes. The Environmental Management Commission shall not adopt a temporary rule to implement this Part. The Environmental Management Commission shall report on its progress in implementing this Part as a part of each quarterly report the Environmental Management Commission makes to the Environmental Review Commission pursuant to G.S. 143B-282(b).

PART IX. FERTILIZER USE AT GOLF COURSES

Section 9.1. Article 3 of Chapter 90A of the General Statutes is amended by adding a new Part to read:

"Part 3. Certification of Applicators of Soil Enriching Nutrients at Golf Courses.

"**§ 90A-48. Purpose.**

The purpose of this Part is to reduce nonpoint source pollution in order to protect the public health, to conserve and protect the quality of the State's water resources, to encourage the development and improvement of the State's land for the recreational use and enjoyment of private and public golf courses, and to require the examination of persons who apply soil-enriching nutrients onto land at golf courses,

and certification of their competency to apply or supervise the application of soil-enriching nutrients onto land at golf courses.

"§ 90A-48.1. Definitions.

As used in this Part:

(1) 'Application' means spraying, laying, spreading on, irrigating, or injecting soil-enriching nutrients onto land.

(2) 'Commission' means the Water Pollution Control System Operators Certification Commission.

(3) 'Operator in charge' means a person who holds a currently valid certificate for the application of soil-enriching nutrients onto land at golf courses and who has primary responsibility for their application.

(4) 'Soil-enriching nutrients' means fertilizers or soil-enriching substances containing nitrogen, phosphorus, zinc, or other soil-enriching elements or minerals.

(5) 'Owner' means the person who owns or controls the land used for a golf course or the person's lessee or designee.

"§ 90A-48.2. Certified operator in charge required; qualifications for certification.

(a) No owner or other person in control of a golf course onto which soil-enriching nutrients are applied shall allow the application by a person who does not hold a valid certificate as an operator in charge of the application of soil-enriching nutrients onto land at golf courses issued by the Commission. No person shall perform the duties of an operator in charge of the application of soil-enriching nutrients onto land at golf courses without being certified under the provisions of this Part. Other persons may assist in the application of soil-enriching nutrients so long as they are directly supervised by an operator in charge who is certified under this Part.

(b) The owner or other person in control of a golf course onto which soil-enriching nutrients are applied may contract with a certified operator in charge of the application of soil-enriching nutrients onto land at golf courses to provide for the application of soil-enriching nutrients onto that land. The Commission may adopt rules requiring that any certified operator in charge who contracts with one or more owners or other persons in control of a golf course onto which soil-enriching nutrients are applied file an annual report with the Commission as to which property the services of the operator in charge are provided.

"§ 90A-48.3. Qualifications for certification; training; examination.

(a) The Commission shall develop and administer a certification program for an operator in charge of the application of soil-enriching nutrients onto land at golf courses that provides for receipt of applications, training, and examination of applicants and for investigation of the qualifications of applicants.

(b) The Commission, in cooperation with the Division of Water Quality of the Department of Environment, Health, and Natural Resources, and the Cooperative Extension Service, shall develop and administer a training program for an operator in charge of the application of soil-enriching nutrients onto land at golf courses. An applicant for initial certification shall complete 10 hours of classroom instruction

prior to taking the examination. In order to remain certified, an operator in charge of the application of soil-enriching nutrients onto land at golf courses shall complete six hours of approved additional training during each three-year period following initial certification. A certified operator in charge of the application of soil-enriching nutrients onto land at golf courses who fails to complete approved additional training within 30 days of the end of the three-year period shall take and pass the examination for certification in order to renew the certificate.

"**§ 90A-48.4. Certificate renewals.**

A certificate holder shall renew the certificate annually. A certificate holder who fails to renew the certificate within 30 days of its expiration shall be required to take and pass the examination for certification in order to renew the certificate.

"**§ 90A-48.5. Suspension; revocation of certificate.**

(a) The Commission, in accordance with the provisions of Chapter 150B of the General Statutes, may suspend or revoke the certificate of any operator in charge who:

(1) Engages in fraud or deceit in obtaining certification.

(2) Fails to exercise reasonable care, judgment, or use of the operator's knowledge and ability in the performance of the duties of an operator in charge.

(3) Is incompetent or otherwise unable to properly perform the duties of an operator in charge.

(b) In addition to revocation of a certificate, the Commission may levy a civil penalty, not to exceed one thousand dollars ($1,000) per violation, for willful violation of the requirements of this Part.

"**§ 90A-48.6. Rules.**

The Commission shall adopt rules to implement the provisions of this Part."

PART X. GRADUATED VIOLATION POINTS SYSTEM FOR SWINE OPERATORS; STUDY OF SWINE INTEGRATORS CIVIL PENALTY LIABILITY

Section 10.1. Part 1 of Article 21 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-215.6E. Violation Points System applicable to swine farms.**

(a) The Commission shall develop a Violation Points System applicable to permits for animal waste management systems for swine farms. This system shall operate in addition to the provisions of G.S. 143-215.6A. This system shall not alter the authority of the Commission to revoke a permit for an animal waste management system for a swine farm. The Violation Points System shall provide that:

(1) Violations that involve the greatest harm to the natural resources of the State, the groundwater or surface water quantity or quality, public health, or the environment shall receive the most points and shall be considered significant violations.

(2) Violations that are committed willfully or intentionally shall be considered significant violations.

(3) The number of points received shall be directly related to the degree of negligence or willfulness.

(4) The commission of three significant violations, or the commission of lesser violations that result in a predetermined cumulative number of points, within a limited period of time of not less than five years shall result in the mandatory revocation of a permit.

(5) The commission of one willful violation that results in serious harm may result in the revocation of a permit.

(b) In developing the Violation Points System under this section, the Commission shall determine the:

(1) Number of points that lesser violations must cumulatively total to result in the revocation of a permit.

(2) Limited period of time during which the commission of three significant violations, or the commission of a greater number of lesser violations, will result in the revocation of the operator's permit. This limited period of time shall not be less than five years.

(3) Duration of the permit revocation.

(4) Conditions under which the person whose permit is revoked may reapply for another permit for an animal waste management system for a swine farm.

(c) In developing the Violation Points System under this section, the Commission shall provide for an appeals process."

Section 10.2. (a) The Department of Environment, Health, and Natural Resources shall develop a recommended system of civil penalties applicable to integrators of swine operations. These civil penalties shall be imposed upon the revocation of a permit of an operator under contract with that integrator for the production of swine at the time the violation that resulted in the revocation of the operator's permit occurred, whether or not that operator was under contract with that integrator throughout the period of time all the violations that contributed to this permit revocation occurred. In conjunction with developing this system of civil penalties for integrators of swine operations, the Environmental Management Commission shall provide that the Director of the Division of Water Quality of the Department of Environment, Health, and Natural Resources notify all integrators of all violations assessed against operators who are under contract for the production of swine with that integrator and, upon the written request by the integrator, notify that integrator of all violations assessed an operator with whom the integrator contemplates entering into a contract. The Environmental Management Commission shall also study the issue of liability for cleanup costs and appropriate penalties for integrators of swine operations if an operator commits a willful, wanton, or grossly negligent violation that results in significant environmental damage.

(b) No later than 1 March 1998, the Department of Environment, Health, and Natural Resources shall report its findings and recommendations, including legislative proposals, if any, on the issues to be studied under subsection (a) of this section. This report shall include a recommended system of civil penalties applicable to integrators of swine operations for violations by growers who are under contract with that integrator for the production of swine. The Environmental Review Commission shall determine whether to submit a legislative proposal based upon this recommended system to the 1997 General Assembly, 1998 Regular Session.

PART XI. CRIMINAL ENFORCEMENT FOR REPEATED VIOLATIONS; CLARIFICATION OF REQUIREMENT THAT PERMIT APPLICANTS DEMONSTRATE THAT THEY ARE FINANCIALLY QUALIFIED

Section 11.1. G.S. 143-215.6A is amended by adding a new subsection to read:

"(a1) The Secretary shall refer to the State Bureau of Investigation for its review as to the possible commission of any criminal offense any person or facility that discharges waste in a manner that significantly violates this Article or rules adopted pursuant to this Article on two or more separate occasions in any three-year period. Upon receipt of a referral under this section, the State Bureau of Investigation may conduct an investigation and, if appropriate, refer the matter to the district attorney in whose jurisdiction any criminal offense has occurred. This subsection shall not be construed to limit the authority of the Secretary to refer any matter to the State Bureau of Investigation for review without regard to the number of possible offenses within any particular period of time."

Section 11.2. G.S. 143-215.1(b) reads as rewritten:

"(b) Commission's Power as to Permits. --

(1) The Commission shall act on all permits so as to prevent, so far as reasonably possible, considering relevant standards under State and federal laws, any significant increase in pollution of the waters of the State from any new or enlarged sources. No permit shall be denied and no condition shall be attached to the permit, except when the Commission finds such denial or such conditions necessary to effectuate the purposes of this Article.

(2) The Commission shall also act on all permits so as to prevent violation of water quality standards due to the cumulative effects of permit decisions. Cumulative effects are impacts attributable to the collective effects of a number of projects and include the effects of additional projects similar to the requested permit in areas available for development in the vicinity. All permit decisions shall require that the practicable waste treatment and disposal alternative with the least adverse impact on the environment be utilized.

(3) General permits may be issued under rules adopted pursuant to Chapter 150B of the General Statutes. Such rules may provide that minor activities may occur under a general permit issued in accordance with conditions set out in such rules. All persons covered under general permits shall be subject to all enforcement procedures and remedies applicable under this Article.

(4) The Commission shall have the power:

a. To grant a permit with such conditions attached as the Commission believes necessary to achieve the purposes of this Article.

b. To require that an applicant satisfy the Department that the applicant, or any parent, subsidiary, or other affiliate of the applicant or parent:

1. Is financially qualified to carry out the activity for which the permit is required under subsection (a) of this ~~section; and~~ section. Financial qualification may be demonstrated through the use of a letter of credit, insurance, surety, trust agreement, financial test, bond, or a guarantee by corporate parents or third parties who can pass the financial test. No permit shall be issued under this section until financial qualification is established and the issuance of the permit shall be contingent on the continuance of the financial qualification for the duration of the activity for which the permit was issued.

2. Has substantially complied with the effluent standards and limitations and waste management treatment practices applicable to any activity in which the applicant has previously engaged, and has been in substantial compliance with other federal and state laws, regulations, and rules for the protection of the environment.

3. As used in this subdivision, the words 'affiliate,' 'parent,' and 'subsidiary' have the same meaning as in 17 Code of Federal Regulations § 240.12b-2 (1 April 1990 Edition).

c. To modify or revoke any permit upon not less than 60 days' written notice to any person affected.

d. To designate certain classes of minor activities for which a general permit may be issued, after considering:

1. The environmental impact of the activities;
2. How often the activities are carried out;
3. The need for individual permit oversight; and

4. The need for public review and comment on individual permits.

e. To designate certain classes of minor activities for which:

1. Performance conditions may be established by rule; and

2. Individual or general permits are not required."

PART XII. ADDITIONAL STUDIES

Section 12.1. The Environmental Review Commission shall study the feasibility and the desirability of requiring persons who apply fertilizers or other soil-enriching nutrients onto land other than golf courses to be certified under a certification program that requires training and passing an examination and that is similar to the certification program required of those who apply soil-enriching nutrients onto land at golf courses, as required by Article 3 of Chapter 90A of the General Statutes, as enacted by Section 9.1 of this act. In conjunction with this study, the Environmental Review Commission shall consider the amounts of fertilizers used on public roadways, at public parks and recreation areas, at commercial properties, at churches, at athletic fields and schools, near airstrips at airports, and on residential lawns and gardens that are maintained by commercial lawn services as well as those that are maintained by the residential dweller. During this study, the Department of Transportation shall report to the Environmental Review Commission the amounts of fertilizers and pesticides that it uses to maintain turfgrass, ornamental plantings, and trees along the State roadways. The Environmental Review Commission shall submit its legislative recommendations, if any, resulting from this study to the 1997 General Assembly, 1998 Regular Session.

Section 12.2. The Environmental Review Commission shall study the feasibility and desirability of establishing a voluntary education program designed to educate members of the public who maintain residential lawns or gardens concerning the impact nutrients and pesticides have on the environment of the State, the responsible use of nutrients and pesticides, and ways to reduce excessive inputs of nutrients and pesticides into the surface and groundwaters of the State. In conjunction with this study, the Environmental Review Commission shall study the feasibility and desirability of directing the North Carolina Cooperative Extension Service to develop and implement such a voluntary education program. The Environmental Review Commission shall submit its legislative recommendations, if any, resulting from this study to the 1997 General Assembly, 1998 Regular Session.

Section 12.3. The Department of Agriculture shall submit the next North Carolina Turfgrass Survey to the Environmental Review Commission no later than one month after the survey is published.

Section 12.4. The Environmental Review Commission shall study the development of guidelines for best management practices for golf courses. The study shall address golf course planning, siting, design, construction, maintenance, and operation in relation to water usage; stormwater runoff; use of fertilizers, pesticides,

and herbicides; waste management; and any other matters necessary to protect water quality, public health, and the environment. The Environmental Review Commission shall submit its legislative recommendations, if any, resulting from this study to the 1997 General Assembly, 1998 Regular Session.

Section 12.5. The Environmental Review Commission shall study the development of guidelines for best management practices for septic tank systems for both the installation of new septic tank systems and the replacement or improvement of existing septic tank systems that supplement any rules governing septic tank systems that are adopted by the Commission for Health Services, including standards for devices and practices relating to septic tank installation, operation, maintenance, and repair. The Environmental Review Commission shall consider the use of incentives, including tax credits, that could be implemented to encourage the use of best management practices for septic tank systems. The Environmental Review Commission shall submit its legislative recommendations, if any, resulting from this study to the 1997 General Assembly, 1998 Regular Session. As used in this section, the phrase "devices and practices" includes, but is not limited to:

(1) Filters or other devices designed to improve the efficiency of septic tank systems.

(2) Risers or other devices designed to facilitate pumping.

(3) Electronic warning devices that signal when the solid or liquid waste in the system has reached a level such that the septic tank needs to be pumped.

(4) Alternative and innovative systems for improved wastewater treatment and disposal.

(5) Any other approved technology or practice that demonstrates improved efficiency for septic systems.

Section 12.6. (a) The Department of Agriculture shall develop a plan to phase out the use of anaerobic lagoons and sprayfields as primary methods of disposing of animal waste at swine farms.

(b) In developing the plan under subsection (a) of this section, the Department of Agriculture shall consider the feasibility of phasing in the use of solid waste management systems and aerobic wastewater management systems to treat and dispose of animal waste at swine farms, including, without limitation, package treatment plants, closed-loop systems, and central waste disposal facilities that serve multiple swine farms.

(c) No later than May 1, 1998, the Department of Agriculture shall present the plan developed under this section in a written report to the 1998 Regular Session of the 1997 General Assembly and to the Environmental Review Commission.

PART XIII. ASSUMPTION OF CONTROL OF NONCOMPLYING PUBLICLY OWNED TREATMENT WORKS BY THE ENVIRONMENTAL MANAGEMENT COMMISSION

Section 13.1. G.S. 143-215.3(a) is amended by adding a new subdivision to read:

"(18) To assume control and operate a publicly owned treatment works that persistently fails to comply with this Article, rules adopted pursuant to this Article, or other federal and State laws, regulations and rules for the protection of public health and the environment. Before assuming control of a publicly owned treatment works, the Commission shall notify the unit of local government that owns or operates the treatment works that the Commission intends to assume control of the treatment works unless the local government immediately takes whatever steps are necessary to bring the treatment works into compliance with applicable requirements. The Commission shall also consult with the Local Government Commission before assuming control and operation of a publicly owned treatment works. If the Commission assumes control and operation of a publicly owned treatment works, the unit of local government that owns or operates the treatment works is liable to the Commission for all costs associated with the control and operation of the treatment works, including the cost of any repairs and improvements necessary to bring the treatment works into compliance with applicable requirements. If the Commission assumes control and operation of a publicly owned treatment works, it shall continue to operate the treatment works until such time as the Commission, in consultation with the Local Government Commission, is satisfied that the unit of local government is both capable of and willing to operate the treatment works in compliance with all applicable requirements."

PART XIV. IMPLEMENTATION OF A RECOMMENDATION OF THE GOVERNMENT PERFORMANCE AUDIT COMMITTEE TO MODIFY THE PROCEDURES CONCERNING FINAL ADMINISTRATIVE DECISIONS IN CONTESTED CASES HEARD BY THE OFFICE OF ADMINISTRATIVE HEARINGS

Section 14.1. G.S. 150B-36 reads as rewritten:

"**§ 150B-36. Final decision.**

(a) (1) ~~Before the agency makes a final decision, it shall~~ After an agency receives the official record in a contested case, the agency must give each party ~~an opportunity~~ to the contested case 15 days to file exceptions to the decision or order recommended by the administrative law ~~judge,~~ judge and to present written arguments to those in the agency who will make the final decision or order. If none of the parties files exceptions to the recommended decision or order within the 15-day period, the agency is considered to have

adopted the administrative law judge's recommended decision or order as the agency's final decision or order.

(2) If a party files in good faith a timely and sufficient affidavit of personal bias or other reason for disqualification of a member of the agency making the final decision, the agency shall determine the matter as a part of the record in the ~~case, and the~~ case. The determination is subject to judicial review at the conclusion of the case.

(b) (1) A final decision or order in a contested case shall be made by the ~~agency in writing after review of~~ agency within the time set by G.S. 150B-44. If the agency does not adopt as its final decision or order the recommended decision or order made in the contested case under subsection (a) of this section, it must make a written final decision or order. In making its final decision or order, the agency may consider only the official record as defined in G.S. 150B-37(a) and the exceptions filed by a party. The final decision or order shall include findings of fact and conclusions of law. The findings of fact and conclusions of law made in the contested case by the administrative law judge are binding on the agency in making its final decision or order if they are supported by substantial evidence admissible under G.S. 150B-29(a), 150B-30, or 150B-31 in view of the entire record.

(2) If the agency does not adopt the administrative law judge's recommended decision or order as its final ~~decision,~~ decision or order, the agency shall state in its decision or order the specific reasons why it did not adopt the administrative law judge's recommended ~~decision. The agency may consider only the official record prepared pursuant to G.S. 150B-37 in making a final decision or order, and the final decision or order shall be supported by substantial evidence admissible under G.S. 150B-29(a), 150B-30, or 150B-31.~~ decision or order. A copy of the agency's decision or order shall be served upon each party personally or by certified mail addressed to the party at the latest address given by the party to the agency, and a copy shall be furnished to ~~his~~ each party's attorney of record and the Office of Administrative Hearings.

(c) The following decisions made by administrative law judges in contested cases are final decisions:

(1) A determination that the Office of Administrative Hearings lacks jurisdiction.

(2) An order entered pursuant to the authority in G.S. 7A-759(e).

(3) An order entered pursuant to a written prehearing motion that either dismisses the contested case for failure of the petitioner to

prosecute or grants the relief requested when a party does not comply with procedural requirements.

(4) An order entered pursuant to a prehearing motion to dismiss the contested case in accordance with G.S. 1A-1, Rule 12(b) when the order disposes of all issues in the contested case."

Section 14.2. G.S. 150B-37(c) reads as rewritten:

"(c) The Office of Administrative Hearings shall forward a copy of the official record to the agency making the final ~~decision and shall forward a copy of the recommended decision to each party.~~ decision."

Section 14.3. G.S. 150B-44 reads as rewritten:

"**§ 150B-44. Right to judicial intervention when decision unreasonably delayed.**

Unreasonable delay on the part of any agency or administrative law judge in taking any required action shall be justification for any person whose rights, duties, or privileges are adversely affected by such delay to seek a court order compelling action by the agency or administrative law judge. An agency that is subject to Article 3 of this Chapter and is not a board or commission has ~~90~~ 45 days from the day it receives the official record in a contested case from the Office of Administrative Hearings to make a final decision in the case. This time limit may be extended by the parties or, for good cause shown, by the agency for an additional period of up to ~~90~~ 30 days. An agency that is subject to Article 3 of this Chapter and is a board or commission has ~~90~~ 45 days from the day it receives the official record in a contested case from the Office of Administrative Hearings or ~~90~~ 45 days after its next regularly scheduled meeting, whichever is longer, to make a final decision in the case. This time limit may be extended by the parties or, for good cause shown, by the agency for an additional period of up to ~~90~~ 30 days. If an agency subject to Article 3 of this Chapter has not made a final decision within these time limits, the agency is considered to have adopted the administrative law judge's recommended decision as the agency's final decision. Failure of an agency subject to Article 3A of this Chapter to make a final decision within ~~180~~ 75 days of the close of the contested case hearing is justification for a person whose rights, duties, or privileges are adversely affected by the delay to seek a court order compelling action by the agency or, if the case was heard by an administrative law judge, by the administrative law judge."

Section 14.4. G.S. 150B-51 reads as rewritten:

"**§ 150B-51. Scope of review.**

(a) Initial Determination in Certain Cases. -- In reviewing a final decision in a contested case in which an administrative law judge made a recommended decision, the court shall make ~~two~~ three initial ~~determinations.~~ determinations as follows:

(1) First, the court shall determine whether the agency heard new evidence after receiving the recommended decision. If the court determines that the agency heard new evidence, the court shall reverse the decision or remand the case to the agency to enter a decision in accordance with the evidence in the official record.

(2) Second, if the agency did not adopt the recommended decision, the court shall determine whether the administrative law judge's

findings of fact and conclusions of law are supported by substantial evidence admissible under G.S. 150B-29(a), 150B-30, or 150B-31 in view of the entire record. If the court determines that the agency failed to adhere to the administrative law judge's findings of fact and conclusions of law that are supported by substantial evidence, the court shall reverse the decision or remand the case to the agency to enter a decision in accordance with the evidence in the official record.

(3) Third, if the agency did not adopt the recommended decision, the court shall determine whether the agency's decision states the specific reasons why the agency did not adopt the recommended decision. If the court determines that the agency did not state specific reasons why it did not adopt a recommended decision, the court shall reverse the decision or remand the case to the agency to enter the specific reasons.

(b) Standard of Review. -- After making the determinations, if any, required by subsection (a), the court reviewing a final decision may affirm the decision of the agency or remand the case for further proceedings. It may also reverse or modify the agency's decision if the substantial rights of the petitioners may have been prejudiced because the agency's findings, inferences, conclusions, or decisions are:

(1) In violation of constitutional provisions;
(2) In excess of the statutory authority or jurisdiction of the agency;
(3) Made upon unlawful procedure;
(4) Affected by other error of law;
(5) Unsupported by substantial evidence admissible under G.S. 150B-29(a), 150B-30, or 150B-31 in view of the entire record as submitted; or
(6) Arbitrary or capricious."

PART XV. MISCELLANEOUS PROVISIONS; EFFECTIVE DATES

Section 15.1. G.S. 143-215(e) is repealed.

Section 15.2. The headings to the Parts of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act.

Section 15.3. If any section or provision of this act is declared unconstitutional or invalid by the courts, the unconstitutional or invalid section or provision does not affect the validity of this act as a whole or any part of this act other than the part declared to be unconstitutional or invalid.

Section 15.4. (a) G.S. 143-215.8B, as enacted by Section 8.2 of this act, becomes effective when this act becomes law, except that subdivisions (1) through (4) of G.S. 143-215.8B(l) become effective 1 January 1998. This act shall not be construed to invalidate the development and implementation of basinwide water quality management plans by the Environmental Management Commission and the

Department of Environment, Health, and Natural Resources that has occurred prior to the date this act becomes effective.

(b) G.S. 90A-48.2, as enacted by Section 9.1 of this act, becomes effective 1 July 1998.

(c) Except as otherwise provided, each section of this act is effective when it becomes law.

(d) Part XIV of this act becomes effective 1 October 1997, and applies to contested cases commenced on or after that date.

MINUTES
COMMITTEE ON RULES CALENDAR, AND OPERATIONS OF THE HOUSE
July 30, 1997

The Committee on Rules, Calendar, and Operations of the House met July 30, 1997, at 2:00 p.m. in Room 421 of the Legislative Office Building. Representative Morgan, Committee Chair, called the meeting to order and asked the clerk to call the roll. The following members were present: Representative Bowie, Vice Chair; and Representatives Culp, Esposito, Gulley, Hill, McMahan, Miner, Mitchell, Neely, and Thompson.

The following bills were considered:

House Bill 1052 - A BILL TO BE ENTITLED AN ACT TO ALLOW INSURERS TO LIMIT OR EXCLUDE EXCESS LIABILITY COVERAGE FOR UNINSURED AND UNDERINSURED MOTORISTS AS PROVIDED BY LAW AND TO ALLOW INJURED PARTIES TO EXECUTE COVENANTS NOT TO ENFORCE JUDGMENT AS CONSIDERATION FOR PAYMENT OF THE APPLICABLE LIMITS OF LIABILITY BY THE INSURER. The Chair recognized Representative Miller, bill sponsor, to explain the bill. Representative Neely moved that the Committee recommend that the House do concur with the Senate committee substitute for House Bill 1052. Motion carried.

House Bill 63 - A BILL TO BE ENTITLED AN ACT TO RESTORE EXTRATERRITORIAL PLANNING POWERSOF THE TOWN OF RIVER BEND BUT PROHIBIT IT FROM MAKING INVOLUNTARY ANNEXATIONS. Chairman Morgan recognized Staff Counsel Gerry Cohen to explain the bill. The Chair temporarily displaced the bill.

House Bill 651 - A BILL TO BE ENTITLED AN ACT TO ALLOW THE ISSUANCE OF CERTAIN ALCOHOLIC BEVERAGE CONTROL PERMITS IN INTERSTATE ECONOMIC DEVELOPMENT ZONES - was temporarily displaced.

House Joint Resolution 1243 - A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF CHARLES KURALT. Representative McMahan, bill sponsor, was recognized to explain the bill. Representative McMahan moved for a favorable report. Motion carried.

House Bill 794 - A BILL TO BE ENTITLED AN ACT TO MAKE SUBSTANTIVE CHANGES TO THE NORTH CAROLINA ENGINEERING AND LAND SURVEYING ACT. The Chair recognized Representative Ives, bill sponsor, to explain the bill. Representative Neely moved to reconsider the favorable report as to the committee substitute number two. Motion carried. The committee substitute was placed before the Committee as it was when it left the Committee. Counsel Gerry Cohen explained the committee substitute. Representative Thompson moved for adoption of the

amendment. Mr. Cohen was recognized to explain the technical amendment on page 25, lines 26 through 33. Motion carried. Representative Mitchell moved that the amendment be rolled into the new committee substitute; moved for a favorable report as to the committee substitute and an unfavorable report as to the original bill. Motion carried.

Senate Bill 862 - A BILL TO BE ENTITLED AN ACT TO PROVIDE GREATER FLEXIBILITY TO THE UNIVERSITY OF NORTH CAROLINA AND OTHER AGENCIES IN NEGOTIATING CERTAIN CONTRACTS AND CAPITAL PROJECTS, TO INCREASE THE BENCHMARK FOR PURCHASES BY THE UNIVERSITY OF NORTH CAROLINA AND OTHER STATE AGENCIES, AND TO AUTHORIZE EMPLOYEE PAYROLL DEDUCTIONS FOR CERTAIN DISCRETIONARY PRIVILEGES OF UNIVERSITY SERVICE AT THE UNIVERSITY OF NORTH CAROLINA. Representative McMahan, bill sponsor, was recognized to explain the bill. Representative McMahan moved that the committee substitute be adopted for the purpose of discussion. Motion carried. Committee Counsel was recognized to explain the changes which were requested by the University of North Carolina. Representative McMahan moved for a favorable report as to the new committee substitute and an unfavorable report as to the original bill. Motion carried.

Senate Bill 561 - A BILL TO BE ENTITLED AN ACT TO REMEDY THE INADVERTENT EXCLUSION OF DULY SWORN AND COMMISSIONED COMPANY POLICE OFFICERS FROM THE CONCEALED HANDGUN STATUTES, TO EXEMPT ACTIVE OR RETIRED COMPANY POLICE OFFICERS FROM THE TRAINING REQUIRED TO QUALIFY FOR A CONCEALED HANDGUN PERMIT IF THE OFFICER APPLIES FOR THE PERMIT WITHIN TWO YEARS OF RETIREMENT, AND TO CLARIFY THE MENTAL HEALTH REQUIREMENTS FOR A CONCEALED HANDGUN PERMIT. Representative Thompson offered an amendment and moved for its adoption. The amendment was on page 2, lines 7, 8, 26 and 27. Motion carried. Representative Thompson moved for a favorable report as to the new committee substitute with the amendment and an unfavorable report as to the original bill. Motion carried.

Senate Bill 699 - A BILL TO BE ENTITLED VEHICLE DEALER WHO SELLS ONLY TRAILERS OR SEMITRAILERS DOES NOT HAVE TO MEET THE REQUIREMENTS SET FOR AN ESTABLISHED OFFICE OR SALESROOM OF A MOTOR VEHICLE DEALER. Senator Horton, bill sponsor, was recognized to explain the bill. Representative Esposito moved for a favorable report. Motion carried.

Senate Bill 947 - A BILL TO BE ENTITLED AN ACT TO MODIFY THE BURDEN OF PROOF THAT MUST BE SATISFIED TO OBTAIN A CERTIFICATE AUTHORIZING AN INTERBASIN TRANSFER OF SURFACE WATERS, TO DIRECT THE ENVIRONMENTAL REVIEW COMMISSION TO STUDY ISSUES RELATING TO INTERBASIN TRANSFERS, AND TO IMPOSE A TEMPORARY MORATORIUM ON INTERBASIN TRANSFERS DURING THE PENDENCY OF THE STUDY. Senator Cochrane, bill sponsor, was recognized to explain the bill. Representative Miner moved for a favorable report. Motion carried.

Senate Joint Resolution 1081 - A JOINT RESOLUTION HONORING THE MEMORY OF JACKIE ROBINSON AND RECOGNIZING WALTER FENNER "BUCK" LEONARD ON THE FIFTIETH ANNIVERSARY OF JACKIE ROBINSON'S BREAKING THE COLOR BARRIER IN MAJOR LEAGUE BASEBALL. Chairman Morgan recognized Senator Shaw, bill sponsor, to explain the bill. Representative McMahan moved for a favorable report. Motion carried.

House Bill 651 - A BILL TO BE ENTITLED AN ACT TO ALLOW THE ISSUANCE OF CERTAIN ALCOHOLIC BEVERAGE CONTROL PERMITS IN INTERSTATE ECONOMIC DEVELOPMENT ZONES. Representative Howard Hunter, bill sponsor, was recognized to explain the bill. Representative Mitchell moved that the Committee recommend the House do concur with Senate Committee Substitute for House Bill 651. Motion carried.

Senate Bill 627 - A BILL TO BE ENTITLED AN ACT TO CLARIFY AND EXPAND THE CLASSIFICATION OF PERSONS WHO MAY OBTAIN A DOMESTIC VIOLENCE PROTECTIVE ORDER; TO CLARIFY THE CIRCUMSTANCES UNDER WHICH MAGISTRATES MAY ISSUE PROTECTIVE ORDERS; AND TO IMPOSE A CRIMINAL PENALTY FOR VIOLATION OF A PROTECTIVE ORDER. The Chair recognized Senator Miller, bill sponsor, to explain the bill. Representative Neely, Chair of the subcommittee, moved that the committee substitute be adopted for discussion. Motion carried. Representative Neely was recognized to explain the committee substitute that was recommended by the subcommittee. Representative Morris spoke in support of the bill. Representative Bowie moved for a favorable report as to the committee substitute and an unfavorable report as to the original bill

House Bill 63 - A BILL TO BE ENTITLED AN ACT TO RESTORE EXTRATERRITORIAL PLANNING POWERS OF THE TOWN OF RIVER BEND BUT PROHIBIT IT FROM MAKING INVOLUNTARY ANNEXATIONS was back before the Committee. Counsel Gerry Cohen was recognized to explain the Senate

amendment. Representative Bowie moved that the Committee recommend that the House do concur with the Senate amendment for House Bill 63. Motion carried.

The Committee adjourned at 2:40 p.m.

Representative Richard T. Morgan
Committee Chair

Anne M. Cole
Acting Committee Clerk

Attachments:
Committee Reports
Bills
Senate Amendment for House Bill 63
Visitor's Sheet

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House**.

Sen.

X Committee Substitute for

H.B. 1052 A BILL TO BE ENTITLED AN ACT TO ALLOW INSURERS TO LIMIT OR EXCLUDE EXCESS LIABILITY COVERAGE FOR UNINSURED AND UNDERINSURED MOTORISTS AS PROVIDED BY LAW AND TO ALLOW INJURED PARTIES TO EXECUTE COVENANTS NOT TO ENFORCE JUDGMENT AS CONSIDERATION FOR PAYMENT OF THE APPLICABLE LIMITS OF LIABILITY BY THE INSURER.

☐ 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 2

HOUSE BILL 1052
Senate Pensions & Retirement and Insurance Committee Substitute Adopted 7/3/97

Short Title: Exclude Excess Coverage/Covenants. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW INSURERS TO LIMIT OR EXCLUDE EXCESS LIABILITY COVERAGE FOR UNINSURED AND UNDERINSURED MOTORISTS AS PROVIDED BY LAW AND TO ALLOW INJURED PARTIES TO EXECUTE COVENANTS NOT TO ENFORCE JUDGMENT AS CONSIDERATION FOR PAYMENT OF THE APPLICABLE LIMITS OF LIABILITY BY THE INSURER.

The General Assembly of North Carolina enacts:

Section 1. Article 3 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-3-152. Excess liability policies; uninsured and underinsured motorist coverages.**

With respect to policy forms that provide excess liability coverage, an insurer may limit or exclude coverage for uninsured motorists as provided in G.S. 20-279.21(b)(3) and for underinsured motorists as provided in G.S. 20-279.21(b)(4)."

Section 2. G.S. 20-279.21(b)(4) reads as rewritten:

"(4) Shall, in addition to the coverages set forth in subdivisions (2) and (3) of this subsection, provide underinsured motorist coverage, to be used only with a policy that is written at limits that exceed those prescribed by subdivision (2) of this section and that afford uninsured motorist coverage as provided by subdivision (3) of this subsection, in an amount not to be less than the financial responsibility amounts for bodily injury liability as set forth in G.S. 20-279.5 nor greater than one million dollars ($1,000,000) as selected by the policy owner. An 'uninsured motor vehicle,' as

described in subdivision (3) of this subsection, includes an 'underinsured highway vehicle,' which means a highway vehicle with respect to the ownership, maintenance, or use of which, the sum of the limits of liability under all bodily injury liability bonds and insurance policies applicable at the time of the accident is less than the applicable limits of underinsured motorist coverage for the vehicle involved in the accident and insured under the owner's policy. For the purposes of this subdivision, the term 'highway vehicle' means a land motor vehicle or trailer other than (i) a farm-type tractor or other vehicle designed for use principally off public roads and while not upon public roads, (ii) a vehicle operated on rails or crawler-treads, or (iii) a vehicle while located for use as a residence or premises. The provisions of subdivision (3) of this subsection shall apply to the coverage required by this subdivision. Underinsured motorist coverage is deemed to apply when, by reason of payment of judgment or settlement, all liability bonds or insurance policies providing coverage for bodily injury caused by the ownership, maintenance, or use of the underinsured highway vehicle have been exhausted. Exhaustion of that liability coverage for the purpose of any single liability claim presented for underinsured motorist coverage is deemed to occur when either (a) the limits of liability per claim have been paid upon the claim, or (b) by reason of multiple claims, the aggregate per occurrence limit of liability has been paid. Underinsured motorist coverage is deemed to apply to the first dollar of an underinsured motorist coverage claim beyond amounts paid to the claimant under the exhausted liability policy.

In any event, the limit of underinsured motorist coverage applicable to any claim is determined to be the difference between the amount paid to the claimant under the exhausted liability policy or policies and the limit of underinsured motorist coverage applicable to the motor vehicle involved in the accident. Furthermore, if a claimant is an insured under the underinsured motorist coverage on separate or additional policies, the limit of underinsured motorist coverage applicable to the claimant is the difference between the amount paid to the claimant under the exhausted liability policy or policies and the total limits of the claimant's underinsured motorist coverages as determined by combining the highest limit available under each policy; provided that this sentence shall apply only to insurance on nonfleet private passenger motor vehicles as described in G.S. 58-40-15(9) and (10). The underinsured motorist limits applicable to any one motor vehicle under a policy shall not be combined with or added to the limits applicable to any other motor vehicle under that policy.

An underinsured motorist insurer may at its option, upon a claim pursuant to underinsured motorist coverage, pay moneys without there having first been an exhaustion of the liability insurance policy covering the ownership, use, and maintenance of the underinsured highway vehicle. In the event of payment, the underinsured motorist insurer shall be either: (a) entitled to receive by assignment from the claimant any right or (b) subrogated to the claimant's right regarding any claim the claimant has or had against the owner, operator, or maintainer of the underinsured highway vehicle, provided that the amount of the insurer's right by subrogation or assignment shall not exceed payments made to the claimant by the insurer. No insurer shall exercise any right of subrogation or any right to approve settlement with the original owner, operator, or maintainer of the underinsured highway vehicle under a policy providing coverage against an underinsured motorist where the insurer has been provided with written notice before a settlement between its insured and the underinsured motorist and the insurer fails to advance a payment to the insured in an amount equal to the tentative settlement within 30 days following receipt of that notice. Further, the insurer shall have the right, at its election, to pursue its claim by assignment or subrogation in the name of the claimant, and the insurer shall not be denominated as a party in its own name except upon its own election. Assignment or subrogation as provided in this subdivision shall not, absent contrary agreement, operate to defeat the claimant's right to pursue recovery against the owner, operator, or maintainer of the underinsured highway vehicle for damages beyond those paid by the underinsured motorist insurer. The claimant and the underinsured motorist insurer may join their claims in a single suit without requiring that the insurer be named as a party. Any claimant who intends to pursue recovery against the owner, operator, or maintainer of the underinsured highway vehicle for moneys beyond those paid by the underinsured motorist insurer shall before doing so give notice to the insurer and give the insurer, at its expense, the opportunity to participate in the prosecution of the claim. Upon the entry of judgment in a suit upon any such claim in which the underinsured motorist insurer and claimant are joined, payment upon the judgment, unless otherwise agreed to, shall be applied pro rata to the claimant's claim beyond payment by the insurer of the owner, operator or maintainer of the underinsured highway vehicle and the claim of the underinsured motorist insurer.

A party injured by the operation of an underinsured highway vehicle who institutes a suit for the recovery of moneys

for those injuries and in such an amount that, if recovered, would support a claim under underinsured motorist coverage shall give notice of the initiation of the suit to the underinsured motorist insurer as well as to the insurer providing primary liability coverage upon the underinsured highway vehicle. Upon receipt of notice, the underinsured motorist insurer shall have the right to appear in defense of the claim without being named as a party therein, and without being named as a party may participate in the suit as fully as if it were a party. The underinsured motorist insurer may elect, but may not be compelled, to appear in the action in its own name and present therein a claim against other parties; provided that application is made to and approved by a presiding superior court judge, in any such suit, any insurer providing primary liability insurance on the underinsured highway vehicle may upon payment of all of its applicable limits of liability be released from further liability or obligation to participate in the defense of such proceeding. However, before approving any such application, the court shall be persuaded that the owner, operator, or maintainer of the underinsured highway vehicle against whom a claim has been made has been apprised of the nature of the proceeding and given his right to select counsel of his own choice to appear in the action on his separate behalf. If an underinsured motorist insurer, following the approval of the application, pays in settlement or partial or total satisfaction of judgment moneys to the claimant, the insurer shall be subrogated to or entitled to an assignment of the claimant's rights against the owner, operator, or maintainer of the underinsured highway vehicle and, provided that adequate notice of right of independent representation was given to the owner, operator, or maintainer, a finding of liability or the award of damages shall be res judicata between the underinsured motorist insurer and the owner, operator, or maintainer of underinsured highway vehicle.

As consideration for payment of policy limits by a liability insurer on behalf of the owner, operator, or maintainer of an underinsured motor vehicle, a party injured by an underinsured motor vehicle may execute a contractual covenant not to enforce against the owner, operator, or maintainer of the vehicle any judgment that exceeds the policy limits. A covenant not to enforce judgment shall not preclude the injured party from pursuing available underinsured motorist benefits, unless the terms of the covenant expressly provide otherwise, and shall not preclude an insurer providing underinsured motorist coverage from pursuing any right of subrogation.

The coverage required under this subdivision shall not be applicable where any insured named in the policy rejects the coverage. An insured named in the policy may select different coverage limits as provided in this subdivision. If the named insured does not reject underinsured motorist coverage and does not select different coverage limits, the amount of underinsured motorist coverage shall be equal to the highest limit of bodily injury liability coverage for any one vehicle in the policy. Once the option to reject underinsured motorist coverage or to select different coverage limits is offered by the insurer, the insurer is not required to offer the option in any renewal, reinstatement, substitute, amended, altered, modified, transfer, or replacement policy unless a named insured makes a written request to exercise a different option. The selection or rejection of underinsured motorist coverage by a named insured or the failure to select or reject is valid and binding on all insureds and vehicles under the policy.

Rejection of or selection of different coverage limits for underinsured motorist coverage for policies under the jurisdiction of the North Carolina Rate Bureau shall be made in writing by the named insured on a form promulgated by the Bureau and approved by the Commissioner of Insurance."

Section 3. G.S. 20-279.21 is amended by adding a new subsection to read:

"(l) A party injured by an uninsured motor vehicle covered under a policy in amounts less than those set forth in G.S. 20-279.5, may execute a contractual covenant not to enforce against the owner, operator, or maintainer of the uninsured vehicle any judgment that exceeds the liability policy limits, as consideration for payment of any applicable policy limits by the insurer where judgment exceeds the policy limits. A covenant not to enforce judgment shall not preclude the injured party from pursuing available uninsured motorist benefits, unless the terms of the covenant expressly provide otherwise, and shall not preclude an insurer providing uninsured motorist coverage from pursuing any right of subrogation."

Section 4. This act is effective when it becomes law.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House.**

☒ Committee Substitute for #2
H.B. 63 A BILL TO BE ENTITLED AN ACT TO RESTORE EXTRATERRITORIAL PLANNING POWERS OF THE TOWN OF RIVER BEND BUT PROHIBIT IT FROM MAKING INVOLUNTARY ANNEXATIONS.

☐ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 63
Committee Substitute Favorable 2/18/97
Committee Substitute #2 Favorable 3/19/97

Short Title: River Bend Zoning/Annexation. (Local)

Sponsors:

Referred to:

February 6, 1997

A BILL TO BE ENTITLED

AN ACT TO RESTORE EXTRATERRITORIAL PLANNING POWERS OF THE TOWN OF RIVER BEND BUT PROHIBIT IT FROM MAKING INVOLUNTARY ANNEXATIONS.

The General Assembly of North Carolina enacts:

Section 1. Section VI of the Charter of the Town of River Bend, being that Charter approved by the Municipal Board of Control and filed with the Secretary of State on January 14, 1981, as added by Chapter 26 of the Session Laws of 1987, reads as rewritten:

"Section VI. ~~The Town may not exercise any extraterritorial jurisdiction or extraterritorial powers under Article 19 of Chapter 160A of the General Statutes.~~ (a) The city must hold a referendum on whether to annex an area into the city if the city council receives a petition opposing the annexation signed by twenty-five percent (25%) of the registered voters who own real property in the area proposed to be annexed. The petition must be received by the city council no later than the adjournment of the public hearing required to be held under G.S. 160A-37. If the city council receives such a petition, then the annexation ordinance shall become effective only if approved by the voters of the area proposed to be annexed.

(b) If a referendum is required under subsection (a) of this section, the city council shall order the board of elections which conducts elections for that city to call an election to determine whether or not the proposed territory shall be annexed to

the city or town. Within 90 days after receiving such order from the governing body, the county board of elections shall proceed to hold an election on the question.

Such election shall be called by a resolution or resolutions of said county board of elections which shall:

(1) Describe the territory proposed to be annexed to the said city or town as set out in the order of the said local governing body;

(2) Provide that the matter of annexation of such territory shall be submitted to the vote of the qualified voters of the territory proposed to be annexed; and

(3) Provide for registration of voters in the territory proposed to be annexed for said election in accordance with G.S. 163-288.2.

Said resolution shall be published in one or more newspapers of the said county once a week for 30 days prior to the closing of the registration books. All costs of holding such election shall be paid by the city or town. Except as herein provided, the election shall be held under the same statutes, rules, and regulations as are applicable to elections in the municipality whose corporate limits are being enlarged.

At such election the question on the ballot shall be:

'[ ] FOR [ ] AGAINST
Annexation.'

If at the election a majority of the votes cast from the area proposed for annexation shall be 'For Annexation', the annexation ordinance shall become effective as provided by this Part.

(c) The Town of River Bend has jurisdiction under Article 19 of Chapter 160A of the General Statutes over the following described territory:

TRACT ONE

Lying and being situated in Number Eight Township, Craven County, North Carolina and described as follows:

BEGINNING at a point on the southern right-of-way line of U.S. Highway 17, said point being the northwest corner of plan of Piner Estates recorded in Plat Cabinet D, Slide 666, Craven County Registry; thence from said point of beginning along and with westernmost line of said Piner Estates S27 degrees 29'38"W 528.53 feet to the northwesternmost corner of lot No. 1, Craven Woods Subdivision recorded in Plat Cabinet C, Slide 41, Craven County Registry; thence along and with line between aforesaid Piner Estates and Craven Woods Subdivisions N53 degrees 05'15"E 1186.76' to a point; thence continuing with said line N69 degrees 00' E 1106.85 feet to a point, the southeasternmost corner of Lot 1, Piner Estates; thence, S29 degrees 34'19"E to the centerline of secondary road No. 1307, (this point being designated by the letter 'C' on that certain map or plat entitled Trent Estates recorded in Map Book 10, Page 72, Craven County Registry); thence continuing S29 degrees 34'19"E 30.0 feet to a point on the southern right-of-way line of secondary road No. 1307; thence with said southern right-of-way line of secondary road No. 1307 in a westwardly direction to a point on said southern right-of-way line where 'Harris' easternmost line extended southwardly would intersect said right-of-way line; thence, N00 degrees 12'17"W 199.96 feet to a point; thence with said Harris easternmost line

N84 degrees 45'48"W 95.12 feet to a point; thence N3 degrees 11'55"E 147.81' to a point on the southern right-of-way line of U.S. Highway No. 17; thence, with said southern right-of-way line of U.S. Highway No. 17, S67 degrees 00'W 493 feet to a point at the intersection of said southern right-of-way line of U.S. Highway 17 and Canoe Branch; thence in a northerly direction with said Canoe Branch to its intersection with the centerline of Seaboard Coastline Railway, now abandoned; thence with said centerline of Seaboard Coastline Railway in an easterly direction to a point where the western line of Hidden Oaks Subdivision, recorded in Plat Cabinet D, Slide 455, Craven County Registry, extended would intersect said centerline; thence S25 degrees 51'58"E 62.5 feet to the northwestern corner of said Hidden Oaks Subdivision; thence with said northernmost line of Hidden Oaks Subdivision N69 degrees 43'03"E 3, 111.74 feet to the northeast corner of said Hidden Oaks Subdivision S22 degrees 23'E 731.08 feet to a point on the northern right-of-way line of U.S. Highway No. 17; thence continuing S22 degrees 23'E 150.0 feet to a point on the southern right-of-way line of U.S. Highway No. 17; thence with said southern right-of-way line of U.S. Highway No. 17, S67 degrees 48'50"W 727.98 feet to the northeastern corner of aforesaid Piner Estates; thence continuing with said southern right-of-way line S67 degrees 48'50"W 2,271.20 feet to the Point of Beginning.

TRACT TWO

Lying and being situated in Number Eight Township, Craven County, North Carolina and described as follows:

BEGINNING at the southeasternmost corner of Lot No. 18, Plan of Springdale Subdivision recorded in Plat Cabinet D, Slide 623, Craven County Registry; said corner being on the northern right-of-way line of U.S. Highway No. 17; thence along and with the easternmost line of aforesaid Springdale Subdivision N22 degrees 22'03"W 277.0 feet to a point; thence S62 degrees 05'E to the northwestern corner of Lot 79, Plan of Deerfield Subdivision, Phase 3, recorded in Plat Cabinet E, Slide 333, Craven County Registry; thence with northernmost line of aforesaid Deerfield Subdivision, Phase 3, N66 degrees 50'56"E 473.81 feet to a point; thence N50 degrees 07'40"E 281.86 feet to a point on the western right-of-way line of Forest Oaks Drive; thence with western right-of-way line of Forest Oaks Drive S42 degrees 22'20"E 200.19 feet to the northern right-of-way line of Rocky Run Road; thence with said right-of-way of Rocky Run Road S03 degrees 28'20"E 97.78 feet to a point on the northern right-of-way line of U.S. Highway No. 17; thence S66 degrees 50'56"W along and with said northern right-of-way line of U.S. Highway No. 17 to the Point of Beginning."

Section 2. This act becomes effective 30 days after it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 63

AMENDMENT NO. 1
(to be filled in by
Principal Clerk)

H63-ALBX-2

Page 1 of 2

Date 7/2 ,1997

Comm. Sub. [ ]
Amends Title [YES]

moves to amend the bill on page 1, line 4, by adding the following immediately before the period, "AND CONCERNING ANNEXATION OF AREAS BY THE TOWNS OF MOREHEAD CITY AND NEWPORT WHERE PLANNING JURISDICTION WAS RECENTLY GRANTED TO THOSE TOWNS BY LOCAL ACT"

further moves to amend the bill on page 3, line 36, by adding the following between lines 36 and 37:

"Section 1.1. Section 1 of S.L. 1997-219 reads as rewritten:

This is the corrected version of the attached amendment which has the corrections written in and initialed.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 63

AMENDMENT NO. 1
(to be filled in by
Principal Clerk)

H63-ALBX-2

"Section 1. The Towns of Morehead City and Newport may not annex noncontiguous areas as provided in Part 4 of Article 4A of Chapter 160A of the General Statutes if the area to be annexed is closer to the other Town's corporate limits than it is to the corporate limits of the Town desiring to annex the area. However, either Town may annex such an area if it lies within an area where the Town could exercise its extraterritorial planning jurisdiction under S.L. 1997-185, or where the Town is exercising its extraterritorial planning jurisdiction under Article 19 of Chapter 160A of the General Statutes."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House.**

X Committee Substitute for

H.B. 651 A BILL TO BE ENTITLED AN ACT TO ALLOW THE ISSUANCE OF CERTAIN ALCOHOLIC BEVERAGE CONTROL PERMITS IN INTERSTATE ECONOMIC DEVELOPMENT ZONES.

☐ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 651
Committee Substitute Favorable 4/28/97
Senate State Government, Local Government, and Personnel Committee Substitute Adopted 6/25/97

Short Title: Interstate Econ. Bill Develop. Zone. (Public)

Sponsors:

Referred to:

March 27, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE ISSUANCE OF CERTAIN ALCOHOLIC BEVERAGE CONTROL PERMITS IN INTERSTATE ECONOMIC DEVELOPMENT ZONES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 18B-1006 is amended by adding a new subsection to read:

"(m) Interstate Interchange Economic Development Zones. -- The Commission may issue permits listed in G.S. 18B-1001(10), without approval at an election, to qualified establishments defined in G.S. 18B-1000(4), (6), and (8) located within one mile of an interstate highway interchange located in a county that:

(1) Has approved the sale of malt beverages, unfortified wine, and fortified wine, but not mixed beverages;

(2) Operates ABC stores;

(3) Borders on another state; and

(4) Lies north and east of the Roanoke River."

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

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House.**

☐ Committee Substitute for
H.J.R. 1243 A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF CHARLES KURALT.

☒ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

HOUSE JOINT RESOLUTION 1243*

Sponsors: Representatives McMahan; Aldridge, Brawley, Buchanan, Daughtry, Dockham, Esposito, Goodwin, Holmes, Miner, Neely, Russell, Sherrill, Thompson, and C. Wilson.

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

July 29, 1997

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF CHARLES KURALT.

Whereas, Charles Bishop Kuralt was born in Wilmington, North Carolina, on September 10, 1934, to Wallace Hamilton Kuralt and Ina Bishop Kuralt; and

Whereas, Charles Kuralt spent his childhood years in the City of Charlotte where his mother was a schoolteacher and his father, a social worker, served for 28 years as director of Mecklenburg County's public welfare; and

Whereas, Charles Kuralt excelled as a student at the University of North Carolina at Chapel Hill, serving as editor of The Daily Tar Heel and graduating with a bachelors degree in 1955; and

Whereas, following graduation from college, Charles Kuralt worked for the Charlotte News and in 1956, received the Ernie Pyle Memorial Award for his well-crafted and stylish writing; and

Whereas, in 1957, Charles Kuralt joined Columbia Broadcasting System (CBS) as a writer and in 1959, at the age of 24, became the youngest person to be named a news correspondent at CBS; and

Whereas, for the next several years, Charles Kuralt completed various assignments for CBS, including covering the Vietnam War and other news stories from various locations throughout the world, and serving as the first host of the CBS prime time series, "Eyewitness", as the CBS Latin American Correspondent, and as the Chief West Coast Correspondent; and

Whereas, after many years of masterful news reporting, Charles Kuralt began his acclaimed "On the Road" series, as part of "The CBS Evening News" in 1967; and

Whereas, for the next 12 years, Charles Kuralt traveled the highways and byways of the United States searching for stories that represented the ordinary American; and

Whereas, on January 28, 1979, Charles Kuralt began his "Sunday Morning" series, and for the next 15 years, warmed the hearts of millions of viewers across the nation each Sunday morning with 90 minutes of wonderful stories and scenes from all over the United States; and

Whereas, after a 37-year career at CBS, Charles Kuralt retired on April 3, 1994; and

Whereas, Charles Kuralt was the author of six books; and

Whereas, Charles Kuralt received numerous awards and recognitions, including 12 Emmy Awards and three Peabody Awards and was inducted into the North Carolina Journalism Hall of Fame in 1981; and

Whereas, despite his fame, Charles Kuralt never forgot his beloved home state nor his alma mater, which he often assisted with fund-raising projects; and

Whereas, in 1995, Charles Kuralt served as the speaker for the dedication of the Tate-Turner-Kuralt Building, which is named for him and houses the School of Social Work, on the campus of the University of North Carolina at Chapel Hill; and

Whereas, Charles Kuralt died on July 4, 1997; and

Whereas, Charles Kuralt is survived by his wife, Suzanna "Petie" Kuralt; his daughters, Lisa White and Susan Bowers; a brother, Wallace Kuralt, Jr., a sister, Catherine Harris; and two grandchildren; and

Whereas, Charles Kuralt possessed a peculiar insight that enabled him to contribute substantially and effectively to the improvement and betterment of the world around him, enriching the lives of those with whom he was associated and came in contact; and

Whereas, in the passing of Charles Kuralt, North Carolina has lost one of its most beloved, admired, and respected native sons;

Now, therefore, be it resolved by the House of Representatives, the Senate concurring:

Section 1. The General Assembly honors the life and memory of Charles Bishop Kuralt and expresses its gratitude and appreciation of this State and its citizens for his life and service.

Section 2. The General Assembly expresses its deep sorrow to the family and friends of Charles Bishop Kuralt for the loss of a beloved husband, father, and a true friend.

Section 3. The Secretary of State shall transmit a certified copy of this resolution to the family of Charles Kuralt.

Section 4. This resolution is effective upon ratification.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **MORGAN** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE.**.

☒ Committee Substitute #2 for
H.B. 794 A BILL TO BE ENTITLED AN ACT TO MAKE SUBSTANTIVE CHANGES TO THE NORTH CAROLINA ENGINEERING AND LAND SURVEYING 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 ☐

☐ 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 (# 3), ~~☐ which changes the title~~, unfavorable as to ~~Senate~~ House committee substitute bill ~~#~~ 2 .

☐ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 794*
Committee Substitute Favorable 5/28/97
Committee Substitute #2 Favorable 6/25/97
Proposed Committee Substitute H794-PCS7364

Short Title: Engineering and Land Surveying Changes. (Public)

Sponsors:

Referred to:

April 3, 1997

A BILL TO BE ENTITLED

AN ACT TO MAKE SUBSTANTIVE CHANGES TO THE NORTH CAROLINA ENGINEERING AND LAND SURVEYING ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 89C-2 reads as rewritten:

"**§ 89C-2. Declarations; prohibitions.**

In order to safeguard life, health, and property, and to promote the public welfare, the practice of engineering and the practice of land surveying in this State are hereby declared to be subject to regulation in the public interest. It shall be unlawful for any person to practice or to offer to practice engineering or land surveying in this State, as defined in the provisions of this Chapter, or to use in connection with ~~his~~ the person's name or otherwise assume or advertise any title or description tending to convey the impression that ~~he~~ the person is either a professional engineer or a ~~registered~~ professional land surveyor, unless ~~such~~ the person has been duly ~~registered as such.~~ licensed. The right to engage in the practice of engineering or land surveying ~~shall be deemed~~ is a personal right, based on the qualifications of the ~~individual~~ person as evidenced by ~~his~~ the person's certificate of ~~registration,~~ licensure, which shall not be transferable."

Section 2. G.S. 89C-3 reads as rewritten:

"**§ 89C-3. Definitions.**

The following definitions apply in this Chapter:

(1) Board. -- The North Carolina State Board of ~~Registration~~ Examiners for ~~Professional~~ Engineers and ~~Land~~ Surveyors provided for by this Chapter.

(1a) Business firm. -- A partnership, firm, association, or another organization or group that is not a corporation and is acting as a unit.

(2) Engineer. -- A person who, by reason of ~~his~~ special knowledge and use of the mathematical, physical and engineering sciences and the principles and methods of engineering analysis and design, acquired by engineering education and engineering experience, is qualified to practice engineering.

(3) ~~Engineer-in-training.~~ Engineering intern. -- A person who complies with the requirements for education, experience and character, and has passed an examination in the fundamental engineering subjects, as provided in this Chapter.

(3a) Inactive licensee. -- Licensees who are not engaged in the practice of engineering or land surveying in this State.

(4) ~~Land surveyor-in-training.~~ Land surveyor intern. -- A person who has qualified for, taken, and passed an examination on the basic disciplines of land surveying as provided in this Chapter.

(5) Person. -- Any natural person, firm, partnership, corporation or other legal entity.

(6) Practice of engineering. --

a. Any service or creative work, the adequate performance of which requires engineering education, training, and experience, in the application of special knowledge of the mathematical, physical, and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning, and design of engineering works and systems, planning the use of land and water, engineering surveys, and the observation of construction for the purposes of assuring compliance with drawings and specifications, including the consultation, investigation, evaluation, planning, and design for either private or public use, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects, and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, pneumatic or thermal nature, insofar as they involve safeguarding life, health or property, and including such other professional services as may be necessary to the planning, progress and completion of any engineering services.

A person shall be construed to practice or offer to practice engineering, within the meaning and intent of this

Chapter, who practices any branch of the profession of engineering; or who, by verbal claim, sign, advertisement, letterhead, card, or in any other way represents ~~himself~~ the person to be a professional engineer, or through the use of some other title implies that ~~he~~ the person is a professional engineer or that ~~he~~ the person is ~~registered~~ licensed under this Chapter; or who holds ~~himself~~ the person out as able to perform, or who does perform any engineering service or work not exempted by this Chapter, or any other service designated by the practitioner which is recognized as engineering.

b. The term 'practice of engineering' shall not be construed to permit the location, description, establishment or reestablishment of property lines or descriptions of land boundaries for conveyance. The term does not include the assessment of an underground storage tank required by applicable rules at closure or change in service unless there has been a discharge or release of the product from the tank.

(7) Practice of land ~~surveying by registered land surveyors.~~ surveying. --

a. ~~Any service or work, the adequate performance of which involves the application of special knowledge of the principles of mathematics, the related physical and applied sciences, and the relevant requirements of law for adequate evidence to the act of measuring and locating lines, angles, elevations, natural and man-made features in the air, on the surface of the earth, within underground workings, and on the beds of bodies of water for the purpose of determining areas and volumes, for the monumenting of property boundaries, and for the platting and layout of lands and subdivisions thereof, including the topography, alignment and grades of street and incidental drainage within the subdivision, and for the preparation and perpetuation of maps, record plats, field note records, and property descriptions that represent these surveys.~~ Providing professional services such as consultation, investigation, testimony, evaluation, planning, mapping, assembling, and interpreting reliable scientific measurements and information relative to the location, size, shape, or physical features of the earth, improvements on the earth, the space above the earth, or any part of the earth, whether the gathering of information for the providing of these services is accomplished by conventional ground measurements, by

aerial photography, by global positioning via satellites, or by a combination of any of these methods, and the utilization and development of these facts and interpretations into an orderly survey map, plan, report, description, or project. The practice of land surveying includes the following:

1. Locating, relocating, establishing, laying out, or retracing any property line, easement, or boundary of any tract of land;
2. Locating, relocating, establishing, or laying out the alignment or elevation of any of the fixed works embraced within the practice of professional engineering;
3. Making any survey for the subdivision of any tract of land, including the topography, alignment and grades of streets and incidental drainage within the subdivision, and the preparation and perpetuation of maps, record plats, field note records, and property descriptions that represent these surveys;
4. Determining, by the use of the principles of land surveying, the position for any survey monument or reference point, or setting, resetting, or replacing any survey monument or reference point;
5. Determining the configuration or contour of the earth's surface or the position of fixed objects on the earth's surface by measuring lines and angles and applying the principles of mathematics or photogrammetry;
6. Providing geodetic surveying which includes surveying for determination of the size and shape of the earth both horizontally and vertically and the precise positioning of points on the earth utilizing angular and linear measurements through spatially oriented spherical geometry; and
7. Creating, preparing, or modifying electronic or computerized data, including land information systems and geographic information systems relative to the performance of the practice of land surveying.

b. The term 'practice of land surveying' shall not be construed to permit the design or preparation of specifications for (i) major highways; (ii) wastewater systems; (iii) wastewater or industrial waste treatment works; (iv) pumping or lift stations; (v) water supply, treatment, or distribution systems; (vi) streets or storm sewer systems except as incidental to a subdivision.

(8) Professional engineer. -- A person who has been duly ~~registered and~~ licensed as a professional engineer by the Board established by this Chapter.

(8a) Professional engineer, retired. -- A person who has been duly licensed as a professional engineer by the Board and who chooses to relinquish or not to renew a license and who applies to and is approved by the Board to be granted the use of the honorific title 'Professional Engineer, Retired'.

(9) ~~Registered~~ Professional land surveyor. -- A person who, by reason of ~~his~~ special knowledge of mathematics, surveying principles and methods, and legal requirements which are acquired by education and/or practical experience, is qualified to engage in the practice of land surveying, ~~as herein defined,~~ as attested by ~~his registration~~ the person's licensure as a ~~registered~~ professional land surveyor by the Board.

(9a) Professional land surveyor, retired. -- A person who has been duly licensed as a professional land surveyor by the Board and who chooses to relinquish or not to renew a license and who applies to and is approved by the Board to be granted the use of the honorific title 'Professional Land Surveyor, Retired'.

(10) Responsible charge. -- Direct control and personal supervision, either of engineering work or of land surveying, as the case may be."

Section 3. G.S. 89C-4 reads as rewritten:

"**§ 89C-4. State Board of ~~Registration;~~ Examiners for Engineers and Surveyors; appointment; terms.**

A State Board of ~~Registration~~ Examiners for ~~Professional~~ Engineers and ~~Land~~ Surveyors, whose duty it is to administer the provisions of this Chapter, is created. The Board shall consist of four ~~registered~~ licensed professional engineers, three ~~registered~~ licensed professional land surveyors and two public members, who are neither professional engineers nor professional land surveyors. Of the land surveyor members, one and only one may hold dual ~~registration~~ licenses as a professional land surveyor and professional engineer. All of the members shall be appointed by the Governor. Appointments of the engineer and land surveyor members shall preferably, but not necessarily, be made from a list of nominees submitted by the professional societies for engineers and land surveyors in this State. Each member of the Board shall receive a certificate of appointment from the Governor and shall file with the Secretary of State ~~his~~ a written oath or affirmation for the faithful discharge of ~~his~~ the duties.

Members of the Board serve for staggered five-year terms, and no member may be appointed for more than two full terms. Members serve until the expiration of their respective terms and until their respective successors are appointed. If a vacancy occurs during a term, the Governor shall appoint a successor from the same classification as the person causing the vacancy to serve for the remainder of the

unexpired term. If the vacancy is not filled within 90 days after it occurs, the Board may appoint a provisional member to serve until the appointment by the Governor becomes effective. The provisional member during his tenure has all the powers and duties of a regular member."

Section 4. G.S. 89C-5 reads as rewritten:

"**§ 89C-5. Board members; qualifications.**

Each engineer member of the Board shall be a resident of North Carolina and shall be a ~~registered~~ licensed professional engineer engaged in the lawful practice of engineering in North Carolina for at least six years.

Each land surveyor member of the Board shall be a resident of North Carolina and shall be a ~~registered~~ licensed professional land surveyor engaged in the lawful practice of land surveying in North Carolina for at least six years.

Each public member of the Board shall be a resident of North Carolina."

Section 5. G.S. 89C-6 reads as rewritten:

"**§ 89C-6. Compensation and expenses of Board members.**

Each member of the Board, when attending to the work of the Board or any of its committees, shall receive as compensation for ~~his service~~ services the per diem and, in ~~addition thereto,~~ addition, shall be reimbursed for travel expenses and incidentals not exceeding the maximum set forth by law. In addition to per diem allowances, travel and incidentals, the secretary of the Board may, with the approval of the Board, receive such reasonable additional compensation as is compatible with the actual hours of work required by the duties of ~~his~~ the office."

Section 6. G.S. 89C-8 reads as rewritten:

"**§ 89C-8. Organization of the Board; meetings; election of officers.**

The Board shall hold at least two regular meetings each year. Special meetings may be held at such times and upon such notice as the rules and regulations of the Board may provide. The Board shall elect annually from its members a ~~chairman,~~ chair, a ~~vice-chairman,~~ vice-chair, and a secretary. A quorum of the Board shall consist of not less than five members. The Board shall operate under its rules and regulations supplemented by Robert's Rules of Order."

Section 7. G.S. 89C-9 reads as rewritten:

"**§ 89C-9. Executive ~~secretary;~~ director; duties and liabilities.**

The Board shall employ an executive ~~secretary~~ director who is not a member of the Board. The executive ~~secretary~~ director shall be a full-time employee of the Board and perform ~~such~~ the duties assigned to ~~him~~ the director by the secretary subject to the approval of the Board. The executive ~~secretary~~ director shall receive a salary and compensation fixed by the Board. The executive ~~secretary~~ director shall give a surety bond satisfactory to the Board conditioned upon the faithful performance of ~~his~~ the director's ~~duties.~~ duties assigned. The premium on ~~said~~ the bond shall be a necessary and proper expense of the Board."

Section 8. G.S. 89C-10 reads as rewritten:

"**§ 89C-10. Board powers.**

(a) The Board ~~shall have the power to~~ may adopt and amend all ~~rules and regulations. Additionally, the Board shall have the power to adopt such rules,~~ rules

and rules of ~~procedure, and regulations,~~ procedure as may be reasonably necessary for the proper performance of its duties, the regulation of its procedures, meetings, records, the ~~giving of~~ administration of ~~examinations and the conduct thereof,~~ examinations, and the ~~power~~ authority to enforce ~~such~~ the rules of professional conduct as ~~may, from time to time,~~ may be adopted by the Board pursuant to G.S. 89C-20.

The action by the Board in carrying out any of the powers specified ~~above~~ in this section shall be binding upon all persons ~~registered~~ licensed under this Chapter, including corporations and business firms holding certificates of authorization.

(b) The Board shall adopt and have an official seal, which shall be affixed to each certificate issued.

(c) The Board ~~is hereby authorized~~ may in the name of the State ~~to~~ apply for relief, by injunction, in the established manner provided in cases of civil procedure, without bond, to enforce the provisions of this Chapter, or to restrain any violation ~~thereof.~~ of the provisions of this Chapter. In ~~such proceedings,~~ proceedings for injunctive relief, it shall not be necessary to allege or prove either that an adequate remedy at law does not exist, or that substantial or irreparable damage would result from the continued violation ~~thereof.~~ of the provisions of this Chapter. The members of the Board shall not be personally liable under this proceeding.

(d) The Board may subject an applicant for ~~registration~~ licensure to ~~such~~ any examination ~~as it deems~~ necessary to determine ~~his~~ the applicant's qualifications.

(e) The Board ~~shall have the power to~~ may issue an appropriate certificate of ~~registration~~ licensure to any applicant who, in the opinion of the Board, has met the requirements of this Chapter.

(f) It shall be the responsibility and duty of the Board to conduct a regular program of investigation concerning all matters within its jurisdiction under the provisions of this Chapter. The investigation of a ~~registrant~~ licensee is confidential until the Board issues a citation to the ~~registrant.~~ licensee. The Board may expend its funds for salaries, fees, and per diem expenses, in connection with its investigations, provided that no ~~such~~ funds other than per diem expenses shall be paid to any member of the Board in connection with its investigations, nor may any member of the Board give testimony and ~~thereafter~~ later sit in deciding on any matter which may directly involve punitive action ~~under such~~ for the testimony.

(g) The Board ~~is authorized and empowered to~~ may use its funds to establish and conduct instructional programs for persons who are currently ~~registered~~ licensed to practice engineering or land surveying, as well as refresher courses for persons interested in obtaining adequate instruction or programs of study to qualify them for ~~registration~~ licensure to practice engineering or land surveying. The Board may expend its funds for these purposes and ~~is authorized and empowered~~ may not only ~~to~~ conduct, sponsor, and arrange for instructional programs, but also ~~to~~ may carry out ~~such~~ instructional programs through extension courses or other ~~media, and the~~ media. The Board may enter into plans or agreements with community colleges, public or private institutions of higher learning, ~~both public and private,~~ State and county boards of education, or with the governing authority of any industrial education

center for the purpose of planning, scheduling or arranging ~~such~~ courses, instruction, extension courses, or in assisting in obtaining courses of study or programs in the field of engineering and land surveying. The Board shall ~~make every effort practical to~~ encourage the educational institutions in this State to offer courses necessary to complete the educational requirements of this Chapter. For the purpose of carrying out these objectives, the Board ~~is authorized to make and promulgate such~~ may adopt rules ~~and regulations~~ as may be necessary for ~~such~~ the educational programs, instruction, extension services, or for entering into plans or contracts with persons or educational and industrial institutions.

(h) The Board may license sponsors of continuing professional competency activities who agree to conduct programs in accordance with standards adopted by the Board. Sponsors shall pay a license fee established by the Board, not to exceed two hundred fifty dollars ($250.00) for licensure under this subsection. The license fee shall accompany the application. Sponsors shall renew their licenses annually on a form provided by the Board."

Section 9. G.S. 89C-11 reads as rewritten:

"**§ 89C-11. Secretary; duties and liabilities; expenditures.**

The secretary of the Board shall receive and account for all moneys derived from the operation of the Board as provided in this Chapter, and shall deposit them in one or more special funds in banks or other financial institutions carrying deposit insurance and authorized to do business in North Carolina. The fund or funds shall be designated as 'Fund of the Board of ~~Registration~~ Examiners for ~~Professional~~ Engineers and ~~Land~~ Surveyors' and shall be drawn against only for the purpose of implementing provisions of this Chapter as herein provided. All expenses certified by the Board as properly and necessarily incurred in the discharge of its duties, including authorized compensation, shall be paid out of ~~said~~ this fund on the warrant signed by the secretary of the ~~Board; provided, however, that at~~ Board. At no time shall the total of warrants issued exceed the total amount of funds accumulated under this Chapter. The secretary of the Board shall give a surety bond satisfactory to the State Board of ~~Registration~~ Examiners for ~~Professional~~ Engineers and ~~Land~~ Surveyors, conditioned upon the faithful performance of ~~his duties.~~ the duties assigned. The premium on ~~said~~ the bond ~~shall be regarded as~~ is a proper and necessary expense of the Board. The secretary of the Board may delegate to the executive ~~secretary~~ director certain routine duties, such as receipt and disbursement of funds in stated amounts by a written authorization, which has the unanimous approval of the Board."

Section 10. G.S. 89C-12 reads as rewritten:

"**§ 89C-12. Records and reports of Board; evidence.**

The Board shall keep a record of its proceedings and a register of all applicants for ~~registration,~~ licensure, showing for each the date of application, name, age, education, and other qualifications, place of business and place of residence, whether the applicant was rejected or a certificate of ~~registration~~ licensure granted, and the date ~~of such action.~~ licensure was rejected or granted. The books and register of the Board shall be prima facie evidence of all matters recorded ~~therein,~~ by the Board,

and a copy duly certified by the secretary of the Board under seal shall be admissible in evidence as if the original were produced. A roster showing the names and places of business and of residence of all ~~registered~~ licensed professional engineers and all ~~registered~~ licensed professional land surveyors shall be prepared by the secretary of the Board current to the month of January of each ~~year; such~~ year. The roster shall be printed by the Board out of the Board's fund ~~of said Board~~ and distributed as ~~set forth~~ described in the Board's ~~rules and regulations.~~ rules. On or before the first day of May of each year, the Board shall submit to the Governor a report on its transactions for the preceding year, and shall file with the Secretary of State a copy of ~~such~~ the report, together with a complete statement of the receipts and expenditures of the ~~Board,~~ Board attested by the ~~affidavits of the chairman~~ chair and the ~~secretary,~~ secretary and a copy of the ~~said~~ the roster of ~~registered~~ licensed professional engineers and ~~registered~~ professional land surveyors."

Section 11. G.S. 89C-13 reads as rewritten:

"**§ 89C-13. General requirements for ~~registration.~~ licensure.**

(a) Engineer Applicant. -- To be eligible for ~~admission to examination for~~ licensure as a professional ~~engineer~~ engineer, an applicant must be of good character and reputation. An applicant desiring to take the examination in the fundamentals of engineering ~~only~~ must submit three character ~~references.~~ references, one of whom shall be a professional engineer. An applicant desiring to take the examination in the principles and practice of engineering must submit five references, two of whom shall be professional engineers having personal knowledge of ~~his~~ the applicant's engineering experiences.

The following shall be considered as minimum evidence satisfactory to the Board that the applicant is qualified for ~~registration:~~ licensure:

(1) As a professional engineer (shall meet one):

a. ~~Registration~~ Licensure by Comity or Endorsement. -- A person holding a certificate of ~~registration~~ licensure to engage in the practice of engineering, on the basis of comparable qualifications, issued to ~~him~~ the person by a proper authority of a state, territory, or possession of the United States, the District of Columbia, or of Canada, who completes an application for licensure and submits five references, two of which shall be from professional engineers having personal knowledge of the applicant's engineering experience, and ~~who~~ who, in the opinion of the Board, meets the requirements of this Chapter, based on verified evidence may, upon application, be ~~registered~~ licensed without further examination.

A person holding a certificate of qualification issued by the Committee on National Engineering Certification of the National Council of ~~Engineering Examiners,~~ Examiners for Engineering and Surveying whose qualifications meet the

requirements of this Chapter, may upon application, be ~~registered~~ licensed without further examination.

b. ~~E.I.T.~~ E.I. Certificate, Experience, and Examination. -- A holder of a certificate of ~~engineer-in-training~~ engineering intern issued by the Board, and with a specific record of an additional four years or more of progressive experience on engineering projects of a grade and character which indicates to the Board that the applicant may be competent to practice engineering, shall be admitted to ~~an eight-hour examination in~~ the principles and practice of ~~engineering.~~ engineering examination. Upon passing ~~such~~ the examination, the applicant shall be granted a certificate of ~~registration~~ licensure to practice professional engineering in this State, provided ~~he~~ the applicant is otherwise qualified.

c. Graduation, Experience, and Examination. -- A graduate of an engineering curriculum of four years or more approved by the Board as being of satisfactory standing, and with a specific record of an additional four years or more of progressive experience on engineering projects of a grade and character which indicates to the Board that the applicant may be competent to practice engineering, shall be admitted to ~~an eight-hour written examination in~~ the fundamentals of ~~engineering,~~ engineering examination, and ~~an eight-hour written examination in~~ the principles and practice of ~~engineering.~~ engineering examination. Upon passing ~~such~~ the examinations, the applicant shall be granted a certificate of ~~registration~~ licensure to practice professional engineering in this State, provided ~~he~~ the applicant is otherwise qualified.

d. Graduation, Experience, and Examination. -- A graduate of an engineering or related science curriculum of four years or more, other than the ones approved by the Board as being of satisfactory standing or with an equivalent education and engineering experience satisfactory to the Board and with a specific record of eight years or more of progressive experience on engineering projects of a grade and character which indicates to the Board that the applicant may be competent in the fundamentals of engineering, shall be admitted to ~~an eight-hour written examination in~~ the fundamentals of ~~engineering,~~ engineering examination and ~~an eight-hour written examination in~~ the principles and practice of ~~engineering.~~ engineering examination. Upon passing ~~such~~ the examinations, the applicant shall be granted a certificate of ~~registration~~ licensure to practice professional

engineering in this State, provided ~~he~~ the applicant is otherwise qualified.

e. Long-Established Practice. -- ~~An individual~~ A person with a specific record of 20 years or more of progressive experience on engineering projects of a grade and character which indicates to the Board that the applicant may be competent to practice engineering shall be admitted to ~~an eight-hour written examination in~~ the principles and practice of ~~engineering.~~ engineering examination. Upon passing ~~such~~ the examination, the applicant shall be granted a certificate of ~~registration~~ licensure to practice professional engineering in this State, provided ~~he~~ the applicant is otherwise qualified.

At its discretion the Board may require an applicant to submit exhibits, drawings, designs, or other tangible evidence of engineering work ~~executed by him and~~ which ~~he~~ the applicant personally accomplished or supervised.

The following shall be considered as minimum evidence that the applicant is qualified for certification:

(2) As an ~~engineer-in-training~~ engineering intern (shall meet one):

a. Graduation and Examination. -- A graduate of an engineering curriculum or related science curriculum of four years or more, approved by the Board as being of satisfactory standing, or a student who has attained senior status in an accredited engineering program, shall be admitted to ~~an eight-hour written examination in~~ the fundamentals of ~~engineering.~~ engineering examination. The applicant shall be notified if the examination was passed or not passed and if passed he shall be certified as an ~~engineer-in-training,~~ engineering intern if ~~he~~ the applicant is otherwise qualified.

b. Graduation, Experience, and Examination. -- A graduate of an engineering or related science curriculum of four years or more, other than the ones approved by the Board as being of satisfactory standing, or with equivalent education and engineering experience satisfactory to the Board and with a specific record of four or more years of progressive experience on engineering projects of a grade and character satisfactory to the Board, shall be admitted to ~~an eight-hour written examination in~~ the fundamentals of ~~engineering.~~ engineering examination. The applicant shall be notified if the examination was passed or not passed and if ~~passed he~~ passed, the applicant shall be certified as an ~~engineer-in-training~~ engineering intern if ~~he~~ the applicant is otherwise qualified.

(b) Land Surveyor Applicant. -- To be eligible for admission to examination for land ~~surveyor-in-training,~~ surveyor intern or ~~registered~~ professional land surveyor, an applicant must be of good character and reputation and shall submit five references with ~~his~~ the application for ~~registration~~ licensure as a land surveyor, two of which references shall be ~~registered~~ professional land surveyors having personal knowledge of ~~his~~ the applicant's land surveying experience, or in the case of an application for certification as a land ~~surveyor-in-training~~ surveyor intern by three references, one of which shall be a ~~registered~~ licensed land surveyor having personal knowledge of the applicant's land surveying experience.

The evaluation of a land surveyor applicant's qualifications shall involve a consideration of ~~his~~ the applicant's education, technical and land surveying experience, exhibits of land surveying projects with which ~~he~~ the applicant has been associated, and recommendations by ~~references, and reviewing of these categories during an oral examination.~~ references. The land surveyor applicant's qualifications may be reviewed at an interview if the Board ~~deems~~ determines it necessary. Educational credit for institute courses, correspondence courses, ~~etc.,~~ or other courses shall be determined by the Board.

The following shall be considered a minimum evidence satisfactory to the Board that the applicant is qualified for ~~registration~~ licensure as a professional land surveyor or for certification as a land ~~surveyor-in-training,~~ surveyor intern respectively:

(1) As a ~~registered~~ professional land surveyor (shall meet one):

a. Rightful possession of a ~~B.S.~~ bachelor of science degree in surveying or other equivalent curricula, all approved by the Board and a record satisfactory to the Board of ~~one year~~ two years or more of progressive practical ~~experience~~ experience, one year of which shall have been under a practicing ~~registered~~ professional land surveyor and satisfactorily passing ~~such~~ any oral and written ~~examination, taken in the presence of and~~ examination required by the Board, all of which shall determine and indicate that the ~~candidate~~ applicant is competent to practice land surveying. The applicant may ~~elect~~ be qualified by the Board to take the first examination (Surveying Fundamentals) immediately after obtaining the ~~B.S.~~ bachelor of science degree at the first regularly scheduled examination thereafter. Upon passing the first examination and successful completion of the experience required by this subdivision, the applicant may apply to take the second examination (Principles and Practice of Land Surveying). An applicant who passes both examinations and completes the educational and experience requirements of this subdivision shall be granted ~~registration~~ licensure as a professional land surveyor.

b. Rightful possession of an associate degree in surveying technology approved by the Board and a record satisfactory

to the Board of ~~three~~ four years of progressive practical experience, ~~two~~ three years of which shall have been under a practicing ~~registered~~ licensed land surveyor, and satisfactorily passing ~~such~~ any written and oral examination ~~taken in the presence of and as~~ required by the Board, all of which shall determine and indicate that the ~~candidate~~ applicant is competent to practice land surveying. The applicant may ~~elect~~ apply to the Board to take the first examination (Surveying Fundamentals) immediately after obtaining the associate degree at the first regularly scheduled examination thereafter. Upon passing the first examination and successfully completing ~~years of progressive practical experience under a practicing registered land surveyor,~~ the practical experience required under this subdivision, the applicant may ~~elect~~ apply to the Board to take the second examination ~~(Principles and Practice of Land Surveying) prior to, during, or after completion of the additional experience required by this subdivision.~~ (Principles and Practice of Land Surveying). An applicant who passes both examinations and successfully completes the educational and experience requirements of this subdivision shall be granted ~~registration~~ licensure as a professional land surveyor.

~~e. Land Surveyor in Training Certificate, Experience, and Examination. -- A holder of a certificate of land surveyor in training issued by the Board, and with a specific record of an additional two years or more of progressive surveying experience, one year of which shall have been under a practicing registered land surveyor, of a grade and character which indicates to the Board that the applicant may be competent to practice land surveying, shall be admitted to two four hour examinations. Upon passing such examinations, the applicant shall be granted a certificate of registration to practice land surveying in this State, provided he is otherwise qualified.~~

d. Graduation from a high school or the completion of a high school equivalency certificate and a record satisfactory to the Board of seven years of progressive practical experience, ~~six~~ seven years of which shall have been under a practicing ~~registered~~ licensed land surveyor, and satisfactorily passing ~~such~~ any oral and written ~~examination written in the presence of and~~ examinations required by the Board, all of which shall determine and indicate that the candidate is competent to practice land surveying. The applicant may be

qualified by the Board to take the first examination (Surveying Fundamentals) upon graduation from high school or the completion of a high school equivalency certificate and successfully completing six years of progressive practice experience, five of which shall have been under a practicing licensed land surveyor. The applicant may apply to take the second examination (Principles and Practice of Land Surveying) upon passing the first examination and successfully completing four years of progressive practical experience, two of which shall have been under a practicing licensed land surveyor.

e. Repealed by Session Laws 1985 (Regular Session, 1986), c. 977, s. 7.

f. ~~Registration~~ Licensure by Comity or Endorsement. -- A person holding a certificate of ~~registration~~ licensure to engage in the practice of land surveying issued on comparable qualifications from a state, territory, or possession of the United States will be given comity considerations. However, ~~he~~ the applicant may be asked to take ~~such~~ any examinations as the Board ~~deems necessary~~ requires to determine ~~his~~ the applicant's qualifications, but in any event, ~~he~~ the applicant shall be required to pass ~~a written~~ an examination which shall include questions on laws, procedures, and practices pertaining to the practice of land surveying in North Carolina.

g. A licensed professional engineer who can satisfactorily demonstrate to the Board that ~~his~~ the professional engineer's formal academic training in acquiring a degree and field experience in engineering includes land surveying, to the extent necessary to reasonably qualify the applicant in the practice of land surveying, may apply for and may be granted permission to take the ~~two four-hour examinations on the~~ principles and practice of land surveying examination and the ~~two four-hour examinations on the~~ fundamentals of land ~~surveying.~~ surveying examination. Upon satisfactorily passing the examinations, the applicant ~~will~~ shall be granted a license to practice land surveying in the State of North Carolina.

h. Professional Engineers in Land Surveying. -- Any person presently licensed to practice professional engineering under this Chapter shall upon ~~his~~ application be licensed to practice land surveying, providing ~~his~~ a written application is filed with the Board within one year next after June 19, 1975.

i. Photogrammetrists. -- Any person presently practicing photogrammetry with at least seven years of experience in the profession, two or more of which shall have been in responsible charge of photogrammetric mapping projects meeting National Map Accuracy Standards shall, upon application, be licensed to practice land surveying, provided:

1. The applicant submit certified proof of graduation from high school, high school equivalency, or higher degree;
2. The applicant submit proof of employment in responsible charge as a photogrammetrist practicing within the State of North Carolina to include itemized reports detailing methods, procedures, amount of applicant's personal involvement and the name, address, and telephone numbers of the client for five projects completed by the applicant with the State. A final map for one of the five projects shall also be submitted;
3. Five references to the applicant's character and quality of work, three of which shall be from professional land surveyors, are submitted to the Board; and
4. The application is submitted to the Board by July 1, 1998. After July 1, 1998, no photogrammetrist shall be licensed without meeting the same requirements as to education, length of experience, and testing required of all land surveying applicants.

The Board shall require an applicant to submit exhibits, drawings, plats or other tangible evidence of land surveying work executed by ~~him~~ the applicant under proper supervision and which ~~he~~ the applicant has personally accomplished or supervised.

Land surveying encompasses a number of disciplines including geodetic surveying, hydrographic surveying, cadastral surveying, engineering surveying, route surveying, photogrammetric (aerial) surveying, and topographic surveying. A professional land surveyor shall practice only within the surveyor's area of expertise.

(2) As a land ~~surveyor-in-training~~ surveyor intern (shall meet one):

a. Rightful possession of an associate degree in surveying technology approved by the Board and satisfactorily passing a written ~~or~~ and oral examination ~~taken in the presence of and~~ as required by the Board.

b. Rightful possession of a ~~B.S.~~ bachelors degree in surveying or other equivalent curricula in surveying all approved by the Board and satisfactorily passing ~~such~~ any oral and

written examinations ~~written in the presence of and~~ required by the Board.

c. Graduation from high school or the completion of a high school equivalency certificate and a record satisfactory to the Board of ~~five~~ six years of progressive, practical experience, ~~four~~ five years of which shall have been under a practicing ~~registered~~ licensed land surveyor and satisfactorily passing any oral and written examinations ~~taken in the presence of and as~~ required by the Board.

The Board shall require an applicant to submit exhibits, drawings, plats, or other tangible evidence of land surveying work executed by ~~him~~ the applicant under proper supervision and which ~~he~~ the applicant has personally accomplished or supervised."

Section 12. G.S. 89C-14 reads as rewritten:

"**§ 89C-14. Application for ~~registration; registration~~ licensure; license fees.**

(a) Application for ~~registration~~ licensure as a professional engineer or ~~registered~~ professional land surveyor shall be on a form prescribed and furnished by the Board. It shall contain statements made under oath, showing the applicant's education and a detailed summary of ~~his~~ the applicant's technical and engineering or land surveying experience, and shall include the names and complete mailing addresses of the references, none of whom ~~should~~ may be immediate members of the applicant's family or members of the Board.

The Board may accept the certified information on the copy of a current formal certificate of qualifications issued by the National Council of ~~Engineering Examiners Committee or National Engineering Certification for Professional Engineer applicants~~ Examiners for Engineering and Surveying in lieu of the same information that is required for the form prescribed and furnished by the Board.

(b) An applicant for ~~registration~~ licensure who is required to take the written examination shall pay ~~a fee equal to the cost of the examination to the Board plus an additional amount~~ to the Board an application fee not to exceed one hundred dollars ($100.00). The Board may charge any fee necessary to defray the cost of any required examinations. The fee shall accompany the application. The fee for comity ~~registration~~ licensure of engineers and land surveyors who hold unexpired certificates in another state or a territory of the United States or in Canada shall be the total current fee as fixed by the Board.

(c) The certification fee for a corporation is the amount set by the Board ~~in accordance with G.S. 55B-10.~~ but shall not exceed one hundred dollars ($100.00). The fee shall accompany the application. The certification fee for a business firm is the same as the fee for a corporation. The fee for renewal of a certificate of ~~registration~~ licensure of a corporation is the amount set by the Board ~~in accordance with G.S. 55B-11.~~ but shall not exceed seventy-five dollars ($75.00). The fee for renewal of a certificate of ~~registration~~ licensure for a business firm is the same as the renewal fee for a corporation.

(d) Should the Board deny the issuance of a certificate of ~~registration~~ licensure to any applicant, the unobligated portion of fees paid shall be returned by the Board to the applicant.

(e) A candidate failing an examination may apply, and be considered by the Board, for reexamination at the end of six months. The Board shall make such reexamination charge as is necessary to defray the cost of the examination.

A candidate ~~failing an examination three times will not be permitted to take a reexamination until he has made a written appeal to the Board and his tentative qualifications for the examination are reviewed and reaffirmed by the Board.~~ with a combination of three failures or unexcused absences on an examination shall only be eligible after submitting a new application with appropriate application fee, and be considered by the Board for reexamination at the end of 12 months. After the end of the 12-month period, the applicant may take the examination no more than once every calendar year."

Section 13. G.S. 89C-15 reads as rewritten:

"**§ 89C-15. Examinations.**

(a) The examinations will be held at ~~such~~ the times and places as the Board directs. The Board shall determine the passing grade on examinations. All examinations shall be approved by the entire Board.

(b) Written examinations will be given in sections and may be taken only after the applicant has met the other minimum requirements as given in ~~G.S. 89C-13,~~ G.S. 89C-13 and has been approved by the Board for admission to the examination as follows:

(1) Engineering Fundamentals. -- Consists of an eight-hour examination on the fundamentals of engineering. Passing this examination qualifies the ~~examinee~~ applicant for an ~~engineer-in-training~~ engineering intern certificate, provided ~~he~~ the applicant has met all other requirements for ~~certification~~ licensure required by this Chapter.

(2) Principles and Practice of Engineering. -- Consists of an eight-hour examination on applied engineering. Passing this examination qualifies the ~~examinee~~ applicant for ~~registration~~ licensure as a professional engineer, provided ~~he~~ the applicant has met the other requirements for registration required by this Chapter.

(3) Surveying Fundamentals. -- Consists of ~~two four-hour examinations~~ an eight-hour examination on the elementary disciplines of land surveying. Passing ~~both of these examinations~~ this examination qualifies the ~~examinee~~ applicant for a land ~~surveyor-in-training~~ surveyor intern certificate provided ~~he~~ the applicant has met all other requirements for certification required by this Chapter.

(4) Principles and Practices of Land Surveying. -- Consists of ~~two four-hour examinations~~ a six-hour examination on the basic and applied disciplines of land ~~surveying, one examination on basic disciplines and the other examination covering applied disciplines.~~

surveying and a two-hour examination on requirements specific to the practice of land surveying in North Carolina. Passing each of these examinations qualifies the ~~examinee~~ applicant for a ~~registered~~ professional land surveyor certificate provided ~~he~~ the applicant has met all other requirements for certification required by this Chapter."

Section 14. G.S. 89C-16 reads as rewritten:

"**§ 89C-16. Certificates of ~~registration;~~ licensure; effect; seals.**

(a) The Board shall issue to any applicant, who, in the opinion of the Board, has met the requirements of this Chapter, a certificate of ~~registration~~ licensure giving the ~~registrant~~ licensee proper authority to practice ~~his~~ the profession in this State. The certificate of ~~registration~~ licensure for a professional engineer shall carry the designation 'professional engineer,' and for a land surveyor, '~~registered~~ 'professional land surveyor,' shall give the full name of the ~~registrant~~ licensee with ~~his serial~~ the Board designated licensure number and shall be signed by the ~~chairman~~ chair and the secretary under the seal of the Board.

(b) This certificate shall be prima facie evidence that the person named ~~thereon~~ on the certificate is entitled to all rights, privileges and responsibilities of a professional engineer or a ~~registered~~ professional land surveyor, while the ~~said~~ certificate of ~~registration~~ licensure remains unrevoked or unexpired.

(c) Each ~~registrant hereunder~~ licensee shall upon ~~registration~~ licensure obtain a seal of a design authorized by the Board bearing the ~~registrant's~~ licensee's name, ~~serial~~ license number, and the legend, 'professional engineer,' or '~~registered~~ 'professional land surveyor.' Final drawings, specifications, plans and reports prepared by a ~~registrant~~ licensee shall, when issued, be certified and stamped with the ~~said~~ seal or facsimile ~~thereof~~ of the seal unless the ~~registrant~~ licensee is exempt under the provisions of G.S. 89C-25(7). It shall be unlawful for a ~~registrant~~ licensee to affix, or permit ~~his~~ the licensee's seal and signature or facsimile ~~thereof~~ of the seal and signature to be affixed to any drawings, specifications, plans or reports after the expiration of a certificate or for the purpose of aiding or abetting any other person to evade or attempt to evade any provision of this Chapter. A professional engineer practicing land surveying shall use ~~his registered~~ the licensee's land surveyor seal."

Section 15. G.S. 89C-17 reads as rewritten:

"**§ 89C-17. Expirations and renewals of certificates.**

Certificates for ~~registration~~ licensure shall expire on the last day of the month of December next following their issuance or renewal, and shall become invalid on that date unless renewed. When necessary to protect the public health, safety, or welfare, the Board shall require ~~such~~ any evidence ~~as it deems~~ necessary to establish the continuing competency of engineers and land surveyors as a condition of renewal of licenses. When the Board is satisfied as to the continuing competency of an applicant, it shall issue a renewal of the certificate upon payment by the applicant of a fee fixed by the Board but not to exceed ~~fifty dollars ($50.00).~~ seventy-five dollars ($75.00). The secretary of the Board shall notify by mail every person ~~registered~~ licensed under this Chapter of the date of expiration of ~~his~~ the certificate, the amount of the fee

required for its renewal for one year, and any requirement as to evidence of continued competency. The notice shall be mailed at least one month in advance of the expiration date of the certificate. Renewal shall be effected at any time during the month of January immediately following, by payment to the secretary of the Board of a renewal fee, as determined by the Board, which shall not exceed ~~fifty dollars ($50.00).~~ seventy-five dollars ($75.00). Failure on the part of any registrant to renew ~~his~~ the certificate annually in the month of January, as required above, shall deprive the registrant of the right to practice until renewal has been effected. Renewal may be effected at any time during the first ~~36~~ 12 months immediately following its invalidation ~~of payment of the renewal fee increased ten percent (10%) for each month or fraction of a month that payment for renewal is delayed.~~ by payment of the established renewal fee and a late penalty of one hundred dollars ($100.00). Failure of a ~~registrant~~ licensee to renew ~~his registration~~ the license for a period of ~~36~~ 12 months shall require the individual, prior to resuming practice in North Carolina, to submit an application ~~therefor~~ on the prescribed form, and to meet all other requirements for ~~registration~~ licensure as set forth in Chapter 89C. The secretary of the Board is instructed to remove from the official roster of engineers and land surveyors the names of all ~~registrants~~ licensees who have not effected their renewal by the first day of February immediately following the date of their expiration. The Board may ~~enact~~ adopt rules to provide for renewals in distress or hardship cases due to military service, prolonged illness, or prolonged absence from the State, where the applicant for renewal demonstrates to the Board that ~~he~~ the applicant has maintained ~~his~~ active knowledge and professional status as an engineer or land surveyor, as the case may be. It shall be the responsibility of each ~~registrant~~ licensee to inform the Board promptly concerning change in address. A licensee may request and be granted inactive status. No inactive licensee may practice in this State unless otherwise exempted in this Chapter. A licensee granted inactive status shall pay annual renewal fees but shall not be subject to annual continuing professional competency requirements. A licensee granted inactive status may return to active status by meeting all requirements of the Board, including demonstration of continuing professional competency as a condition of reinstatement."

Section 16. G.S. 89C-18 reads as rewritten:

"**§ 89C-18. Duplicate certificates.**

The Board may issue a duplicate certificate of ~~registration~~ licensure or certificate of authorization to replace any certificate that has been lost, destroyed, or mutilated and may charge a fee of up to twenty-five dollars ($25.00) for issuing the certificate."

Section 17. G.S. 89C-19 reads as rewritten:

"**§ 89C-19. Public works; requirements where public safety involved.**

This State and its political subdivisions such as counties, cities, towns, or other political entities or legally constituted boards, commissions, public utility companies, or authorities, or officials, or employees ~~thereof~~ of these entities shall not engage in the practice of engineering or land surveying involving either public or private property where the safety of the public is directly involved without the project being under the supervision of a professional engineer for the preparations of plans and

specifications for engineering projects, or a ~~registered~~ professional land surveyor for land surveying projects, as provided for the practice of the respective professions by this Chapter.

An official or employee of the State or any political subdivision specified in this section, holding the positions set out in this section as of June 19, 1975, shall be exempt from the provisions of this section so long as such official or employee is engaged in substantially the same type of work as is involved in ~~his~~ the present position.

Nothing in this section shall be construed to prohibit inspection, maintenance and service work done by employees of the State of North Carolina, any political subdivision ~~thereof,~~ of the State, or any municipality ~~therein~~ including construction, installation, servicing, and maintenance by regular full-time employees of, secondary roads and drawings incidental ~~thereto,~~ to work on secondary roads, streets, street lighting, traffic-control signals, police and fire alarm systems, waterworks, steam, electric and sewage treatment and disposal plants, the services of superintendents, inspectors or foremen regularly employed by the State of North Carolina or any political subdivision ~~thereof,~~ of the State, or municipal ~~corporation therein.~~ corporation.

The provisions in this section shall not be construed to alter or modify the requirements of Article 1 of Chapter 133 of the General Statutes."

Section 18. G.S. 89C-20 reads as rewritten:

"**§ 89C-20. Rules of professional conduct.**

In the interest of protecting the safety, health, and welfare of the public, the Board shall ~~promulgate and~~ adopt rules of professional conduct applicable to the practice of engineering and land surveying. These rules, when adopted, shall be construed to be a reasonable exercise of the police power vested in the Board of ~~Registration~~ Examiners for ~~Professional~~ Engineers and Land Surveyors. Every person ~~registered~~ licensed by the Board shall subscribe to and observe the adopted rules as the standard of professional conduct for the practice of engineering and land ~~surveying.~~ surveying and shall cooperate fully with the Board in the course of any investigation. In the case of violation of the rules of professional conduct, the Board shall ~~have the responsibility and duty to~~ proceed in accordance with G.S. 89C-22."

Section 19. G.S. 89C-21 reads as rewritten:

"**§ 89C-21. Disciplinary action -- Reexamination, revocation, suspension, reprimand, or civil penalty.**

(a) The Board may reprimand the licensee, suspend, refuse to renew, or revoke the certificate of ~~registration,~~ licensure, or, as appropriate, require reexamination, for any engineer or land surveyor, who is found:

(1) Guilty of the practice of any fraud or deceit in obtaining a certificate of ~~registration~~ licensure or certificate of authorization.

(2) Guilty of any gross negligence or misconduct in the practice of ~~his~~ the profession.

(3) Guilty of any felony or any crime involving moral turpitude.

(4) Guilty of violation of the Rules of Professional Conduct, as adopted by the Board.

(5) To have been declared insane or incompetent by a court of competent jurisdiction and has not ~~thereafter~~ later been lawfully declared sane or competent.

(6) Guilty of professional incompetence. In the event the Board finds that a certificate holder is incompetent the Board may, in its discretion, require oral or written examinations, or other indication of the certificate holder's fitness to practice ~~his profession~~ engineering or land surveying and suspend ~~his~~ the license during any such period.

(b) The Board ~~shall have the power to~~ may (i) revoke a certificate of authorization, or (ii) to suspend a certificate of authorization for a period of time not exceeding two years, of any corporation or business firm where one or more of its officers or directors have committed any act or have been guilty of any conduct which would authorize a revocation or suspension of their certificates of ~~registration~~ licensure under the provision of this section.

(c) The Board may levy a civil penalty not in excess of two thousand dollars ($2,000) for any engineer or land surveyor who violates any of the provisions of subdivisions (1) through (4) of subsection (a) of this section. All civil penalties collected by the Board shall be deposited in the General Fund of North Carolina.

(d) Before imposing and assessing a civil penalty and fixing the ~~amount thereof,~~ amount, the Board shall, as a part of its deliberation, take into consideration the following factors:

(1) The nature, gravity, and persistence of the particular violations;

(2) The appropriateness of the imposition of a civil penalty when considered alone or in combination with other punishment;

(3) Whether the violation(s) were done willfully and maliciously; and

(4) Any other factors which would tend to either mitigate or aggravate the violation(s) found to exist."

Section 20. G.S. 89C-22 reads as rewritten:

"**§ 89C-22. Disciplinary action -- Charges; procedure.**

(a) Any person may prefer charges of fraud, deceit, gross negligence, incompetence, misconduct, or violation of the rules of professional conduct, against any Board registrant. The charges shall be in writing and shall be sworn to by the person or persons making them and shall be filed with ~~the secretary of~~ the Board.

(b) All charges, unless dismissed by the Board as unfounded or trivial, shall be heard by the Board as provided under the requirements of Chapter 150B of the General Statutes.

(c) If, after ~~such~~ a hearing, a majority of the Board votes in favor of sustaining the charges, the Board shall reprimand, levy a civil penalty, suspend, refuse to renew, or revoke the ~~registrant's certificate of registration.~~ licensee's certificate.

(d) A ~~registrant~~ licensee who is aggrieved by a final decision of the Board may appeal for judicial review as provided by Article 4 of Chapter 150B.

(e) The Board may, upon petition of an individual or an entity whose certificate has been revoked, for sufficient ~~reasons it may deem sufficient,~~ reasons as it may determine, reissue a certificate of ~~registration~~ licensure or authorization, provided that a majority of the members of the Board vote in favor of such issuance."

Section 21. G.S. 89C-23 reads as rewritten:

"**§ 89C-23. Unlawful to practice engineering or land surveying without ~~registration;~~ licensure; unlawful use of title or terms; penalties; Attorney General to be legal adviser.**

Any person who shall practice, or offer to practice, engineering or land surveying in this State without first being ~~registered~~ licensed in accordance with the provisions of this Chapter, or any person, firm, partnership, organization, association, corporation, or other entity using or employing the words 'engineer' or 'engineering' or 'professional engineer' or 'professional engineering' or 'land surveyor' or 'land surveying,' or any modification or derivative ~~thereof~~ of those words in its name or form of business or activity except as ~~registered~~ licensed under this Chapter or in pursuit of activities exempted by this Chapter, or any person presenting or attempting to use the certificate of ~~registration~~ licensure or the seal of another, or any person who shall give any false or forged evidence of any kind to the Board or to any member ~~thereof~~ of the Board in obtaining or attempting to obtain a certificate of ~~registration,~~ licensure, or any person who shall falsely impersonate any other ~~registrant~~ licensee of like or different name, or any person who shall attempt to use an expired or revoked or nonexistent certificate of ~~registration,~~ licensure, or who shall practice or offer to practice when not qualified, or any person who falsely claims that ~~he~~ the person is registered under this Chapter, or any person who shall violate any of the provisions of this Chapter, in addition to injunctive procedures set out hereinbefore, shall be guilty of a Class 2 misdemeanor. In no event shall there be representation of or holding out to the public of any engineering expertise by ~~unregistered~~ unlicensed persons. It shall be the duty of all duly constituted officers of the State and all political subdivisions ~~thereof~~ of the State to enforce the provisions of this Chapter and to prosecute any persons violating ~~same.~~ them.

The Attorney General of the State or ~~his~~ an assistant shall act as legal adviser to the Board and render ~~such~~ any legal assistance ~~as may be~~ necessary ~~in carrying~~ to carry out the provisions of this Chapter. The Board may employ counsel and necessary assistance to aid in the enforcement of this Chapter, and the compensation and expenses ~~therefor~~ for the assistance shall be paid from funds of the Board."

Section 22. G.S. 89C-24 reads as rewritten:

"**§ 89C-24. ~~Registration~~ Licensure of corporations and business firms that engage in the practice of engineering or land surveying.**

A corporation or business firm may not engage in the practice of engineering or land surveying in this State unless it is ~~registered with~~ licensed by the Board and has paid ~~the required registration fee.~~ an application fee established by the Board in an amount not to exceed one hundred dollars ($100.00). A corporation or business firm is subject to the same duties and responsibilities as an individual ~~registrant. Registration~~ licensee. Licensure of a corporation or business firm does not affect the

requirement that all engineering or land surveying work done by the corporation or business firm be performed by or under the responsible charge of individual registrants, nor does it relieve the individual registrants within a corporation or business firm of their design and supervision responsibilities.

This section applies to every corporation that is engaged in the practice of engineering or land surveying, regardless of when it was incorporated. A corporation that is not exempt from Chapter 55B of the General Statutes by application of G.S. 55B-15 must be incorporated under that Chapter."

Section 23. G.S. 89C-25 reads as rewritten:

"**§ 89C-25. Limitations on application of Chapter.**

This Chapter shall not be construed to prevent or affect:

(1) The practice of architecture, landscape architecture, or contracting or any other legally recognized profession or trade; or

(2) The practice of professional engineering or land surveying in this State or by any person not a resident of this State and having no established place of business in this State when this practice does not aggregate more than 90 days in any calendar year, whether performed in this State or elsewhere, or involve more than one specific project; provided, however, that ~~such~~ the person is ~~legally qualified by registration~~ licensed to practice the ~~said~~ profession in ~~his~~ the person's own state or country, in which the requirements and qualifications for obtaining a certificate of ~~registration~~ licensure are satisfactory to the Board; in which case the person shall apply for and the Board will issue a temporary permit; or

(3) The practice of professional engineering or land surveying in this State not to aggregate more than 90 days by any person residing in this State, but whose residence has not been of sufficient duration for the Board to grant or deny ~~registration;~~ licensure; provided, however, ~~such~~ the person shall have filed an application for ~~registration~~ licensure as a professional engineer or ~~registered~~ professional land surveyor and shall have paid the fee provided for in G.S. 89C-14, and provided that ~~such a~~ the person is ~~legally qualified by registration~~ licensed to practice professional engineering or professional land surveying in ~~his~~ the person's own state or country in which the requirements and qualifications for obtaining a certificate of ~~registration~~ licensure are satisfactory to the Board, in which case the person shall apply for and the Board will issue a temporary permit; or

(4) Engaging in engineering or land surveying as an employee or assistant under the responsible charge of a professional engineer or ~~registered~~ professional land surveyor or as an employee or assistant of a nonresident professional engineer or a nonresident ~~registered~~ professional land surveyor provided for in subdivisions (2) and (3)

of this section, provided that ~~said~~ the work as an employee may not include responsible charge of design or supervision; or

(5) The practice of professional engineering or land surveying by any person not a resident of, and having no established place of business in this State, as a consulting associate of a professional engineer or ~~registered~~ professional land surveyor ~~registered~~ licensed under the provisions of this Chapter; provided, the nonresident is qualified for ~~such~~ performing the professional service in ~~his~~ the person's own state or country; or

(6) Practice by members of the armed forces or employees of the government of the United States while engaged in the practice of engineering or land surveying solely for ~~said~~ the government on government-owned works and projects; or

(7) The internal engineering or surveying activities of a person, firm or corporation engaged in manufacturing, processing, or producing a product, including the activities of public service corporations, public utility companies, authorities, State agencies, railroads, or membership cooperatives, or the installation and servicing of their product in the field; or research and development in connection with the manufacture of that product or their service; or of their research affiliates; or their employees in the course of their employment in connection with the manufacture, installation, or servicing of their product or service in the field, or on-the-premises maintenance of machinery, equipment, or apparatus incidental to the manufacture or installation of the product or service of a firm by the employees of the firm upon property owned, leased or used by the firm; inspection, maintenance and service work done by employees of the State of North Carolina, any political subdivision ~~thereof,~~ of the State, or any municipality ~~therein~~ including construction, installation, servicing, maintenance by regular full-time employees of streets, street lighting, traffic-control signals, police and fire alarm systems, waterworks, steam, electric and sewage treatment and disposal plants; the services of superintendents, inspectors or foremen regularly employed by the State of North Carolina or any political subdivision ~~thereof,~~ of the State or a municipal ~~corporation therein;~~ corporation; provided, however, that the internal engineering or surveying activity is not a holding out to or an offer to the public of engineering or any service thereof as prohibited by this Chapter. Engineering work, not related to the foregoing exemptions, where the safety of the public is directly involved shall be under the responsible charge of a ~~registered~~ licensed professional engineer, or in accordance with standards prepared or approved by a ~~registered~~ licensed professional engineer.

(8) The (i) preparation of fire sprinkler planning and design drawings by a fire sprinkler contractor licensed under Article 2 of Chapter 87 of the General Statutes, or (ii) the performance of internal engineering or survey work by a manufacturing or communications common carrier company, or by a research and development company, or by employees of ~~such~~ those corporations provided that ~~such~~ the work is in connection with, or incidental to products of, or nonengineering services rendered by ~~such~~ those corporations or their affiliates.

(9) The routine maintenance or servicing of machinery, equipment, facilities or structures, the work of mechanics in the performance of their established functions, or the inspection or supervision of construction by a foreman, superintendent, or agent of the architect or professional engineer, or services of an operational nature performed by an employee of a laboratory, a manufacturing plant, a public service corporation, or governmental operation."

Section 24. G.S. 89C-25.1 reads as rewritten:

"**§ 89C-25.1. Supervision of ~~unregistered~~ unlicensed individuals by ~~registered~~ licensed person.**

In all circumstances in which ~~unregistered~~ unlicensed individuals are permitted under this Chapter to perform engineering or land surveying work, or both, under the supervision of a ~~registered~~ licensed engineer, land surveyor, or both, the Board may by regulation establish a reasonable limit on the number of ~~unregistered~~ unlicensed individuals which a ~~registrant~~ licensee of the Board may directly or personally supervise at one time."

Section 25. G.S. 89C-28 reads as rewritten:

"**§ 89C-28. Existing ~~registration~~ licensure not affected.**

Nothing in this Chapter shall be construed as affecting the status of ~~registration~~ licensure of any professional engineer or ~~registered~~ land surveyor who is rightfully in possession of a certificate of ~~registration~~ licensure duly issued by the Board and valid as of July 1, 1975."

Section 26. This act is effective when it becomes law and applies to persons applying for licenses on or after that date and to persons practicing engineering and land surveying on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 794

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H794-ARN-001

Date_____,1997

Comm. Sub. [X]
Amends Title []
Third Edition

Representative _____

moves to amend the bill on page 25, lines 26-33, by deleting those lines (being all of Section 25) and by renumbering the remaining sections accordingly;

and on page 25, line 40, by deleting "July 1, 1997," and inserting "when it becomes law";

and on page 22, line 42, by deleting "two hundred fifty dollars ($250.00)" and inserting "one hundred dollars ($100.00)".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if **Senate** Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 794*
Committee Substitute Favorable 5/28/97
Committee Substitute #2 Favorable 6/25/97

Short Title: Engineering and Land Surveying Changes. (Public)

Sponsors:

Referred to:

April 3, 1997

A BILL TO BE ENTITLED

AN ACT TO MAKE SUBSTANTIVE CHANGES TO THE NORTH CAROLINA ENGINEERING AND LAND SURVEYING ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 89C-2 reads as rewritten:

"**§ 89C-2. Declarations; prohibitions.**

In order to safeguard life, health, and property, and to promote the public welfare, the practice of engineering and the practice of land surveying in this State are hereby declared to be subject to regulation in the public interest. It shall be unlawful for any person to practice or to offer to practice engineering or land surveying in this State, as defined in the provisions of this Chapter, or to use in connection with ~~his~~ the person's name or otherwise assume or advertise any title or description tending to convey the impression that ~~he~~ the person is either a professional engineer or a ~~registered~~ professional land surveyor, unless ~~such~~ the person has been duly ~~registered as such.~~ licensed. The right to engage in the practice of engineering or land surveying ~~shall be deemed~~ is a personal right, based on the qualifications of the ~~individual~~ person as evidenced by ~~his~~ the person's certificate of ~~registration,~~ licensure, which shall not be transferable."

Section 2. G.S. 89C-3 reads as rewritten:

"**§ 89C-3. Definitions.**

The following definitions apply in this Chapter:

(1) Board. -- The North Carolina State Board of ~~Registration~~ Examiners for ~~Professional~~ Engineers and ~~Land~~ Surveyors provided for by this Chapter.

(1a) Business firm. -- A partnership, firm, association, or another organization or group that is not a corporation and is acting as a unit.

(2) Engineer. -- A person who, by reason of ~~his~~ special knowledge and use of the mathematical, physical and engineering sciences and the principles and methods of engineering analysis and design, acquired by engineering education and engineering experience, is qualified to practice engineering.

(3) ~~Engineer-in-training.~~ Engineering intern. -- A person who complies with the requirements for education, experience and character, and has passed an examination in the fundamental engineering subjects, as provided in this Chapter.

(3a) Inactive licensee. -- Licensees who are not engaged in the practice of engineering or land surveying in this State.

(4) ~~Land surveyor-in-training.~~ Land surveyor intern. -- A person who has qualified for, taken, and passed an examination on the basic disciplines of land surveying as provided in this Chapter.

(5) Person. -- Any natural person, firm, partnership, corporation or other legal entity.

(6) Practice of engineering. --

a. Any service or creative work, the adequate performance of which requires engineering education, training, and experience, in the application of special knowledge of the mathematical, physical, and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning, and design of engineering works and systems, planning the use of land and water, engineering surveys, and the observation of construction for the purposes of assuring compliance with drawings and specifications, including the consultation, investigation, evaluation, planning, and design for either private or public use, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects, and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, pneumatic or thermal nature, insofar as they involve safeguarding life, health or property, and including such other professional services as may be necessary to the planning, progress and completion of any engineering services.

A person shall be construed to practice or offer to practice engineering, within the meaning and intent of this

Chapter, who practices any branch of the profession of engineering; or who, by verbal claim, sign, advertisement, letterhead, card, or in any other way represents ~~himself~~ the person to be a professional engineer, or through the use of some other title implies that ~~he~~ the person is a professional engineer or that ~~he~~ the person is ~~registered~~ licensed under this Chapter; or who holds ~~himself~~ the person out as able to perform, or who does perform any engineering service or work not exempted by this Chapter, or any other service designated by the practitioner which is recognized as engineering.

b. The term 'practice of engineering' shall not be construed to permit the location, description, establishment or reestablishment of property lines or descriptions of land boundaries for conveyance. The term does not include the assessment of an underground storage tank required by applicable rules at closure or change in service unless there has been a discharge or release of the product from the tank.

(7) Practice of land ~~surveying by registered land surveyors.~~ surveying. --

a. ~~Any service or work, the adequate performance of which involves the application of special knowledge of the principles of mathematics, the related physical and applied sciences, and the relevant requirements of law for adequate evidence to the act of measuring and locating lines, angles, elevations, natural and man-made features in the air, on the surface of the earth, within underground workings, and on the beds of bodies of water for the purpose of determining areas and volumes, for the monumenting of property boundaries, and for the platting and layout of lands and subdivisions thereof, including the topography, alignment and grades of street and incidental drainage within the subdivision, and for the preparation and perpetuation of maps, record plats, field note records, and property descriptions that represent these surveys.~~ Providing professional services such as consultation, investigation, testimony, evaluation, planning, mapping, assembling, and interpreting reliable scientific measurements and information relative to the location, size, shape, or physical features of the earth, improvements on the earth, the space above the earth, or any part of the earth, whether the gathering of information for the providing of these services is accomplished by conventional ground measurements, by

aerial photography, by global positioning via satellites, or by a combination of any of these methods, and the utilization and development of these facts and interpretations into an orderly survey map, plan, report, description, or project. The practice of land surveying includes the following:

1. Locating, relocating, establishing, laying out, or retracing any property line, easement, or boundary of any tract of land;
2. Locating, relocating, establishing, or laying out the alignment or elevation of any of the fixed works embraced within the practice of professional engineering;
3. Making any survey for the subdivision of any tract of land, including the topography, alignment and grades of streets and incidental drainage within the subdivision, and the preparation and perpetuation of maps, record plats, field note records, and property descriptions that represent these surveys;
4. Determining, by the use of the principles of land surveying, the position for any survey monument or reference point, or setting, resetting, or replacing any survey monument or reference point;
5. Determining the configuration or contour of the earth's surface or the position of fixed objects on the earth's surface by measuring lines and angles and applying the principles of mathematics or photogrammetry;
6. Providing geodetic surveying which includes surveying for determination of the size and shape of the earth both horizontally and vertically and the precise positioning of points on the earth utilizing angular and linear measurements through spatially oriented spherical geometry; and
7. Creating, preparing, or modifying electronic or computerized data, including land information systems and geographic information systems relative to the performance of the practice of land surveying.

b. The term 'practice of land surveying' shall not be construed to permit the design or preparation of specifications for (i) major highways; (ii) wastewater systems; (iii) wastewater or industrial waste treatment works; (iv) pumping or lift stations; (v) water supply, treatment, or distribution systems; (vi) streets or storm sewer systems except as incidental to a subdivision.

(8) Professional engineer. -- A person who has been duly ~~registered and~~ licensed as a professional engineer by the Board established by this Chapter.

(8a) Professional engineer, retired. -- A person who has been duly licensed as a professional engineer by the Board and who chooses to relinquish or not to renew a license and who applies to and is approved by the Board to be granted the use of the honorific title 'Professional Engineer, Retired'.

(9) ~~Registered~~ Professional land surveyor. -- A person who, by reason of ~~his~~ special knowledge of mathematics, surveying principles and methods, and legal requirements which are acquired by education and/or practical experience, is qualified to engage in the practice of land surveying, ~~as herein defined,~~ as attested by ~~his registration~~ the person's licensure as a ~~registered~~ professional land surveyor by the Board.

(9a) Professional land surveyor, retired. -- A person who has been duly licensed as a professional land surveyor by the Board and who chooses to relinquish or not to renew a license and who applies to and is approved by the Board to be granted the use of the honorific title 'Professional Land Surveyor, Retired'.

(10) Responsible charge. -- Direct control and personal supervision, either of engineering work or of land surveying, as the case may be."

Section 3. G.S. 89C-4 reads as rewritten:

"**§ 89C-4. State Board of ~~Registration;~~ Examiners for Engineers and Surveyors; appointment; terms.**

A State Board of ~~Registration~~ Examiners for ~~Professional~~ Engineers and ~~Land~~ Surveyors, whose duty it is to administer the provisions of this Chapter, is created. The Board shall consist of four ~~registered~~ licensed professional engineers, three ~~registered~~ licensed professional land surveyors and two public members, who are neither professional engineers nor professional land surveyors. Of the land surveyor members, one and only one may hold dual ~~registration~~ licenses as a professional land surveyor and professional engineer. All of the members shall be appointed by the Governor. Appointments of the engineer and land surveyor members shall preferably, but not necessarily, be made from a list of nominees submitted by the professional societies for engineers and land surveyors in this State. Each member of the Board shall receive a certificate of appointment from the Governor and shall file with the Secretary of State ~~his~~ a written oath or affirmation for the faithful discharge of ~~his~~ the duties.

Members of the Board serve for staggered five-year terms, and no member may be appointed for more than two full terms. Members serve until the expiration of their respective terms and until their respective successors are appointed. If a vacancy occurs during a term, the Governor shall appoint a successor from the same classification as the person causing the vacancy to serve for the remainder of the

unexpired term. If the vacancy is not filled within 90 days after it occurs, the Board may appoint a provisional member to serve until the appointment by the Governor becomes effective. The provisional member during his tenure has all the powers and duties of a regular member."

Section 4. G.S. 89C-5 reads as rewritten:

"**§ 89C-5. Board members; qualifications.**

Each engineer member of the Board shall be a resident of North Carolina and shall be a ~~registered~~ licensed professional engineer engaged in the lawful practice of engineering in North Carolina for at least six years.

Each land surveyor member of the Board shall be a resident of North Carolina and shall be a ~~registered~~ licensed professional land surveyor engaged in the lawful practice of land surveying in North Carolina for at least six years.

Each public member of the Board shall be a resident of North Carolina."

Section 5. G.S. 89C-6 reads as rewritten:

"**§ 89C-6. Compensation and expenses of Board members.**

Each member of the Board, when attending to the work of the Board or any of its committees, shall receive as compensation for ~~his service~~ services the per diem and, in ~~addition thereto,~~ addition, shall be reimbursed for travel expenses and incidentals not exceeding the maximum set forth by law. In addition to per diem allowances, travel and incidentals, the secretary of the Board may, with the approval of the Board, receive such reasonable additional compensation as is compatible with the actual hours of work required by the duties of ~~his~~ the office."

Section 6. G.S. 89C-8 reads as rewritten:

"**§ 89C-8. Organization of the Board; meetings; election of officers.**

The Board shall hold at least two regular meetings each year. Special meetings may be held at such times and upon such notice as the rules and regulations of the Board may provide. The Board shall elect annually from its members a ~~chairman,~~ chair, a ~~vice-chairman,~~ vice-chair, and a secretary. A quorum of the Board shall consist of not less than five members. The Board shall operate under its rules and regulations supplemented by Robert's Rules of Order."

Section 7. G.S. 89C-9 reads as rewritten:

"**§ 89C-9. Executive ~~secretary;~~ director; duties and liabilities.**

The Board shall employ an executive ~~secretary~~ director who is not a member of the Board. The executive ~~secretary~~ director shall be a full-time employee of the Board and perform ~~such~~ the duties assigned to ~~him~~ the director by the secretary subject to the approval of the Board. The executive ~~secretary~~ director shall receive a salary and compensation fixed by the Board. The executive ~~secretary~~ director shall give a surety bond satisfactory to the Board conditioned upon the faithful performance of ~~his~~ the director's ~~duties.~~ duties assigned. The premium on ~~said~~ the bond shall be a necessary and proper expense of the Board."

Section 8. G.S. 89C-10 reads as rewritten:

"**§ 89C-10. Board powers.**

(a) The Board ~~shall have the power to~~ may adopt and amend all ~~rules and regulations. Additionally, the Board shall have the power to adopt such rules,~~ rules

and rules of ~~procedure, and regulations,~~ procedure as may be reasonably necessary for the proper performance of its duties, the regulation of its procedures, meetings, records, the ~~giving of~~ administration of ~~examinations and the conduct thereof,~~ examinations, and the ~~power~~ authority to enforce ~~such~~ the rules of professional conduct as ~~may, from time to time,~~ may be adopted by the Board pursuant to G.S. 89C-20.

The action by the Board in carrying out any of the powers specified ~~above~~ in this section shall be binding upon all persons ~~registered~~ licensed under this Chapter, including corporations and business firms holding certificates of authorization.

(b) The Board shall adopt and have an official seal, which shall be affixed to each certificate issued.

(c) The Board ~~is hereby authorized~~ may in the name of the State ~~to~~ apply for relief, by injunction, in the established manner provided in cases of civil procedure, without bond, to enforce the provisions of this Chapter, or to restrain any violation ~~thereof.~~ of the provisions of this Chapter. In ~~such proceedings,~~ proceedings for injunctive relief, it shall not be necessary to allege or prove either that an adequate remedy at law does not exist, or that substantial or irreparable damage would result from the continued violation ~~thereof.~~ of the provisions of this Chapter. The members of the Board shall not be personally liable under this proceeding.

(d) The Board may subject an applicant for ~~registration~~ licensure to ~~such~~ any examination ~~as it deems~~ necessary to determine ~~his~~ the applicant's qualifications.

(e) The Board ~~shall have the power to~~ may issue an appropriate certificate of ~~registration~~ licensure to any applicant who, in the opinion of the Board, has met the requirements of this Chapter.

(f) It shall be the responsibility and duty of the Board to conduct a regular program of investigation concerning all matters within its jurisdiction under the provisions of this Chapter. The investigation of a ~~registrant~~ licensee is confidential until the Board issues a citation to the ~~registrant.~~ licensee. The Board may expend its funds for salaries, fees, and per diem expenses, in connection with its investigations, provided that no ~~such~~ funds other than per diem expenses shall be paid to any member of the Board in connection with its investigations, nor may any member of the Board give testimony and ~~thereafter~~ later sit in deciding on any matter which may directly involve punitive action ~~under such~~ for the testimony.

(g) The Board ~~is authorized and empowered to~~ may use its funds to establish and conduct instructional programs for persons who are currently ~~registered~~ licensed to practice engineering or land surveying, as well as refresher courses for persons interested in obtaining adequate instruction or programs of study to qualify them for ~~registration~~ licensure to practice engineering or land surveying. The Board may expend its funds for these purposes and ~~is authorized and empowered~~ may not only ~~to~~ conduct, sponsor, and arrange for instructional programs, but also ~~to~~ may carry out ~~such~~ instructional programs through extension courses or other ~~media, and the~~ media. The Board may enter into plans or agreements with community colleges, public or private institutions of higher learning, ~~both public and private,~~ State and county boards of education, or with the governing authority of any industrial education

center for the purpose of planning, scheduling or arranging ~~such~~ courses, instruction, extension courses, or in assisting in obtaining courses of study or programs in the field of engineering and land surveying. The Board shall ~~make every effort practical to~~ encourage the educational institutions in this State to offer courses necessary to complete the educational requirements of this Chapter. For the purpose of carrying out these objectives, the Board ~~is authorized to make and promulgate such~~ may adopt rules ~~and regulations~~ as may be necessary for ~~such~~ the educational programs, instruction, extension services, or for entering into plans or contracts with persons or educational and industrial institutions.

(h) The Board may license sponsors of continuing professional competency activities who agree to conduct programs in accordance with standards adopted by the Board. Sponsors shall pay a license fee established by the Board, not to exceed two hundred fifty dollars ($250.00) for licensure under this subsection. The license fee shall accompany the application. Sponsors shall renew their licenses annually on a form provided by the Board."

Section 9. G.S. 89C-11 reads as rewritten:

"**§ 89C-11. Secretary; duties and liabilities; expenditures.**

The secretary of the Board shall receive and account for all moneys derived from the operation of the Board as provided in this Chapter, and shall deposit them in one or more special funds in banks or other financial institutions carrying deposit insurance and authorized to do business in North Carolina. The fund or funds shall be designated as 'Fund of the Board of ~~Registration~~ Examiners for ~~Professional~~ Engineers and ~~Land~~ Surveyors' and shall be drawn against only for the purpose of implementing provisions of this Chapter as herein provided. All expenses certified by the Board as properly and necessarily incurred in the discharge of its duties, including authorized compensation, shall be paid out of ~~said~~ this fund on the warrant signed by the secretary of the ~~Board; provided, however, that at~~ Board. At no time shall the total of warrants issued exceed the total amount of funds accumulated under this Chapter. The secretary of the Board shall give a surety bond satisfactory to the State Board of ~~Registration~~ Examiners for ~~Professional~~ Engineers and ~~Land~~ Surveyors, conditioned upon the faithful performance of ~~his duties.~~ the duties assigned. The premium on ~~said~~ the bond ~~shall be regarded as~~ is a proper and necessary expense of the Board. The secretary of the Board may delegate to the executive ~~secretary~~ director certain routine duties, such as receipt and disbursement of funds in stated amounts by a written authorization, which has the unanimous approval of the Board."

Section 10. G.S. 89C-12 reads as rewritten:

"**§ 89C-12. Records and reports of Board; evidence.**

The Board shall keep a record of its proceedings and a register of all applicants for ~~registration,~~ licensure, showing for each the date of application, name, age, education, and other qualifications, place of business and place of residence, whether the applicant was rejected or a certificate of ~~registration~~ licensure granted, and the date ~~of such action.~~ licensure was rejected or granted. The books and register of the Board shall be prima facie evidence of all matters recorded ~~therein,~~ by the Board,

and a copy duly certified by the secretary of the Board under seal shall be admissible in evidence as if the original were produced. A roster showing the names and places of business and of residence of all ~~registered~~ licensed professional engineers and all ~~registered~~ licensed professional land surveyors shall be prepared by the secretary of the Board current to the month of January of each ~~year; such~~ year. The roster shall be printed by the Board out of the Board's fund ~~of said Board~~ and distributed as ~~set forth~~ described in the Board's ~~rules and regulations.~~ rules. On or before the first day of May of each year, the Board shall submit to the Governor a report on its transactions for the preceding year, and shall file with the Secretary of State a copy of ~~such~~ the report, together with a complete statement of the receipts and expenditures of the ~~Board,~~ Board attested by the ~~affidavits of the chairman~~ chair and the ~~secretary,~~ secretary and a copy of the ~~said~~ the roster of ~~registered~~ licensed professional engineers and ~~registered~~ professional land surveyors."

Section 11. G.S. 89C-13 reads as rewritten:

"**§ 89C-13. General requirements for ~~registration.~~ licensure.**

(a) Engineer Applicant. -- To be eligible for ~~admission to examination for~~ licensure as a professional ~~engineer~~ engineer, an applicant must be of good character and reputation. An applicant desiring to take the examination in the fundamentals of engineering ~~only~~ must submit three character ~~references.~~ references, one of whom shall be a professional engineer. An applicant desiring to take the examination in the principles and practice of engineering must submit five references, two of whom shall be professional engineers having personal knowledge of ~~his~~ the applicant's engineering experiences.

The following shall be considered as minimum evidence satisfactory to the Board that the applicant is qualified for ~~registration:~~ licensure:

(1) As a professional engineer (shall meet one):

a. ~~Registration~~ Licensure by Comity or Endorsement. -- A person holding a certificate of ~~registration~~ licensure to engage in the practice of engineering, on the basis of comparable qualifications, issued to ~~him~~ the person by a proper authority of a state, territory, or possession of the United States, the District of Columbia, or of Canada, who completes an application for licensure and submits five references, two of which shall be from professional engineers having personal knowledge of the applicant's engineering experience, and ~~who~~ who, in the opinion of the Board, meets the requirements of this Chapter, based on verified evidence may, upon application, be ~~registered~~ licensed without further examination.

A person holding a certificate of qualification issued by the Committee on National Engineering Certification of the National Council of ~~Engineering Examiners,~~ Examiners for Engineering and Surveying whose qualifications meet the

requirements of this Chapter, may upon application, be ~~registered~~ licensed without further examination.

b. ~~E.I.T.~~ E.I. Certificate, Experience, and Examination. -- A holder of a certificate of ~~engineer-in-training~~ engineering intern issued by the Board, and with a specific record of an additional four years or more of progressive experience on engineering projects of a grade and character which indicates to the Board that the applicant may be competent to practice engineering, shall be admitted to ~~an eight-hour examination in~~ the principles and practice of ~~engineering.~~ engineering examination. Upon passing ~~such~~ the examination, the applicant shall be granted a certificate of ~~registration~~ licensure to practice professional engineering in this State, provided ~~he~~ the applicant is otherwise qualified.

c. Graduation, Experience, and Examination. -- A graduate of an engineering curriculum of four years or more approved by the Board as being of satisfactory standing, and with a specific record of an additional four years or more of progressive experience on engineering projects of a grade and character which indicates to the Board that the applicant may be competent to practice engineering, shall be admitted to ~~an eight-hour written examination in~~ the fundamentals of ~~engineering;~~ engineering examination, and ~~an eight-hour written examination in~~ the principles and practice of ~~engineering.~~ engineering examination. Upon passing ~~such~~ the examinations, the applicant shall be granted a certificate of ~~registration~~ licensure to practice professional engineering in this State, provided ~~he~~ the applicant is otherwise qualified.

d. Graduation, Experience, and Examination. -- A graduate of an engineering or related science curriculum of four years or more, other than the ones approved by the Board as being of satisfactory standing or with an equivalent education and engineering experience satisfactory to the Board and with a specific record of eight years or more of progressive experience on engineering projects of a grade and character which indicates to the Board that the applicant may be competent in the fundamentals of engineering, shall be admitted to ~~an eight-hour written examination in~~ the fundamentals of ~~engineering;~~ engineering examination and ~~an eight-hour written examination in~~ the principles and practice of ~~engineering.~~ engineering examination. Upon passing ~~such~~ the examinations, the applicant shall be granted a certificate of ~~registration~~ licensure to practice professional

engineering in this State, provided ~~he~~ the applicant is otherwise qualified.

e. Long-Established Practice. -- ~~An individual~~ A person with a specific record of 20 years or more of progressive experience on engineering projects of a grade and character which indicates to the Board that the applicant may be competent to practice engineering shall be admitted to ~~an eight-hour written examination in~~ the principles and practice of ~~engineering.~~ engineering examination. Upon passing ~~such~~ the examination, the applicant shall be granted a certificate of ~~registration~~ licensure to practice professional engineering in this State, provided ~~he~~ the applicant is otherwise qualified.

At its discretion the Board may require an applicant to submit exhibits, drawings, designs, or other tangible evidence of engineering work ~~executed by him and~~ which ~~he~~ the applicant personally accomplished or supervised.

The following shall be considered as minimum evidence that the applicant is qualified for certification:

(2) As an ~~engineer-in-training~~ engineering intern (shall meet one):

a. Graduation and Examination. -- A graduate of an engineering curriculum or related science curriculum of four years or more, approved by the Board as being of satisfactory standing, or a student who has attained senior status in an accredited engineering program, shall be admitted to ~~an eight-hour written examination in~~ the fundamentals of ~~engineering.~~ engineering examination. The applicant shall be notified if the examination was passed or not passed and if passed he shall be certified as an ~~engineer-in-training,~~ engineering intern if ~~he~~ the applicant is otherwise qualified.

b. Graduation, Experience, and Examination. -- A graduate of an engineering or related science curriculum of four years or more, other than the ones approved by the Board as being of satisfactory standing, or with equivalent education and engineering experience satisfactory to the Board and with a specific record of four or more years of progressive experience on engineering projects of a grade and character satisfactory to the Board, shall be admitted to ~~an eight-hour written examination in~~ the fundamentals of ~~engineering.~~ engineering examination. The applicant shall be notified if the examination was passed or not passed and if ~~passed he~~ passed, the applicant shall be certified as an ~~engineer-in-training~~ engineering intern if ~~he~~ the applicant is otherwise qualified.

(b) Land Surveyor Applicant. -- To be eligible for admission to examination for land ~~surveyor-in-training,~~ surveyor intern or ~~registered~~ professional land surveyor, an applicant must be of good character and reputation and shall submit five references with ~~his~~ the application for ~~registration~~ licensure as a land surveyor, two of which references shall be ~~registered~~ professional land surveyors having personal knowledge of ~~his~~ the applicant's land surveying experience, or in the case of an application for certification as a land ~~surveyor-in-training~~ surveyor intern by three references, one of which shall be a ~~registered~~ licensed land surveyor having personal knowledge of the applicant's land surveying experience.

The evaluation of a land surveyor applicant's qualifications shall involve a consideration of ~~his~~ the applicant's education, technical and land surveying experience, exhibits of land surveying projects with which ~~he~~ the applicant has been associated, and recommendations by ~~references, and reviewing of these categories during an oral examination.~~ references. The land surveyor applicant's qualifications may be reviewed at an interview if the Board ~~deems~~ determines it necessary. Educational credit for institute courses, correspondence courses, ~~etc.,~~ or other courses shall be determined by the Board.

The following shall be considered a minimum evidence satisfactory to the Board that the applicant is qualified for ~~registration~~ licensure as a professional land surveyor or for certification as a land ~~surveyor-in-training,~~ surveyor intern respectively:

(1) As a ~~registered~~ professional land surveyor (shall meet one):

a. Rightful possession of a ~~B.S.~~ bachelor of science degree in surveying or other equivalent curricula, all approved by the Board and a record satisfactory to the Board of ~~one year~~ two years or more of progressive practical ~~experience~~ experience, one year of which shall have been under a practicing ~~registered~~ professional land surveyor and satisfactorily passing ~~such~~ any oral and written ~~examination, taken in the presence of and~~ examination required by the Board, all of which shall determine and indicate that the ~~candidate~~ applicant is competent to practice land surveying. The applicant may ~~elect~~ be qualified by the Board to take the first examination (Surveying Fundamentals) immediately after obtaining the ~~B.S.~~ bachelor of science degree at the first regularly scheduled examination thereafter. Upon passing the first examination and successful completion of the experience required by this subdivision, the applicant may apply to take the second examination (Principles and Practice of Land Surveying). An applicant who passes both examinations and completes the educational and experience requirements of this subdivision shall be granted ~~registration~~ licensure as a professional land surveyor.

b. Rightful possession of an associate degree in surveying technology approved by the Board and a record satisfactory

to the Board of ~~three~~ four years of progressive practical experience, ~~two~~ three years of which shall have been under a practicing ~~registered~~ licensed land surveyor, and satisfactorily passing ~~such~~ any written and oral examination ~~taken in the presence of and as~~ required by the Board, all of which shall determine and indicate that the ~~candidate~~ applicant is competent to practice land surveying. The applicant may ~~elect~~ apply to the Board to take the first examination (Surveying Fundamentals) immediately after obtaining the associate degree at the first regularly scheduled examination thereafter. Upon passing the first examination and successfully completing ~~years of progressive practical experience under a practicing registered land surveyor,~~ the practical experience required under this subdivision, the applicant may ~~elect~~ apply to the Board to take the second examination ~~(Principles and Practice of Land Surveying) prior to, during, or after completion of the additional experience required by this subdivision.~~ (Principles and Practice of Land Surveying). An applicant who passes both examinations and successfully completes the educational and experience requirements of this subdivision shall be granted ~~registration~~ licensure as a professional land surveyor.

~~e. Land Surveyor-in-Training Certificate, Experience, and Examination. — A holder of a certificate of land surveyor-in-training issued by the Board, and with a specific record of an additional two years or more of progressive surveying experience, one year of which shall have been under a practicing registered land surveyor, of a grade and character which indicates to the Board that the applicant may be competent to practice land surveying, shall be admitted to two four-hour examinations. Upon passing such examinations, the applicant shall be granted a certificate of registration to practice land surveying in this State, provided he is otherwise qualified.~~

d. Graduation from a high school or the completion of a high school equivalency certificate and a record satisfactory to the Board of seven years of progressive practical experience, ~~six~~ seven years of which shall have been under a practicing ~~registered~~ licensed land surveyor, and satisfactorily passing ~~such~~ any oral and written ~~examination written in the presence of and~~ examinations required by the Board, all of which shall determine and indicate that the candidate is competent to practice land surveying. The applicant may be

qualified by the Board to take the first examination (Surveying Fundamentals) upon graduation from high school or the completion of a high school equivalency certificate and successfully completing six years of progressive practice experience, five of which shall have been under a practicing licensed land surveyor. The applicant may apply to take the second examination (Principles and Practice of Land Surveying) upon passing the first examination and successfully completing four years of progressive practical experience, two of which shall have been under a practicing licensed land surveyor.

e. Repealed by Session Laws 1985 (Regular Session, 1986), c. 977, s. 7.

f. ~~Registration~~ Licensure by Comity or Endorsement. -- A person holding a certificate of ~~registration~~ licensure to engage in the practice of land surveying issued on comparable qualifications from a state, territory, or possession of the United States will be given comity considerations. However, ~~he~~ the applicant may be asked to take ~~such~~ any examinations as the Board ~~deems necessary~~ requires to determine ~~his~~ the applicant's qualifications, but in any event, ~~he~~ the applicant shall be required to pass ~~a written~~ an examination which shall include questions on laws, procedures, and practices pertaining to the practice of land surveying in North Carolina.

g. A licensed professional engineer who can satisfactorily demonstrate to the Board that ~~his~~ the professional engineer's formal academic training in acquiring a degree and field experience in engineering includes land surveying, to the extent necessary to reasonably qualify the applicant in the practice of land surveying, may apply for and may be granted permission to take the ~~two four-hour examinations on the~~ principles and practice of land surveying examination and the ~~two four-hour examinations on the~~ fundamentals of land ~~surveying.~~ surveying examination. Upon satisfactorily passing the examinations, the applicant ~~will~~ shall be granted a license to practice land surveying in the State of North Carolina.

h. Professional Engineers in Land Surveying. -- Any person presently licensed to practice professional engineering under this Chapter shall upon ~~his~~ application be licensed to practice land surveying, providing ~~his~~ a written application is filed with the Board within one year next after June 19, 1975.

i. Photogrammetrists. -- Any person presently practicing photogrammetry with at least seven years of experience in the profession, two or more of which shall have been in responsible charge of photogrammetric mapping projects meeting National Map Accuracy Standards shall, upon application, be licensed to practice land surveying, provided:

1. The applicant submit certified proof of graduation from high school, high school equivalency, or higher degree;
2. The applicant submit proof of employment in responsible charge as a photogrammetrist practicing within the State of North Carolina to include itemized reports detailing methods, procedures, amount of applicant's personal involvement and the name, address, and telephone numbers of the client for five projects completed by the applicant with the State. A final map for one of the five projects shall also be submitted;
3. Five references to the applicant's character and quality of work, three of which shall be from professional land surveyors, are submitted to the Board; and
4. The application is submitted to the Board by July 1, 1998. After July 1, 1998, no photogrammetrist shall be licensed without meeting the same requirements as to education, length of experience, and testing required of all land surveying applicants.

The Board shall require an applicant to submit exhibits, drawings, plats or other tangible evidence of land surveying work executed by ~~him~~ the applicant under proper supervision and which ~~he~~ the applicant has personally accomplished or supervised.

Land surveying encompasses a number of disciplines including geodetic surveying, hydrographic surveying, cadastral surveying, engineering surveying, route surveying, photogrammetric (aerial) surveying, and topographic surveying. A professional land surveyor shall practice only within the surveyor's area of expertise.

(2) As a land ~~surveyor-in-training~~ surveyor intern (shall meet one):

a. Rightful possession of an associate degree in surveying technology approved by the Board and satisfactorily passing a written ~~or~~ and oral examination ~~taken in the presence of and~~ as required by the Board.

b. Rightful possession of a ~~B.S.~~ bachelors degree in surveying or other equivalent curricula in surveying all approved by the Board and satisfactorily passing ~~such~~ any oral and

written examinations ~~written in the presence of and~~ required by the Board.

c. Graduation from high school or the completion of a high school equivalency certificate and a record satisfactory to the Board of ~~five~~ six years of progressive, practical experience, ~~four~~ five years of which shall have been under a practicing ~~registered~~ licensed land surveyor and satisfactorily passing any oral and written examinations ~~taken in the presence of and as~~ required by the Board.

The Board shall require an applicant to submit exhibits, drawings, plats, or other tangible evidence of land surveying work executed by ~~him~~ the applicant under proper supervision and which ~~he~~ the applicant has personally accomplished or supervised."

Section 12. G.S. 89C-14 reads as rewritten:

"**§ 89C-14. Application for ~~registration; registration~~ licensure; license fees.**

(a) Application for ~~registration~~ licensure as a professional engineer or ~~registered~~ professional land surveyor shall be on a form prescribed and furnished by the Board. It shall contain statements made under oath, showing the applicant's education and a detailed summary of ~~his~~ the applicant's technical and engineering or land surveying experience, and shall include the names and complete mailing addresses of the references, none of whom ~~should~~ may be immediate members of the applicant's family or members of the Board.

The Board may accept the certified information on the copy of a current formal certificate of qualifications issued by the National Council of ~~Engineering Examiners Committee or National Engineering Certification for Professional Engineer applicants~~ Examiners for Engineering and Surveying in lieu of the same information that is required for the form prescribed and furnished by the Board.

(b) An applicant for ~~registration~~ licensure who is required to take the written examination shall pay ~~a fee equal to the cost of the examination to the Board plus an additional amount~~ to the Board an application fee not to exceed one hundred dollars ($100.00). The Board may charge any fee necessary to defray the cost of any required examinations. The fee shall accompany the application. The fee for comity ~~registration~~ licensure of engineers and land surveyors who hold unexpired certificates in another state or a territory of the United States or in Canada shall be the total current fee as fixed by the Board.

(c) The certification fee for a corporation is the amount set by the Board ~~in accordance with G.S. 55B-10.~~ but shall not exceed one hundred dollars ($100.00). The fee shall accompany the application. The certification fee for a business firm is the same as the fee for a corporation. The fee for renewal of a certificate of ~~registration~~ licensure of a corporation is the amount set by the Board ~~in accordance with G.S. 55B-11.~~ but shall not exceed seventy-five dollars ($75.00). The fee for renewal of a certificate of ~~registration~~ licensure for a business firm is the same as the renewal fee for a corporation.

(d) Should the Board deny the issuance of a certificate of ~~registration~~ licensure to any applicant, the unobligated portion of fees paid shall be returned by the Board to the applicant.

(e) A candidate failing an examination may apply, and be considered by the Board, for reexamination at the end of six months. The Board shall make such reexamination charge as is necessary to defray the cost of the examination.

A candidate ~~failing an examination three times will not be permitted to take a reexamination until he has made a written appeal to the Board and his tentative qualifications for the examination are reviewed and reaffirmed by the Board.~~ with a combination of three failures or unexcused absences on an examination shall only be eligible after submitting a new application with appropriate application fee, and be considered by the Board for reexamination at the end of 12 months. After the end of the 12-month period, the applicant may take the examination no more than once every calendar year."

Section 13. G.S. 89C-15 reads as rewritten:

"**§ 89C-15. Examinations.**

(a) The examinations will be held at ~~such~~ the times and places as the Board directs. The Board shall determine the passing grade on examinations. All examinations shall be approved by the entire Board.

(b) Written examinations will be given in sections and may be taken only after the applicant has met the other minimum requirements as given in ~~G.S. 89C-13,~~ G.S. 89C-13 and has been approved by the Board for admission to the examination as follows:

(1) Engineering Fundamentals. -- Consists of an eight-hour examination on the fundamentals of engineering. Passing this examination qualifies the ~~examinee~~ applicant for an ~~engineer-in-training~~ engineering intern certificate, provided ~~he~~ the applicant has met all other requirements for ~~certification~~ licensure required by this Chapter.

(2) Principles and Practice of Engineering. -- Consists of an eight-hour examination on applied engineering. Passing this examination qualifies the ~~examinee~~ applicant for ~~registration~~ licensure as a professional engineer, provided ~~he~~ the applicant has met the other requirements for registration required by this Chapter.

(3) Surveying Fundamentals. -- Consists of ~~two four-hour examinations~~ an eight-hour examination on the elementary disciplines of land surveying. Passing ~~both of these examinations~~ this examination qualifies the ~~examinee~~ applicant for a land ~~surveyor-in-training~~ surveyor intern certificate provided ~~he~~ the applicant has met all other requirements for certification required by this Chapter.

(4) Principles and Practices of Land Surveying. -- Consists of ~~two four-hour examinations~~ a six-hour examination on the basic and applied disciplines of land ~~surveying, one examination on basic disciplines and the other examination covering applied disciplines.~~

surveying and a two-hour examination on requirements specific to the practice of land surveying in North Carolina. Passing each of these examinations qualifies the ~~examinee~~ applicant for a ~~registered~~ professional land surveyor certificate provided ~~he~~ the applicant has met all other requirements for certification required by this Chapter."

Section 14. G.S. 89C-16 reads as rewritten:

"**§ 89C-16. Certificates of ~~registration;~~ licensure; effect; seals.**

(a) The Board shall issue to any applicant, who, in the opinion of the Board, has met the requirements of this Chapter, a certificate of ~~registration~~ licensure giving the ~~registrant~~ licensee proper authority to practice ~~his~~ the profession in this State. The certificate of ~~registration~~ licensure for a professional engineer shall carry the designation 'professional engineer,' and for a land surveyor, ~~'registered~~ 'professional land surveyor,' shall give the full name of the ~~registrant~~ licensee with ~~his serial~~ the Board designated licensure number and shall be signed by the ~~chairman~~ chair and the secretary under the seal of the Board.

(b) This certificate shall be prima facie evidence that the person named ~~thereon~~ on the certificate is entitled to all rights, privileges and responsibilities of a professional engineer or a ~~registered~~ professional land surveyor, while the ~~said~~ certificate of ~~registration~~ licensure remains unrevoked or unexpired.

(c) Each ~~registrant hereunder~~ licensee shall upon ~~registration~~ licensure obtain a seal of a design authorized by the Board bearing the ~~registrant's~~ licensee's name, ~~serial~~ license number, and the legend, 'professional engineer,' or ~~'registered~~ 'professional land surveyor.' Final drawings, specifications, plans and reports prepared by a ~~registrant~~ licensee shall, when issued, be certified and stamped with the ~~said~~ seal or facsimile ~~thereof~~ of the seal unless the ~~registrant~~ licensee is exempt under the provisions of G.S. 89C-25(7). It shall be unlawful for a ~~registrant~~ licensee to affix, or permit ~~his~~ the licensee's seal and signature or facsimile ~~thereof~~ of the seal and signature to be affixed to any drawings, specifications, plans or reports after the expiration of a certificate or for the purpose of aiding or abetting any other person to evade or attempt to evade any provision of this Chapter. A professional engineer practicing land surveying shall use ~~his registered~~ the licensee's land surveyor seal."

Section 15. G.S. 89C-17 reads as rewritten:

"**§ 89C-17. Expirations and renewals of certificates.**

Certificates for ~~registration~~ licensure shall expire on the last day of the month of December next following their issuance or renewal, and shall become invalid on that date unless renewed. When necessary to protect the public health, safety, or welfare, the Board shall require ~~such~~ any evidence ~~as it deems~~ necessary to establish the continuing competency of engineers and land surveyors as a condition of renewal of licenses. When the Board is satisfied as to the continuing competency of an applicant, it shall issue a renewal of the certificate upon payment by the applicant of a fee fixed by the Board but not to exceed ~~fifty dollars ($50.00).~~ seventy-five dollars ($75.00). The secretary of the Board shall notify by mail every person ~~registered~~ licensed under this Chapter of the date of expiration of ~~his~~ the certificate, the amount of the fee

required for its renewal for one year, and any requirement as to evidence of continued competency. The notice shall be mailed at least one month in advance of the expiration date of the certificate. Renewal shall be effected at any time during the month of January immediately following, by payment to the secretary of the Board of a renewal fee, as determined by the Board, which shall not exceed ~~fifty dollars ($50.00).~~ seventy-five dollars ($75.00). Failure on the part of any registrant to renew ~~his~~ the certificate annually in the month of January, as required above, shall deprive the registrant of the right to practice until renewal has been effected. Renewal may be effected at any time during the first ~~36~~ 12 months immediately following its invalidation ~~of payment of the renewal fee increased ten percent (10%) for each month or fraction of a month that payment for renewal is delayed.~~ by payment of the established renewal fee and a late penalty of one hundred dollars ($100.00). Failure of a ~~registrant~~ licensee to renew ~~his registration~~ the license for a period of ~~36~~ 12 months shall require the individual, prior to resuming practice in North Carolina, to submit an application ~~therefor~~ on the prescribed form, and to meet all other requirements for ~~registration~~ licensure as set forth in Chapter 89C. The secretary of the Board is instructed to remove from the official roster of engineers and land surveyors the names of all ~~registrants~~ licensees who have not effected their renewal by the first day of February immediately following the date of their expiration. The Board may ~~enact~~ adopt rules to provide for renewals in distress or hardship cases due to military service, prolonged illness, or prolonged absence from the State, where the applicant for renewal demonstrates to the Board that ~~he~~ the applicant has maintained ~~his~~ active knowledge and professional status as an engineer or land surveyor, as the case may be. It shall be the responsibility of each ~~registrant~~ licensee to inform the Board promptly concerning change in address. A licensee may request and be granted inactive status. No inactive licensee may practice in this State unless otherwise exempted in this Chapter. A licensee granted inactive status shall pay annual renewal fees but shall not be subject to annual continuing professional competency requirements. A licensee granted inactive status may return to active status by meeting all requirements of the Board, including demonstration of continuing professional competency as a condition of reinstatement."

Section 16. G.S. 89C-18 reads as rewritten:

"**§ 89C-18. Duplicate certificates.**

The Board may issue a duplicate certificate of ~~registration~~ licensure or certificate of authorization to replace any certificate that has been lost, destroyed, or mutilated and may charge a fee of up to twenty-five dollars ($25.00) for issuing the certificate."

Section 17. G.S. 89C-19 reads as rewritten:

"**§ 89C-19. Public works; requirements where public safety involved.**

This State and its political subdivisions such as counties, cities, towns, or other political entities or legally constituted boards, commissions, public utility companies, or authorities, or officials, or employees ~~thereof~~ of these entities shall not engage in the practice of engineering or land surveying involving either public or private property where the safety of the public is directly involved without the project being under the supervision of a professional engineer for the preparations of plans and

specifications for engineering projects, or a ~~registered~~ professional land surveyor for land surveying projects, as provided for the practice of the respective professions by this Chapter.

An official or employee of the State or any political subdivision specified in this section, holding the positions set out in this section as of June 19, 1975, shall be exempt from the provisions of this section so long as such official or employee is engaged in substantially the same type of work as is involved in ~~his~~ the present position.

Nothing in this section shall be construed to prohibit inspection, maintenance and service work done by employees of the State of North Carolina, any political subdivision ~~thereof,~~ of the State, or any municipality ~~therein~~ including construction, installation, servicing, and maintenance by regular full-time employees of, secondary roads and drawings incidental ~~thereto,~~ to work on secondary roads, streets, street lighting, traffic-control signals, police and fire alarm systems, waterworks, steam, electric and sewage treatment and disposal plants, the services of superintendents, inspectors or foremen regularly employed by the State of North Carolina or any political subdivision ~~thereof,~~ of the State, or municipal ~~corporation therein.~~ corporation.

The provisions in this section shall not be construed to alter or modify the requirements of Article 1 of Chapter 133 of the General Statutes."

Section 18. G.S. 89C-20 reads as rewritten:

"**§ 89C-20. Rules of professional conduct.**

In the interest of protecting the safety, health, and welfare of the public, the Board shall ~~promulgate and~~ adopt rules of professional conduct applicable to the practice of engineering and land surveying. These rules, when adopted, shall be construed to be a reasonable exercise of the police power vested in the Board of ~~Registration~~ Examiners for ~~Professional~~ Engineers and Land Surveyors. Every person ~~registered~~ licensed by the Board shall subscribe to and observe the adopted rules as the standard of professional conduct for the practice of engineering and land ~~surveying.~~ surveying and shall cooperate fully with the Board in the course of any investigation. In the case of violation of the rules of professional conduct, the Board shall ~~have the responsibility and duty to~~ proceed in accordance with G.S. 89C-22."

Section 19. G.S. 89C-21 reads as rewritten:

"**§ 89C-21. Disciplinary action -- Reexamination, revocation, suspension, reprimand, or civil penalty.**

(a) The Board may reprimand the licensee, suspend, refuse to renew, or revoke the certificate of ~~registration,~~ licensure, or, as appropriate, require reexamination, for any engineer or land surveyor, who is found:

(1) Guilty of the practice of any fraud or deceit in obtaining a certificate of ~~registration~~ licensure or certificate of authorization.

(2) Guilty of any gross negligence or misconduct in the practice of ~~his~~ the profession.

(3) Guilty of any felony or any crime involving moral turpitude.

(4) Guilty of violation of the Rules of Professional Conduct, as adopted by the Board.

(5) To have been declared insane or incompetent by a court of competent jurisdiction and has not ~~thereafter~~ later been lawfully declared sane or competent.

(6) Guilty of professional incompetence. In the event the Board finds that a certificate holder is incompetent the Board may, in its discretion, require oral or written examinations, or other indication of the certificate holder's fitness to practice ~~his profession~~ engineering or land surveying and suspend ~~his~~ the license during any such period.

(b) The Board ~~shall have the power to~~ may (i) revoke a certificate of authorization, or (ii) to suspend a certificate of authorization for a period of time not exceeding two years, of any corporation or business firm where one or more of its officers or directors have committed any act or have been guilty of any conduct which would authorize a revocation or suspension of their certificates of ~~registration~~ licensure under the provision of this section.

(c) The Board may levy a civil penalty not in excess of two thousand dollars ($2,000) for any engineer or land surveyor who violates any of the provisions of subdivisions (1) through (4) of subsection (a) of this section. All civil penalties collected by the Board shall be deposited in the General Fund of North Carolina.

(d) Before imposing and assessing a civil penalty and fixing the ~~amount thereof,~~ amount, the Board shall, as a part of its deliberation, take into consideration the following factors:

(1) The nature, gravity, and persistence of the particular violations;

(2) The appropriateness of the imposition of a civil penalty when considered alone or in combination with other punishment;

(3) Whether the violation(s) were done willfully and maliciously; and

(4) Any other factors which would tend to either mitigate or aggravate the violation(s) found to exist."

Section 20. G.S. 89C-22 reads as rewritten:

"**§ 89C-22. Disciplinary action -- Charges; procedure.**

(a) Any person may prefer charges of fraud, deceit, gross negligence, incompetence, misconduct, or violation of the rules of professional conduct, against any Board registrant. The charges shall be in writing and shall be sworn to by the person or persons making them and shall be filed with ~~the secretary of~~ the Board.

(b) All charges, unless dismissed by the Board as unfounded or trivial, shall be heard by the Board as provided under the requirements of Chapter 150B of the General Statutes.

(c) If, after ~~such~~ a hearing, a majority of the Board votes in favor of sustaining the charges, the Board shall reprimand, levy a civil penalty, suspend, refuse to renew, or revoke the ~~registrant's certificate of registration.~~ licensee's certificate.

(d) A ~~registrant~~ licensee who is aggrieved by a final decision of the Board may appeal for judicial review as provided by Article 4 of Chapter 150B.

(e) The Board may, upon petition of an individual or an entity whose certificate has been revoked, for sufficient ~~reasons it may deem sufficient,~~ reasons as it may determine, reissue a certificate of ~~registration~~ licensure or authorization, provided that a majority of the members of the Board vote in favor of such issuance."

Section 21. G.S. 89C-23 reads as rewritten:

"**§ 89C-23. Unlawful to practice engineering or land surveying without ~~registration;~~ licensure; unlawful use of title or terms; penalties; Attorney General to be legal adviser.**

Any person who shall practice, or offer to practice, engineering or land surveying in this State without first being ~~registered~~ licensed in accordance with the provisions of this Chapter, or any person, firm, partnership, organization, association, corporation, or other entity using or employing the words 'engineer' or 'engineering' or 'professional engineer' or 'professional engineering' or 'land surveyor' or 'land surveying,' or any modification or derivative ~~thereof~~ of those words in its name or form of business or activity except as ~~registered~~ licensed under this Chapter or in pursuit of activities exempted by this Chapter, or any person presenting or attempting to use the certificate of ~~registration~~ licensure or the seal of another, or any person who shall give any false or forged evidence of any kind to the Board or to any member ~~thereof~~ of the Board in obtaining or attempting to obtain a certificate of ~~registration,~~ licensure, or any person who shall falsely impersonate any other ~~registrant~~ licensee of like or different name, or any person who shall attempt to use an expired or revoked or nonexistent certificate of ~~registration,~~ licensure, or who shall practice or offer to practice when not qualified, or any person who falsely claims that ~~he~~ the person is registered under this Chapter, or any person who shall violate any of the provisions of this Chapter, in addition to injunctive procedures set out hereinbefore, shall be guilty of a Class 2 misdemeanor. In no event shall there be representation of or holding out to the public of any engineering expertise by ~~unregistered~~ unlicensed persons. It shall be the duty of all duly constituted officers of the State and all political subdivisions ~~thereof~~ of the State to enforce the provisions of this Chapter and to prosecute any persons violating ~~same.~~ them.

The Attorney General of the State or ~~his~~ an assistant shall act as legal adviser to the Board and render ~~such~~ any legal assistance ~~as may be~~ necessary ~~in carrying~~ to carry out the provisions of this Chapter. The Board may employ counsel and necessary assistance to aid in the enforcement of this Chapter, and the compensation and expenses ~~therefor~~ for the assistance shall be paid from funds of the Board."

Section 22. G.S. 89C-24 reads as rewritten:

"**§ 89C-24. ~~Registration~~ Licensure of corporations and business firms that engage in the practice of engineering or land surveying.**

A corporation or business firm may not engage in the practice of engineering or land surveying in this State unless it is ~~registered with~~ licensed by the Board and has paid ~~the required registration fee.~~ an application fee established by the Board in an amount not to exceed two hundred fifty dollars ($250.00). A corporation or business firm is subject to the same duties and responsibilities as an individual ~~registrant. Registration~~ licensee. Licensure of a corporation or business firm does not affect the

requirement that all engineering or land surveying work done by the corporation or business firm be performed by or under the responsible charge of individual registrants, nor does it relieve the individual registrants within a corporation or business firm of their design and supervision responsibilities.

This section applies to every corporation that is engaged in the practice of engineering or land surveying, regardless of when it was incorporated. A corporation that is not exempt from Chapter 55B of the General Statutes by application of G.S. 55B-15 must be incorporated under that Chapter."

Section 23. G.S. 89C-25 reads as rewritten:

"**§ 89C-25. Limitations on application of Chapter.**

This Chapter shall not be construed to prevent or affect:

(1) The practice of architecture, landscape architecture, or contracting or any other legally recognized profession or trade; or

(2) The practice of professional engineering or land surveying in this State or by any person not a resident of this State and having no established place of business in this State when this practice does not aggregate more than 90 days in any calendar year, whether performed in this State or elsewhere, or involve more than one specific project; provided, however, that ~~such~~ the person is ~~legally qualified by registration~~ licensed to practice the ~~said~~ profession in ~~his~~ the person's own state or country, in which the requirements and qualifications for obtaining a certificate of ~~registration~~ licensure are satisfactory to the Board; in which case the person shall apply for and the Board will issue a temporary permit; or

(3) The practice of professional engineering or land surveying in this State not to aggregate more than 90 days by any person residing in this State, but whose residence has not been of sufficient duration for the Board to grant or deny ~~registration;~~ licensure; provided, however, ~~such~~ the person shall have filed an application for ~~registration~~ licensure as a professional engineer or ~~registered~~ professional land surveyor and shall have paid the fee provided for in G.S. 89C-14, and provided that ~~such a~~ the person is ~~legally qualified by registration~~ licensed to practice professional engineering or professional land surveying in ~~his~~ the person's own state or country in which the requirements and qualifications for obtaining a certificate of ~~registration~~ licensure are satisfactory to the Board, in which case the person shall apply for and the Board will issue a temporary permit; or

(4) Engaging in engineering or land surveying as an employee or assistant under the responsible charge of a professional engineer or ~~registered~~ professional land surveyor or as an employee or assistant of a nonresident professional engineer or a nonresident ~~registered~~ professional land surveyor provided for in subdivisions (2) and (3)

of this section, provided that ~~said~~ the work as an employee may not include responsible charge of design or supervision; or

(5) The practice of professional engineering or land surveying by any person not a resident of, and having no established place of business in this State, as a consulting associate of a professional engineer or ~~registered~~ professional land surveyor ~~registered~~ licensed under the provisions of this Chapter; provided, the nonresident is qualified for ~~such~~ performing the professional service in ~~his~~ the person's own state or country; or

(6) Practice by members of the armed forces or employees of the government of the United States while engaged in the practice of engineering or land surveying solely for ~~said~~ the government on government-owned works and projects; or

(7) The internal engineering or surveying activities of a person, firm or corporation engaged in manufacturing, processing, or producing a product, including the activities of public service corporations, public utility companies, authorities, State agencies, railroads, or membership cooperatives, or the installation and servicing of their product in the field; or research and development in connection with the manufacture of that product or their service; or of their research affiliates; or their employees in the course of their employment in connection with the manufacture, installation, or servicing of their product or service in the field, or on-the-premises maintenance of machinery, equipment, or apparatus incidental to the manufacture or installation of the product or service of a firm by the employees of the firm upon property owned, leased or used by the firm; inspection, maintenance and service work done by employees of the State of North Carolina, any political subdivision ~~thereof,~~ of the State, or any municipality ~~therein~~ including construction, installation, servicing, maintenance by regular full-time employees of streets, street lighting, traffic-control signals, police and fire alarm systems, waterworks, steam, electric and sewage treatment and disposal plants; the services of superintendents, inspectors or foremen regularly employed by the State of North Carolina or any political subdivision ~~thereof,~~ of the State or a municipal ~~corporation therein;~~ corporation; provided, however, that the internal engineering or surveying activity is not a holding out to or an offer to the public of engineering or any service thereof as prohibited by this Chapter. Engineering work, not related to the foregoing exemptions, where the safety of the public is directly involved shall be under the responsible charge of a ~~registered~~ licensed professional engineer, or in accordance with standards prepared or approved by a ~~registered~~ licensed professional engineer.

(8) The (i) preparation of fire sprinkler planning and design drawings by a fire sprinkler contractor licensed under Article 2 of Chapter 87 of the General Statutes, or (ii) the performance of internal engineering or survey work by a manufacturing or communications common carrier company, or by a research and development company, or by employees of ~~such~~ those corporations provided that ~~such~~ the work is in connection with, or incidental to products of, or nonengineering services rendered by ~~such~~ those corporations or their affiliates.

(9) The routine maintenance or servicing of machinery, equipment, facilities or structures, the work of mechanics in the performance of their established functions, or the inspection or supervision of construction by a foreman, superintendent, or agent of the architect or professional engineer, or services of an operational nature performed by an employee of a laboratory, a manufacturing plant, a public service corporation, or governmental operation."

Section 24. G.S. 89C-25.1 reads as rewritten:

"**§ 89C-25.1. Supervision of ~~unregistered~~ unlicensed individuals by ~~registered~~ licensed person.**

In all circumstances in which ~~unregistered~~ unlicensed individuals are permitted under this Chapter to perform engineering or land surveying work, or both, under the supervision of a ~~registered~~ licensed engineer, land surveyor, or both, the Board may by regulation establish a reasonable limit on the number of ~~unregistered~~ unlicensed individuals which a ~~registrant~~ licensee of the Board may directly or personally supervise at one time."

Section 25. G.S. 89C-26 reads as rewritten:

"**§ 89C-26. Duties of register of deeds.**

The register of deeds or any other county or proper public authority may not file or record any map, plat, survey, or other documents, within the definition of land surveying, which do not contain an original personal signature and original seal of a ~~registered~~ licensed land surveyor by whom, or under whose responsible charge, the map, plat, survey, or other documents were prepared, except as provided in G.S. 47-30(m) and (n)."

Section 26. G.S. 89C-28 reads as rewritten:

"**§ 89C-28. Existing ~~registration~~ licensure not affected.**

Nothing in this Chapter shall be construed as affecting the status of ~~registration~~ licensure of any professional engineer or ~~registered~~ land surveyor who is rightfully in possession of a certificate of ~~registration~~ licensure duly issued by the Board and valid as of July 1, 1975."

Section 27. This act becomes effective July 1, 1997, and applies to persons applying for licenses on or after that date and to persons practicing engineering and land surveying on or after that date.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House**.

X Committee Substitute for

S.B. 862 A BILL TO BE ENTITLED AN ACT TO PROVIDE GREATER FLEXIBILITY TO THE UNIVERSITY OF NORTH CAROLINA AND OTHER AGENCIES IN NEGOTIATING CERTAIN CONTRACTS AND CAPITAL PROJECTS, TO INCREASE THE BENCHMARK FOR PURCHASES BY THE UNIVERSITY OF NORTH CAROLINA AND OTHER STATE AGENCIES, AND TO AUTHORIZE EMPLOYEE PAYROLL DEDUCTIONS FOR CERTAIN DISCRETIONARY PRIVILEGES OF UNIVERSITY SERVICE AT THE UNIVERSITY OF 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 (# 2), ~~☐ which changes the title~~, unfavorable as to ~~Senate~~ committee substitute bill. ~~#~~ 1

☐ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 862
Judiciary Committee Substitute Adopted 4/28/97
House Committee Substitute Favorable 6/26/97
Proposed House Committee Substitute S862-PCS6718

Short Title: UNC Contracts Negotiations. (Public)

Sponsors:

Referred to:

April 15, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE GREATER FLEXIBILITY TO THE UNIVERSITY OF NORTH CAROLINA AND OTHER AGENCIES IN NEGOTIATING CERTAIN CONTRACTS AND CAPITAL PROJECTS, TO INCREASE THE BENCHMARK FOR PURCHASES BY THE UNIVERSITY OF NORTH CAROLINA AND OTHER STATE AGENCIES, AND TO AUTHORIZE EMPLOYEE PAYROLL DEDUCTIONS FOR CERTAIN DISCRETIONARY PRIVILEGES OF UNIVERSITY SERVICE AT THE UNIVERSITY OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. Article 1 of Chapter 116 of the General Statutes is amended by adding two new sections to read:

"**§ 116-31.10. Powers of Board regarding certain purchasing contracts.**

Notwithstanding G.S. 143-53.1 or G.S. 143-53(a)(2), the expenditure benchmark for a special responsibility constituent institution with regard to competitive bid procedures and the bid value benchmark shall be an amount not greater than two hundred fifty thousand dollars ($250,000). The Board shall set the benchmark for each institution from time to time. In setting an institution's benchmark in accordance with this section, the Board shall consider the institution's overall capabilities including staff resources, purchasing compliance reviews, and audit

reports. The Board shall also consult with the Director of the Division of Purchase and Contract and the Director of the Budget prior to setting the benchmark.

"**§ 116-31.11. Powers of Board regarding certain fee negotiations, contracts, and capital improvements.**

(a) Notwithstanding G.S. 143-341(3) and G.S. 143-135.1, the Board shall, with respect to the design, construction, or renovation of buildings, utilities, and other property developments of The University of North Carolina requiring the estimated expenditure of public money of five hundred thousand dollars ($500,000) or less:

(1) Conduct the fee negotiations for all design contracts and supervise the letting of all construction and design contracts.

(2) Develop procedures governing the responsibilities of The University of North Carolina and its affiliated and constituent institutions to perform the duties of the Department of Administration and the Director or Office of State Construction under G.S. 133-1.1(d) and G.S. 143-341(3).

(3) Develop procedures and reasonable limitations governing the use of open-end design agreements, subject to G.S. 143-64.34 and the approval of the State Building Commission.

(b) The Board may delegate its authority under subsection (a) of this section to a constituent or affiliated institution if the institution is qualified under guidelines adopted by the Board and approved by the State Building Commission and the Director of the Budget.

(c) The University shall use the standard contracts for design and construction currently in use for State capital improvement projects by the Office of State Construction of the Department of Administration.

(d) A contract may not be divided for the purpose of evading the monetary limit under this section."

Section 2. G.S. 143-52 reads as rewritten:

"**§ 143-52. Competitive bidding procedure; consolidation of estimates by Secretary; bids; awarding of contracts.**

As feasible, the Secretary of Administration will compile and consolidate all such estimates of supplies, materials, printing, equipment and contractual services needed and required by State departments, institutions and agencies to determine the total requirements of any given commodity. Where such total requirements will involve an expenditure in excess of the expenditure benchmark established under the provisions of G.S. 143-53.1 and where the competitive bidding procedure is employed as hereinafter provided, sealed bids shall be solicited by advertisement in a newspaper ~~of statewide circulation~~ widely distributed in this State or through electronic means, or both, as determined by the Secretary to be most advantageous, at least once and at least 10 days prior to the date designated for opening. ~~opening of the bids and awarding of the contract: Provided, other methods of advertisement may be adopted by the Secretary of Administration when such other method is deemed more advantageous for certain items or commodities. Regardless of the amount of the expenditure, under the competitive bidding procedure it shall be the duty of the~~

~~Secretary of Administration to solicit bids direct by mail from qualified sources of supply.~~ Except as otherwise provided under this Article, contracts for the purchase of supplies, materials or equipment shall be based on competitive bids and acceptance made of the lowest and best bid(s) most advantageous to the State as determined upon consideration of the following criteria: prices offered; the quality of the articles offered; the general reputation and performance capabilities of the bidders; the substantial conformity with the specifications and other conditions set forth in the request for bids; the suitability of the articles for the intended use; the personal or related services needed; the transportation charges; the date or dates of delivery and performance; and such other factor(s) deemed pertinent or peculiar to the purchase in question, which if controlling shall be made a matter of record. Competitive bids on such contracts shall be received in accordance with rules and regulations to be adopted by the Secretary of Administration, which rules and regulations shall prescribe for the manner, time and place for proper advertisement for such bids, the time and place when bids will be received, the articles for which such bids are to be submitted and the specifications prescribed for such articles, the number of the articles desired or the duration of the proposed contract, and the amount, if any, of bonds or certified checks to accompany the bids. Bids shall be publicly opened. Any and all bids received may be rejected. Each and every bid conforming to the terms of the invitation, together with the name of the bidder, shall be tabulated ~~or otherwise entered as a matter of record, and all such records with the name of the successful bidder indicated thereon shall, after the award of the contract, be open to public inspection.~~ and that tabulation shall become public record in accordance with the rules adopted by the Secretary. All contract information shall be made a matter of public record after the award of contract. Provided, that trade secrets, test data and similar proprietary information may remain confidential. A bond for the faithful performance of any contract may be required of the successful bidder at bidder's expense and in the discretion of the Secretary of Administration. After contracts have been awarded, the Secretary of Administration shall certify to the departments, institutions and agencies of the State government the sources of supply and the contract price of the supplies, materials and equipment so contracted for. Prior to adopting other methods of advertisement under this section, the Secretary of Administration may consult with the Advisory Budget Commission. Prior to adopting rules and regulations under this section, the Secretary of Administration may consult with the Advisory Budget Commission."

Section 3. G.S. 143-53(a) reads as rewritten:

"(a) The Secretary of Administration may adopt rules governing the following:

(1) Prescribing the routine and procedures to be followed in canvassing bids and awarding contracts, and for reviewing decisions made pursuant thereto, and the decision of the reviewing body shall be the final administrative review.

(2) Prescribing ~~routine~~ routine, including consistent contract language, for securing bids on items that do not exceed the bid value

benchmark established under the provisions of G.S. ~~143-53.1.~~ 143-53.1 or G.S. 116-31.10.

The purchasing delegation for securing offers, (excluding the special responsibility constituent institutions of The University of North Carolina), for each State department, institution, agency, community college, and public school administrative unit shall be determined by the Director of the Division of Purchase and Contract. For the State agencies this shall be done following the Director's consultation with the State Budget Officer and the State Auditor. The Director for the Division of Purchase and Contract may set or lower the delegation, or raise the delegation upon written request by the agency, after consideration of their overall capabilities, including staff resources, purchasing compliance reviews, and audit reports of the individual agency. The routine prescribed by the Secretary shall include contract award protest procedures and consistent requirements for advertising of solicitations for securing offers issued by State departments, institutions, universities (including the special responsibility constituent institutions of The University of North Carolina), agencies, community colleges, and the public school administrative units.

(3) Defining contractual services for the purposes of G.S. ~~143-49(3).~~ 143-49(3) and G.S. 143-49(5).

(4) Prescribing items and quantities, and conditions and procedures, governing the acquisition of goods and services which may be delegated to departments, institutions and agencies, notwithstanding any other provisions of this Article.

(5) Prescribing conditions under which purchases and contracts for the purchase, rental or lease of equipment, materials, supplies or services may be entered into by means other than competitive bidding.

(6) Prescribing conditions under which partial, progressive and multiple awards may be made.

(7) Prescribing conditions and procedures governing the purchase of used equipment, materials and supplies.

(8) Providing conditions under which bids may be rejected in whole or in part.

(9) Prescribing conditions under which information submitted by bidders or suppliers may be considered proprietary or confidential.

(10) Prescribing procedures for making purchases under programs involving participation by two or more levels or agencies of government, or otherwise with funds other than State-appropriated.

(11) Prescribing procedures to encourage the purchase of North Carolina farm products, and products of North Carolina manufacturing enterprises.

(12) Repealed by Session Laws 1987, c. 827, s. 216."

Section 4. G.S. 143-53.1 reads as rewritten:

"**§ 143-53.1. Setting of benchmarks; increase by Secretary.**

On and after July 1, ~~1990,~~ 1997, the ~~expenditure benchmark~~ procedures prescribed by G.S. 143-52 with respect to competitive ~~bid procedures~~ bids and the bid value benchmark authorized by G.S. ~~143-53(2)~~ 143-53(a)(2) with respect to rule making by the Secretary of Administration for competitive bidding shall be ~~ten thousand dollars ($10,000);~~ no more than twenty-five thousand dollars ($25,000); provided, the Secretary of Administration may, in his or her discretion, increase the benchmarks effective as of the beginning of any fiscal biennium of the State commencing after June 30, ~~1992,~~ 1999, in an amount whose increase, expressed as a percentage, does not exceed the rise in the Consumer Price Index during the fiscal biennium next preceding the effective date of the benchmark increase. For a special responsibility constituent institution of The University of North Carolina, the benchmark prescribed in this section shall be ~~thirty-five thousand dollars ($35,000).~~ as provided in G.S. 116-31.10."

Section 5. G.S. 143-64.34 as amended by S.L. 1997-314 reads as rewritten:

"**§ 143-64.34. Exemption of certain ~~State Capital Improvement Projects.~~ projects.**

(a) State Capital Improvement Projects under the jurisdiction of the State Building Commission where the estimated expenditure of public money is less than one hundred thousand dollars ($100,000) are exempt from the provisions of this Article.

(b) A capital improvement project of The University of North Carolina under G.S. 116-31.11 where the estimated expenditure of public money is less than three hundred thousand dollars ($300,000) is exempt from this Article if:

(1) The architectural, engineering, or surveying services to be rendered are under an open-end design agreement;

(2) The open-end design agreement has been publicly announced; and

(3) The open-end design agreement complies with procedures adopted by the University and approved by the State Building Commission under G.S. 116-31.11(a)(3)."

Section 5.1. Effective July 1, 2001, G.S. 143-64.34, as amended by Section 5 of this act, reads as rewritten:

"**§ 143-64.34. Exemption of certain projects.**

~~(a)~~ State Capital Improvement Projects under the jurisdiction of the State Building Commission where the estimated expenditure of public money is less than hundred thousand dollars ($100,000) are exempt from the provisions of this Article.

~~(b) A capital improvement project of the University of North Carolina under G.S. 116-31.11 where the estimated expenditure of public money is less than three hundred thousand dollars ($300,000) is exempt from this Article if:~~

~~(1) The architectural, engineering, or surveying services to be rendered are under an open-end design agreement;~~
~~(2) The open-end design agreement has been publicly announced; and~~
~~(3) The open-end design agreement complies with procedures adopted by the University and approved by the State Building Commission under G.S. 116-31.11(a)(3).~~"

Section 6. G.S. 143-341(3) reads as rewritten:

"(3) Architecture and Engineering:

a. To examine and approve all plans and specifications for the construction or renovation of:

1. All State buildings; and
2. All community college buildings requiring the estimated expenditure for construction or repair work for which public bidding is required under G.S. 143-129

prior to the awarding of a contract for such work; and to examine and approve all changes in those plans and specifications made after the contract for such work has been awarded.

b. To prepare preliminary studies and cost estimates and otherwise to assist all agencies in the preparation of requests for appropriations for the construction or renovation of all State buildings.

c. To supervise the letting of all contracts for the design, construction or renovation of all State buildings and all community college buildings whose plans and specifications must be examined and approved under a.2. of this subdivision.

d. To supervise and inspect all work done and materials used in the construction or renovation of all State buildings and all community college buildings whose plans and specifications must be examined and approved under a.2. of this subdivision; and no such work may be accepted by the State or by any State agency until it has been approved by the Department.

Except for sub-subdivision b., this subdivision does not apply to the design, construction, or renovation or projects by The University of North Carolina pursuant to G.S. 116-31.11."

Section 7. G.S. 143-135.3 reads as rewritten:

"**§ 143-135.3. Adjustment and resolution of State board construction contract claim.**

(a) The word 'board' as used in this section shall mean the State of North Carolina or any board, bureau, commission, institution, or other agency of the State, as distinguished from a board or governing body of a subdivision of the State. 'A contract for construction or repair work,' as used in this section, is defined as any

contract for the construction of buildings and appurtenances thereto, including, but not by way of limitation, utilities, plumbing, heating, electrical, air conditioning, elevator, excavation, grading, paving, roofing, masonry work, tile work and painting, and repair work as well as any contract for the construction of airport runways, taxiways and parking aprons, sewer and water mains, power lines, docks, wharves, dams, drainage canals, telephone lines, streets, site preparation, parking areas and other types of construction on which the Department of Administration or The University of North Carolina enters into contracts.

'Contractor' as used in this section includes any person, firm, association or corporation which has contracted with a State board for architectural, engineering or other professional services in connection with construction or repair work as well as those persons who have contracted to perform such construction or repair work.

(b) A contractor who has not completed a contract with a board for construction or repair work and who has not received the amount he claims is due under the contract may submit a verified written claim to the Director of the Office of State Construction of the Department of Administration for the amount the contractor claims is due. The Director may deny, allow, or compromise the claim, in whole or in part. A claim under this subsection is not a contested case under Chapter 150B of the General Statutes.

(c) A contractor who has completed a contract with a board for construction or repair work and who has not received the amount he claims is due under the contract may submit a verified written claim to the Director of the Office of State Construction of the Department of Administration for the amount the contractor claims is due. The claim shall be submitted within 60 days after the contractor receives a final statement of the board's disposition of his claim and shall state the factual basis for the claim.

The Director shall investigate a submitted claim within 90 days of receiving the claim, or within any longer time period upon which the Director and the contractor agree. The contractor may appear before the Director, either in person or through counsel, to present facts and arguments in support of his claim. The Director may allow, deny, or compromise the claim, in whole or in part. The Director shall give the contractor a written statement of the Director's decision on the contractor's claim.

A contractor who is dissatisfied with the Director's decision on a claim submitted under this subsection may commence a contested case on the claim under Chapter 150B of the General Statutes. The contested case shall be commenced within 60 days of receiving the Director's written statement of the decision.

(c1) A contractor who is dissatisfied with the Director's decision on a claim submitted under subsection (c) of this section may commence a contested case on the claim under Chapter 150B of the General Statutes. The contested case shall be commenced within 60 days of receiving the Director's written statement of the decision.

(d) As to any portion of a claim that is denied by the Director, the contractor may, in lieu of the procedures set forth in the preceding subsection of this section,

within six months of receipt of the Director's final decision, institute a civil action for the sum he claims to be entitled to under the contract by filing a verified complaint and the issuance of a summons in the Superior Court of Wake County or in the superior court of any county where the work under the contract was performed. The procedure shall be the same as in all civil actions except that all issues shall be tried by the judge, without a jury.

(e) The provisions of this section are part of every contract for construction or repair work made by a board and a contractor. A provision in a contract that conflicts with this section is invalid."

Section 8. G.S. 150B-1(f) reads as rewritten:

"(f) Exemption ~~from All But Judicial Review.~~ for The University of North Carolina. -- ~~No~~ Except as provided in G.S. 143-135.3, no Article in this Chapter except Article 4 applies to The University of North Carolina."

Section 9. G.S. 143-3.3 is amended by adding a new subsection to read:

"(k) Payroll Deduction for University of North Carolina System Employees to Pay for Discretionary Privileges of University Service. -- Subject to rules adopted by the State Controller, if a constituent institution of The University of North Carolina approves a payroll deduction plan under this subsection, an employee of the constituent institution may authorize, in writing, the periodic deduction from the employee's salary or wages paid for employment by the constituent institution, of one or more designated lump sums to be applied to the cost of corresponding discretionary privileges available at employee expense from the employing institution. Discretionary privileges from the employing institution that may be paid for through this subsection include parking privileges, athletic passes, use of recreational facilities, admission to campus concert series, and access to other institutionally hosted or provided entertainments, events, and facilities."

Section 10. G.S. 143-135.1 reads as rewritten:

"**§ 143-135.1. State buildings exempt from county and municipal building requirements; consideration of recommendations by counties and municipalities.**

(a) Buildings constructed by the State of North Carolina or by any agency or institution of the State in accordance with plans and specifications approved by the Department of Administration or by The University of North Carolina or one of its affiliated or constituent institutions pursuant to G.S. 116-31.11 shall not be subject to inspection by any county or municipal authorities and shall not be subject to county or municipal building codes and requirements.

(b) Inspection fees fixed by counties and municipalities shall not be applicable to such construction by the State of North Carolina. County and municipal authorities may inspect any plans or specifications upon their request to the Department of ~~Administration,~~ Administration or, with respect to projects under G.S. 116-31.11, The University of North Carolina, and any and all recommendations made by them shall be given ~~consideration by the Department of Administration.~~ consideration. Requests by county and municipal authorities to inspect plans and specifications for State projects shall be on the basis of a specific project. Should any agency or institution of the State require the services of county or municipal authorities, notice shall be given

for the need of such services, and appropriate fees for such services shall be paid to the county or municipality; provided, however, that the application for such services to be rendered by any county or municipality shall have prior written approval of the Department of ~~Administration.~~ Administration, or with respect to projects under G.S. 116-31.11, The University of North Carolina.

(c) Notwithstanding any law to the contrary, including any local act, no county or municipality may impose requirements that exceed the North Carolina State Building Code regarding the design or construction of buildings constructed by the State of North Carolina."

Section 11. G.S. 133-1.1(d) reads as rewritten:

"(d) On projects on which no registered architect or engineer is required pursuant to the provisions of this section, the governing board or awarding authority shall require a certificate of compliance with the State Building Code from the city or county inspector for the specific trade or trades involved or from a registered architect or engineer, except that the provisions of this subsection shall not apply on projects (i) wherein plans and specifications are approved by the Department of Administration, Division of State Construction, and the completed project is inspected by the Division of State Construction and the State Electrical Inspector, ~~or on projects~~ (ii) that are exempt from the State Building ~~Code.~~ Code, or (iii) that are subject to G.S. 116-31.11 and the completed project is inspected by the State Electrical Inspector and by The University of North Carolina or its constituent or affiliated institution."

Section 12. (a) The Office of State Budget and Management and the State Building Commission shall evaluate the process and quality of construction completed under G.S. 116-31.11 as enacted by this act. The evaluation shall include an analysis of the time required to complete projects, project savings or costs, necessary increases or decreases in staffing, if any, and any other benefits or detriments regarding the delegation of authority under G.S. 116-31.11. The evaluation shall also include recommendations regarding the continuance of the delegated powers, continuance with modifications, expansion, or discontinuance. The Office of State Budget and Management and the State Building Commission shall jointly report their findings and recommendations to the Board of Governors of The University of North Carolina and to the General Assembly by April 15, 2001.

(b) The Board of Governors of The University of North Carolina shall report to the Joint Legislative Commission on Governmental Operations, the State Building Commission, and the Director of the Budget no later than December 1, 1997, on the procedures it intends to implement pursuant to G.S. 116-31.11, as enacted in Section 1 of this act. The State Building Commission shall report to the General Assembly no later than June 1, 1998, with respect to action taken pursuant to G.S. 116-31.11(a)(3) and (b).

Section 13. The Office of State Budget and Management shall evaluate the effectiveness and efficiency of the increase of the purchasing benchmark and its delegation to the special responsibility constituent institutions under G.S. 116-31.10 and other agencies under G.S. 143-53.1 and G.S. 143-53(a)(2). In its evaluation, the

Office of State Budget and Management shall consider such factors as costs of goods and services purchased, administrative costs, effective time for completion of the purchasing process, agency satisfaction, vendor reactions, and other factors it deems appropriate. The Office of State Budget and Management shall report its findings and recommendations to the General Assembly by April 15, 2001.

Section 14. This section and Section 12(b) of this act are effective when they become law. Section 5.1 becomes effective July 1, 2001. The remainder of this act becomes effective January 1, 1998. Sections 6, 7, 8, 10, and 11 of this act and G.S. 116-31.11, as enacted by Section 1 of this act, expire July 1, 2001.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 862
Judiciary Committee Substitute Adopted 4/28/97
Proposed House Committee Substitute S862-PCS2794

Short Title: UNC Contracts Negotiations. (Public)

Sponsors:

Referred to:

April 15, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE GREATER FLEXIBILITY TO THE UNIVERSITY OF NORTH CAROLINA AND OTHER AGENCIES IN NEGOTIATING CERTAIN CONTRACTS AND CAPITAL PROJECTS, TO INCREASE THE BENCHMARK FOR PURCHASES BY THE UNIVERSITY OF NORTH CAROLINA AND OTHER STATE AGENCIES, AND TO AUTHORIZE EMPLOYEE PAYROLL DEDUCTIONS FOR CERTAIN DISCRETIONARY PRIVILEGES OF UNIVERSITY SERVICE AT THE UNIVERSITY OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. Article 1 of Chapter 116 of the General Statutes is amended by adding two new sections to read:

"**§ 116-31.10. Powers of Board regarding certain purchasing contracts.**

Notwithstanding G.S. 143-53.1 or G.S. 143-53(a)(2), the expenditure benchmark for a special responsibility constituent institution with regard to competitive bid procedures and the bid value benchmark shall be an amount not greater than two hundred fifty thousand dollars ($250,000). The Board shall set the benchmark for each institution from time to time. In setting an institution's benchmark in accordance with this section, the Board shall consider the institution's overall capabilities including staff resources, purchasing compliance reviews, and audit reports. The Board shall also consult with the Director of the Division of Purchase and Contract and the Director of the Budget prior to setting the benchmark.

"**§ 116-31.11. Powers of Board regarding certain fee negotiations, contracts, and capital improvements.**

(a) Notwithstanding G.S. 143-341(3) and G.S. 143-135.1, the Board shall, with respect to the design, construction, or renovation of buildings, utilities, and other property developments of The University of North Carolina requiring the estimated expenditure of public money of five hundred thousand dollars ($500,000) or less:

(1) Conduct the fee negotiations for all design contracts and supervise the letting of all construction and design contracts.

(2) Develop procedures governing the responsibilities of The University of North Carolina and its affiliated and constituent institutions to perform the duties of the Department of Administration and the Director or Office of State Construction under G.S. 133-1.1(d) and G.S. 143-341(3).

(3) Develop procedures and reasonable limitations governing the use of open-end design agreements, subject to G.S. 143-64.34 and the approval of the State Building Commission.

(b) The Board may delegate its authority under subsection (a) of this section to a constituent or affiliated institution if the institution is qualified under guidelines adopted by the Board and approved by the State Building Commission and the Director of the Budget.

(c) The University shall use the standard contracts for design and construction currently in use for State capital improvement projects by the Office of State Construction of the Department of Administration.

(d) A contract may not be divided for the purpose of evading the monetary limit under this section."

Section 2. G.S. 143-52 reads as rewritten:

"**§ 143-52. Competitive bidding procedure; consolidation of estimates by Secretary; bids; awarding of contracts.**

As feasible, the Secretary of Administration will compile and consolidate all such estimates of supplies, materials, printing, equipment and contractual services needed and required by State departments, institutions and agencies to determine the total requirements of any given commodity. Where such total requirements will involve an expenditure in excess of the expenditure benchmark established under the provisions of G.S. 143-53.1 and where the competitive bidding procedure is employed as hereinafter provided, sealed bids shall be solicited by advertisement in a newspaper ~~of statewide circulation~~ widely distributed in this State or through electronic means, or both, as determined by the Secretary to be most advantageous, at least once and at least 10 days prior to the date designated for opening. ~~opening of the bids and awarding of the contract: Provided, other methods of advertisement may be adopted by the Secretary of Administration when such other method is deemed more advantageous for certain items or commodities. Regardless of the amount of the expenditure, under the competitive bidding procedure it shall be the duty of the Secretary of Administration to solicit bids direct by mail from qualified sources of supply.~~ Except as otherwise provided under this Article, contracts for the purchase of

supplies, materials or equipment shall be based on competitive bids and acceptance made of the lowest and best bid(s) most advantageous to the State as determined upon consideration of the following criteria: prices offered; the quality of the articles offered; the general reputation and performance capabilities of the bidders; the substantial conformity with the specifications and other conditions set forth in the request for bids; the suitability of the articles for the intended use; the personal or related services needed; the transportation charges; the date or dates of delivery and performance; and such other factor(s) deemed pertinent or peculiar to the purchase in question, which if controlling shall be made a matter of record. Competitive bids on such contracts shall be received in accordance with rules and regulations to be adopted by the Secretary of Administration, which rules and regulations shall prescribe for the manner, time and place for proper advertisement for such bids, the time and place when bids will be received, the articles for which such bids are to be submitted and the specifications prescribed for such articles, the number of the articles desired or the duration of the proposed contract, and the amount, if any, of bonds or certified checks to accompany the bids. Bids shall be publicly opened. Any and all bids received may be rejected. Each and every bid conforming to the terms of the invitation, together with the name of the bidder, shall be tabulated ~~or otherwise entered as a matter of record, and all such records with the name of the successful bidder indicated thereon shall, after the award of the contract, be open to public inspection.~~ and that tabulation shall become public record in accordance with the rules adopted by the Secretary. All contract information shall be made a matter of public record after the award of contract. Provided, that trade secrets, test data and similar proprietary information may remain confidential. A bond for the faithful performance of any contract may be required of the successful bidder at bidder's expense and in the discretion of the Secretary of Administration. After contracts have been awarded, the Secretary of Administration shall certify to the departments, institutions and agencies of the State government the sources of supply and the contract price of the supplies, materials and equipment so contracted for. Prior to adopting other methods of advertisement under this section, the Secretary of Administration may consult with the Advisory Budget Commission. Prior to adopting rules and regulations under this section, the Secretary of Administration may consult with the Advisory Budget Commission."

Section 3. G.S. 143-53(a) reads as rewritten:

"(a) The Secretary of Administration may adopt rules governing the following:

(1) Prescribing the routine and procedures to be followed in canvassing bids and awarding contracts, and for reviewing decisions made pursuant thereto, and the decision of the reviewing body shall be the final administrative review.

(2) Prescribing ~~routine~~ routine, including consistent contract language, for securing bids on items that do not exceed the bid value benchmark established under the provisions of G.S. ~~143-53.1.~~ 143-53.1 or G.S. 116-31.10.

The purchasing delegation for securing offers, (excluding the special responsibility constituent institutions of The University of North Carolina), for each State department, institution, agency, community college, and public school administrative unit shall be determined by the Director of the Division of Purchase and Contract. For the State agencies this shall be done following the Director's consultation with the State Budget Officer and the State Auditor. The Director for the Division of Purchase and Contract may set or lower the delegation, or raise the delegation upon written request by the agency, after consideration of their overall capabilities, including staff resources, purchasing compliance reviews, and audit reports of the individual agency. The routine prescribed by the Secretary shall include contract award protest procedures and consistent requirements for advertising of solicitations for securing offers issued by State departments, institutions, universities (including the special responsibility constituent institutions of The University of North Carolina), agencies, community colleges, and the public school administrative units.

(3) Defining contractual services for the purposes of G.S. ~~143-49(3).~~ 143-49(3) and G.S. 143-49(5).

(4) Prescribing items and quantities, and conditions and procedures, governing the acquisition of goods and services which may be delegated to departments, institutions and agencies, notwithstanding any other provisions of this Article.

(5) Prescribing conditions under which purchases and contracts for the purchase, rental or lease of equipment, materials, supplies or services may be entered into by means other than competitive bidding.

(6) Prescribing conditions under which partial, progressive and multiple awards may be made.

(7) Prescribing conditions and procedures governing the purchase of used equipment, materials and supplies.

(8) Providing conditions under which bids may be rejected in whole or in part.

(9) Prescribing conditions under which information submitted by bidders or suppliers may be considered proprietary or confidential.

(10) Prescribing procedures for making purchases under programs involving participation by two or more levels or agencies of government, or otherwise with funds other than State-appropriated.

(11) Prescribing procedures to encourage the purchase of North Carolina farm products, and products of North Carolina manufacturing enterprises.

(12) Repealed by Session Laws 1987, c. 827, s. 216."

Section 4. G.S. 143-53.1 reads as rewritten:

"**§ 143-53.1. Setting of benchmarks; increase by Secretary.**

On and after July 1, ~~1990,~~ 1997, the ~~expenditure benchmark~~ procedures prescribed by G.S. 143-52 with respect to competitive ~~bid procedures~~ bids and the bid value benchmark authorized by G.S. ~~143-53(2)~~ 143-53(a)(2) with respect to rule making by the Secretary of Administration for competitive bidding shall be ~~ten thousand dollars ($10,000);~~ no more than twenty-five thousand dollars ($25,000); provided, the Secretary of Administration may, in his or her discretion, increase the benchmarks effective as of the beginning of any fiscal biennium of the State commencing after June 30, ~~1992,~~ 1999, in an amount whose increase, expressed as a percentage, does not exceed the rise in the Consumer Price Index during the fiscal biennium next preceding the effective date of the benchmark increase. For a special responsibility constituent institution of The University of North Carolina, the benchmark prescribed in this section shall be ~~thirty-five thousand dollars ($35,000).~~ as provided in G.S. 116-31.10."

Section 5. G.S. 143-64.34 as amended by S.L. 1997-314 reads as rewritten:

"**§ 143-64.34. Exemption of certain ~~State Capital Improvement Projects.~~ projects.**

(a) State Capital Improvement Projects under the jurisdiction of the State Building Commission where the estimated expenditure of public money is less than one hundred thousand dollars ($100,000) are exempt from the provisions of this Article.

(b) A capital improvement project of The University of North Carolina under G.S. 116-31.11 where the estimated expenditure of public money is less than three hundred thousand dollars ($300,000) is exempt from this Article if:

(1) The architectural, engineering, or surveying services to be rendered are under an open-end design agreement;

(2) The open-end design agreement has been publicly announced; and

(3) The open-end design agreement complies with procedures adopted by the University and approved by the State Building Commission under G.S. 116-31.11(a)(3)."

Section 5.1. Effective July 1, 2001, G.S. 143-64.34, as amended by Section 5 of this act, reads as rewritten:

"**§ 143-64.34. Exemption of certain projects.**

~~(a)~~ State Capital Improvement Projects under the jurisdiction of the State Building Commission where the estimated expenditure of public money is less than hundred thousand dollars ($100,000) are exempt from the provisions of this Article.

~~(b) A capital improvement project of the University of North Carolina under G.S. 116-31.11 where the estimated expenditure of public money is less than three hundred thousand dollars ($300,000) is exempt from this Article if:~~

~~(1) The architectural, engineering, or surveying services to be rendered are under an open-end design agreement;~~

~~(2) The open-end design agreement has been publicly announced; and~~

~~(3) The open-end design agreement complies with procedures adopted by the University and approved by the State Building Commission under G.S. 116-31.11(a)(3).~~"

Section 6. G.S. 143-341(3) reads as rewritten:

"(3) Architecture and Engineering:

a. To examine and approve all plans and specifications for the construction or renovation of:

1. All State buildings; and

2. All community college buildings requiring the estimated expenditure for construction or repair work for which public bidding is required under G.S. 143-129

prior to the awarding of a contract for such work; and to examine and approve all changes in those plans and specifications made after the contract for such work has been awarded.

b. To prepare preliminary studies and cost estimates and otherwise to assist all agencies in the preparation of requests for appropriations for the construction or renovation of all State buildings.

c. To supervise the letting of all contracts for the design, construction or renovation of all State buildings and all community college buildings whose plans and specifications must be examined and approved under a.2. of this subdivision.

d. To supervise and inspect all work done and materials used in the construction or renovation of all State buildings and all community college buildings whose plans and specifications must be examined and approved under a.2. of this subdivision; and no such work may be accepted by the State or by any State agency until it has been approved by the Department.

Except for sub-subdivision b., this subdivision does not apply to the design, construction, or renovation or projects by The University of North Carolina pursuant to G.S. 116-31.11."

Section 7. G.S. 143-135.3 reads as rewritten:

"**§ 143-135.3. Adjustment and resolution of State board construction contract claim.**

(a) The word 'board' as used in this section shall mean the State of North Carolina or any board, bureau, commission, institution, or other agency of the State, as distinguished from a board or governing body of a subdivision of the State. 'A contract for construction or repair work,' as used in this section, is defined as any contract for the construction of buildings and appurtenances thereto, including, but not by way of limitation, utilities, plumbing, heating, electrical, air conditioning, elevator, excavation, grading, paving, roofing, masonry work, tile work and painting,

and repair work as well as any contract for the construction of airport runways, taxiways and parking aprons, sewer and water mains, power lines, docks, wharves, dams, drainage canals, telephone lines, streets, site preparation, parking areas and other types of construction on which the Department of Administration or The University of North Carolina enters into contracts.

'Contractor' as used in this section includes any person, firm, association or corporation which has contracted with a State board for architectural, engineering or other professional services in connection with construction or repair work as well as those persons who have contracted to perform such construction or repair work.

(b) A contractor who has not completed a contract with a board for construction or repair work and who has not received the amount he claims is due under the contract may submit a verified written claim to the Director of the Office of State Construction of the Department of Administration for the amount the contractor claims is due. The Director may deny, allow, or compromise the claim, in whole or in part. A claim under this subsection is not a contested case under Chapter 150B of the General Statutes.

(c) A contractor who has completed a contract with a board for construction or repair work and who has not received the amount he claims is due under the contract may submit a verified written claim to the Director of the Office of State Construction of the Department of Administration for the amount the contractor claims is due. The claim shall be submitted within 60 days after the contractor receives a final statement of the board's disposition of his claim and shall state the factual basis for the claim.

The Director shall investigate a submitted claim within 90 days of receiving the claim, or within any longer time period upon which the Director and the contractor agree. The contractor may appear before the Director, either in person or through counsel, to present facts and arguments in support of his claim. The Director may allow, deny, or compromise the claim, in whole or in part. The Director shall give the contractor a written statement of the Director's decision on the contractor's claim.

A contractor who is dissatisfied with the Director's decision on a claim submitted under this subsection may commence a contested case on the claim under Chapter 150B of the General Statutes. The contested case shall be commenced within 60 days of receiving the Director's written statement of the decision.

(c1) A contractor who is dissatisfied with the Director's decision on a claim submitted under subsection (c) of this section may commence a contested case on the claim under Chapter 150B of the General Statutes. The contested case shall be commenced within 60 days of receiving the Director's written statement of the decision.

(d) As to any portion of a claim that is denied by the Director, the contractor may, in lieu of the procedures set forth in the preceding subsection of this section, within six months of receipt of the Director's final decision, institute a civil action for the sum he claims to be entitled to under the contract by filing a verified complaint and the issuance of a summons in the Superior Court of Wake County or in the

superior court of any county where the work under the contract was performed. The procedure shall be the same as in all civil actions except that all issues shall be tried by the judge, without a jury.

(e) The provisions of this section are part of every contract for construction or repair work made by a board and a contractor. A provision in a contract that conflicts with this section is invalid."

Section 8. G.S. 150B-1(f) reads as rewritten:

"(f) Exemption ~~from All But Judicial Review.~~ for The University of North Carolina. -- ~~No~~ Except as provided in G.S. 143-135.3, no Article in this Chapter except Article 4 applies to The University of North Carolina."

Section 9. G.S. 143-3.3 is amended by adding a new subsection to read:

"(k) Payroll Deduction for University of North Carolina System Employees to Pay for Discretionary Privileges of University Service. -- Subject to rules adopted by the State Controller, if a constituent institution of The University of North Carolina approves a payroll deduction plan under this subsection, an employee of the constituent institution may authorize, in writing, the periodic deduction from the employee's salary or wages paid for employment by the constituent institution, of one or more designated lump sums to be applied to the cost of corresponding discretionary privileges available at employee expense from the employing institution. Discretionary privileges from the employing institution that may be paid for through this subsection include parking privileges, athletic passes, use of recreational facilities, admission to campus concert series, and access to other institutionally hosted or provided entertainments, events, and facilities."

Section 10. G.S. 143-135.1 reads as rewritten:

"**§ 143-135.1. State buildings exempt from county and municipal building requirements; consideration of recommendations by counties and municipalities.**

(a) Buildings constructed by the State of North Carolina or by any agency or institution of the State in accordance with plans and specifications approved by the Department of Administration or by The University of North Carolina or one of its affiliated or constituent institutions pursuant to G.S. 116-31.11 shall not be subject to inspection by any county or municipal authorities and shall not be subject to county or municipal building codes and requirements.

(b) Inspection fees fixed by counties and municipalities shall not be applicable to such construction by the State of North Carolina. County and municipal authorities may inspect any plans or specifications upon their request to the Department of ~~Administration,~~ Administration or, with respect to projects under G.S. 116-31.11, The University of North Carolina, and any and all recommendations made by them shall be given ~~consideration by the Department of Administration.~~ consideration. Requests by county and municipal authorities to inspect plans and specifications for State projects shall be on the basis of a specific project. Should any agency or institution of the State require the services of county or municipal authorities, notice shall be given for the need of such services, and appropriate fees for such services shall be paid to the county or municipality; provided, however, that the application for such services to be rendered by any county or municipality shall have prior written approval of the

Department of ~~Administration.~~ Administration, or with respect to projects under G.S. 116-31.11, The University of North Carolina.

(c) Notwithstanding any law to the contrary, including any local act, no county or municipality may impose requirements that exceed the North Carolina State Building Code regarding the design or construction of buildings constructed by the State of North Carolina."

Section 11. G.S. 133-1.1(d) reads as rewritten:

"(d) On projects on which no registered architect or engineer is required pursuant to the provisions of this section, the governing board or awarding authority shall require a certificate of compliance with the State Building Code from the city or county inspector for the specific trade or trades involved or from a registered architect or engineer, except that the provisions of this subsection shall not apply on projects (i) wherein plans and specifications are approved by the Department of Administration, Division of State Construction, and the completed project is inspected by the Division of State Construction and the State Electrical Inspector, ~~or on projects~~ (ii) that are exempt from the State Building ~~Code.~~ Code, or (iii) that are subject to G.S. 116-31.11 and the completed project is inspected by the State Electrical Inspector and by The University of North Carolina or its constituent or affiliated institution."

Section 12. (a) The Office of State Budget and Management and the State Building Commission shall evaluate the process and quality of construction completed under G.S. 116-31.11 as enacted by this act. The evaluation shall include an analysis of the time required to complete projects, project savings or costs, necessary increases or decreases in staffing, if any, and any other benefits or detriments regarding the delegation of authority under G.S. 116-31.11. The evaluation shall also include recommendations regarding the continuance of the delegated powers, continuance with modifications, expansion, or discontinuance. The Office of State Budget and Management and the State Building Commission shall jointly report their findings and recommendations to the Board of Governors of The University of North Carolina and to the General Assembly by April 15, 2001.

(b) The Board of Governors of The University of North Carolina shall report to the Joint Legislative Commission on Governmental Operations, the State Building Commission, and the Director of the Budget no later than December 1, 1997, on the procedures it intends to implement pursuant to G.S. 116-31.11, as enacted in Section 1 of this act. The State Building Commission shall report to the General Assembly no later than June 1, 1998, with respect to action taken pursuant to G.S. 116-31.11(a)(3) and (b).

Section 13. The Office of State Budget and Management shall evaluate the effectiveness and efficiency of the increase of the purchasing benchmark and its delegation to the special responsibility constituent institutions under G.S. 116-31.10 and other agencies under G.S. 143-53.1 and G.S. 143-53(a)(2). In its evaluation, the Office of State Budget and Management shall consider such factors as costs of goods and services purchased, administrative costs, effective time for completion of the purchasing process, agency satisfaction, vendor reactions, and other factors it deems

appropriate. The Office of State Budget and Management shall report its findings and recommendations to the General Assembly by April 15, 2001.

Section 14. This section and Section 12(b) of this act are effective when they become law. Section 5.1 becomes effective July 1, 2001. The remainder of this act becomes effective January 1, 1998. Sections 6, 7, 8, 10, and 11 of this act and G.S. 116-31.11, as enacted by Section 1 of this act, expire July 1, 2001.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 3

SENATE BILL 862
Judiciary Committee Substitute Adopted 4/28/97
House Committee Substitute Favorable 6/26/97

Short Title: UNC Contracts Negotiations. (Public)

Sponsors:

Referred to:

April 15, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE GREATER FLEXIBILITY TO THE UNIVERSITY OF NORTH CAROLINA AND OTHER AGENCIES IN NEGOTIATING CERTAIN CONTRACTS AND CAPITAL PROJECTS, TO INCREASE THE BENCHMARK FOR PURCHASES BY THE UNIVERSITY OF NORTH CAROLINA AND OTHER STATE AGENCIES, AND TO AUTHORIZE EMPLOYEE PAYROLL DEDUCTIONS FOR CERTAIN DISCRETIONARY PRIVILEGES OF UNIVERSITY SERVICE AT THE UNIVERSITY OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. Article 1 of Chapter 116 of the General Statutes is amended by adding two new sections to read:

"**§ 116-31.10. Powers of Board regarding certain purchasing contracts.**

Notwithstanding G.S. 143-53.1 or G.S. 143-53(a)(2), the expenditure benchmark for a special responsibility constituent institution with regard to competitive bid procedures and the bid value benchmark shall be an amount not greater than two hundred fifty thousand dollars ($250,000). The Board shall set the benchmark for each institution from time to time. In setting an institution's benchmark in accordance with this section, the Board shall consider the institution's overall capabilities including staff resources, purchasing compliance reviews, and audit reports. The Board shall also consult with the Director of the Division of Purchase and Contract and the Director of the Budget prior to setting the benchmark.

"§ 116-31.11. Powers of Board regarding certain fee negotiations, contracts, and capital improvements.

(a) Notwithstanding G.S. 143-341(3), 143-135.1, and 143-31.1, the Board shall, with respect to the design, construction, or renovation of buildings, utilities, and other property developments of The University of North Carolina requiring the estimated expenditure of public money of five hundred thousand dollars ($500,000) or less:

(1) Conduct the fee negotiations for all design contracts and supervise the letting of all construction and design contracts.

(2) Develop procedures governing the responsibilities of The University of North Carolina and its affiliated and constituent institutions to perform the duties of the Department of Administration, the Director of the Budget, and the Director or Office of State Construction under G.S. 133-1.1(d), 143-341(3), and 143-31.1.

(3) Develop procedures and reasonable limitations governing the use of open-end design agreements, subject to G.S. 143-64.34 and the approval of the State Building Commission.

(b) The Board may delegate its authority under subsection (a) of this section to a constituent or affiliated institution if the institution is qualified under guidelines adopted by the Board and approved by the State Building Commission and the Director of the Budget.

(c) The University shall use the standard contracts for design and construction currently in use for State capital improvement projects by the Office of State Construction of the Department of Administration.

(d) A contract may not be divided for the purpose of evading the monetary limit under this section."

Section 2. G.S. 143-52 reads as rewritten:

"**§ 143-52. Competitive bidding procedure; consolidation of estimates by Secretary; bids; awarding of contracts.**

As feasible, the Secretary of Administration will compile and consolidate all such estimates of supplies, materials, printing, equipment and contractual services needed and required by State departments, institutions and agencies to determine the total requirements of any given commodity. Where such total requirements will involve an expenditure in excess of the expenditure benchmark established under the provisions of G.S. 143-53.1 and where the competitive bidding procedure is employed as hereinafter provided, sealed bids shall be solicited by advertisement in a newspaper ~~of statewide circulation~~ widely distributed in this State or through electronic means, or both, as determined by the Secretary to be most advantageous, at least once and at least 10 days prior to the date designated for opening. ~~opening of the bids and awarding of the contract: Provided, other methods of advertisement may be adopted by the Secretary of Administration when such other method is deemed more advantageous for certain items or commodities. Regardless of the amount of the expenditure, under the competitive bidding procedure it shall be the duty of the Secretary of Administration to solicit bids direct by mail from qualified sources of~~

~~supply.~~ Except as otherwise provided under this Article, contracts for the purchase of supplies, materials or equipment shall be based on competitive bids and acceptance made of the lowest and best bid(s) most advantageous to the State as determined upon consideration of the following criteria: prices offered; the quality of the articles offered; the general reputation and performance capabilities of the bidders; the substantial conformity with the specifications and other conditions set forth in the request for bids; the suitability of the articles for the intended use; the personal or related services needed; the transportation charges; the date or dates of delivery and performance; and such other factor(s) deemed pertinent or peculiar to the purchase in question, which if controlling shall be made a matter of record. Competitive bids on such contracts shall be received in accordance with rules and regulations to be adopted by the Secretary of Administration, which rules and regulations shall prescribe for the manner, time and place for proper advertisement for such bids, the time and place when bids will be received, the articles for which such bids are to be submitted and the specifications prescribed for such articles, the number of the articles desired or the duration of the proposed contract, and the amount, if any, of bonds or certified checks to accompany the bids. Bids shall be publicly opened. Any and all bids received may be rejected. Each and every bid conforming to the terms of the invitation, together with the name of the bidder, shall be tabulated ~~or otherwise entered as a matter of record, and all such records with the name of the successful bidder indicated thereon shall, after the award of the contract, be open to public inspection.~~ and that tabulation shall become public record in accordance with the rules adopted by the Secretary. All contract information shall be made a matter of public record after the award of contract. Provided, that trade secrets, test data and similar proprietary information may remain confidential. A bond for the faithful performance of any contract may be required of the successful bidder at bidder's expense and in the discretion of the Secretary of Administration. After contracts have been awarded, the Secretary of Administration shall certify to the departments, institutions and agencies of the State government the sources of supply and the contract price of the supplies, materials and equipment so contracted for. Prior to adopting other methods of advertisement under this section, the Secretary of Administration may consult with the Advisory Budget Commission. Prior to adopting rules and regulations under this section, the Secretary of Administration may consult with the Advisory Budget Commission."

Section 3. G.S. 143-53(a) reads as rewritten:

"(a) The Secretary of Administration may adopt rules governing the following:

(1) Prescribing the routine and procedures to be followed in canvassing bids and awarding contracts, and for reviewing decisions made pursuant thereto, and the decision of the reviewing body shall be the final administrative review.

(2) Prescribing ~~routine~~ routine, including consistent contract language, for securing bids on items that do not exceed the bid value benchmark established under the provisions of G.S. ~~143-53.1.~~ 143-53.1 or G.S. 116-31.10.

The purchasing delegation for securing offers, (excluding the special responsibility constituent institutions of The University of North Carolina), for each State department, institution, agency, community college, and public school administrative unit shall be determined by the Director of the Division of Purchase and Contract. For the State agencies this shall be done following the Director's consultation with the State Budget Officer and the State Auditor. The Director for the Division of Purchase and Contract may set or lower the delegation, or raise the delegation upon written request by the agency, after consideration of their overall capabilities, including staff resources, purchasing compliance reviews, and audit reports of the individual agency. The routine prescribed by the Secretary shall include contract award protest procedures and consistent requirements for advertising of solicitations for securing offers issued by State departments, institutions, universities (including the special responsibility constituent institutions of The University of North Carolina), agencies, community colleges, and the public school administrative units.

(3) Defining contractual services for the purposes of G.S. ~~143-49(3).~~ 143-49(3) and G.S. 143-49(5).

(4) Prescribing items and quantities, and conditions and procedures, governing the acquisition of goods and services which may be delegated to departments, institutions and agencies, notwithstanding any other provisions of this Article.

(5) Prescribing conditions under which purchases and contracts for the purchase, rental or lease of equipment, materials, supplies or services may be entered into by means other than competitive bidding.

(6) Prescribing conditions under which partial, progressive and multiple awards may be made.

(7) Prescribing conditions and procedures governing the purchase of used equipment, materials and supplies.

(8) Providing conditions under which bids may be rejected in whole or in part.

(9) Prescribing conditions under which information submitted by bidders or suppliers may be considered proprietary or confidential.

(10) Prescribing procedures for making purchases under programs involving participation by two or more levels or agencies of government, or otherwise with funds other than State-appropriated.

(11) Prescribing procedures to encourage the purchase of North Carolina farm products, and products of North Carolina manufacturing enterprises.

(12) Repealed by Session Laws 1987, c. 827, s. 216."

Section 4. G.S. 143-53.1 reads as rewritten:

"**§ 143-53.1. Setting of benchmarks; increase by Secretary.**

On and after July 1, ~~1990,~~ 1997, the ~~expenditure benchmark~~ procedures prescribed by G.S. 143-52 with respect to competitive ~~bid procedures~~ bids and the bid value benchmark authorized by G.S. ~~143-53(2)~~ 143-53(a)(2) with respect to rule making by the Secretary of Administration for competitive bidding shall be ~~ten thousand dollars ($10,000);~~ no more than twenty-five thousand dollars ($25,000); provided, the Secretary of Administration may, in his or her discretion, increase the benchmarks effective as of the beginning of any fiscal biennium of the State commencing after June 30, ~~1992,~~ 1999, in an amount whose increase, expressed as a percentage, does not exceed the rise in the Consumer Price Index during the fiscal biennium next preceding the effective date of the benchmark increase. For a special responsibility constituent institution of The University of North Carolina, the benchmark prescribed in this section shall be ~~thirty-five thousand dollars ($35,000).~~ as provided in G.S. 116-31.10."

Section 5. G.S. 143-64.34 reads as rewritten:

"**§ 143-64.34. Exemption of certain ~~State Capital Improvement Projects.~~ projects.**

(a) State Capital Improvement Projects under the jurisdiction of the State Building Commission where the estimated expenditure of public money is less than ~~fifty thousand dollars ($50,000)~~ one hundred thousand dollars ($100,000) are exempt from the provisions of this Article.

(b) A capital improvement project of The University of North Carolina under G.S. 116-31.11 where the estimated expenditure of public money is less than three hundred thousand dollars ($300,000) is exempt from this Article if:

(1) The architectural, engineering, or surveying services to be rendered are under an open-end design agreement;

(2) The open-end design agreement has been publicly announced; and

(3) The open-end design agreement complies with procedures adopted by the University and approved by the State Building Commission under G.S. 116-31.11(a)(3)."

Section 5.1. Effective July 1, 2001, G.S. 143-64.34, as amended by Section 5 of this act, reads as rewritten:

"**§ 143-64.34. Exemption of certain projects.**

~~(a)~~ State Capital Improvement Projects under the jurisdiction of the State Building Commission where the estimated expenditure of public money is less than hundred thousand dollars ($100,000) are exempt from the provisions of this Article.

~~(b) A capital improvement project of the University of North Carolina under G.S. 116-31.11 where the estimated expenditure of public money is less than three hundred thousand dollars ($300,000) is exempt from this Article if:~~

~~(1) The architectural, engineering, or surveying services to be rendered are under an open-end design agreement;~~

~~(2) The open-end design agreement has been publicly announced; and~~

~~(3) The open-end design agreement complies with procedures adopted by the University and approved by the State Building Commission under G.S. 116-31.11(a)(3).~~"

Section 6. G.S. 143-341(3) reads as rewritten:

"(3) Architecture and Engineering:

a. To examine and approve all plans and specifications for the construction or renovation of:

1. All State buildings; and

2. All community college buildings requiring the estimated expenditure for construction or repair work for which public bidding is required under G.S. 143-129

prior to the awarding of a contract for such work; and to examine and approve all changes in those plans and specifications made after the contract for such work has been awarded.

b. To prepare preliminary studies and cost estimates and otherwise to assist all agencies in the preparation of requests for appropriations for the construction or renovation of all State buildings.

c. To supervise the letting of all contracts for the design, construction or renovation of all State buildings and all community college buildings whose plans and specifications must be examined and approved under a.2. of this subdivision.

d. To supervise and inspect all work done and materials used in the construction or renovation of all State buildings and all community college buildings whose plans and specifications must be examined and approved under a.2. of this subdivision; and no such work may be accepted by the State or by any State agency until it has been approved by the Department.

Except for sub-subdivision b., this subdivision does not apply to the design, construction, or renovation or projects by The University of North Carolina pursuant to G.S. 116-31.11."

Section 7. G.S. 143-135.3 reads as rewritten:

"**§ 143-135.3. Adjustment and resolution of State board construction contract claim.**

(a) The word 'board' as used in this section shall mean the State of North Carolina or any board, bureau, commission, institution, or other agency of the State, as distinguished from a board or governing body of a subdivision of the State. 'A contract for construction or repair work,' as used in this section, is defined as any contract for the construction of buildings and appurtenances thereto, including, but not by way of limitation, utilities, plumbing, heating, electrical, air conditioning, elevator, excavation, grading, paving, roofing, masonry work, tile work and painting,

and repair work as well as any contract for the construction of airport runways, taxiways and parking aprons, sewer and water mains, power lines, docks, wharves, dams, drainage canals, telephone lines, streets, site preparation, parking areas and other types of construction on which the Department of Administration or The University of North Carolina enters into contracts.

'Contractor' as used in this section includes any person, firm, association or corporation which has contracted with a State board for architectural, engineering or other professional services in connection with construction or repair work as well as those persons who have contracted to perform such construction or repair work.

(b) A contractor who has not completed a contract with a board for construction or repair work and who has not received the amount he claims is due under the contract may submit a verified written claim to the Director of the Office of State Construction of the Department of Administration for the amount the contractor claims is due. The Director may deny, allow, or compromise the claim, in whole or in part. A claim under this subsection is not a contested case under Chapter 150B of the General Statutes.

(c) A contractor who has completed a contract with a board for construction or repair work and who has not received the amount he claims is due under the contract may submit a verified written claim to the Director of the Office of State Construction of the Department of Administration for the amount the contractor claims is due. The claim shall be submitted within 60 days after the contractor receives a final statement of the board's disposition of his claim and shall state the factual basis for the claim.

The Director shall investigate a submitted claim within 90 days of receiving the claim, or within any longer time period upon which the Director and the contractor agree. The contractor may appear before the Director, either in person or through counsel, to present facts and arguments in support of his claim. The Director may allow, deny, or compromise the claim, in whole or in part. The Director shall give the contractor a written statement of the Director's decision on the contractor's claim.

A contractor who is dissatisfied with the Director's decision on a claim submitted under this subsection may commence a contested case on the claim under Chapter 150B of the General Statutes. The contested case shall be commenced within 60 days of receiving the Director's written statement of the decision.

(c1) A contractor who is dissatisfied with the Director's decision on a claim submitted under subsection (c) of this section may commence a contested case on the claim under Chapter 150B of the General Statutes. The contested case shall be commenced within 60 days of receiving the Director's written statement of the decision.

(d) As to any portion of a claim that is denied by the Director, the contractor may, in lieu of the procedures set forth in the preceding subsection of this section, within six months of receipt of the Director's final decision, institute a civil action for the sum he claims to be entitled to under the contract by filing a verified complaint and the issuance of a summons in the Superior Court of Wake County or in the

superior court of any county where the work under the contract was performed. The procedure shall be the same as in all civil actions except that all issues shall be tried by the judge, without a jury.

(e) The provisions of this section are part of every contract for construction or repair work made by a board and a contractor. A provision in a contract that conflicts with this section is invalid."

Section 8. G.S. 150B-1(f) reads as rewritten:

"(f) Exemption ~~from All But Judicial Review.~~ for The University of North Carolina. -- ~~No~~ Except as provided in G.S. 143-135.3, no Article in this Chapter except Article 4 applies to The University of North Carolina."

Section 9. G.S. 143-3.3 is amended by adding a new subsection to read:

"(k) Payroll Deduction for University of North Carolina System Employees to Pay for Discretionary Privileges of University Service. -- Subject to rules adopted by the State Controller, if a constituent institution of The University of North Carolina approves a payroll deduction plan under this subsection, an employee of the constituent institution may authorize, in writing, the periodic deduction from the employee's salary or wages paid for employment by the constituent institution, of one or more designated lump sums to be applied to the cost of corresponding discretionary privileges available at employee expense from the employing institution. Discretionary privileges from the employing institution that may be paid for through this subsection include parking privileges, athletic passes, use of recreational facilities, admission to campus concert series, and access to other institutionally hosted or provided entertainments, events, and facilities."

Section 10. G.S. 143-135.1 reads as rewritten:

"**§ 143-135.1. State buildings exempt from county and municipal building requirements; consideration of recommendations by counties and municipalities.**

(a) Buildings constructed by the State of North Carolina or by any agency or institution of the State in accordance with plans and specifications approved by the Department of Administration or by The University of North Carolina or one of its affiliated or constituent institutions pursuant to G.S. 116-31.11 shall not be subject to inspection by any county or municipal authorities and shall not be subject to county or municipal building codes and requirements.

(b) Inspection fees fixed by counties and municipalities shall not be applicable to such construction by the State of North Carolina. County and municipal authorities may inspect any plans or specifications upon their request to the Department of ~~Administration,~~ Administration or, with respect to projects under G.S. 116-31.11, The University of North Carolina, and any and all recommendations made by them shall be given ~~consideration by the Department of Administration.~~ consideration. Requests by county and municipal authorities to inspect plans and specifications for State projects shall be on the basis of a specific project. Should any agency or institution of the State require the services of county or municipal authorities, notice shall be given for the need of such services, and appropriate fees for such services shall be paid to the county or municipality; provided, however, that the application for such services to be rendered by any county or municipality shall have prior written approval of the

Department of ~~Administration.~~ Administration, or with respect to projects under G.S. 116-31.11, The University of North Carolina.

(c) Notwithstanding any law to the contrary, including any local act, no county or municipality may impose requirements that exceed the North Carolina State Building Code regarding the design or construction of buildings constructed by the State of North Carolina."

Section 11. G.S. 133-1.1(d) reads as rewritten:

"(d) On projects on which no registered architect or engineer is required pursuant to the provisions of this section, the governing board or awarding authority shall require a certificate of compliance with the State Building Code from the city or county inspector for the specific trade or trades involved or from a registered architect or engineer, except that the provisions of this subsection shall not apply on projects (i) wherein plans and specifications are approved by the Department of Administration, Division of State Construction, and the completed project is inspected by the Division of State Construction and the State Electrical Inspector, ~~or on projects~~ (ii) that are exempt from the State Building ~~Code.~~ Code, or (iii) that are subject to G.S. 116-31.11 and the completed project is inspected by the State Electrical Inspector and by The University of North Carolina or its constituent or affiliated institution."

Section 12. (a) The Office of State Budget and Management and the State Building Commission shall evaluate the process and quality of construction completed under G.S. 116-31.11 as enacted by this act. The evaluation shall include an analysis of the time required to complete projects, project savings or costs, necessary increases or decreases in staffing, if any, any other benefits or detriments regarding the delegation of authority under G.S. 116-31.11; recommendations regarding the continuance of the delegated powers, continuance with modifications, expansion, or discontinuance. The Office of State Budget and Management and the State Building Commission shall jointly report their findings and recommendations to the Board of Governors of The University of North Carolina and to the General Assembly by April 15, 2001.

(b) The Board of Governors of The University of North Carolina shall report to the Joint Legislative Commission on Governmental Operations, the State Building Commission, and the Director of the Budget no later than December 1, 1997, on the procedures it intends to implement pursuant to G.S. 116-31.11, as enacted in Section 1 of this act. The State Building Commission shall report to the General Assembly no later than June 1, 1998, with respect to action taken pursuant to G.S. 116-31.11(a)(3) and (b).

Section 13. The Office of State Budget and Management shall evaluate the effectiveness and efficiency of the increase of the purchasing benchmark and its delegation to the special responsibility constituent institutions under G.S. 116-31.10 and other agencies under G.S. 143-53.1 and G.S. 143-53(a)(2). In its evaluation, the Office of State Budget and Management shall consider such factors as costs of goods and services purchased, administrative costs, effective time for completion of the purchasing process, agency satisfaction, vendor reactions, and other factors it deems

appropriate. The Office of State Budget and Management shall report its findings and recommendations to the General Assembly by April 15, 2001.

Section 14. This section and Section 12(b) of this act are effective when they become law. Section 5.1 becomes effective July 1, 2001. The remainder of this act becomes effective January 1, 1998. Sections 5, 6, 7, 8, 10, and 11 of this act and G.S. 116-31.11, as enacted by Section 1 of this act, expire July 1, 2001.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House**.

House

X Committee Substitute for #2

S.B. 561 A BILL TO BE ENTITLED AN ACT TO REMEDY THE INADVERTENT EXCLUSION OF DULY SWORN AND COMMISSIONED COMPANY POLICE OFFICERS FROM THE CONCEALED HANDGUN STATUTES, TO EXEMPT ACTIVE OR RETIRED COMPANY POLICE OFFICERS FROM THE TRAINING REQUIRED TO QUALIFY FOR A CONCEALED HANDGUN PERMIT IF THE OFFICER APPLIES FOR THE PERMIT WITHIN TWO YEARS OF RETIREMENT, AND TO CLARIFY THE MENTAL HEALTH REQUIREMENTS FOR A CONCEALED HANDGUN PERMIT.

☐ 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 (# 3), ~~☐ which changes the title,~~ unfavorable as to ~~Senate~~ House committee substitute bill. #2.

☐ 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 D

SENATE BILL 561
House Committee Substitute Favorable 6/4/97
House Committee Substitute #2 Favorable 7/8/97
Proposed House Committee Substitute S561-PCS1878

Short Title: Company Police/Concealed Handguns. (Public)

Sponsors:

Referred to:

April 1, 1997

A BILL TO BE ENTITLED

AN ACT TO REMEDY THE INADVERTENT EXCLUSION OF DULY SWORN AND COMMISSIONED COMPANY POLICE OFFICERS FROM THE CONCEALED HANDGUN STATUTES, TO EXEMPT ACTIVE OR RETIRED COMPANY POLICE OFFICERS FROM THE TRAINING REQUIRED TO QUALIFY FOR A CONCEALED HANDGUN PERMIT IF THE OFFICER APPLIES FOR THE PERMIT WITHIN TWO YEARS OF RETIREMENT, AND TO CLARIFY THE MENTAL HEALTH REQUIREMENTS FOR A CONCEALED HANDGUN PERMIT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 74E-6(c) reads as rewritten:

"(c) All Company Police. -- Company police officers, while in the performance of their duties of employment, have the same powers as municipal and county police officers to make arrests for both felonies and misdemeanors and to charge for infractions on any of the following:

(1) Real property owned by or in the possession and control of their employer.

(2) Real property owned by or in the possession and control of a person who has contracted with the employer to provide on-site company police security personnel services for the property.

(3) Any other real property while in continuous and immediate pursuit of a person for an offense committed upon property described in subdivisions (1) or (2) of this subsection.

Company police officers shall have, if duly authorized by the superior officer in charge, the authority to carry concealed weapons pursuant to and in conformity with G.S. 14-269(b)(5)."

Section 2. G.S. 14-415.10(4) as enacted by S.L. 1997-274, reads as rewritten:

"(4) Qualified former sworn law enforcement officer. -- An individual who retired from service as a law enforcement officer with a ~~local or State~~ local, State, or company police agency in North Carolina, other than for reasons of mental disability, who has been retired as a sworn law enforcement officer two years or less from the date of the permit application, and who satisfies all of the following:

a. Immediately before retirement, the individual was a qualified law enforcement officer with a ~~local or State~~ local, State, or company police agency in North Carolina.

b. The individual has a nonforfeitable right to benefits under the retirement plan of the local, State, or company police agency as a law enforcement ~~officer.~~ officer or has 20 or more aggregate years of law enforcement service and has retired from a company police agency that does not have a retirement plan.

c. The individual is not prohibited by State or federal law from receiving a firearm."

Section 3. G.S. 14-415.10(5), as enacted by S.L. 1997-274, reads as rewritten:

"(5) Qualified sworn law enforcement officer. -- A law enforcement officer employed by a ~~local or State~~ local, State, or company police agency in North Carolina who satisfies all of the following:

a. The individual is authorized by the agency to carry a handgun in the course of duty.

b. The individual is not the subject of a disciplinary action by the agency that prevents the carrying of a handgun.

c. The individual meets the requirements established by the agency regarding handguns."

Section 4. G.S. 14-415.12(b)(6) reads as rewritten:

"(6) Is currently, or has been previously adjudicated by a court or administratively determined by a governmental agency whose decisions are subject to judicial review to be, lacking mental capacity or mentally ill. Receipt of previous consultative services or outpatient treatment alone shall not disqualify an applicant under this subdivision."

Section 5. Sections 2 and 3 of this act become effective December 1, 1997. The remainder of this act is effective when it becomes law, and Section 4 applies to applications made before, on, or after the effective date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 3

SENATE BILL 561
House Committee Substitute Favorable 6/4/97
House Committee Substitute #2 Favorable 7/8/97

Short Title: Company Police/Concealed Handguns. (Public)

Sponsors:

Referred to:

April 1, 1997

A BILL TO BE ENTITLED

AN ACT TO REMEDY THE INADVERTENT EXCLUSION OF DULY SWORN AND COMMISSIONED COMPANY POLICE OFFICERS FROM THE CONCEALED HANDGUN STATUTES, TO EXEMPT ACTIVE OR RETIRED COMPANY POLICE OFFICERS FROM THE TRAINING REQUIRED TO QUALIFY FOR A CONCEALED HANDGUN PERMIT IF THE OFFICER APPLIES FOR THE PERMIT WITHIN TWO YEARS OF RETIREMENT, AND TO CLARIFY THE MENTAL HEALTH REQUIREMENTS FOR A CONCEALED HANDGUN PERMIT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 74E-6(c) reads as rewritten:

"(c) All Company Police. -- Company police officers, while in the performance of their duties of employment, have the same powers as municipal and county police officers to make arrests for both felonies and misdemeanors and to charge for infractions on any of the following:

(1) Real property owned by or in the possession and control of their employer.

(2) Real property owned by or in the possession and control of a person who has contracted with the employer to provide on-site company police security personnel services for the property.

(3) Any other real property while in continuous and immediate pursuit of a person for an offense committed upon property described in subdivisions (1) or (2) of this subsection.

Company police officers shall have, if duly authorized by the superior officer in charge, the authority to carry concealed weapons pursuant to and in conformity with G.S. 14-269(b)(5)."

Section 2. If House Bill 433 of the 1997 General Assembly is enacted into law, then G.S. 14-415.10(4) reads as rewritten:

"(4) Qualified former sworn law enforcement officer. -- An individual who retired from service as a law enforcement officer with a ~~local or State~~ local, State, or company police agency in North Carolina, other than for reasons of mental disability, who has been retired as a sworn law enforcement officer two years or less from the date of the permit application, and who satisfies all of the following:

a. Immediately before retirement, the individual was a qualified law enforcement officer with a ~~local or State~~ local, State, or company police agency in North Carolina.

b. The individual has a nonforfeitable right to benefits under the retirement plan of the local, State, or company police agency as a law enforcement ~~officer.~~ officer or has 20 or more aggregate years of law enforcement service and has retired from a company police agency that does not have a retirement plan.

c. The individual is not prohibited by State or federal law from receiving a firearm."

Section 3. If House Bill 433 of the 1997 General Assembly is enacted into law, then G.S. 14-415.10(5) reads as rewritten:

"(5) Qualified sworn law enforcement officer. -- A law enforcement officer employed by a ~~local or State~~ local, State, or company police agency in North Carolina who satisfies all of the following:

a. The individual is authorized by the agency to carry a handgun in the course of duty.

b. The individual is not the subject of a disciplinary action by the agency that prevents the carrying of a handgun.

c. The individual meets the requirements established by the agency regarding handguns."

Section 4. G.S. 14-415.12(b)(6) reads as rewritten:

"(6) Is currently, or has been previously adjudicated by a court or administratively determined by a governmental agency whose decisions are subject to judicial review to be, lacking mental capacity or mentally ill. Receipt of previous consultative services or outpatient treatment alone shall not disqualify an applicant under this subdivision."

Section 5. Sections 2 and 3 of this act become effective December 1, 1997. The remainder of this act is effective when it becomes law, and Section 4 applies to applications made before, on, or after the effective date.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House**.

X Committee Substitute for

S.B. 699 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT THE PLACE OF BUSINESS OF A MOTOR VEHICLE DEALER WHO SELLS ONLY TRAILERS OR SEMITRAILERS DOES NOT HAVE TO MEET THE REQUIREMENTS SET FOR AN ESTABLISHED OFFICE OR SALESROOM OF A MOTOR VEHICLE DEALER.

☒ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 3

SENATE BILL 699
Finance Committee Substitute Adopted 4/29/97
House Committee Substitute Favorable 7/9/97

Short Title: Modify Vehicle Dealer Requirements. (Public)

Sponsors:

Referred to:

April 7, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE PLACE OF BUSINESS OF A MOTOR VEHICLE DEALER WHO SELLS ONLY TRAILERS OR SEMITRAILERS DOES NOT HAVE TO MEET THE REQUIREMENTS SET FOR AN ESTABLISHED OFFICE OR SALESROOM OF A MOTOR VEHICLE DEALER.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-288(d) reads as rewritten:

"(d) To obtain a license as a wholesaler, ~~the~~ an applicant who intends to sell or distribute self-propelled vehicles must have an established office in this ~~State.~~ State, and an applicant who intends to sell or distribute only trailers or semitrailers of less than 2500 pounds unloaded weight must have a place of business in this State where the records required under this Article are kept.

To obtain a license as a motor vehicle dealer, an applicant who intends to deal in self-propelled vehicles must have an established salesroom in this ~~State.~~ State, and an applicant who intends to deal in only trailers or semitrailers of less than 2500 pounds unloaded weight must have a place of business in this State where the records required under this Article are kept.

An applicant for a license as a manufacturer, a factory branch, a distributor, a distributor branch, a wholesaler, or a motor vehicle dealer must have a separate license for each established office, established salesroom, or other place of business in

this State. An application for any of these licenses shall include a list of the applicant's places of business in this State."

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

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House**.

House

X Committee Substitute for

S.B. 947 A BILL TO BE ENTITLED AN ACT TO MODIFY THE BURDEN OF PROOF THAT MUST BE SATISFIED TO OBTAIN A CERTIFICATE AUTHORIZING AN INTERBASIN TRANSFER OF SURFACE WATERS, TO DIRECT THE ENVIRONMENTAL REVIEW COMMISSION TO STUDY ISSUES RELATING TO INTERBASIN TRANSFERS, AND TO IMPOSE A TEMPORARY MORATORIUM ON CERTAIN INTERBASIN TRANSFERS DURING THE PENDENCY OF THE STUDY.

☒ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 3

SENATE BILL 947
Agriculture/Environment/Natural Resources Committee Substitute Adopted 4/29/97
House Committee Substitute Favorable 7/3/97

Short Title: Amend Interbasin Transfers. (Public)

Sponsors:

Referred to:

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE BURDEN OF PROOF THAT MUST BE SATISFIED TO OBTAIN A CERTIFICATE AUTHORIZING AN INTERBASIN TRANSFER OF SURFACE WATERS, TO DIRECT THE ENVIRONMENTAL REVIEW COMMISSION TO STUDY ISSUES RELATING TO INTERBASIN TRANSFERS, AND TO IMPOSE A TEMPORARY MORATORIUM ON CERTAIN INTERBASIN TRANSFERS DURING THE PENDENCY OF THE STUDY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-215.22I(g) reads as rewritten:

"(g) A certificate shall be granted for a water transfer ~~unless~~ if the applicant establishes and the Commission concludes by a preponderance of the evidence based upon the findings of fact made under subsection (f) of this section ~~that the potential detriments of the proposed transfer outweigh the benefits of the transfer.~~ that: (i) the benefits of the proposed transfer outweigh the detriments of the proposed transfer, and (ii) the detriments have been or will be mitigated to a reasonable degree. The conditions necessary to ensure that the detriments are and continue to be mitigated to a reasonable degree shall be attached to the certificate in accordance with subsection (h) of this section."

Section 2. The Environmental Review Commission shall study issues relating to the transfer of surface waters between river basins in the State. As a part of this study, the Environmental Review Commission shall consider whether, and on

what basis, the total volume of water that may be transferred from any river basin should be limited and whether the Environmental Management Commission should be authorized to issue special orders to remedy violations of laws or rules regulating transfers. The Environmental Review Commission shall report its findings, recommendations, and legislative proposals, if any, to the 1998 Regular Session of the General Assembly.

Section 3. As used in this section, "transfer" has the same meaning as in G.S. 143-215.22G. There is imposed a moratorium on any new transfer and on any increase in the permitted volume of an existing transfer for which a certificate is required under G.S. 143-215.22I. The Environmental Management Commission shall not issue a certificate for a new transfer or approve an increase in the permitted volume of an existing transfer during the period that the moratorium imposed by this section is in effect. During the moratorium imposed by this section, the Environmental Management Commission may hold public meetings or hearings, gather information, and analyze additional data relevant to any interbasin transfer application submitted to it.

The moratorium imposed by this section does not apply to an application to increase the volume of an existing transfer that, on 1 May 1997, is registered under G.S. 143-215.22H and:

(1) Was not permitted under G.S. 153A-285, repealed by Section 4 of Chapter 348 of the 1993 Session Laws, or G.S. 162A-7, repealed by Section 6 of Chapter 348 of the 1993 Session Laws; and

(2) For which a certificate has not been issued under G.S. 143-215.22I.

Section 4. This act is effective when it becomes law. Section 3 of this act expires on the date that the 1997 General Assembly adjourns its 1998 Regular Session sine die.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House**.

☐ Committee Substitute for
S.J.R. 1081 A JOINT RESOLUTION HONORING THE MEMORY OF JACKIE ROBINSON AND RECOGNIZING WALTER FENNER "BUCK" LEONARD ON THE FIFTIETH ANNIVERSARY OF JACKIE ROBINSON'S BREAKING THE COLOR BARRIER IN MAJOR LEAGUE BASEBALL.

☒ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE JOINT RESOLUTION 1081

Sponsors: Senators Shaw of Cumberland, Cooper; Albertson, Allran, Ballantine, Blust, Carpenter, Carrington, Clark, Cochrane, Dalton, Dannelly, East, Forrester, Foxx, Garwood, Gulley, Hoyle, Jenkins, Kerr, Kincaid, Kinnaird, Ledbetter, Lucas, Martin of Pitt, Martin of Guilford, McDaniel, Page, Phillips, Rand, Rucho, Shaw of Guilford, Warren, Webster, Weinstein, Wellons, and Winner.

Referred to: Rules and Operations of the Senate.

June 5, 1997

A JOINT RESOLUTION HONORING THE MEMORY OF JACKIE ROBINSON AND RECOGNIZING WALTER FENNER "BUCK" LEONARD ON THE FIFTIETH ANNIVERSARY OF JACKIE ROBINSON'S BREAKING THE COLOR BARRIER IN MAJOR LEAGUE BASEBALL.

Whereas, Walter Fenner "Buck" Leonard, one of baseball's most outstanding players, played baseball with Jackie Robinson, Willie Mays, Satchel Page, Josh Gibson, and Cool Papa Bell; and

Whereas, on the fiftieth anniversary of Jackie Robinson's breaking the color barrier in Major League Baseball, it is only fitting to honor Buck Leonard, one of baseball's greatest players and a native of North Carolina; and

Whereas, Buck Leonard was born on September 8, 1907, in Rocky Mount; and

Whereas, Buck Leonard began playing semiprofessional baseball in 1921, with the Rocky Mount Elks and the Rocky Mount Black Swans; and

Whereas, after losing his job due to the Depression, Buck Leonard decided to pursue full-time professional baseball; and

Whereas, from 1934 through 1950, Buck Leonard played first base for the Homestead Grays in the Negro League, where he amassed impressive records; and

Whereas, Buck Leonard compiled a career batting average of over .340 and an average of over .380 during Major League exhibition games; and

Whereas, for several seasons, Buck Leonard averaged 34 home runs per year; and

Whereas, from 1937 to 1945, Buck Leonard helped lead the Homestead Grays to nine consecutive Negro League Championships; and

Whereas, Buck Leonard was selected to play in the Negro League's East-West All Star Game 11 times, an All Star record; and

Whereas, Buck Leonard was always a fan favorite; and

Whereas, from 1951 through 1955, Buck Leonard played baseball in Mexico; and

Whereas, after his baseball career, Buck Leonard returned to Rocky Mount, where he worked as a truant officer with the Rocky Mount school system, operated his own real estate agency, and served as an officer with the Rocky Mount Leafs in the Class-A Carolina League; and

Whereas, Buck Leonard was inducted into the Baseball Hall of Fame in 1972, and is the oldest living member of the Baseball Hall of Fame; and

Whereas, on March 21, 1981, Buck Leonard was honored at the White House by President Reagan; and

Whereas, Buck Leonard continues to reside in Rocky Mount;

Now, therefore, be it resolved by the Senate, the House of Representatives concurring:

Section 1. The General Assembly honors the memory of Jackie Robinson and expresses its appreciation to Walter Fenner "Buck" Leonard for his outstanding contributions to the sport of baseball on the fiftieth anniversary of Jackie Robinson's integration of Major League Baseball.

Section 2. The Secretary of State shall transmit a certified copy of this resolution to Walter Fenner "Buck" Leonard.

Section 3. This resolution is effective upon ratification.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House.**

☒ Committee Substitute for
S.B. 627 A BILL TO BE ENTITLED AN ACT TO CLARIFY AND EXPAND THE CLASSIFICATION OF PERSONS WHO MAY OBTAIN A DOMESTIC VIOLENCE PROTECTIVE ORDER, AND TO CLARIFY THE CIRCUMSTANCES UNDER WHICH MAGISTRATES MAY ISSUE PROTECTIVE ORDERS.

☐ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 627
Judiciary Committee Substitute Adopted 4/16/97
Third Edition Engrossed 4/23/97
Proposed House Committee Substitute S627-PCS7846

Short Title: Domestic Violence Changes. (Public)

Sponsors:

Referred to:

April 1, 1997

A BILL TO BE ENTITLED

AN ACT TO CLARIFY AND EXPAND THE CLASSIFICATION OF PERSONS WHO MAY OBTAIN A DOMESTIC VIOLENCE PROTECTIVE ORDER; TO CLARIFY THE CIRCUMSTANCES UNDER WHICH MAGISTRATES MAY ISSUE PROTECTIVE ORDERS; AND TO IMPOSE A CRIMINAL PENALTY FOR VIOLATION OF A PROTECTIVE ORDER.

The General Assembly of North Carolina enacts:

Section 1. G.S. 50B-1 reads as rewritten:

"**§ 50B-1. Domestic violence; definition.**

(a) Domestic violence means the commission of one or more of the following acts upon an aggrieved party or upon a minor child residing with or in the custody of the aggrieved party by a person with whom the aggrieved party has or has had a ~~familial~~ personal relationship, but does not include acts of self-defense:

(1) Attempting to cause bodily injury, or intentionally causing bodily injury; or

(2) Placing the aggrieved party or a member of the aggrieved party's family or household in fear of imminent serious bodily injury; or

(3) Committing any act defined in G.S. 14-27.2 through G.S. 14-27.7.

(b) For purposes of this section, the term '~~familial~~ personal relationship' means a relationship wherein the parties involved:

(1) Are current or former spouses;

(2) Are persons of opposite sex who live together or have lived together;

(3) ~~Are parents, grandparents, or others acting in loco parentis to a minor child, or children and grandchildren;~~ Are related as parents and children, including others acting in loco parentis to a minor child, or as grandparents and grandchildren. For purposes of this subdivision, an aggrieved party may not obtain an order of protection against a child or grandchild under the age of 16;

(4) Have a child in ~~common.~~ common;

(5) Are current or former household members;

(6) Are persons of the opposite sex who are in a dating relationship or have been in a dating relationship. For purposes of this subdivision, a dating relationship is one wherein the parties are romantically involved over time and on a continuous basis during the course of the relationship. A casual acquaintance or ordinary fraternization between persons in a business or social context is not a dating relationship."

Section 2. G.S. 50B-2(c1) reads as rewritten:

"(c1) Ex Parte Orders by Authorized Magistrate. -- The chief district court judge may authorize a magistrate or magistrates to hear any motions for emergency relief ex parte. Prior to the hearing, if the magistrate determines that at the time the party is seeking emergency relief ex parte ~~the clerk of superior court is not available,~~ the district court is not in ~~session,~~ session and a district court judge is not and will not be available to hear the motion for a period of four or more hours, the motion may be heard by the magistrate. If it clearly appears to the magistrate from specific facts shown that there is a danger of acts of domestic violence against the aggrieved party or a minor child, the magistrate may enter such orders as it deems necessary to protect the aggrieved party or minor children from such acts, except that a temporary order for custody ex parte and prior to service of process and notice shall not be entered unless the magistrate finds that the child is exposed to a substantial risk of bodily injury or sexual abuse. An ex parte order entered under this subsection shall expire and the magistrate shall schedule an ex parte hearing before a district court judge within 72 hours of the filing for relief under this subsection, or by the end of the next day on which the district court is in session in the county in which the action was filed, whichever occurs first. A party who has paid court costs due for seeking an order from the magistrate under this subsection shall not be liable for court costs for a hearing before the district court judge scheduled and heard pursuant to an order entered by the magistrate under this subsection. Ex parte orders entered by the district court judge pursuant to this subsection shall be entered and scheduled in accordance with subsection (c) of this section."

Section 3. Chapter 50B is amended by adding the following new section to read:

"**§ 50B-4A. Violation of valid protective order a misdemeanor.**

A person who knowingly violates a valid protective order entered pursuant to this Chapter shall be guilty of a Class A1 misdemeanor."

Section 4. This act becomes effective December 1, 1997, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 3

SENATE BILL 627
Judiciary Committee Substitute Adopted 4/16/97
Third Edition Engrossed 4/23/97

Short Title: Domestic Violence Changes. (Public)

Sponsors:

Referred to:

April 1, 1997

A BILL TO BE ENTITLED

AN ACT TO CLARIFY AND EXPAND THE CLASSIFICATION OF PERSONS WHO MAY OBTAIN A DOMESTIC VIOLENCE PROTECTIVE ORDER, AND TO CLARIFY THE CIRCUMSTANCES UNDER WHICH MAGISTRATES MAY ISSUE PROTECTIVE ORDERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 50B-1 reads as rewritten:

"**§ 50B-1. Domestic violence; definition.**

(a) Domestic violence means the commission of one or more of the following acts upon an aggrieved party or upon a minor child residing with or in the custody of the aggrieved party by a person with whom the aggrieved party has or has had a ~~familial~~ personal relationship, but does not include acts of self-defense:

(1) Attempting to cause bodily injury, or intentionally causing bodily injury; or

(2) Placing the aggrieved party or a member of the aggrieved party's family or household in fear of imminent serious bodily injury; or

(3) Committing any act defined in G.S. 14-27.2 through G.S. 14-27.7.

(b) For purposes of this section, the term '~~familial~~ personal relationship' means a relationship wherein the parties involved:

(1) Are current or former spouses;

(2) Are persons of opposite sex who live together or have lived together;

(3) ~~Are parents, grandparents, or others acting in loco parentis to a minor child, or children and grandchildren;~~ Are related as parents and children, including others acting in loco parentis to a minor child, or as grandparents and grandchildren. For purposes of this subdivision, an aggrieved party may not obtain an order of protection against a child or grandchild under the age of 16;

(4) Have a child in ~~common.~~ common;

(5) Are current or former household members;

(6) Are persons of the opposite sex who are in a dating relationship or have been in a dating relationship. For purposes of this subdivision, a dating relationship is one wherein the parties are romantically involved over time and on a continuous basis during the course of the relationship. A casual acquaintance or ordinary fraternization between persons in a business or social context is not a dating relationship."

Section 2. G.S. 50B-2(c1) reads as rewritten:

"(c1) Ex Parte Orders by Authorized Magistrate. -- The chief district court judge may authorize a magistrate or magistrates to hear any motions for emergency relief ex parte. Prior to the hearing, if the magistrate determines that at the time the party is seeking emergency relief ex parte ~~the clerk of superior court is not available,~~ the district court is not in ~~session,~~ session and a district court judge is not and will not be available to hear the motion for a period of four or more hours, the motion may be heard by the magistrate. If it clearly appears to the magistrate from specific facts shown that there is a danger of acts of domestic violence against the aggrieved party or a minor child, the magistrate may enter such orders as it deems necessary to protect the aggrieved party or minor children from such acts, except that a temporary order for custody ex parte and prior to service of process and notice shall not be entered unless the magistrate finds that the child is exposed to a substantial risk of bodily injury or sexual abuse. An ex parte order entered under this subsection shall expire and the magistrate shall schedule an ex parte hearing before a district court judge within 72 hours of the filing for relief under this subsection, or by the end of the next day on which the district court is in session in the county in which the action was filed, whichever occurs first. A party who has paid court costs due for seeking an order from the magistrate under this subsection shall not be liable for court costs for a hearing before the district court judge scheduled and heard pursuant to an order entered by the magistrate under this subsection. Ex parte orders entered by the district court judge pursuant to this subsection shall be entered and scheduled in accordance with subsection (c) of this section."

Section 3. This act becomes effective December 1, 1997, and applies to offenses committed on or after that date.

VISITOR REGISTRATION SHEET

RULES, CALENDAR, AND OPERATIONS OF THE HOUSE JULY 30, 1997

Name of Committee Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
FRED TAYLOR	WRAL-TV
Lucius PULLEN	ATTORNEY
[illegible]	Property & Casualty Assn N.C.
[illegible]	[illegible] Van Hollen
[illegible]	
[illegible]	State Construction
[illegible]	DOA
Paul B. Brobson	Professional Engineers of NC
[illegible]	" " " "
R.S Sch. Lib.	NCUCDC
Roslyn Sawtt	NC Coalition Against Domestic Violence
John Bowlish	Zeb Alley P.A.
BILL SCOGGIN	NCBA
Sam Cover	BPMHL
[illegible]	Secy of State
[illegible]	Cole NC
[illegible]	Bode Call V Stroup
Jeff Davis	UNC
Henry Holmes	UNC
Laura Hartsell	MCIC
Tommy Winn	Carolina Realty Exchange
Curt Williams	Governor's Office
Robert PASchal	Young, Moore
[illegible]	Manning Fulton & Skinner PA
PC	NCFF
William Breeze	N.C. Medical Board

VISITOR REGISTRATION SHEET

RULES, CALENDAR, AND OPERATIONS OF THE HOUSE **JULY 30, 1997**

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tim Kent	American Institute of Architects
Doug Lassiter	NC STA
[illegible]	NCMS
Marie Scott	NCSA
Amy Ann Bain	Smith Anderson
[illegible]	CP&L
[illegible]	[illegible]
John McAlister	Duke Energy
Henry Jones	Attorney - Raleigh
Mike Carpenter	NCAIA
B. Paul Wilcox	NCHBA
Jerry Carter	NC Bd. of Registration
Natalie Hasken	Charlotte Chamber
Michael A. Thompson	D C Power
David Farrell	Hofler, McNamara, Caldwell, McElroy & Cotten, PA
[illegible]	NCSSA
[illegible]	Power & Smith
Brenda Dougherty	Sprint

MINUTES
COMMITTEE ON RULES, CALENDAR AND OPERATIONS OF THE HOUSE
August 4, 1997

The Committee on Rules, Calendar and Operations of the House met on August 4, 1997, in Room 2305 of the Legislative Building. Representative Morgan, Chair, called the meeting to order and asked the clerk to call the roll. The following members were present: Representatives Bowie, Vice-Chair; Crawford, Culp, Dockham, Esposito, Gulley, Hill, McMahan, Miner, Mitchell, Neely, Thompson and C. Wilson.

The Committee considered Senate Committee Substitute for HB 896 - A BILL TO BE ENTITLED AN ACT TO AMEND THE LAW PERTAINING TO THE CUSTODY AND PLACEMENT OF JUVENILES TO ENHANCE THE STATE'S ABILITY TO ENSURE THAT JUVENILES ARE PLACED IN A SAFE, PERMANENT HOME WITHIN A REASONABLE PERIOD OF TIME, TO AUTHORIZE THE DEPARTMENT OF HUMAN RESOURCES TO ASSUME CONTROL OF DELIVERY OF COUNTY CHILD WELFARE SERVICES UNDER CERTAIN CIRCUMSTANCES, AND TO ESTABLISH THE LEGISLATIVE STUDY COMMISSION ON CHILDREN AND YOUTH. The Chair stated that this bill was back before the Committee for concurrence.

Representative Gardner, a supporter of the Senate committee substitute, was recognized to explain the changes in the Senate committee substitute. The daycare changes, which included playground equipment, that were in the original bill when it was sent over to the Senate are now incorporated in the Daycare Omnibus Bill. The bill now encompasses the following items when the juvenile is before the Juvenile Court Judge: 1) the child's safety is the primary consideration; 2) a takeover provision by the Division of Social Services if the Child Protective Services is not adequately providing protection for the juvenile; and 3) the creating of a legislative study commission on children and youth. Representative Miner moved that the House do concur with the Senate committee substitute for HB 896. Motion carried.

The meeting adjourned.

Respectfully submitted,

Representative Richard T. Morgan
Chairman

Anne M. Cole
Acting Committee Clerk

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE.**

☒ Senate Committee Substitute for
H.B. 896 A BILL TO BE ENTITLED AN ACT TO AMEND THE LAW PERTAINING TO THE CUSTODY AND PLACEMENT OF JUVENILES TO ENHANCE THE STATE'S ABILITY TO ENSURE THAT JUVENILES ARE PLACED IN A SAFE, PERMANENT HOME WITHIN A REASONABLE PERIOD OF TIME, TO AUTHORIZE THE DEPARTMENT OF HUMAN RESOURCES TO ASSUME CONTROL OF DELIVERY OF COUNTY CHILD WELFARE SERVICES UNDER CERTAIN CIRCUMSTANCES, AND TO ESTABLISH THE LEGISLATIVE STUDY COMMISSION ON CHILDREN AND YOUTH.

☐ 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.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 5

HOUSE BILL 896
Committee Substitute Favorable 4/24/97
Third Edition Engrossed 4/30/97
Senate Children & Human Resources Committee Substitute Adopted 7/24/97
Fifth Edition Engrossed 7/29/97

Short Title: Child Welfare Changes. (Public)

Sponsors:

Referred to:

April 8, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW PERTAINING TO THE CUSTODY AND PLACEMENT OF JUVENILES TO ENHANCE THE STATE'S ABILITY TO ENSURE THAT JUVENILES ARE PLACED IN A SAFE, PERMANENT HOME WITHIN A REASONABLE PERIOD OF TIME, TO AUTHORIZE THE DEPARTMENT OF HUMAN RESOURCES TO ASSUME CONTROL OF DELIVERY OF COUNTY CHILD WELFARE SERVICES UNDER CERTAIN CIRCUMSTANCES, AND TO ESTABLISH THE LEGISLATIVE STUDY COMMISSION ON CHILDREN AND YOUTH.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-289.32(3) reads as rewritten:

"(3) The parent has willfully left the child in foster care for more than 12 months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made within 12 months in correcting those conditions which led to the removal of the child. ~~child or without showing positive response within 12 months to the diligent efforts of a county Department of Social Services, a child-caring institution or licensed child-placing agency to encourage the parent to strengthen the parental relationship to the child or to make and follow through with constructive planning for the future of the child.~~ Provided, however, that no parental

rights shall be terminated for the sole reason that the parents are unable to care for the child on account of their poverty."

Section 2. G.S. 7A-289.32(7) reads as rewritten:

"(7) That the parent is incapable ~~as a result of mental retardation, mental illness, organic brain syndrome, or any other degenerative mental condition~~ of providing for the proper care and supervision of the child, such that the child is a dependent child within the meaning of G.S. 7A-517(13), and that there is a reasonable probability that such incapability will continue ~~throughout the minority of the child.~~ for the foreseeable future. Incapability under this subdivision may be the result of substance abuse, mental retardation, mental illness, organic brain syndrome, or any other similar cause or condition."

Section 3. G.S. 7A-517 is amended by adding the following new subdivisions to read:

"(25a) 'Reasonable efforts'. -- The diligent use of preventive or reunification services by a department of social services when a juvenile's remaining at home or returning home is consistent with achieving a safe, permanent home for the juvenile within a reasonable period of time.

(25b) 'Safe home'. -- A home in which the child is not at substantial risk of physical or emotional abuse or neglect."

Section 3.1. G.S. 7A-544 reads as rewritten:

"**§ 7A-544. Investigation by Director; access to confidential information; notification of person making the report.**

When a report of abuse, neglect, or dependency is received, the Director of the Department of Social Services shall make a prompt and thorough investigation in order to ascertain the facts of the case, the extent of the abuse or neglect, and the risk of harm to the juvenile, in order to determine whether protective services should be provided or the complaint filed as a petition. When the report alleges abuse, the Director shall immediately, but no later than 24 hours after receipt of the report, initiate the investigation. When the report alleges neglect or dependency, the Director shall initiate the investigation within 72 hours following receipt of the report. The investigation and evaluation shall include a visit to the place where the juvenile resides. All information received by the Department of Social Services, including the identity of the reporter, shall be held in strictest confidence by the Department.

When a report of ~~a juvenile's death as a result of~~ suspected ~~maltreatment~~ abuse, neglect, or dependency of a juvenile is received, the Director of the Department of Social Services shall immediately ascertain if other juveniles remain in the home, and, if so, initiate an investigation in order to determine whether they require protective services or whether immediate removal of the juveniles from the home is necessary for their protection.

If the investigation indicates that abuse, neglect, or dependency has occurred, the Director shall decide whether immediate removal of the juvenile or any other

juveniles in the home is necessary for their protection. If immediate removal does not seem necessary, the Director shall immediately provide or arrange for protective services. If the parent or other caretaker refuses to accept the protective services provided or arranged by the Director, the Director shall sign a complaint seeking to invoke the jurisdiction of the court for the protection of the juvenile or juveniles.

If immediate removal seems necessary for the protection of the juvenile or other juveniles in the home, the Director shall sign a complaint which alleges the applicable facts to invoke the jurisdiction of the court. Where the investigation shows that it is warranted, a protective services worker may assume temporary custody of the juvenile for the juvenile's protection pursuant to Article 46 of this Chapter.

In performing any duties related to the investigation of the complaint or the provision or arrangement for protective services, the Director may consult with any public or private agencies or individuals, including the available State or local law-enforcement officers who shall assist in the investigation and evaluation of the seriousness of any report of abuse, neglect, or dependency when requested by the Director. The Director or the Director's representative may make a written demand for any information or reports, whether or not confidential, that may in the Director's opinion be relevant to the investigation of or the provision for protective services. Upon the Director's or the Director's representative's request and unless protected by the attorney-client privilege, any public or private agency or individual shall provide access to and copies of this confidential information and these records to the extent permitted by federal law and regulations. If a custodian of criminal investigative information or records believes that release of the information will jeopardize the right of the State to prosecute a defendant or the right of a defendant to receive a fair trial or will undermine an ongoing or future investigation, it may seek an order from a court of competent jurisdiction to prevent disclosure of the information. In such an action, the custodian of the records shall have the burden of showing by a preponderance of the evidence that disclosure of the information in question will jeopardize the right of the State to prosecute a defendant or the right of a defendant to receive a fair trial or will undermine an ongoing or future investigation. Actions brought pursuant to this paragraph shall be set down for immediate hearing, and subsequent proceedings in the actions shall be accorded priority by the trial and appellate courts.

Within five working days after receipt of the report of abuse, neglect, or dependency, the Director shall give written notice to the person making the report, unless requested by that person not to give notice, as to whether the report was accepted for investigation and whether the report was referred to the appropriate State or local law enforcement agency.

Within five working days after completion of the protective services investigation, the Director shall give subsequent written notice to the person making the report, unless requested by that person not to give notice, as to whether there is a finding of abuse, neglect, or dependency, whether the county Department of Social Services is taking action to protect the juvenile, and what action it is taking, including whether or not a petition was filed. The person making the report shall be informed of

procedures necessary to request a review by the prosecutor of the Director's decision not to file a petition. A request for review by the prosecutor shall be made within five working days of receipt of the second notification. The second notification shall include notice that, if the person making the report is not satisfied with the Director's decision, he may request review of the decision by the prosecutor within five working days of receipt. The person making the report may waive the person's right to this notification and no notification is required if the person making the report does not identify himself to the Director."

Section 3.2. G.S. 7A-517(21) reads as rewritten:

"(21) Neglected Juvenile. -- A juvenile who does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or who lives in an environment injurious to the juvenile's welfare; or who has been placed for care or adoption in violation of law. In determining whether a juvenile is a neglected juvenile, it is relevant whether that juvenile lives in a home where another juvenile has ~~died as a result of abuse or neglect or lives in a home where another juvenile has~~ been subjected to ~~sexual abuse or severe physical~~ abuse or neglect by an adult who regularly lives in the home."

Section 4. G.S. 7A-576 reads as rewritten:

"**§ 7A-576. Place of secure or nonsecure custody.**

(a) A juvenile meeting the criteria set out in G.S. 7A-574, subsection (a), may be placed in nonsecure custody with the Department of Social Services or a person designated in the order for temporary residential placement in:

(1) A licensed foster home or a home otherwise authorized by law to provide such care or

(2) A facility operated by the Department of Social Services or

(3) Any other home or facility approved by the court and designated in the order.

In placing a juvenile in nonsecure custody under this section and under G.S. 7A-629 and G.S. 7A-651, the court shall first consider whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home. If the court finds that the relative is willing and able to provide proper care and supervision in a safe home, then the court shall order placement of the juvenile with the relative. Prior to placement of a juvenile with a relative outside of this State, the placement must be in accordance with the Interstate Compact on the Placement of Children.

(b) A juvenile meeting the criteria set out in G.S. 7A-574(b) may be temporarily detained in an approved county detention home or a regional detention facility which shall be separate from any jail, lockup, prison, or other adult penal institution. It shall be unlawful for a county or any unit of government to operate a juvenile detention

home unless the facility meets the standards promulgated by the Department of Human Resources."

Section 5. G.S. 7A-577(h) reads as rewritten:

"(h) Any order authorizing the continued nonsecure custody of a juvenile who is alleged to be abused, neglected, or dependent shall include findings as to whether reasonable efforts have been made to prevent or eliminate the need for placement of the juvenile in custody and may provide for services or other efforts aimed at returning the juvenile ~~home promptly.~~ promptly to a safe home. A finding that reasonable efforts have not been made ~~to prevent or eliminate the need for placement~~ shall not preclude the entry of an order authorizing continued nonsecure custody when the court finds that continued nonsecure custody is necessary for the protection of the juvenile. Where efforts to prevent the need for the juvenile's placement were precluded by an immediate threat of harm to the juvenile, the court may find that the placement of the juvenile in the absence of such efforts was reasonable. If the court finds through written findings of fact that efforts to eliminate the need for placement of the juvenile in custody clearly would be futile or would be inconsistent with the juvenile's safety and need for a safe, permanent home within a reasonable period of time, then the court shall specify in its order that reunification efforts are not required or order that reunification efforts cease."

Section 6. G.S. 7A-577 is amended by adding the following new subsection to read:

"(i) At each hearing to determine the need for continued nonsecure custody, the court shall:

(1) Inquire as to the identity and location of any missing parent. The court shall include findings as to the efforts undertaken to locate the missing parent and to serve that parent. The order may provide for specific efforts aimed at determining the identity and location of any missing parent;

(2) Inquire as to whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home. If the court finds that the relative is willing and able to provide proper care and supervision in a safe home, then the court shall order temporary placement of the juvenile with the relative. Prior to placement of a juvenile with a relative outside of this State, the placement must be in accordance with the Interstate Compact on the Placement of Children; and

(3) Inquire as to whether there are other juveniles remaining in the home from which the juvenile was removed and, if there are, inquire as to the specific findings of the investigation conducted under G.S. 7A-544 and any actions taken or services provided by the Director for the protection of the other juveniles."

Section 7. G.S. 7A-585 reads as rewritten:

"**§ 7A-585. Appointment of guardian.**

In any case when no parent appears in a hearing with the juvenile or when the judge finds it would be in the best interest of the juvenile, the judge may appoint a guardian of the person for the juvenile. The guardian shall operate under the supervision of the court with or without bond and shall file only such reports as the court shall require. The guardian shall have the care, custody, and control of the juvenile or may arrange a suitable placement for ~~him~~ the juvenile and may represent the juvenile in legal actions before any court. The guardian ~~shall also have authority to~~ may consent to certain actions on the part of the juvenile in place of the parent including (i) marriage, (ii) enlisting in the armed forces, and (iii) ~~undergoing major surgery.~~ enrollment in school. The guardian may also consent to any necessary remedial, psychological, medical, or surgical treatment for the juvenile. The authority of the guardian shall continue until the guardianship is terminated by court order, until the juvenile is emancipated pursuant to Article ~~56,~~ 56 of this Chapter, or until the juvenile reaches the age of majority."

Section 8. G.S. 7A-651(c) reads as rewritten:

"(c) Any order directing placement of a juvenile in foster care shall also contain:

(1) A finding that the juvenile's continuation in or return to his own home would be contrary to the juvenile's best interest; and

(2) Findings as to whether reasonable efforts have been made to prevent or eliminate the need for placement of the juvenile in foster care. A finding that reasonable efforts were not made ~~to prevent or eliminate the need for placement~~ shall not preclude entry of a dispositional order authorizing placement in foster care when the court finds that such placement is needed for protection of the juvenile. When efforts to prevent the need for the juvenile's placement are precluded by an immediate threat of harm to the juvenile, the court may find that placement of the juvenile in the absence of such efforts is reasonable.

The order may provide for services or other efforts aimed at returning the juvenile promptly to a safe home. If the court finds through written findings of fact that efforts to eliminate the need for placement of the juvenile in custody clearly would be futile or would be inconsistent with the juvenile's safety and need for a safe, permanent home within a reasonable period of time, the court shall specify in its order that reunification efforts are not required or order that reunification efforts cease."

Section 9. G.S. 7A-657 reads as rewritten:

"**§ 7A-657. Review of custody order.**

(a) ~~In any case where the judge removes custody from a parent or person standing in loco parentis because of dependency, neglect or abuse, the juvenile shall not be returned to the parent or person standing in loco parentis unless the judge finds sufficient facts to show that the juvenile will receive proper care and supervision.~~ In any case where custody is removed from a parent, the judge shall conduct a review within six months of the date the order was entered, shall conduct a second review within six months after the first review, and shall conduct subsequent reviews at least

every year thereafter. The Director of Social Services shall make timely requests to the clerk to calendar the case at a session of court scheduled for the hearing of juvenile matters within six months of the date the order was entered. The Director shall make timely requests for calendaring ~~of the yearly reviews thereafter.~~ subsequent reviews. The clerk shall give 15 days' notice of the review to the parent or the person standing in loco parentis, the juvenile if 12 years of age or more, the guardian, foster parent, custodian or agency with custody, the guardian ad litem, and any other person the court may specify, indicating the court's impending review.

(b) Notwithstanding other provisions of this Article, the court may waive the holding of review hearings required by subsection (a), may require written reports to the court by the agency or person holding custody in lieu of review hearings, or order that review hearings be held less often than every 12 months, if the court finds by clear, cogent and convincing evidence that:

(1) The juvenile has ~~been placed~~ resided with a relative or has been in the custody of another suitable person for a ~~continuous~~ period of at least one year; and

(2) The placement is stable and continuation of the placement is in the juvenile's best interest; and

(3) Neither the juvenile's best interests nor the rights of any party require that review hearings be held every 12 months; and

(4) All parties are aware that the matter may be brought before the court for review at any time by the filing of a motion for review or on the court's own motion; and

(5) The court order has designated the relative or other suitable person as the juvenile's permanent caretaker or guardian of the person. ~~at the review at which these findings are made.~~

The court may not waive or refuse to conduct a review hearing if a party files a motion seeking the review.

(c) At every review hearing, the court shall consider information from the Department of Social Services, the court counselor, the juvenile, the parent or person standing in loco parentis, the custodian, the foster parent, the guardian ad litem, and any public or private agency which will aid it in its review.

In each case the court shall consider the following ~~criteria:~~ criteria and make written findings regarding those that are relevant:

(1) Services which have been offered to reunite the ~~family;~~ family, or whether efforts to reunite the family clearly would be futile or inconsisent with the juvenile's safety and need for a safe, permanent home within a reasonable period of time;

(2) Where the juvenile's return home is unlikely, the efforts which have been made to evaluate or plan for other methods of care;

(3) Goals of the foster care placement and the appropriateness of the foster care plan;

(4) A new foster care plan, if continuation of care is sought, that addresses the role the current foster parent will play in the planning for the juvenile;
(5) Reports on the placements the juvenile has had and any services offered to the juvenile and the parent;
(6) When and if termination of parental rights should be considered;
(7) Any other criteria the court deems necessary.

(d) The judge, after making findings of fact, ~~shall have authority to~~ may appoint a guardian of the person for the juvenile pursuant to G.S. 7A-585 or may make any disposition authorized by G.S. 7A-647, including the authority to place the child in the custody of either parent or any relative found by the court to be suitable and found by the court to be in the best interest of the juvenile. If the juvenile is placed in or remains in the custody of the department of social services, the court may authorize the department to arrange and supervise a visitation plan. Except for such visitation, the juvenile shall not be returned to the parent or person standing in loco parentis without a hearing at which the court finds sufficient facts to show that the juvenile will receive proper care and supervision. The court may enter an order continuing the placement under review or providing for a different placement as is deemed to be in the best interest of the juvenile. If at any time custody is restored to a parent, the court shall be relieved of the duty to conduct periodic judicial reviews of the placement.

(d1) At a hearing designated by the court, but at least within 12 months after the juvenile's placement, a review hearing shall be held under this section and designated as a permanency planning hearing. The purpose of the hearing shall be to develop a plan to achieve a safe, permanent home for the juvenile within a reasonable period of time. Notice of the hearing shall inform the parties of the purpose of the hearing. At the conclusion of the hearing, if the juvenile is not returned home, the judge shall make specific findings as to the best plan of care to achieve a safe, permanent home for the juvenile within a reasonable period of time and shall enter an order consistent with those findings.

(e) The provisions of subsections (b), (c), and (d) of G.S. 7A-651 shall apply to any order entered under this section which continues the foster care placement of a juvenile."

Section 10. Article 3 of Chapter 108A of the General Statutes is amended by adding the following new section to read:

"**§ 108A-74. County department failure to provide services; State intervention in or control of service delivery.**

(a) Notwithstanding any other provision of law to the contrary, the Secretary of Human Resources may take action in accordance with this section to ensure the delivery of child welfare services in accordance with State laws and applicable rules. As used in this section, the terms:

(1) 'County department of social services' also means the consolidated human services agency, whichever applies;

(2) 'County director of social services' also means the human services director, whichever applies; and

(3) 'County board of social services' also means the consolidated human services board, whichever applies.

(b) If the Secretary of Human Resources determines that a county department of social services is not providing child protective services, foster care services, or adoption services in accordance with State law and with applicable rules adopted by the Social Services Commission, or fails to demonstrate reasonable efforts to do so, then the Secretary, after providing written notification of intent to the county director of social services, to the chair of the county board of commissioners, and to the chair of the county board of social services, and after providing them with an opportunity to be heard, may intervene in the particular service or services in question. Intervention includes, but is not limited to, the following activities:

(1) Sending staff of the Department of Human Resources to the county department of social services to provide technical assistance and to monitor the services being provided;

(2) Establishing a corrective plan of action to correct inappropriate policies and procedures; and

(3) Advising county personnel as to appropriate policies and procedures.

If within 60 days of completion of the intervention activities, the Secretary finds that the county department of social services is not providing in accordance with State laws and applicable rules the particular service or services for which intervention was initiated, or has not demonstrated reasonable efforts to do so, the Secretary shall withhold State and federal child welfare services administrative funds until the particular service or services are provided in accordance with State laws and applicable rules.

(c) If the Secretary determines that a county department of social services is not providing child protective, foster care, or adoption services in accordance with State law and with applicable rules adopted by the Social Services Commission, or fails to demonstrate reasonable efforts to do so, and the failure to provide the services poses a substantial threat to the safety and welfare of children in the county who receive or are eligible to receive the services, then the Secretary, after providing written notification of intent to the chair of the county board of commissioners, to the chair of the county board of social services, and to the county director of social services, and after providing them with an opportunity to be heard, shall withhold funding for the particular service or services in question and shall ensure the provision of these services through contracts with public or private agencies or by direct operation by the Department of Human Resources.

(d) In the event that the Secretary assumes control of service delivery pursuant to subsection (c) of this section, the county director of social services shall be divested of all service delivery powers conferred upon the director by G.S. 108A-14 and other applicable State law as the powers pertain to the services in question. Upon assumption of control of service delivery, the Secretary may assign any of the powers

and duties of the county director of social services to the Director of the Division of Social Services of the Department of Human Resources or to a contractor as the Secretary deems necessary and appropriate to continue the provision of the services in the county.

(e) In the event the Secretary takes action under this section, the Department of Human Resources shall, in conjunction with the county board of commissioners, the county board of social services, and the county director of social services develop and implement a corrective plan of action. The Department of Human Resources shall also keep the chair of the county board of commissioners, the chair of the county board of social services, and the county director of social services informed of any ongoing concerns or problems with the delivery of the services in question.

(f) Upon the Secretary taking action pursuant to subsection (c) of this section, county funding of the services in question shall continue and at no time during the period of time that the Secretary is taking action shall a county withdraw funds previously obligated or appropriated for the services. Upon the Secretary's assumption of the control of service delivery, the county shall also pay the nonfederal share of any additional cost that may be incurred to operate the services in question at the level necessary to comply fully with State law and Social Services Commission rules.

(g) During the period of time that the Secretary is taking action pursuant to subsection (c) of this section, the Department of Human Resources shall work with the county board of commissioners, the county board of social services, and the county director of social services, to enable service delivery to be returned to the county if and when the Secretary has determined that services can be provided by the county in accordance with State law and applicable rules."

Section 11. Chapter 120 of the General Statutes is amended by adding the following new Article to read:

"ARTICLE 24.

"The Legislative Study Commission on Children and Youth.

"**§ 120-208. Commission created; purpose.**

There is created the Legislative Study Commission on Children and Youth. The purpose of the Commission is to study and evaluate the system of delivery of services to children and youth and to make recommendations to improve service delivery to meet present and future needs of the children and youth of this State. This study shall be a continuing one and the evaluation ongoing.

"**§ 120-209. Commission duties.**

The Commission shall have the following duties:

(1) Study the needs of children and youth. This study shall include, but is not limited to:

a. Determining the adequacy and appropriateness of services:

1. To children and youth receiving child welfare services;

2. To children and youth in the juvenile court system; and

3. Provided by the Division of Social Services and the Division of Youth Services of the Department of Human Resources.

b. Developing methods for identifying and providing services to children and youth not receiving but in need of child welfare services, children and youth at risk of entering the juvenile court system, and children and youth exposed to domestic violence situations.

c. Developing strategies for addressing the issues of school dropout, teen suicide, and adolescent pregnancy.

d. Identifying and evaluating the impact on children and youth of other economic and environmental issues.

e. Identifying obstacles to ensuring that children who are in secure or nonsecure custody are placed in safe and permanent homes within a reasonable period of time and recommending strategies for overcoming those obstacles. The Commission shall consider what, if anything, can be done to expedite the adjudication and appeal of abuse and neglect charges against parents so that decisions may be made about the safe and permanent placement of their children as quickly as possible.

(2) Evaluate problems associated with juveniles who are beyond the disciplinary control of their parents, including juveniles who are runaways, and develop solutions for addressing the problems of those juveniles.

(3) Identify strategies for the development and funding of a comprehensive statewide database relating to children and youth to facilitate State agency planning for delivery of services to children and youth.

(4) Conduct any other studies, evaluations, or assessments necessary for the Commission to carry out its purpose.

"**§ 120-210. Commission membership; terms; compensation.**

(a) The Commission shall consist of 23 members, as follows:

(1) Ten members appointed by the Speaker of the House of Representatives, as follows:

a. Four shall be members of the House of Representatives at the time of their appointment,

b. One shall be the director of a local health department,

c. One shall be the director of a county department of social services,

d. One shall be a representative of the general public who has knowledge of issues relating to children and youth,

e. One shall be a licensed physician who is knowledgeable about the health needs of children and youth, and

f. One shall be a chief district court judge recommended by the Council of Chief District Judges.
g. One shall be a representative from the Covenant with North Carolina Children.

(2) Ten members appointed by the President Pro Tempore of the Senate, as follows:
a. Four shall be members of the Senate at the time of their appointment,
b. One shall be the director of a mental health area authority,
c. One shall be a representative of the Association of County Commissioners,
d. One shall be a representative of the general public who has knowledge of issues relating to children and youth,
e. One shall be a licensed attorney whose practice includes the representation of parents accused of criminal or civil abuse or neglect, and
f. One shall be a chief district court judge recommended by the Council of Chief District Judges.
g. One shall be a representative from the North Carolina Child Advocacy Institute.

(3) The following shall serve ex officio as nonvoting members of the Commission:
a. The Secretary of Human Resources, or the Secretary's designee,
b. The State Superintendent of Public Instruction, or the Superintendent's designee, and
c. The Secretary of Administration, or the Secretary's designee.

(b) Any vacancy shall be filled by the appointing authority who made the initial appointment and by a person having the same qualification. Members' terms shall last for two years. Members may be reappointed for two consecutive terms and may be appointed again after having been off the Commission for two years.

(c) Commission members shall receive no salary as a result of serving on the Commission but shall receive necessary subsistence and travel expenses in accordance with G.S. 120-3.1, 138-5, and 138-6, as applicable.

"**§ 120-211. Commission meetings; public hearings; staff.**

(a) The Commission shall hold its initial meeting at the call of the Speaker of the House of Representatives and the President Pro Tempore of the Senate. Subsequent meetings shall be held upon the call of the Commission cochairs. The Speaker of the House of Representatives and the President Pro Tempore of the Senate shall appoint a cochair each from the membership of the Commission.

(b) The Commission may hold public hearings across the State to solicit public input with respect to issues relating to children and youth.

(c) The Commission may contract for clerical or professional staff or for any other services it may require in the course of its ongoing study. At the request of the Commission, the Legislative Services Commission may supply members of the staff of the Legislative Services Office and clerical assistance to the Commission as the Legislative Services Commission considers appropriate. The Commission may, with the approval of the Legislative Services Commission, meet in the State Legislative Building or the Legislative Office Building.

"**§ 120-212. Commission reports.**

The Commission shall report to the General Assembly and to the Governor the results of its study and recommendations. A written report shall be submitted to each biennial session of the General Assembly at its convening.

"**§ 120-213. Commission authority.**

The Commission has the authority to obtain information and data from all State officers, agents, agencies, and departments, while in discharge of its duties, pursuant to G.S. 120-19, as if it were a committee of the General Assembly."

Section 11.1. G.S. 131D-10.6A reads as rewritten:

"**§ 131D-10.6A. Training by the Division of Social Services required.**

The Division of Social Services, Department of Human Resources, shall continue the in-house training component that provides a mandated minimum of 30 hours of preservice training for foster care parents either prior to licensure or within six months from the date a provisional license is issued pursuant to G.S. 131D-10.3, and 84 hours for foster care workers and adoption ~~care~~ social workers and a mandated minimum of 10 hours of continuing education for all foster care parents and 18 hours for foster care workers and adoption ~~care~~ social workers.'"

Section 12. Sections 1 through 9 of this act become effective October 1, 1997, and apply to actions commenced on and after that date. Section 10 of this act becomes effective January 1, 1998. The remainder of this act is effective when it becomes law.

1997

HOUSE
RULES, CALENDAR & OPERATIONS

MINUTES

MINUTES
COMMITTEE ON RULES CALENDAR, AND OPERATIONS OF THE HOUSE
August 12, 1997

The Committee on Rules, Calendar, and Operations, of the House met August 12, 1997, at 2:10 p.m. in Room 544 in the Legislative Office Building. Representative Morgan, Committee Chair, called the meeting to order and asked the clerk to call the roll. The following members were present: Representative Bowie, Vice-Chair; and Representatives Culp, Dockham, Gulley, Hill, McMahan, Miner, Mitchell, Thompson, C. Wilson, and Wood.

The following bills were considered:

House Bill 761 - A BILL TO BE ENTITLED AN ACT PERTAINING TO LOCAL LAWS IN ORANGE COUNTY. The Chair recognized Representative Insko, bill sponsor, to explain changes in the Senate committee substitute for House Bill 761. Representative Hill moved that the Committee recommend that the House do concur with the Senate committee substitute. Motion carried.

The next bill before the Committee was Senate Bill 842 - A BILL TO BE ENTITLED AN ACT TO EXEMPT PERSONS PERFORMING CERTAIN ALTERATION, REMODELING, AND RENOVATIONS OF EXISTING BUILDINGS OR STRUCTURES FROM THE ARCHITECTURAL LICENSURE REQUIREMENTS. Senator Rand, bill sponsor, was recognized to explain the bill. A proposed House committee substitute was sent forward and Representative McMahan moved for its adoption for the purpose of Committee discussion. Motion carried. Senator Rand explained the House committee substitute for Senate Bill 842. Representative McMahan moved for a favorable report as to the House committee substitute bill and an unfavorable report as to the original bill. Motion carried.

House Bill 847 - A BILL TO BE ENTITLED AN ACT TO AUTHORIZE CERTAIN WATER AND SEWER AUTHORITIES TO ENTER INTO CERTAIN AGREEMENTS AND TO AUTHORIZE A WATER AND SEWER AUTHORITY HOLDING A CERTIFICATE UNDER G.S. 162A-7 TO EXERCISE THE POWER OF EMINENT DOMAIN FOR SPECIFIED PURPOSES The Chair recognized Representative Culp, bill sponsor, to explain the Senate committee substitute for House Bill 847. Representative Culp moved that the Committee recommend that the House do concur with Senate committee substitute for House Bill 847. Motion carried.

House Bill 990 - A BILL TO BE ENTITLED AN ACT TO EXEMPT CERTAIN NONPROFIT AND CONSUMER-OWNED WATER OR SEWER UTILITIES AND CERTAIN SMALL WATER OR SEWER UTILITIES FROM REGULATION BY THE UTILITIES COMMISSION. The Chair recognized Representative Church, bill sponsor, to explain the Senate committee substitute for House Bill 990. Representative Church recommended concurrence. Representative Hill moved

that the Committee recommend that the House do concur with the Senate committee substitute. Motion carried.

House Bill 1108 - A BILL TO BE ENTITLED AN ACT TO ALLOW THE ALCOHOLIC BEVERAGE CONTROL COMMISSION TO ISSUE PERMITS FOR "BREW ON PREMISES" BUSINESSES AND TO CLARIFY THE APPLICABILITY OF CERTAIN REGULATIONS TO SOME SPORTS CLUBS. Chairman Morgan recognized Representative McMahan, bill sponsor, to explain the bill. Representative McMahan moved that the Committee recommend to the House that it do not concur with the Senate committee substitute for House Bill 1108, and that conferees be appointed. Motion carried.

Senate Bill 565 - A BILL TO BE ENTITLED AN ACT TO CLARIFY THE APPLICATION OF THE COMMISSIONER OF BANKS' RATE TO VARIABLE RATE LOANS WITH ADJUSTMENT PERIODS GREATER THAN ONE MONTH, TO REPEAL THE LAWS GOVERNING VARIABLE RATE LOANS OF MANUFACTURED HOMES AND INSTALLMENT RATES AND FEES, AND TO ESTABLISH FINANCE CHARGE RATES FOR CONSUMER CREDIT INSTALLMENT SALES CONTRACTS FOR WATERCRAFTS. The Chair recognized Senator Reeves, bill sponsor, to explain the bill. There were three technical changes to Chapter 24 of the general statutes. The two sections to be repealed were obsolete. Representative Hill moved for the adoption of the proposed House committee substitute for Senate Bill 565 for the purpose of consideration. Motion carried. The Chair recognized Counsel to expand on the changes in the committee substitute. The Chair recognized Paul Stock, representing the North Carolina Bankers Association, who spoke in favor of the bill. Representative Hill moved for a favorable report as to the House committee substitute for Senate Bill 565 and an unfavorable report as to the original bill. Motion carried. There was a title change to the bill.

Senate Bill 424 - A BILL TO BE ENTITLED AN ACT CONCERNING ANNEXATION OF NONCONTIGUOUS AREAS BY THE TOWNS OF APEX, FUQUAY-VARINA, KNIGHTDALE AND WAKE FOREST. Chairman Morgan recognized Senator Miller, bill sponsor, to explain the bill. Representative McMahan moved that the House committee substitute for Senate Bill 424 be placed before the Committee for the purpose of discussion. Motion carried. Counsel was recognized by the Chair to explain the changes in the House committee substitute. Representative Miner moved to amend the bill to include Raleigh in the House committee substitute. The Chair recognized Staff Counsel Linwood Jones to read the amendment. Motion carried. Representative Miner moved that the amendment be rolled into the new House committee substitute, moved for a favorable report as to the new House committee

substitute for Senate Bill 424 and an unfavorable report as to the original bill. Motion carried. There was a title change to the bill.

The next bill before the Committee was Senate Bill 583 - A BILL TO BE ENTITLED AN ACT TO REQUIRE PHYSICIANS TO COMPLETE ONE HUNDRED FIFTY HOURS OF CONTINUING EDUCATION, TO REQUIRE PHYSICIANS TO REGISTER ANNUALLY WITH THE NORTH CAROLINA MEDICAL BOARD AND TO MAKE A TECHNICAL CHANGE IN THE PRACTICE OF MEDICINE ACT. The Chair recognized Senator Forrester, bill sponsor, to explain the bill. Representative Dockham moved that the proposed House committee substitute be adopted for the purpose of discussion. Motion carried. Representative Connie Wilson offered an amendment to Senate Bill 583 and moved for its adoption. Motion carried. Representative Wilson was recognized to explain the amendment. Representative Gulley moved that the amendment be rolled into a new House committee substitute for Senate Bill 583 and be given a favorable report, and an unfavorable report to the original bill. Motion carried. There was a title change to the bill.

Senate Bill 595 - A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE NORTH CAROLINA MEDICAL BOARD TO LICENSE INSTEAD OF APPROVE PHYSICIAN ASSISTANTS, TO ISSUE A PHYSICIAN ASSISTANT LIMITED VOLUNTEER LICENSE, AND TO MAKE OTHER CHANGES IN THE STATUTES REGULATING PHYSICIAN ASSISTANTS. Representative Connie. Wilson moved that Senate Bill 595 be placed before the Committee for consideration. Motion carried. Vice Chair Bowie recognized Senator Lucas, bill sponsor, to explain the bill. Representative Connie Wilson moved for a favorable report as to Senate Bill 595. Motion carried.

The next bill before the Committee was Senate Bill 757 - A BILL TO BE ENTITLED AN ACT TO ESTABLISH ADVANCE INSTRUCTION FOR MENTAL HEALTH TREATMENT. The Chair recognized Senator Miller, bill sponsor, to explain the bill. Representative Dockham offered an amendment and moved for its adoption. The Chair recognized Counsel to read the amendment. The Chair recognized Senator Miller to explain the amendment. The amendment was adopted. Representative Dockham moved that the amendment be rolled into a new committee substitute, and moved for a favorable report as to the new House committee substitute for Senate Bill 757, and an unfavorable report as to the original bill. Motion carried.

The next bill before the Committee was Senate Bill 826 - A BILL TO BE ENTITLED AN ACT TO PROVIDE "QUICK TAKE" PROCEDURES IN EMINENT DOMAIN PROCEEDINGS BY SCHOOL BOARDS; AND TO EXPAND THE CARTERET COUNTY BOARD OF EDUCATION FROM FIVE TO SEVEN

MEMBERS AND TO PROVIDE THAT THEIR DISTRICTS ARE THE SAME AS FOR THE BOARD OF COMMISSIONERS, SUBJECT TO A REFERENDUM, AND TO PROVIDE FOR PARTISAN ELECTIONS, SUBJECT TO A REFERENDUM; AND TO PROVIDE THAT FIVE MEMBERS OF THE MOORE COUNTY BOARD OF EDUCATION BE ELECTED FROM THE SAME DISTRICTS AS ARE THE MEMBERS OF THE BOARD OF COMMISSIONERS AND THE REMAINING THREE MEMBERS OF THE MOORE COUNTY BOARD OF EDUCATION BE ELECTED AT LARGE, SUBJECT TO A REFERENDUM, AND TO PROVIDE FOR PARTISAN ELECTIONS, SUBJECT TO A REFERENDUM. A House committee substitute was offered and Representative Gulley moved for its adoption for the purpose of Committee discussion. Motion carried. Senator Miller, bill sponsor, was recognized by the Chair to comment on the original bill. Senator Miller declined. Chairman Morgan recognized Staff Counsel, Linwood Jones, to explain the committee substitute. The Chair recognized Representative Gulley for comment and he moved for a favorable report as to the House committee substitute for Senate Bill 826, and an unfavorable report as to the original bill. Motion carried. There was a title change to Senate Bill 826.

The Chair temporarily displaced Senate Bill 918 - A BILL TO BE ENTITLED AN ACT TO AMEND THE DUTY OF PERSONS WHO DISCHARGE OIL OR ANY HAZARDOUS SUBSTANCE TO REPORT THE DISCHARGE TO THE DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES.

House Bill 1077 - A BILL TO BE ENTITLED AN ACT REGULATING THE MASSAGE AND BODYWORK THERAPIES - was next before the Committee. Chairman Morgan recognized Representative Clary, bill sponsor, to explain the bill. Representative Thompson moved for a favorable report as to House Bill 1077 and recommend that the bill be referred to the Committee on Finance. Motion carried.

Senate Bill 973 - A BILL TO BE ENTITLED AN ACT TO REQUIRE HEALTH BENEFIT PLANS TO PROVIDE CERTAIN INFORMATION. A proposed House committee substitute was offered by Representative McMahan and he moved for its adoption for the purpose of Committee discussion. Motion carried. The Chair recognized Senator Winner, bill sponsor, to explain the bill. Committee Counsel Linwood Jones explained the one change in the bill. Representative Dockham moved that the Committee give a favorable report as to the House committee substitute for Senate Bill 973, unfavorable report as to the original bill, and recommend that the bill be re-referred to the Committee on Insurance. Chairman Morgan temporarily displaced the bill.

House committee substitute #2 for Senate Bill 1 - A BILL TO BE ENTITLED AN ACT TO CHANGE THE FILING SCHEDULE OF CAMPAIGN REPORTS; TO REQUIRE THE LISTING OF A CONTRIBUTOR'S PRINCIPAL OCCUPATION AND TO PROVIDE FOR A "BEST EFFORTS' RULE; TO REQUIRE THAT COORDINATED PARTY EXPENDITURES BE REPORTED; TO EXPAND REPORTING IN LOCAL ELECTIONS AND REFERENDA AND TO SET A THREE THOUSAND DOLLAR THRESHOLD FOR REPORTING GENERALLY; TO REQUIRE ELECTRONIC FILING OF CERTAIN CAMPAIGN REPORTS AND INTERNET ACCESS; TO PROVIDE FOR CIVIL PENALTIES FOR LATE FILING OF CAMPAIGN REPORTS; TO CLOSE THE SECOND PRIMARY LOOPHOLE FOR CONTRIBUTION LIMITS; TO REWRITE AND EXPAND THE LIMITS ON FUND-RAISING DURING LEGISLATIVE SESSIONS; TO PROVIDE FOR A TWO DOLLAR CHECKOFF FOR THE POLITICAL PARTIES FINANCING FUND AND TO CHANGE THE METHOD FOR DISTRIBUTING MONEY FROM THAT FUND; TO REQUIRE THE DISCLOSURE OF SPENDING FOR MATERIAL THAT NAMES CANDIDATES, ELECTIONS, PARTIES, AND ISSUES; AND TO DISCLOSE THE FLOW OF MONEY THROUGH NORTH CAROLINA AND NATIONAL POLITICAL ORGANIZATIONS. Chairman Morgan told the Committee that Senate Bill 1 came by way of the House Ways and Means Committee and was re-referred from the House floor to the Rules Committee. A proposed House committee substitute #3 for Senate Bill 1 was offered and Representative Wood moved for its adoption for the purpose of Committee discussion. Motion carried. Representative Allred was recognized to explain committee substitute #3. Handouts were distributed. Representative Culp asked the cost of the software that the State Board of Elections would need to supply. Representative Allred did not know. Representative Mitchell had questions about the electronic reporting process. Representative Mitchell asked Counsel how long had there been one hundred dollar reporting. Counsel did not know. Representative Mitchell wanted to amend the bill to change the mandatory reporting to begin at two hundred dollar campaign contributions rather than at one hundred dollar contributions. The Chair requested that Representative Mitchell hold the motion for a more appropriate time. The Chair temporarily displaced the bill.

The Chair called Senate Bill 973 back before the Committee.- A BILL TO BE ENTITLED AN ACT TO REQUIRE HEALTH BENEFIT PLANS TO PROVIDE CERTAIN INFORMATION. Chairman Morgan recognized Senator Winner, bill sponsor. Representative Dockham withdrew his original motion and moved for a favorable report as to the House committee substitute for Senate Bill 973, unfavorable report as to the original bill. Motion carried.

Senate Bill 918 - A BILL TO BE ENTITLED AN ACT TO AMEND THE DUTY OF PERSONS WHO DISCHARGE OIL OR ANY HAZARDOUS SUBSTANCE TO REPORT THE DISCHARGE TO THE DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES. Representative Mitchell moved that the proposed committee substitute for Senate Bill 918 be adopted for the purpose of discussion. Motion carried. The Chair recognized Representative Morris to explain the committee substitute. Representative Mitchell moved for a favorable report as to the House committee substitute, and an unfavorable report as to the original bill. Motion carried.

Chairman Morgan recessed the Committee until 3:25 p.m.

Upon reconvening, the Chair brought proposed House committee substitute #3 for Senate Bill 1 back before the Committee. Representative Connie Wilson moved for adoption of the proposed House committee substitute for the purpose of discussion. Motion carried. She was recognized to explain the bill. Representative Mitchell offered an amendment and explained it to the committee. Representative Wilson did not object to the amendment. Representative Mitchell then moved for the adoption of his amendment. Motion carried.

Representative Wood offered an amendment and moved for its adoption. The Chair recognized Representative Wood to explain his amendment (amendment #2). Representative Wilson spoke in opposition to the Wood amendment. Amendment 2 was defeated. Representative Wilson moved that the adopted amendment be rolled into the House committee substitute and the Committee give a favorable report to House committee substitute #3, and an unfavorable report as to the House committee substitute #2 for Senate Bill 1. Motion carried.

The Committee adjourned.

Representative Richard T. Morgan
Committee Chair

Anne M. Cole
Acting Committee Clerk

Attachments:

Committee Reports	North Carolina Alliance for Democracy packet
Bills	Amendment 1 to Senate Bill 1
Visitor's Sheet	Amendment 2 to Senate Bill 1

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative(s) **MORGAN** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE**.

Senate

☒ Committee Substitute for

H.B. 761 A BILL TO BE ENTITLED AN ACT PERTAINING TO LOCAL LAWS IN ORANGE COUNTY.

☐ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 761
Senate State Government, Local Government, and Personnel Committee Substitute Adopted 7/10/97

Short Title: Hillsborough Inspection Contracts. (Local)

Sponsors:

Referred to:

April 2, 1997

A BILL TO BE ENTITLED

AN ACT PERTAINING TO LOCAL LAWS IN ORANGE COUNTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-413 reads as rewritten:

"**§ 160A-413. Joint inspection department; other arrangements.**

A city council may enter into and carry out contracts with another city, county, or combination thereof under which the parties agree to create and support a joint inspection department for the enforcement of State and local laws specified in the agreement. The governing boards of the contracting parties are authorized to make any necessary appropriations for this purpose.

In lieu of a joint inspection department, a city council may designate an inspector from any other city or county to serve as a member of its inspection department with the approval of the governing body of the other city or county, or may contract with an individual who is not a city or county employee but who holds one of the applicable certificates as provided in G.S. 160A-411.1 or ~~G.S. 153A-351.1.~~ G.S. 153A-351.1, or may contract with the employer of an individual who holds one of the applicable certificates for the services of that individual. The inspector, if designated from another city or county under this section, shall, while exercising the duties of the position, be considered a municipal employee. The city shall have the same potential liability, if any, for inspections conducted by an individual who is not an employee of the city as it does for an individual who is an employee of the city. The

individual with whom the city contracts shall have errors and omissions and other insurance coverage acceptable to the city.

The city council of any city may request the board of county commissioners of the county in which the city is located to direct one or more county building inspectors to exercise their powers within part or all of the city's jurisdiction, and they shall thereupon be empowered to do so until the city council officially withdraws its request in the manner provided in G.S. 160A-360(g)."

Section 2. Notwithstanding G.S. 115C-517, the Chapel Hill/Carrboro School Administrative Unit may construct a school on land that is located, in part, outside of the boundaries of the local school administrative unit.

Section 2.1. Section 9-3 of the Charter of the Town of Carrboro, being Chapter 476 of the 1987 Session Laws, reads as rewritten:

"**Section 9-3. Zoning Board of Adjustment.** The board of aldermen may create a board of adjustment in accordance with the provisions of Article 19 of Chapter 160A of the General Statutes. Such board shall be subject to all the provisions of general law except that the board of aldermen may authorize the board of adjustment to decide any matter before it either (i) upon a vote of a majority of the members present at a meeting and not excused from voting, so long as a quorum ~~consisting of at least six members~~ is present, or (ii) upon a vote of a four-fifths majority of the members present at a meeting and not excused from voting, so long as a quorum ~~consisting of at least six members~~ is present."

Section 2.2. Section 9-5 of the Charter of the Town of Carrboro, being Chapter 476 of the 1987 Session Laws, reads as rewritten:

"**Section 9-5. Sprinkler Systems.** Notwithstanding any provision of the North Carolina State Building Code or any general or local law to the contrary, the board of aldermen may adopt an ordinance requiring that sprinkler systems be installed in all of the following types of buildings constructed within the town or its extraterritorial planning ~~jurisdiction:~~ jurisdiction, including the portion of the joint planning area authorized under Chapter 233 of the 1987 Session Laws wherein the Town of Carrboro administers the State Building Code: (i) buildings in excess of 50 feet in height; (ii) nonresidential buildings containing at least 5,000 square feet of floor surface area; ~~or~~ (iii) buildings designed for assembly occupancy (as defined in the North Carolina State Building Code) that accommodate more than 25 ~~people.~~ people; or (iv) multifamily buildings having three or more dwelling units. ~~This ordinance applies~~ An ordinance adopted pursuant to this section may apply to existing buildings only to the extent and under the circumstances that the provisions of the North Carolina State Building Code apply to preexisting buildings."

Section 3. Section 1 of this act applies to the Town of Hillsborough only. Section 2 of this act applies to the Chapel Hill/Carrboro School Administrative Unit only.

Section 4. This act is effective when it becomes law.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **MORGAN** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE.**

☐ Committee Substitute for
S.B. 842 A BILL TO BE ENTITLED AN ACT TO EXEMPT PERSONS PERFORMING CERTAIN ALTERATIONS, REMODELING, AND RENOVATIONS OF EXISTING BUILDINGS OR STRUCTURES FROM THE ARCHITECTURAL LICENSURE REQUIREMENTS.

☐ 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 House 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 842
Proposed House Committee Substitute S842-PCS2803

Short Title: Architectural License Exemption. (Public)

Sponsors:

Referred to:

April 15, 1997

A BILL TO BE ENTITLED

AN ACT TO EXEMPT PERSONS PERFORMING CERTAIN ALTERATIONS, REMODELING, AND RENOVATIONS OF EXISTING BUILDINGS OR STRUCTURES FROM THE ARCHITECTURAL LICENSURE REQUIREMENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 83A-13(c)(5) reads as rewritten:

"(5) Alteration, ~~remodeling~~ remodeling, or renovation of an existing building ~~which~~ that is exempt under this section, or alteration, remodeling, or renovation of an existing building or building site ~~which~~ that does not alter or affect the structural system of the building; change the building's access or exit pattern; or change the live or dead load on the building's structural system. This subdivision shall not limit or change any other exemptions to this Chapter or to the practice of engineering under Chapter 89C of the General Statutes."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 842

Short Title: Architectural License Exemption. (Public)

Sponsors: Senators Rand; and Foxx.

Referred to: Judiciary.

April 15, 1997

A BILL TO BE ENTITLED

AN ACT TO EXEMPT PERSONS PERFORMING CERTAIN ALTERATIONS, REMODELING, AND RENOVATIONS OF EXISTING BUILDINGS OR STRUCTURES FROM THE ARCHITECTURAL LICENSURE REQUIREMENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 83A-13(c)(5) reads as rewritten:

"(5) Alteration, ~~remodeling~~ remodeling, or renovation of an existing building ~~which~~ that is exempt under this section, or alteration, remodeling, or renovation of an existing building or building site ~~which~~ that does not alter or affect the ~~structural system of the building;~~ load on the building's mechanical, electrical, or life safety systems, change the live or dead load on the building's structural system, or change the building's access or exit pattern."

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

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative(s) **MORGAN** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE**.

Senate

☒ Committee Substitute for

H.B. 847 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE CERTAIN WATER AND SEWER AUTHORITIES TO ENTER INTO CERTAIN AGREEMENTS AND TO AUTHORIZE A WATER AND SEWER AUTHORITY HOLDING A CERTIFICATE UNDER G.S. 162A-7 TO EXERCISE THE POWER OF EMINENT DOMAIN FOR SPECIFIED PURPOSES.

☐ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 4

HOUSE BILL 847
Committee Substitute Favorable 5/12/97
Senate Finance Committee Substitute Adopted 7/22/97
Fourth Edition Engrossed 7/29/97

Short Title: Addit. Powers/Certain Water Auth. (Public)

Sponsors:

Referred to:

April 7, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE CERTAIN WATER AND SEWER AUTHORITIES TO ENTER INTO CERTAIN AGREEMENTS AND TO AUTHORIZE A WATER AND SEWER AUTHORITY HOLDING A CERTIFICATE UNDER G.S. 162A-7 TO EXERCISE THE POWER OF EMINENT DOMAIN FOR SPECIFIED PURPOSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 162A-6 reads as rewritten:

"**§ 162A-6. Powers of authority generally.**

(a) Each authority created hereunder shall be deemed to be a public instrumentality exercising public and essential governmental functions to provide for the public health and welfare, and each ~~such~~ authority ~~is, subject to the provisions of G.S. 162A-7, hereby~~ is authorized and empowered:

(1) To adopt bylaws for the regulation of its affairs and the conduct of its business;

(2) To adopt an official seal and alter the same at pleasure;

(3) To maintain an office at such place or places as it may designate;

(4) To sue and be sued in its own name, plead and be impleaded;

(5) To acquire, lease as lessee or lessor, construct, reconstruct, improve, extend, enlarge, equip, repair, maintain and operate any water system or part thereof or any sewer system or part thereof or

any combination thereof within or without the participating political subdivisions or any thereof;

(6) To issue revenue bonds of the authority as hereinafter provided to pay the cost of such acquisition, construction, reconstruction, improvement, extension, enlargement or equipment;

(7) To issue revenue refunding bonds of the authority as hereinafter provided;

(8) To combine any water system and any sewer system as a single system for the purpose of operation and financing;

(9) To fix and revise from time to time and to collect rates, fees and other charges for the use of or for the services and facilities furnished by any system operated by the authority;

(10) To acquire in the name of the authority by gift, grant, purchase, devise, exchange, lease, acceptance of offers of dedication by plat, or any other lawful method, to the same extent and in the same manner as provided for cities and towns under the provisions of G.S. 160A-240.1 and G.S. 160A-374, or the exercise of the right of eminent domain in accordance with the General Statutes of North Carolina which may be applicable to the exercise of such powers by municipalities or counties, any lands or rights in land or water rights in connection therewith, and to acquire such personal property, as it may deem necessary in connection with the acquisition, construction, reconstruction, improvement, extension, enlargement or operation of any water system or sewer system, and to hold and dispose of all real and personal property under its control; provided, that the taking of water from any stream or reservoir by any authority created under the provisions of this Article shall not vest in the taker any rights by prescription; provided, further, that nothing in this section shall affect rights by prescription, if any, now held by any municipality and which may be later transferred to any authority of which such municipality may become a member;

(11) To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this Article, including a trust agreement or trust agreements securing any revenue bonds issued hereunder, and to employ such consulting and other engineers, superintendents, managers, construction and financial experts, accountants and attorneys, and such employees and agents as may, in the judgment of the authority be deemed necessary, and to fix their compensation; provided, however, that all such expenses shall be payable solely from funds made available under the provisions of this Article;

(12) To enter into contracts with the government of the United States or any agency or instrumentality thereof, or with any political subdivision, private corporation, copartnership, association or individual providing for the acquisition, construction, reconstruction, improvement, extension, enlargement, operation or maintenance of any water system or sewer system or providing for or relating to the treatment and disposal of sewage or providing for or relating to any water system or the purchase or sale of water;

(13) To receive and accept from any federal, State or other public agency and any private agency, person or other entity, donations, loans, grants, aid or contributions of any money, property, labor or other things of value for any sewer system or water system, and to agree to apply and use the same in accordance with the terms and conditions under which the same are provided;

(14) To enter into contract with any political subdivision by which the authority shall assume the payment of the principal of and interest on indebtedness of such subdivision; and

(14a) To make special assessments against benefited property within the area served or to be served by the authority for the purpose of constructing, reconstructing, extending, or otherwise improving water systems or sanitary collection, treatment, and sewage disposal systems, in the same manner that a county may make special assessments under authority of Chapter 153A, Article 9, except that the language appearing in G.S. 153A-185 reading as follows: "A county may not assess property within a city pursuant to subdivision (1) or (2) of this section unless the governing board of the city has by resolution approved the project," shall not apply to assessments levied by Water and Sewer Authorities established pursuant to Chapter 162A, Article 1, of the General Statutes. For the purposes of this paragraph, references in Chapter 153A, Article 9, to the "county," the "board of county commissioners," "the board" or a specific county official or employee are deemed to refer, respectively, to the authority and to the official or employee of the authority who performs most nearly the same duties performed by the specified county official or employee.

Assessment rolls after being confirmed shall be filed for registration in the office of the Register of Deeds of the county in which the property being assessed is located, and the term "county tax collector" wherever used in G.S. 153A-195 and G.S. 153A-196, shall mean the Executive Director or other administrative officer designated by the authority to perform the functions described in said sections of the statute.

(14b) To provide for the defense of civil and criminal actions and payment of civil judgments against employees and officers or

former employees and officers and members or former members of the governing body as authorized by G.S. 160A-167, as amended.

(14c) To adopt ordinances to regulate and control the discharge of sewage or stormwater into any sewerage system owned or operated by the authority and to adopt ordinances to regulate and control structural and natural stormwater and drainage systems of all types. Prior to the adoption of any such ordinance or any amendment to any such ordinance, the authority shall first pass a declaration of intent to adopt such ordinance or amendment. The declaration of intent shall describe the ordinance which it is proposed that the authority adopt. The declaration of intent shall be submitted to each governing body for review and comment. The authority shall consider any comment or suggestions offered by any governing body with respect to the proposed ordinance or amendment. Thereafter, the authority shall be authorized to adopt such ordinance or amendment to it at any time after 60 days following the submission of the declaration of intent to each governing body.

(14d) To require the owners of developed property on which there are situated one or more residential dwelling units or commercial establishments located within the jurisdiction of the authority and within a reasonable distance of any waterline or sewer collection line owned, leased as lessee, or operated by the authority to connect the property with the waterline, sewer connection line, or both and fix charges for the connections. The power granted by this subdivision may be exercised by an authority only to the extent that the service, whether water, sewer, or a combination thereof, to be provided by the authority is not then being provided to the improved property by any other political subdivision or by a public utility regulated by the North Carolina Utilities Commission pursuant to Chapter 62 of the General Statutes. In the case of improved property that would qualify for the issuance of a building permit for the construction of one or more residential dwelling units or commercial establishments and where the authority has installed water or sewer lines or a combination thereof directly available to the property, the authority may require payment of a periodic availability charge, not to exceed the minimum periodic service charge for properties that are connected. This subdivision applies only to a water and sewer authority whose membership includes part or all of a county that has a population of at least 40,000 according to the most recent annual population estimates certified by the State Planning Officer.

(15) To do all acts and things necessary or convenient to carry out the powers granted by this Article.

(16) To purchase real or personal property as provided by G.S. 160A-20, in addition to any other method allowed under this Article.

(b) In addition to the powers given under subsection (a) of this section, an authority created under G.S. 162A-3.1 and its participating political subdivisions may enter into agreements obligating these subdivisions to make payments to the authority for treated water delivered or made available or expected to be delivered or made available by the authority, regardless of whether treated water is actually delivered or made available. Such payments may be designed to cover the authority's operating costs (including debt service and related amounts) by allocating those costs among the participating political subdivisions and by requiring these subdivisions to pay additional amounts to make up for the nonpayment of defaulting subdivisions. The participating political subdivisions may agree to budget for and appropriate such payments. Such payment obligations may be made absolute, unconditional, and irrevocable and required to be performed strictly in accordance with the terms of such agreements and without abatement or reduction under all circumstances whatsoever, including whether or not any facility of the authority is completed, operable or operating and, notwithstanding the suspension, interruption, interference, reduction or curtailment of the output of any such facility or the treated water contracted for, and such obligations may be made subject to no reduction, whether by offset or otherwise, and not conditioned upon the performance or nonperformance of the authority or any participating political subdivision under any agreement. Such payment obligations are in consideration of any output or capacity that may at any time be available from facilities of the authority. The participating political subdivisions may agree to make such payments from limited or specified sources. To the extent such payments relate to debt service of the authority and related amounts, they may not be made from any moneys derived from exercise by the participating political subdivisions of their taxing power, and such payment obligations shall not constitute a pledge of such taxing power. The participating political subdivisions may agree (i) not to pledge or encumber any source of payment and (ii) to operate (including fixing rates and charges) in a manner that enables them to make such payments from such sources. The participating political subdivisions may also secure such payment obligations with a pledge of or lien upon any such sources of payment. Notwithstanding the provisions of G.S. 162A-9 or any other law to the contrary, an authority entering into any such agreement need not fix rates, fees and other charges for its services except as provided herein, and such rates, fees and charges need not be uniform through the authority's service areas. Notwithstanding the provisions of G.S. 160A-322 or any other law to the contrary, agreements described herein may have a term not exceeding 50 years. Notwithstanding any law to the contrary, the execution and effectiveness of any agreement authorized hereby shall not be subject to any authorizations or approvals by any entity except the parties thereto. Each authority and its participating political subdivisions shall have the power to do all acts and things necessary or convenient to carry out the powers granted by this subsection.

(c) In addition to the powers given under subsection (a) of this section, an authority that holds a certificate issued after December 1, 1991, by the Environmental Management Commission under G.S. 162A-7 (repealed) may acquire property by the power of eminent domain or by gift, purchase, grant, exchange, lease, or any other lawful method for one or more of the following purposes:

(1) To relocate a road or to construct a road necessitated by construction of water supply project.

(2) To establish, extend, enlarge, or improve storm sewer and drainage systems and works, or sewer and septic tank lines and systems.

(3) To establish drainage programs and programs to prevent obstructions to the natural flow of streams, creeks and natural water channels or to improve drainage facilities. The authority contained in this subdivision is in addition to any authority contained in Chapter 156 of the General Statutes.

(4) To acquire property for wetlands mitigation."

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

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative(s) **MORGAN** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE.**

Senate

☒ Committee Substitute for

H.B. 990 A BILL TO BE ENTITLED AN ACT TO EXEMPT CERTAIN NONPROFIT AND CONSUMER-OWNED WATER OR SEWER UTILITIES AND CERTAIN SMALL WATER OR SEWER UTILITIES FROM REGULATION BY THE UTILITIES 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 .)

☐ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 4

HOUSE BILL 990
Committee Substitute Favorable 4/24/97
Third Edition Engrossed 4/29/97
Senate Finance Committee Substitute Adopted 7/28/97

Short Title: Exempt Certain Nonprofit Utilities. (Public)

Sponsors:

Referred to:

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO EXEMPT CERTAIN NONPROFIT AND CONSUMER-OWNED WATER OR SEWER UTILITIES AND CERTAIN SMALL WATER OR SEWER UTILITIES FROM REGULATION BY THE UTILITIES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 62-3(23) reads as rewritten:

"(23) a. 'Public utility' means a person, whether organized under the laws of this State or under the laws of any other state or country, now or hereafter owning or operating in this State equipment or facilities for:

1. Producing, generating, transmitting, delivering or furnishing electricity, piped gas, steam or any other like agency for the production of light, heat or power to or for the public for compensation; provided, however, that the term 'public utility' shall not include persons who construct or operate an electric generating facility, the primary purpose of which facility is for such person's own use and not for the primary purpose of producing electricity, heat, or steam for sale to or for the public for compensation;

2. Diverting, developing, pumping, impounding, distributing or furnishing water to or for the public for compensation, or operating a public sewerage system for compensation; provided, however, that the term 'public utility' shall not include any person or company whose sole operation consists of selling water to less than ~~10~~ 15 residential customers, except that any person or company which constructs a water system in a subdivision with plans for ~~10~~ 15 or more lots and which holds itself out by contracts or other means at the time of said construction to serve an area containing more than ~~10~~ 15 residential building lots shall be a public utility at the time of such planning or holding out to serve such ~~10~~ 15 or more building lots, without regard to the number of actual customers connected;
3. Transporting persons or household goods by street, suburban or interurban bus or railways for the public for compensation;
4. Transporting persons or household goods by railways or motor vehicles, or any other form of transportation for the public for compensation, except motor carriers exempted in G.S. 62-260, and except carriers by air;
5. Transporting or conveying gas, crude oil or other fluid substance by pipeline for the public for compensation;
6. Conveying or transmitting messages or communications by telephone or telegraph, or any other means of transmission, where such service is offered to the public for compensation.

b. The term 'public utility' shall for rate-making purposes include any person producing, generating or furnishing any of the foregoing services to another person for distribution to or for the public for compensation.

c. The term 'public utility' shall include all persons affiliated through stock ownership with a public utility doing business in this State as parent corporation or subsidiary corporation as defined in G.S. 55-2 to such an extent that the Commission shall find that such affiliation has an effect on the rates or service of such public utility.

d. The term 'public utility,' except as otherwise expressly provided in this Chapter, shall not include a municipality, an authority organized under the North Carolina Water and Sewer Authorities Act, electric or telephone membership

~~corporation or nonprofit water membership or consumer-owned corporations financed by the Farmers Home Administration, the United States Department of Housing and Urban Development, or any similar or successor federal financing agency, provided, that (i) any such financing administration, department or agency exercise substantial control over and regulation of any such corporation's rates and terms and conditions of service, and (ii) the members or consumer-owners of any such corporation, pursuant to the corporation's articles of incorporation and bylaws, shall elect the governing board of the corporation;~~ corporation; or any person not otherwise a public utility who furnishes such service or commodity only to himself, his employees or tenants when such service or commodity is not resold to or used by others; provided, however, that any person other than a nonprofit organization serving only its members, who distributes or provides utility service to his employees or tenants by individual meters or by other coin-operated devices with a charge for metered or coin-operated utility service shall be a public utility within the definition and meaning of this Chapter with respect to the regulation of rates and provisions of service rendered through such meter or coin-operated device imposing such separate metered utility charge. If any person conducting a public utility shall also conduct any enterprise not a public utility, such enterprise is not subject to the provisions of this Chapter. A water or sewer system owned by a homeowners' association that provides water or sewer service only to members or leaseholds of members is not subject to the provisions of this Chapter.

e. The term 'public utility' shall include the University of North Carolina insofar as said University supplies telephone service, electricity or water to the public for compensation from the University Enterprises defined in G.S. 116-41.1(9).

f. The term 'public utility' shall include the Town of Pineville insofar as said town supplies telephone services to the public for compensation. The territory to be served by the Town of Pineville in furnishing telephone services, subject to the Public Utilities Act, shall include the town limits as they exist on May 8, 1973, and shall also include the area proposed to be annexed under the town's ordinance adopted May 3, 1971, until January 1, 1975.

g. The term 'public utility' shall not include a hotel, motel, time share or condominium complex operated primarily to serve transient occupants, which imposes charges to occupants for local, long-distance, or wide area telecommunication services when such calls are completed through the use of facilities provided by a public utility, and provided further that the local services received are rated in accordance with the provisions of G.S. 62-110(d) and the applicable charges for telephone calls are prominently displayed in each area where occupant rooms are located.

h. The term 'public utility' shall not include the resale of electricity by (i) a campground operated primarily to serve transient occupants, or (ii) a marina; provided that (i) the campground or marina charges no more than the actual cost of the electricity supplied to it, (ii) the amount of electricity used by each campsite or marina slip occupant is measured by an individual metering device, (iii) the applicable rates are prominently displayed at or near each campsite or marina slip, and (iv) the campground or marina only resells electricity to campsite or marina slip occupants.

i. The term 'public utility' shall not include the State, the Office of the State Controller, or the Microelectronics Center of North Carolina in the provision or sharing of switched broadband telecommunications services with non-State entities or organizations of the kind or type set forth in G.S. 143B-426.39.

j. The term 'public utility' shall not include any person, not otherwise a public utility, conveying or transmitting messages or communications by mobile radio communications service. Mobile radio communications service includes one-way or two-way radio service provided to mobile or fixed stations or receivers using mobile radio service frequencies."

Section 2. Article 6 of Chapter 62 of the General Statutes is amended by adding a new section to read:

"**§ 62-110.5. Commission may exempt certain nonprofit and consumer-owned water or sewer utilities.**

The Commission may exempt any water or sewer utilities owned by nonprofit membership or consumer-owned corporations from regulation under this Chapter, subject to those conditions the Commission deems appropriate, if:

(1) The members or consumer-owners of the corporation elect the governing board of the corporation pursuant to the corporation's articles of incorporation and bylaws; and

(2) The Commission finds that the organization and the quality of service of the utility are adequate to protect the public interest to the extent that additional regulation is not required by the public convenience and necessity."

Section 3. G.S. 62-300(a) is amended by adding a new subdivision to read:

"(15) One hundred dollars ($100.00) for each application for exemption filed by nonprofit and consumer-owned water or sewer utilities pursuant to G.S. 62-110.5."

Section 4. This act is effective when it becomes law.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative(s) **MORGAN** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE.**

Senate

☒ Committee Substitute for ~~H.B.~~

H.B. 1108 A BILL TO BE ENTITLED AN ACT TO ALLOW THE ALCOHOLIC BEVERAGE CONTROL COMMISSION TO ISSUE PERMITS FOR "BREW ON PREMISES" BUSINESSES AND TO CLARIFY THE APPLICABILITY OF CERTAIN REGULATIONS TO SOME SPORTS CLUBS.

☐ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 6

HOUSE BILL 1108
Committee Substitute Favorable 5/22/97
Committee Substitute #2 Favorable 6/12/97
Senate Finance Committee Substitute Adopted 7/17/97
Senate Committee Substitute #2 Adopted 7/24/97
Sixth Edition Engrossed 7/29/97

Short Title: B.O.P./Sports Club Permits. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE ALCOHOLIC BEVERAGE CONTROL COMMISSION TO ISSUE PERMITS FOR "BREW ON PREMISES" BUSINESSES AND TO CLARIFY THE APPLICABILITY OF CERTAIN REGULATIONS TO SOME SPORTS CLUBS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 18B-307, as amended by S.L. 1997-134, reads as rewritten:

"**§ 18B-307. Manufacturing offenses.**

(a) Offenses. -- It shall be unlawful for any person, except as authorized by this Chapter, to:

(1) Sell or possess equipment or ingredients intended for use in the manufacture of any alcoholic ~~beverage;~~ beverage, except equipment and ingredients provided under a Brew on Premises permit; or

(2) Knowingly allow real or personal property owned or possessed by him to be used by another person for the manufacture of any alcoholic ~~beverage.~~ beverage, except pursuant to a Brew on Premises permit.

(b) Unlawful Manufacturing. -- Except as provided in G.S. 18B-306, it shall be unlawful for any person to manufacture any alcoholic ~~beverage~~ beverage, except at an establishment with a Brew on Premises permit, without first obtaining the applicable ABC permit and revenue licenses.

(c) Second Offense of Manufacturing. -- A second offense of unlawful manufacturing of alcoholic beverage shall be a Class I felony."

Section 2. G.S. 18B-902(d) reads as rewritten:

"(d) Fees. -- An application for an ABC permit shall be accompanied by payment of the following application fee:

(1) On-premises malt beverage permit -- $200.00.
(2) Off-premises malt beverage permit -- $200.00.
(3) On-premises unfortified wine permit -- $200.00.
(4) Off-premises unfortified wine permit -- $200.00.
(5) On-premises fortified wine permit -- $200.00.
(6) Off-premises fortified wine permit -- $200.00.
(7) Brown-bagging permit -- $200.00, unless the application is for a restaurant seating less than 50, in which case the fee shall be $100.00.
(8) Special occasion permit -- $200.00.
(9) Limited special occasion permit -- $25.00.
(10) Mixed beverages permit -- $750.00.
(11) Culinary permit -- $100.00.
(12) Unfortified winery permit -- $150.00.
(13) Fortified winery permit -- $150.00.
(14) Limited winery permit -- $150.00.
(15) Brewery permit -- $150.00.
(16) Distillery permit -- $150.00.
(17) Fuel alcohol permit -- $50.00.
(18) Wine importer permit -- $150.00.
(19) Wine wholesaler permit -- $150.00.
(20) Malt beverage importer permit -- $150.00.
(21) Malt beverage wholesaler permit -- $150.00.
(22) Bottler permit -- $150.00.
(23) Salesman permit -- $25.00.
(24) Vendor representative permit -- $25.00.
(25) Nonresident malt beverage vendor permit -- $50.00.
(26) Nonresident wine vendor permit -- $50.00.
(27) Any special one-time permit under G.S. 18B-1002 -- $25.00.
(28) Winery special event permit -- $100.00.
(29) Mixed beverages catering permit -- $100.00.
(30) Guest room cabinet permit -- $750.00.
(31) Liquor importer/bottler permit -- $250.00.
(32) Cider and vinegar manufacturer permit -- $100.00.
(33) Brew on premises permit -- $200.00."

Section 3. G.S. 18B-1001 is amended by adding a new subdivision to read:

"(14) Brew on Premises Permit. -- A permit may be issued to a business, located in a jurisdiction where the sale of malt beverages is allowed, where individual customers who are 21 years old or older may purchase ingredients and rent the equipment, time, and space to brew malt beverages for personal use in amounts set forth in 27 C.F.R. § 25.205. The customer must do all of the following:

a. Select a recipe and kettle.
b. Weigh out the proper ingredients and add them to the kettle.
c. Transfer the wort to the fermenter.
d. Add the yeast.
e. Place the ingredients in a fermentation room.
f. Filter, carbonate, and bottle the malt beverage.

A permittee may transfer the ingredients from the fermentation room to the cold room and may assist the customer in all the steps involved in brewing a malt beverage except adding the yeast. A malt beverage produced under this subdivision may not contain more than six percent (6%) alcohol by volume."

Section 4. G.S. 18B-904 is amended by adding a new subsection to read:

"(g) Regulations issued by the Commission interpreting G.S. 18B-1000(8) shall not apply to any sports club that was issued any permits prior to July 1, 1997, and that is located in any county that borders on: (i) the geographically largest county in the State, (ii) another state, and (iii) a county where 10 or more municipal ABC systems and a county-wide ABC system have been approved."

Section 5. This act is effective when it becomes law.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative(s) **MORGAN** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE.**

☒ Committee Substitute for

S.B. 565 A BILL TO BE ENTITLED AN ACT TO CLARIFY THE APPLICATION OF THE COMMISSIONER OF BANKS' RATE TO VARIABLE RATE LOANS WITH ADJUSTMENT PERIODS GREATER THAN ONE MONTH, TO REPEAL THE LAWS GOVERNING VARIABLE RATE LOANS OF MANUFACTURED HOMES AND INSTALLMENT RATES AND FEES, AND TO ESTABLISH FINANCE CHARGE RATS FOR CONSUMER CREDIT INSTALLMENT SALES CONTRACTS FOR WATERCRAFTS.

☐ 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 (# 2), ☒ 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.

☐

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 565
Commerce Committee Substitute Adopted 4/30/97
House Committee Substitute Favorable 7/24/97
Proposed House Committee Substitute S565-PCS6724

Short Title: Variable Rate Loans. (Public)

Sponsors:

Referred to:

April 1, 1997

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE APPLICATION OF THE COMMISSIONER OF BANKS' RATE TO VARIABLE RATE LOANS WITH ADJUSTMENT PERIODS GREATER THAN ONE MONTH, TO REPEAL THE LAWS GOVERNING VARIABLE RATE LOANS OF MANUFACTURED HOMES AND INSTALLMENT RATES AND FEES, TO ESTABLISH FINANCE CHARGE RATES FOR CONSUMER CREDIT INSTALLMENT SALES CONTRACTS FOR WATERCRAFTS, AND TO AMEND THE NORTH CAROLINA FINANCIAL PRIVACY ACT TO PERMIT THE DISCLOSURE OF THE NAME, ADDRESS, AND EXISTENCE OF AN ACCOUNT OF ANY CUSTOMER.

The General Assembly of North Carolina enacts:

Section 1. G.S. 24-1.1(c) reads as rewritten:

"(c) On the fifteenth day of each month, the Commissioner of Banks shall announce and publish the maximum rate of interest permitted by subdivision (1) of subsection (a) of this section on that date. Such rate shall be the latest published noncompetitive rate for U.S. Treasury bills with a six-month maturity as of the fifteenth day of the month plus six percent (6%), rounded upward or downward, as the case may be, to the nearest one-half of one percent (1/2 of 1%) or sixteen percent (16%), whichever is greater. If there is no nearest one-half of one percent (1/2 of 1%), the Commissioner shall round downward to the lower one-half of one percent

(1/2 of 1%). The rate so announced shall be the maximum rate permitted for the term of loans made under this section during the following calendar month when the parties to such loans have agreed that the rate of interest to be charged by the lender and paid by the borrower shall not vary or be adjusted during the term of the loan. The parties to a loan made under this section may agree to a rate of interest which shall vary or be adjusted during the term of the loan in which case the maximum rate of interest permitted on such loans during a month during the term of the loan shall be the greater of the rate announced by the Commissioner in (i) the preceding calendar ~~month.~~ month or (ii) the calendar month preceding that in which the rate is varied or adjusted."

Section 2. G.S. 24-1.1C and G.S. 24-1.2 are repealed.

Section 2.1. G.S. 24-1.2A reads as rewritten:

"**§ 24-1.2A. Equity lines of credit.**

(a) Notwithstanding any other provision of this Chapter, the parties to an equity line of credit, as defined in G.S. 45-81, may contract in writing for interest at rates which shall not exceed the maximum rates permitted under ~~G.S. 24-1.2(2a);~~ G.S. 24-1.1(c); provided, however, that the parties may contract for interest rates which shall be adjustable or variable, so long as for adjustable or variable rate contracts the rate in effect for a given period does not exceed the maximum rate permitted under ~~G.S. 24-1.2(2a)~~ G.S. 24-1.1(c) for the same period.

(b) Fees may be charged on equity lines of credit which in the aggregate, over the life of the contract based on the maximum limit of the line of credit, do not exceed those permitted under G.S. 24-10. Any lender may charge a party to a loan or extension of credit governed by this section a fee for the modification, renewal, extension, or amendment of any terms of the loan or extension of credit, such fee not to exceed the greater of one-quarter of one percent (1/4 of 1%) of the balance outstanding at the time of the modification, renewal, extension, or amendment of terms, or fifty dollars ($50.00)."

Section 3. G.S. 25A-15(c) reads as rewritten:

"(c) A finance charge rate not to exceed the higher of the rate established in subsection (b) or the rate set forth below may be imposed in a consumer credit installment sale contract repayable in not less than six installments for a self-propelled motor ~~vehicle:~~ vehicle or a watercraft as defined in G.S. 75A-33(2):

(1) Eighteen percent (18%) per annum for vehicles or watercraft one and two model years old;

(2) Twenty percent (20%) per annum for vehicles or watercraft three model years old;

(3) Twenty-two percent (22%) per annum for vehicles or watercraft four model years old; and

(4) Twenty-nine percent (29%) per annum for vehicles or watercraft five model years old and older.

A motor vehicle or watercraft is one model year old on January 1 of the year following the designated year model of the vehicle."

Section 4. G.S. 53B-8 reads as rewritten:

"**§ 53B-8. Disclosure of financial records.**

No financial institution or its officer, employee, or agent may disclose a customer's financial record to a government authority except as provided in this Chapter. This section does not prohibit a financial institution from giving notice of or disclosing a financial record to a government authority, as defined in G.S. 53B-2(4), to the same extent as is authorized with respect to federal government authorities in the Right to Financial Privacy Act § 1103(d), 12 U.S.C. § 3403(d). Nothing in this ~~Chapter~~ section shall prohibit a financial institution or its officer, employee or agent from disclosing, or require the disclosure of, the name, address, and existence of an account of any customer to a government authority that makes a written request stating the reason for the request. Nothing in this Chapter shall prohibit a financial institution or its officer, employee, or agent from notifying a government authority that the financial institution or its officer, employee, or agent has information that may be relevant to a possible violation of law or regulation. The information shall be limited to a description of the suspected illegal activity and the name or other identifying information concerning any individual, corporation, or account involved in the activity. Any financial institution or its officer, employee, or agent making a disclosure of information pursuant to this section shall not be liable to the customer under the laws and rules of the State of North Carolina or any political subdivision of the State for disclosure or for failure to notify the customer of the disclosure."

Section 5. This act becomes effective October 1, 1997. Section 3 of this act applies to loans made on or after that date, and Section 1 of this act applies to variations or adjustments in rates occurring on or after that date regardless of the date on which the loan was made.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 3

SENATE BILL 565
Commerce Committee Substitute Adopted 4/30/97
House Committee Substitute Favorable 7/24/97

Short Title: Variable Rate Loans. (Public)

Sponsors:

Referred to:

April 1, 1997

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE APPLICATION OF THE COMMISSIONER OF BANKS' RATE TO VARIABLE RATE LOANS WITH ADJUSTMENT PERIODS GREATER THAN ONE MONTH, TO REPEAL THE LAWS GOVERNING VARIABLE RATE LOANS OF MANUFACTURED HOMES AND INSTALLMENT RATES AND FEES, AND TO ESTABLISH FINANCE CHARGE RATES FOR CONSUMER CREDIT INSTALLMENT SALES CONTRACTS FOR WATERCRAFTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 24-1.1(c) reads as rewritten:

"(c) On the fifteenth day of each month, the Commissioner of Banks shall announce and publish the maximum rate of interest permitted by subdivision (1) of subsection (a) of this section on that date. Such rate shall be the latest published noncompetitive rate for U.S. Treasury bills with a six-month maturity as of the fifteenth day of the month plus six percent (6%), rounded upward or downward, as the case may be, to the nearest one-half of one percent (1/2 of 1%) or sixteen percent (16%), whichever is greater. If there is no nearest one-half of one percent (1/2 of 1%), the Commissioner shall round downward to the lower one-half of one percent (1/2 of 1%). The rate so announced shall be the maximum rate permitted for the term of loans made under this section during the following calendar month when the parties to such loans have agreed that the rate of interest to be charged by the lender and paid by the borrower shall not vary or be adjusted during the term of the loan.

The parties to a loan made under this section may agree to a rate of interest which shall vary or be adjusted during the term of the loan in which case the maximum rate of interest permitted on such loans during a month during the term of the loan shall be the greater of the rate announced by the Commissioner in (i) the preceding calendar ~~month.~~ month or (ii) the calendar month preceding that in which the rate is varied or adjusted."

Section 2. G.S. 24-1.1C and G.S. 24-1.2 are repealed.

Section 2.1. G.S. 24-1.2A reads as rewritten:

"**§ 24-1.2A. Equity lines of credit.**

(a) Notwithstanding any other provision of this Chapter, the parties to an equity line of credit, as defined in G.S. 45-81, may contract in writing for interest at rates which shall not exceed the maximum rates permitted under ~~G.S. 24-1.2(2a);~~ G.S. 24-1.1(c); provided, however, that the parties may contract for interest rates which shall be adjustable or variable, so long as for adjustable or variable rate contracts the rate in effect for a given period does not exceed the maximum rate permitted under ~~G.S. 24-1.2(2a)~~ G.S. 24-1.1(c) for the same period.

(b) Fees may be charged on equity lines of credit which in the aggregate, over the life of the contract based on the maximum limit of the line of credit, do not exceed those permitted under G.S. 24-10. Any lender may charge a party to a loan or extension of credit governed by this section a fee for the modification, renewal, extension, or amendment of any terms of the loan or extension of credit, such fee not to exceed the greater of one-quarter of one percent (1/4 of 1%) of the balance outstanding at the time of the modification, renewal, extension, or amendment of terms, or fifty dollars ($50.00)."

Section 3. G.S. 25A-15(c) reads as rewritten:

"(c) A finance charge rate not to exceed the higher of the rate established in subsection (b) or the rate set forth below may be imposed in a consumer credit installment sale contract repayable in not less than six installments for a self-propelled motor ~~vehicle.~~ vehicle or a watercraft as defined in G.S. 75A-33(2):

(1) Eighteen percent (18%) per annum for vehicles or watercraft one and two model years old;

(2) Twenty percent (20%) per annum for vehicles or watercraft three model years old;

(3) Twenty-two percent (22%) per annum for vehicles or watercraft four model years old; and

(4) Twenty-nine percent (29%) per annum for vehicles or watercraft five model years old and older.

A motor vehicle or watercraft is one model year old on January 1 of the year following the designated year model of the vehicle."

Section 4. This act becomes effective October 1, 1997, and applies to loans made on or after that date, and Section 1 of this act applies to variations or adjustments in rates occurring on or after that date regardless of the date on which the loan was made.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **MORGAN** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE.**

☒ Committee Substitute for
S.B. 424 A BILL TO BE ENTITLED AN ACT CONCERNING ANNEXATION OF NONCONTIGUOUS AREAS BY THE TOWNS OF APEX, FUQUAY-VARINA, KNIGHTDALE, AND WAKE FOREST.

☐ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 424

State Government, Local Government, and Personnel Committee Substitute Adopted 3/27/97

Proposed House Committee Substitute S424-PCS6725

Short Title: Wake Annexations/Lee Elections. (Local)

Sponsors:

Referred to:

March 19, 1997

A BILL TO BE ENTITLED

AN ACT CONCERNING ANNEXATION OF NONCONTIGUOUS AREAS BY THE TOWNS OF APEX, FUQUAY-VARINA, KNIGHTDALE, RALEIGH, AND WAKE FOREST, TO PROVIDE STAGGERED TERMS FOR THE TOWN OF BROADWAY, AND TO PROVIDE THAT THE BOARD OF COMMISSIONERS OF LEE COUNTY SHALL CONSIST OF SEVEN MEMBERS ELECTED AT LARGE FOR FOUR-YEAR STAGGERED TERMS ON A NONPARTISAN BASIS AT THE TIME OF THE GENERAL ELECTION.

The General Assembly of North Carolina enacts:

Section 1. (a) G.S. 160A-58.1(b)(2) shall not apply to any property if:

(1) The property is within the Town's perimunicipal planning area, as delineated on the Perimunicipal Planning Areas Map, which has been approved by Wake County.

(2) The Town has entered into an annexation agreement pursuant to Part 6 of Article 4A of Chapter 160A of the General Statutes with the city to which a point on the proposed satellite corporate limits is closer, and that agreement states that the parties have agreed to waive the provisions of G.S. 160A-58.1(b)(2) as to any property that is within the Town's Perimunicipal Planning Area and as more particularly described in the agreement.

(b) This section applies only to the Towns of Apex, Fuquay-Varina, Knightdale, Raleigh, and Wake Forest.

Section 2. Section 3 of the Charter of the Town of Broadway, being Chapter 548 of the Session Laws of 1947 as amended by Chapter 789 of the Session Laws of 1949, reads as rewritten:

"Sec. 3. At the time of the holding of the next general election following ratification of this Act, and ~~biennially~~ thereafter, there shall be elected in the Town of Broadway in accordance with the provisions of Article 3 of Chapter 160 of the General Statutes of North Carolina, as amended, the following officers: ~~A mayor, five town commissioners, and a town constable.~~ A mayor and five town commissioners. The mayor shall be elected for a four-year term. In 1997, the three persons receiving the highest numbers of votes for town commissioner are elected to four-year terms, and the two persons receiving the next highest numbers of votes for town commissioner are elected to two-year terms. In 1999 and quadrennially thereafter, two town commissioners are elected to four-year terms. In 2001 and quadrennially thereafter, three town commissioners are elected to four-year terms. The mayor and the five town commissioners so elected shall constitute the governing body of the Town of Broadway, and such governing body may appoint such other officers and employ such assistants as the governing body of the town may deem necessary for the better governance of the town."

Section 3. (a) Effective with the 1998 election, the Board of Commissioners of Lee County consists of seven members elected at large for four-year terms. In 1998 and quadrennially thereafter, four commissioners shall be elected. In 2000 and quadrennially thereafter, three commissioners shall be elected.

(b) Notwithstanding the provisions of Chapter 163 of the General Statutes, the Board of Commissioners of Lee County shall be elected on a nonpartisan basis at the time set by G.S. 163-1 for the general election in each even-numbered year as terms expire. The election shall be conducted on a nonpartisan plurality basis, with the results determined in accordance with G.S. 163-292. Candidates shall file notices of candidacy not earlier than noon on the third Monday in June and not later than noon on the third Friday in July. The names of the candidates shall be printed on the ballot without reference to any party affiliations. Except as provided by this act, the election shall be conducted in accordance with the applicable provisions of Chapter 163 of the General Statutes.

(c) This section does not affect the terms of office of current members of the Board of Commissioners of Lee County.

Section 4. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 424
State Government, Local Government, and Personnel Committee Substitute Adopted 3/27/97
Proposed House Committee Substitute S424-PCS6720

Short Title: Wake Annexations/Lee Elections. (Local)

Sponsors:

Referred to:

March 19, 1997

A BILL TO BE ENTITLED

AN ACT CONCERNING ANNEXATION OF NONCONTIGUOUS AREAS BY THE TOWNS OF APEX, FUQUAY-VARINA, KNIGHTDALE, AND WAKE FOREST, TO PROVIDE STAGGERED TERMS FOR THE TOWN OF BROADWAY, AND TO PROVIDE THAT THE BOARD OF COMMISSIONERS OF LEE COUNTY SHALL CONSIST OF SEVEN MEMBERS ELECTED AT LARGE FOR FOUR-YEAR STAGGERED TERMS ON A NONPARTISAN BASIS AT THE TIME OF THE GENERAL ELECTION.

The General Assembly of North Carolina enacts:

Section 1. (a) G.S. 160A-58.1(b)(2) shall not apply to any property if:

(1) The property is within the Town's perimunicipal planning area, as delineated on the Perimunicipal Planning Areas Map, which has been approved by Wake County.

(2) The Town has entered into an annexation agreement pursuant to Part 6 of Article 4A of Chapter 160A of the General Statutes with the city to which a point on the proposed satellite corporate limits is closer, and that agreement states that the parties have agreed to waive the provisions of G.S. 160A-58.1(b)(2) as to any property that is within the Town's Perimunicipal Planning Area and as more particularly described in the agreement.

(b) This section applies only to the Towns of Apex, Fuquay-Varina, Knightdale, and Wake Forest.

Section 2. Section 3 of the Charter of the Town of Broadway, being Chapter 548 of the Session Laws of 1947 as amended by Chapter 789 of the Session Laws of 1949, reads as rewritten:

"Sec. 3. At the time of the holding of the next general election following ratification of this Act, and ~~biennially~~ thereafter, there shall be elected in the Town of Broadway in accordance with the provisions of Article 3 of Chapter 160 of the General Statutes of North Carolina, as amended, the following officers: ~~A mayor, five town commissioners, and a town constable.~~ A mayor and five town commissioners. The mayor shall be elected for a four-year term. In 1997, the three persons receiving the highest numbers of votes for town commissioner are elected to four-year terms, and the two persons receiving the next highest numbers of votes for town commissioner are elected to two-year terms. In 1999 and quadrennially thereafter, two town commissioners are elected to four-year terms. In 2001 and quadrennially thereafter, three town commissioners are elected to four-year terms. The mayor and the five town commissioners so elected shall constitute the governing body of the Town of Broadway, and such governing body may appoint such other officers and employ such assistants as the governing body of the town may deem necessary for the better governance of the town."

Section 3. (a) Effective with the 1998 election, the Board of Commissioners of Lee County consists of seven members elected at large for four-year terms. In 1998 and quadrennially thereafter, four commissioners shall be elected. In 2000 and quadrennially thereafter, three commissioners shall be elected.

(b) Notwithstanding the provisions of Chapter 163 of the General Statutes, the Board of Commissioners of Lee County shall be elected on a nonpartisan basis at the time set by G.S. 163-1 for the general election in each even-numbered year as terms expire. The election shall be conducted on a nonpartisan plurality basis, with the results determined in accordance with G.S. 163-292. Candidates shall file notices of candidacy not earlier than noon on the third Monday in June and not later than noon on the third Friday in July. The names of the candidates shall be printed on the ballot without reference to any party affiliations. Except as provided by this act, the election shall be conducted in accordance with the applicable provisions of Chapter 163 of the General Statutes.

(c) This section does not affect the terms of office of current members of the Board of Commissioners of Lee County.

Section 4. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 424
State Government, Local Government, and Personnel Committee Substitute Adopted 3/27/97

Short Title: Wake Forest Annexations. (Local)

Sponsors:

Referred to: Finance.

March 19, 1997

A BILL TO BE ENTITLED

AN ACT CONCERNING ANNEXATION OF NONCONTIGUOUS AREAS BY THE TOWNS OF APEX, FUQUAY-VARINA, KNIGHTDALE, AND WAKE FOREST.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-58.1(b)(2) shall not apply to any property if:

(1) The property is within the Town's perimunicipal planning area, as delineated on the Perimunicipal Planning Areas Map, which has been approved by Wake County.

(2) The Town has entered into an annexation agreement pursuant to Part 6 of Article 4A of Chapter 160A of the General Statutes with the city to which a point on the proposed satellite corporate limits is closer, and that agreement states that the parties have agreed to waive the provisions of G.S. 160A-58.1(b)(2) as to any property that is within the Town's Perimunicipal Planning Area and as more particularly described in the agreement.

Section 2. This act applies only to the Towns of Apex, Fuquay-Varina, Knightdale, and Wake Forest.

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

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **MORGAN** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE.**

☐ Committee Substitute for
S.B. 583 A BILL TO BE ENTITLED AN ACT TO REQUIRE PHYSICIANS TO COMPLETE ONE HUNDRED FIFTY HOURS OF CONTINUING EDUCATION, TO REQUIRE PHYSICIANS TO REGISTER ANNUALLY WITH THE NORTH CAROLINA MEDICAL BOARD AND TO MAKE A TECHNICAL CHANGE IN THE PRACTICE OF MEDICINE 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 ☐

☒ With a favorable report as to ~~committee~~ House 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 583
Proposed House Committee Substitute S583-PCS7856

Short Title: Physician Education and Registration. (Public)

Sponsors:

Referred to:

April 1, 1997

A BILL TO BE ENTITLED

AN ACT TO REQUIRE PHYSICIANS TO COMPLETE NOT TO EXCEED ONE HUNDRED FIFTY HOURS OF CONTINUING EDUCATION, TO REQUIRE PHYSICIANS TO REGISTER ANNUALLY WITH THE NORTH CAROLINA MEDICAL BOARD, TO AMEND THE LAW GOVERNING REPORTING OF SUSPENSIONS OF PHYSICIAN PRIVILEGES WITH RESPECT TO COMPLETION OF MEDICAL RECORDS, TO MAKE A TECHNICAL CHANGE IN THE PRACTICE OF MEDICINE ACT, AND TO IMPROVE NORTH CAROLINA'S PUBLIC HEALTH SERVICE CAPACITY BY AUTHORIZING APPROVAL OF NONPROFIT HEALTH CARE FACILITIES TO SERVE SOME OF THE DENTAL NEEDS OF LOW-INCOME POPULATIONS AND BY AUTHORIZING THE EMPLOYMENT OF DENTISTS, DENTAL STUDENTS, AND DENTAL INTERNS BY THOSE FACILITIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-14(a) reads as rewritten:

"(a) The Board shall have the power to deny, annul, suspend, or revoke a license, or other authority to practice medicine in this State, issued by the Board to any person who has been found by the Board to have committed any of the following acts or conduct, or for any of the following reasons:

(1) Immoral or dishonorable conduct.

(2) Producing or attempting to produce an abortion contrary to law.

(3) Made false statements or representations to the Board, or who has willfully concealed from the Board material information in connection with ~~his~~ an application for a license.

(4) Repealed by Session Laws 1977, c. 838, s. 3.

(5) Being unable to practice medicine with reasonable skill and safety to patients by reason of illness, drunkenness, excessive use of alcohol, drugs, chemicals, or any other type of material or by reason of any physical or mental abnormality. The Board is empowered and authorized to require a physician licensed by it to submit to a mental or physical examination by physicians designated by the Board before or after charges may be presented against ~~him,~~ the physician, and the results of the examination shall be admissible in evidence in a hearing before the Board.

(6) Unprofessional conduct, including, but not limited to, departure from, or the failure to conform to, the standards of acceptable and prevailing medical practice, or the ethics of the medical profession, irrespective of whether or not a patient is injured thereby, or the committing of any act contrary to honesty, justice, or good morals, whether the same is committed in the course of ~~his~~ the physician's practice or otherwise, and whether committed within or without North Carolina. The Board shall not revoke the license of or deny a license to a person solely because of that person's practice of a therapy that is experimental, nontraditional, or that departs from acceptable and prevailing medical practices unless, by competent evidence, the Board can establish that the treatment has a safety risk greater than the prevailing treatment or that the treatment is generally not effective.

(7) Conviction in any court of a crime involving moral turpitude, or the violation of a law involving the practice of medicine, or a conviction of a felony; provided that a felony conviction shall be treated as provided in subsection (c) of this section.

(8) By false representations has obtained or attempted to obtain practice, money or anything of value.

(9) Has advertised or publicly professed to treat human ailments under a system or school of treatment or practice other than that for which ~~he~~ the physician has been educated.

(10) Adjudication of mental incompetency, which shall automatically suspend a license unless the Board orders otherwise.

(11) Lack of professional competence to practice medicine with a reasonable degree of skill and safety for patients. In this connection the Board may consider repeated acts of a physician indicating ~~his~~ the physician's failure to properly treat a patient. The Board may, upon reasonable grounds, require a physician to submit to inquiries or examinations, written or oral, by members of the Board or by

other physicians licensed to practice medicine in this State, as the Board deems necessary to determine the professional qualifications of such licensee.

(12) Promotion of the sale of drugs, devices, appliances or goods for a patient, or providing services to a patient, in such a manner as to exploit the patient, and upon a finding of the exploitation, the Board may order restitution be made to the payer of the bill, whether the patient or the insurer, by the physician; provided that a determination of the amount of restitution shall be based on credible testimony in the record.

(13) Having a license to practice medicine or the authority to practice medicine revoked, suspended, restricted, or acted against or having a license to practice medicine denied by the licensing authority of any jurisdiction. For purposes of this subdivision, the licensing authority's acceptance of a license to practice medicine voluntarily relinquished by a physician or relinquished by stipulation, consent order, or other settlement in response to or in anticipation of the filing of administrative charges against the physician's license, is an action against a license to practice medicine.

(14) The failure to respond, within a reasonable period of time and in a reasonable manner as determined by the Board, to inquiries from the Board concerning any matter affecting the license to practice medicine.

(15) The failure to complete an amount not to exceed 150 hours of continuing medical education during any three consecutive calendar years pursuant to rules adopted by the Board.

For any of the foregoing reasons, the Board may deny the issuance of a license to an applicant or revoke a license issued to ~~him,~~ a physician, may suspend such a license for a period of time, and may impose conditions upon the continued practice after such period of suspension as the Board may deem advisable, may limit the accused physician's practice of medicine with respect to the extent, nature or location of ~~his~~ the physician's practice as the Board deems advisable. The Board may, in its discretion and upon such terms and conditions and for such period of time as it may prescribe, restore a license so revoked or rescinded, except that no license that has been revoked shall be restored for a period of two years following the date of revocation."

Section 2. G.S. 90-14.13 reads as rewritten:

"§ 90-14.13. Reports of disciplinary action by health care institutions; immunity from liability.

The chief administrative officer of every licensed hospital or other health care institution, including Health Maintenance Organizations, as defined in G.S. 58-67-5, preferred providers, as defined in G.S. 58-50-50, and all other provider organizations that issue credentials to physicians who practice medicine in the State, shall, after consultation with the chief of staff of ~~such~~ that institution, report to the Board any

revocation, suspension, or limitation of a physician's privileges to practice in that institution. A hospital is not required to report the suspension of a physician's privileges for failure to timely complete medical records unless the suspension is the third within the calendar year for failure to timely complete medical records. Upon reporting the third suspension, the hospital shall also report the previous two suspensions. ~~Each such~~ The institution shall also report to the Board resignations from practice in that institution by persons licensed under this Article. The Board shall report all violations of this subsection known to it to the licensing agency for the institution involved.

Any licensed physician who does not possess professional liability insurance shall report to the Board any award of damages or any settlement of any malpractice complaint affecting his or her practice within 30 days of the award or settlement.

The chief administrative officer of each insurance company providing professional liability insurance for physicians who practice medicine in North Carolina, the administrative officer of the Liability Insurance Trust Fund Council created by G.S. 116-220, and the administrative officer of any trust fund operated by a hospital authority, group, or provider shall report to the Board within 30 days:

(1) Any award of damages or settlement affecting or involving a physician it insures, or

(2) Any cancellation or nonrenewal of its professional liability coverage of a physician, if the cancellation or nonrenewal was for cause.

The Board may request details about any action and the officers shall promptly furnish the requested information. The reports required by this section are privileged and shall not be open to the public. The Board shall report all violations of this paragraph to the Commissioner of Insurance.

Any person making a report required by this section shall be immune from any criminal prosecution or civil liability resulting therefrom unless such person knew the report was false or acted in reckless disregard of whether the report was false."

Section 3. G.S. 90-15.1 reads as rewritten:

"**§ 90-15.1. (Effective January 1, 1998) Registration every year with Board.**

Every person licensed to practice medicine by the North Carolina Medical Board ~~shall, prior to January 31 of each year,~~ shall register ~~with~~ annually with the Board within 30 days of the person's birthday. ~~the Board.~~ A person who registers with the Board shall report to the Board the person's name and office and residence address and any other information required by the Board, and shall pay a registration fee fixed by the Board not in excess of one hundred dollars ($100.00). A physician who is not actively engaged in the practice of medicine in North Carolina and who does not wish to register the license may direct the Board to place the license on inactive status. For purposes of annual registration, the Board shall use a simplified registration form which allows registrants to confirm information on file with the Board. A physician who fails to register ~~by January 31~~ as required by this section shall pay an additional fee of twenty dollars ($20.00) to the Board. The license of any physician who fails to register and ~~said failure~~ who ~~continues~~ remains unregistered for

a period of 30 days after certified notice of ~~said failure,~~ the failure is automatically ~~suspended.~~ inactive. A person whose license is inactive shall not practice medicine in North Carolina nor be required to pay the annual registration fee. Upon payment of all accumulated fees and penalties, the license of the physician may be reinstated, subject to the Board requiring the physician to appear before the Board for an interview and to comply with other licensing requirements. The penalty may not exceed the maximum fee for a license under G.S. 90-13."

Section 4. G.S. 90-16 reads as rewritten:

"**§ 90-16. Board to keep record; publication of names of licentiates; transcript as evidence; receipt of evidence concerning treatment of patient who has not consented to public disclosure.**

The North Carolina Medical Board shall keep a regular record of its proceedings in a book kept for that purpose, together with the names of the members of the Board present, the names of the applicants for license, and other information as to its actions. The North Carolina Medical Board shall cause to be entered in a separate book the name of each applicant to whom a license is issued to practice medicine or surgery, along with any information pertinent to such issuance. The North Carolina Medical Board shall publish the names of those licensed in three daily newspapers published in the State of North Carolina, within 30 days after granting the same. A transcript of any such entry in the record books, or certificate that there is not entered therein the name and proficiency or date of granting such license of a person charged with the violation of the provisions of this Article, certified under the hand of the secretary and the seals of the ~~Board of Medical Examiners of the State of North Carolina,~~ North Carolina Medical Board, shall be admitted as evidence in any court of this State when it is otherwise competent.

The Board may in a closed session receive evidence involving or concerning the treatment of a patient who has not expressly or impliedly consented to the public disclosure of such treatment as may be necessary for the protection of the rights of such patient or of the accused physician and the full presentation of relevant evidence. All records, papers and other documents containing information collected and compiled by the Board, or its members or employees as a result of investigations, inquiries or interviews conducted in connection with a licensing or disciplinary matter shall not be considered public records within the meaning of Chapter 132 of the General Statutes; provided, however, that any notice or statement of charges against any licensee, or any notice to any licensee of a hearing in any proceeding shall be a public record within the meaning of Chapter 132 of the General Statutes, notwithstanding that it may contain information collected and compiled as a result of any such investigation, inquiry or interview; and provided, further, that if any such record, paper or other document containing information theretofore collected and compiled by the Board, as hereinbefore provided, is received and admitted in evidence in any hearing before the Board, it shall thereupon be a public record within the meaning of Chapter 132 of the General Statutes.

In any proceeding before the Board, in any record of any hearing before the Board, and in the notice of the charges against any licensee (notwithstanding any

provision herein to the contrary) the Board may withhold from public disclosure the identity of a patient who has not expressly or impliedly consented to the public disclosure of treatment by the accused physician."

Section 5. G.S. 90-29(c)(4) reads as rewritten:

"(4) The practice of dentistry in dental schools or colleges in this State approved by the North Carolina State Board of Dental Examiners by students enrolled in such schools or colleges as candidates for a doctoral degree in dentistry when such practice is performed as a part of their course of instruction and is under direct supervision of a dentist who is either duly licensed in North Carolina or qualified under subdivision (3) above as a teacher; additionally, the practice of dentistry by such students at State or county institutions with resident populations, hospitals, State or county health departments, area health education ~~centers~~ centers, nonprofit health care facilities serving low-income populations and approved by the State Health Director or his designee and approved by the Board of Dental Examiners, and State or county-owned nursing homes; subject to review and approval or disapproval by the said Board of Dental Examiners when in the opinion of the dean of such dental school or college or his designee, the students' dental education and experience are adequate therefor, and such practice is a part of the course of instruction of such students, is performed under the direct supervision of a duly licensed dentist acting as a teacher or instructor, and is without remuneration except for expenses and subsistence all as defined and permitted by the rules and regulations of said Board of Dental Examiners. Should the Board disapprove a specific program, the Board shall within 90 days inform the dean of its actions. Nothing herein shall be construed to permit the teaching of, delegation to or performance by any dental hygienist, dental assistant, or other auxiliary relative to any program of extramural rotation, of any function not heretofore permitted by the Dental Practice Act, the Dental Hygiene Act or by the rules and regulations of the Board;".

Section 6. G.S. 90-29(c) is amended by adding the following new subdivision:

"(14) The operation of a nonprofit health care facility serving low-income populations and approved by the State Health Director or his designee and approved by the North Carolina State Board of Dental Examiners."

Section 7. G.S. 90-29.4(3) reads as rewritten:

"(3) The holder of a valid intern permit may practice dentistry only (i) as an employee in a hospital, sanatorium, or a like institution which is licensed or approved by the State of North Carolina and approved by the North Carolina State Board of Dental Examiners;

(ii) as an employee of a nonprofit health care facility serving low-income populations and approved by the State Health Director or his designee and approved by the North Carolina State Board of Dental Examiners; or ~~(ii)~~ (iii) as an employee of the State of North Carolina or an agency or political subdivision thereof, or any other governmental entity within the State of North Carolina, when said employment is approved by the North Carolina State Board of Dental Examiners;".

Section 8. This act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 583

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

S583-ARN-001 Page 1 of __

Date_____,1997

Comm. Sub. [X]
Amends Title [X]
PCS7835

Rep. _____

moves to amend the bill on page 1, lines 7-8 by rewriting those lines to read:

"COMPLETION OF MEDICAL RECORDS, TO MAKE A TECHNICAL CHANGE IN THE PRACTICE OF MEDICINE ACT, AND TO IMPROVE NORTH CAROLINA'S PUBLIC HEALTH SERVICE CAPACITY BY AUTHORIZING APPROVAL OF NON-PROFIT HEALTH CARE FACILITIES TO SERVE SOME OF THE DENTAL NEEDS OF LOW-INCOME POPULATIONS AND BY AUTHORIZING THE EMPLOYMENT OF DENTISTS, DENTAL STUDENTS, AND DENTAL INTERNS BY THOSE FACILITIES.";

and on page 5, line 41, by rewriting that lines to read:

"Section 5. G.S. 90-29(c)(4) reads as rewritten:

(4) The practice of dentistry in dental schools or colleges in this State approved by the North Carolina State Board of Dental Examiners by students enrolled in such schools or colleges as candidates for a doctoral degree in dentistry when such practice is performed as a part of their course of instruction and is under direct supervision of a dentist who is either duly licensed in North Carolina or qualified under subdivision (3) above as a teacher; additionally,

the practice of dentistry by such students at State or county institutions with resident populations, hospitals, State or county health departments, area health education ~~centers~~ centers, non-profit health care facilities serving low-income populations and approved by the State Health Director or his designee and approved by the Board of Dental Examiners, and State or county-owned nursing homes; subject to review and approval or disapproval by the said Board of Dental Examiners when in the opinion of the dean of such dental school or college or his designee, the students' dental education and experience are adequate therefor, and such practice is a part of the course of instruction of such students, is performed under the direct supervision of a duly licensed dentist acting as a teacher or instructor, and is without remuneration except for expenses and subsistence all as defined and permitted by the rules and regulations of said Board of Dental Examiners. Should the Board disapprove a specific program, the Board shall within 90 days inform the dean of its actions. Nothing herein shall be construed to permit the teaching of, delegation to or performance by any dental hygienist, dental assistant, or other auxiliary relative to any program of extramural rotation, of any function not heretofore permitted by the Dental Practice Act, the Dental Hygiene Act or by the rules and regulations of the Board;'

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 583

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

S583-ARN-001

Section 6. G.S. 90-29(c) is amended by adding the following new subdivision:

"(14) The operation of a non-profit health care facility serving low-income populations and approved by the State Health Director or his designee and approved by the North Carolina State Board of Dental Examiners.'

Section 7. G.S. 90-29.4(3) reads as rewritten:

"(3) The holder of a valid intern permit may practice dentistry only (i) as an employee in a hospital, sanatorium, or a like institution which is licensed or approved by the State of North Carolina and approved by the North Carolina State Board of Dental Examiners; (ii) as an employee of a non-profit health care facility serving low-income populations and approved by the State Health Director or his designee and approved by the North Carolina State Board of Dental Examiners; or ~~(ii)~~ (iii) as an employee of the State of North Carolina or an agency or political subdivision thereof, or any other governmental entity within the State of North Carolina, when said employment is approved by the North Carolina State Board of Dental Examiners;'

Section 8. This act is effective when it becomes law."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 583
Proposed House Committee Substitute S583-PCS7835

Short Title: Physician Education and Registration. (Public)

Sponsors:

Referred to:

April 1, 1997

A BILL TO BE ENTITLED

AN ACT TO REQUIRE PHYSICIANS TO COMPLETE NOT TO EXCEED ONE HUNDRED FIFTY HOURS OF CONTINUING EDUCATION, TO REQUIRE PHYSICIANS TO REGISTER ANNUALLY WITH THE NORTH CAROLINA MEDICAL BOARD, TO AMEND THE LAW GOVERNING REPORTING OF SUSPENSIONS OF PHYSICIAN PRIVILEGES WITH RESPECT TO COMPLETION OF MEDICAL RECORDS, AND TO MAKE A TECHNICAL CHANGE IN THE PRACTICE OF MEDICINE ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-14(a) reads as rewritten:

"(a) The Board shall have the power to deny, annul, suspend, or revoke a license, or other authority to practice medicine in this State, issued by the Board to any person who has been found by the Board to have committed any of the following acts or conduct, or for any of the following reasons:

(1) Immoral or dishonorable conduct.

(2) Producing or attempting to produce an abortion contrary to law.

(3) Made false statements or representations to the Board, or who has willfully concealed from the Board material information in connection with ~~his~~ an application for a license.

(4) Repealed by Session Laws 1977, c. 838, s. 3.

(5) Being unable to practice medicine with reasonable skill and safety to patients by reason of illness, drunkenness, excessive use of alcohol, drugs, chemicals, or any other type of material or by

reason of any physical or mental abnormality. The Board is empowered and authorized to require a physician licensed by it to submit to a mental or physical examination by physicians designated by the Board before or after charges may be presented against ~~him,~~ the physician, and the results of the examination shall be admissible in evidence in a hearing before the Board.

(6) Unprofessional conduct, including, but not limited to, departure from, or the failure to conform to, the standards of acceptable and prevailing medical practice, or the ethics of the medical profession, irrespective of whether or not a patient is injured thereby, or the committing of any act contrary to honesty, justice, or good morals, whether the same is committed in the course of ~~his~~ the physician's practice or otherwise, and whether committed within or without North Carolina. The Board shall not revoke the license of or deny a license to a person solely because of that person's practice of a therapy that is experimental, nontraditional, or that departs from acceptable and prevailing medical practices unless, by competent evidence, the Board can establish that the treatment has a safety risk greater than the prevailing treatment or that the treatment is generally not effective.

(7) Conviction in any court of a crime involving moral turpitude, or the violation of a law involving the practice of medicine, or a conviction of a felony; provided that a felony conviction shall be treated as provided in subsection (c) of this section.

(8) By false representations has obtained or attempted to obtain practice, money or anything of value.

(9) Has advertised or publicly professed to treat human ailments under a system or school of treatment or practice other than that for which ~~he~~ the physician has been educated.

(10) Adjudication of mental incompetency, which shall automatically suspend a license unless the Board orders otherwise.

(11) Lack of professional competence to practice medicine with a reasonable degree of skill and safety for patients. In this connection the Board may consider repeated acts of a physician indicating ~~his~~ the physician's failure to properly treat a patient. The Board may, upon reasonable grounds, require a physician to submit to inquiries or examinations, written or oral, by members of the Board or by other physicians licensed to practice medicine in this State, as the Board deems necessary to determine the professional qualifications of such licensee.

(12) Promotion of the sale of drugs, devices, appliances or goods for a patient, or providing services to a patient, in such a manner as to exploit the patient, and upon a finding of the exploitation, the Board may order restitution be made to the payer of the bill,

whether the patient or the insurer, by the physician; provided that a determination of the amount of restitution shall be based on credible testimony in the record.

(13) Having a license to practice medicine or the authority to practice medicine revoked, suspended, restricted, or acted against or having a license to practice medicine denied by the licensing authority of any jurisdiction. For purposes of this subdivision, the licensing authority's acceptance of a license to practice medicine voluntarily relinquished by a physician or relinquished by stipulation, consent order, or other settlement in response to or in anticipation of the filing of administrative charges against the physician's license, is an action against a license to practice medicine.

(14) The failure to respond, within a reasonable period of time and in a reasonable manner as determined by the Board, to inquiries from the Board concerning any matter affecting the license to practice medicine.

(15) The failure to complete an amount not to exceed 150 hours of continuing medical education during any three consecutive calendar years pursuant to rules adopted by the Board.

For any of the foregoing reasons, the Board may deny the issuance of a license to an applicant or revoke a license issued to ~~him,~~ a physician, may suspend such a license for a period of time, and may impose conditions upon the continued practice after such period of suspension as the Board may deem advisable, may limit the accused physician's practice of medicine with respect to the extent, nature or location of ~~his~~ the physician's practice as the Board deems advisable. The Board may, in its discretion and upon such terms and conditions and for such period of time as it may prescribe, restore a license so revoked or rescinded, except that no license that has been revoked shall be restored for a period of two years following the date of revocation."

Section 2. G.S. 90-14.13 reads as rewritten:

"**§ 90-14.13. Reports of disciplinary action by health care institutions; immunity from liability.**

The chief administrative officer of every licensed hospital or other health care institution, including Health Maintenance Organizations, as defined in G.S. 58-67-5, preferred providers, as defined in G.S. 58-50-50, and all other provider organizations that issue credentials to physicians who practice medicine in the State, shall, after consultation with the chief of staff of ~~such~~ that institution, report to the Board any revocation, suspension, or limitation of a physician's privileges to practice in that institution. A hospital is not required to report the suspension of a physician's privileges for failure to timely complete medical records unless the suspension is the third within the calendar year for failure to timely complete medical records. Upon reporting the third suspension, the hospital shall also report the previous two suspensions. ~~Each such~~ The institution shall also report to the Board resignations from practice in that institution by persons licensed under this Article. The Board

shall report all violations of this subsection known to it to the licensing agency for the institution involved.

Any licensed physician who does not possess professional liability insurance shall report to the Board any award of damages or any settlement of any malpractice complaint affecting his or her practice within 30 days of the award or settlement.

The chief administrative officer of each insurance company providing professional liability insurance for physicians who practice medicine in North Carolina, the administrative officer of the Liability Insurance Trust Fund Council created by G.S. 116-220, and the administrative officer of any trust fund operated by a hospital authority, group, or provider shall report to the Board within 30 days:

(1) Any award of damages or settlement affecting or involving a physician it insures, or

(2) Any cancellation or nonrenewal of its professional liability coverage of a physician, if the cancellation or nonrenewal was for cause.

The Board may request details about any action and the officers shall promptly furnish the requested information. The reports required by this section are privileged and shall not be open to the public. The Board shall report all violations of this paragraph to the Commissioner of Insurance.

Any person making a report required by this section shall be immune from any criminal prosecution or civil liability resulting therefrom unless such person knew the report was false or acted in reckless disregard of whether the report was false."

Section 3. G.S. 90-15.1 reads as rewritten:

"**§ 90-15.1. (Effective January 1, 1998) Registration every year with Board.**

Every person licensed to practice medicine by the North Carolina Medical Board ~~shall, prior to January 31 of each year,~~ shall register ~~with~~ annually with the Board within 30 days of the person's birthday. ~~the Board.~~ A person who registers with the Board shall report to the Board the person's name and office and residence address and any other information required by the Board, and shall pay a registration fee fixed by the Board not in excess of one hundred dollars ($100.00). A physician who is not actively engaged in the practice of medicine in North Carolina and who does not wish to register the license may direct the Board to place the license on inactive status. For purposes of annual registration, the Board shall use a simplified registration form which allows registrants to confirm information on file with the Board. A physician who fails to register ~~by January 31~~ as required by this section shall pay an additional fee of twenty dollars ($20.00) to the Board. The license of any physician who fails to register and ~~said failure~~ who ~~continues~~ remains unregistered for a period of 30 days after certified notice of ~~said failure,~~ the failure is automatically ~~suspended.~~ inactive. A person whose license is inactive shall not practice medicine in North Carolina nor be required to pay the annual registration fee. Upon payment of all accumulated fees and penalties, the license of the physician may be reinstated, subject to the Board requiring the physician to appear before the Board for an interview and to comply with other licensing requirements. The penalty may not exceed the maximum fee for a license under G.S. 90-13."

Section 4. G.S. 90-16 reads as rewritten:

"**§ 90-16. Board to keep record; publication of names of licentiates; transcript as evidence; receipt of evidence concerning treatment of patient who has not consented to public disclosure.**

The North Carolina Medical Board shall keep a regular record of its proceedings in a book kept for that purpose, together with the names of the members of the Board present, the names of the applicants for license, and other information as to its actions. The North Carolina Medical Board shall cause to be entered in a separate book the name of each applicant to whom a license is issued to practice medicine or surgery, along with any information pertinent to such issuance. The North Carolina Medical Board shall publish the names of those licensed in three daily newspapers published in the State of North Carolina, within 30 days after granting the same. A transcript of any such entry in the record books, or certificate that there is not entered therein the name and proficiency or date of granting such license of a person charged with the violation of the provisions of this Article, certified under the hand of the secretary and the seals of the ~~Board of Medical Examiners of the State of North Carolina,~~ North Carolina Medical Board, shall be admitted as evidence in any court of this State when it is otherwise competent.

The Board may in a closed session receive evidence involving or concerning the treatment of a patient who has not expressly or impliedly consented to the public disclosure of such treatment as may be necessary for the protection of the rights of such patient or of the accused physician and the full presentation of relevant evidence. All records, papers and other documents containing information collected and compiled by the Board, or its members or employees as a result of investigations, inquiries or interviews conducted in connection with a licensing or disciplinary matter shall not be considered public records within the meaning of Chapter 132 of the General Statutes; provided, however, that any notice or statement of charges against any licensee, or any notice to any licensee of a hearing in any proceeding shall be a public record within the meaning of Chapter 132 of the General Statutes, notwithstanding that it may contain information collected and compiled as a result of any such investigation, inquiry or interview; and provided, further, that if any such record, paper or other document containing information theretofore collected and compiled by the Board, as hereinbefore provided, is received and admitted in evidence in any hearing before the Board, it shall thereupon be a public record within the meaning of Chapter 132 of the General Statutes.

In any proceeding before the Board, in any record of any hearing before the Board, and in the notice of the charges against any licensee (notwithstanding any provision herein to the contrary) the Board may withhold from public disclosure the identity of a patient who has not expressly or impliedly consented to the public disclosure of treatment by the accused physician."

Section 5. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 583

Short Title: Physician Education and Registration. (Public)

Sponsors: Senator Forrester.

Referred to: Children & Human Resources.

April 1, 1997

A BILL TO BE ENTITLED

AN ACT TO REQUIRE PHYSICIANS TO COMPLETE ONE HUNDRED FIFTY HOURS OF CONTINUING EDUCATION, TO REQUIRE PHYSICIANS TO REGISTER ANNUALLY WITH THE NORTH CAROLINA MEDICAL BOARD AND TO MAKE A TECHNICAL CHANGE IN THE PRACTICE OF MEDICINE ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-14(a) reads as rewritten:

"(a) The Board shall have the power to deny, annul, suspend, or revoke a license, or other authority to practice medicine in this State, issued by the Board to any person who has been found by the Board to have committed any of the following acts or conduct, or for any of the following reasons:

(1) Immoral or dishonorable conduct.

(2) Producing or attempting to produce an abortion contrary to law.

(3) Made false statements or representations to the Board, or who has willfully concealed from the Board material information in connection with ~~his~~ an application for a license.

(4) Repealed by Session Laws 1977, c. 838, s. 3.

(5) Being unable to practice medicine with reasonable skill and safety to patients by reason of illness, drunkenness, excessive use of alcohol, drugs, chemicals, or any other type of material or by reason of any physical or mental abnormality. The Board is empowered and authorized to require a physician licensed by it to submit to a mental or physical examination by physicians

designated by the Board before or after charges may be presented against ~~him,~~ the physician, and the results of the examination shall be admissible in evidence in a hearing before the Board.

(6) Unprofessional conduct, including, but not limited to, departure from, or the failure to conform to, the standards of acceptable and prevailing medical practice, or the ethics of the medical profession, irrespective of whether or not a patient is injured thereby, or the committing of any act contrary to honesty, justice, or good morals, whether the same is committed in the course of ~~his~~ the physician's practice or otherwise, and whether committed within or without North Carolina. The Board shall not revoke the license of or deny a license to a person solely because of that person's practice of a therapy that is experimental, nontraditional, or that departs from acceptable and prevailing medical practices unless, by competent evidence, the Board can establish that the treatment has a safety risk greater than the prevailing treatment or that the treatment is generally not effective.

(7) Conviction in any court of a crime involving moral turpitude, or the violation of a law involving the practice of medicine, or a conviction of a felony; provided that a felony conviction shall be treated as provided in subsection (c) of this section.

(8) By false representations has obtained or attempted to obtain practice, money or anything of value.

(9) Has advertised or publicly professed to treat human ailments under a system or school of treatment or practice other than that for which ~~he~~ the physician has been educated.

(10) Adjudication of mental incompetency, which shall automatically suspend a license unless the Board orders otherwise.

(11) Lack of professional competence to practice medicine with a reasonable degree of skill and safety for patients. In this connection the Board may consider repeated acts of a physician indicating ~~his~~ the physician's failure to properly treat a patient. The Board may, upon reasonable grounds, require a physician to submit to inquiries or examinations, written or oral, by members of the Board or by other physicians licensed to practice medicine in this State, as the Board deems necessary to determine the professional qualifications of such licensee.

(12) Promotion of the sale of drugs, devices, appliances or goods for a patient, or providing services to a patient, in such a manner as to exploit the patient, and upon a finding of the exploitation, the Board may order restitution be made to the payer of the bill, whether the patient or the insurer, by the physician; provided that a determination of the amount of restitution shall be based on credible testimony in the record.

(13) Having a license to practice medicine or the authority to practice medicine revoked, suspended, restricted, or acted against or having a license to practice medicine denied by the licensing authority of any jurisdiction. For purposes of this subdivision, the licensing authority's acceptance of a license to practice medicine voluntarily relinquished by a physician or relinquished by stipulation, consent order, or other settlement in response to or in anticipation of the filing of administrative charges against the physician's license, is an action against a license to practice medicine.

(14) The failure to respond, within a reasonable period of time and in a reasonable manner as determined by the Board, to inquiries from the Board concerning any matter affecting the license to practice medicine.

(15) The failure to complete 150 hours of continuing medical education during any three calendar years. At least 60 of the hours required shall consist of the physician attending formally organized educational meetings, including conferences, symposia, and other similar learning activities. The physician shall maintain written documentation of all hours completed and such documentation may be inspected by the Board to verify the physician's compliance with this subdivision.

For any of the foregoing reasons, the Board may deny the issuance of a license to an applicant or revoke a license issued to ~~him,~~ a physician, may suspend such a license for a period of time, and may impose conditions upon the continued practice after such period of suspension as the Board may deem advisable, may limit the accused physician's practice of medicine with respect to the extent, nature or location of ~~his~~ the physician's practice as the Board deems advisable. The Board may, in its discretion and upon such terms and conditions and for such period of time as it may prescribe, restore a license so revoked or rescinded, except that no license that has been revoked shall be restored for a period of two years following the date of revocation."

Section 2. G.S. 90-15.1 reads as rewritten:

"**§ 90-15.1. (Effective January 1, 1998) Registration every year with Board.**

Every person licensed to practice medicine by the North Carolina Medical Board ~~shall, prior to January 31 of each year,~~ shall register ~~with~~ annually with the Board within 30 days of the person's birthday. ~~the Board.~~ A person who registers with the Board shall report to the Board the person's name and office and residence address and any other information required by the Board, and shall pay a registration fee fixed by the Board not in excess of one hundred dollars ($100.00). For purposes of annual registration, the Board shall use a simplified registration form which allows registrants to confirm information on file with the Board. A physician who fails to register ~~by January 31~~ as required by this section shall pay an additional fee of twenty dollars ($20.00) to the Board. The license of any physician who fails to register and ~~said~~ the failure continues for a period of 30 days after certified notice of ~~said~~ the

failure, is automatically suspended. Upon payment of all accumulated fees and penalties, the license of the physician may be reinstated, subject to the Board requiring the physician to appear before the Board for an interview and to comply with other licensing requirements."

Section 3. G.S. 90-16 reads as rewritten:

"**§ 90-16. Board to keep record; publication of names of licentiates; transcript as evidence; receipt of evidence concerning treatment of patient who has not consented to public disclosure.**

The North Carolina Medical Board shall keep a regular record of its proceedings in a book kept for that purpose, together with the names of the members of the Board present, the names of the applicants for license, and other information as to its actions. The North Carolina Medical Board shall cause to be entered in a separate book the name of each applicant to whom a license is issued to practice medicine or surgery, along with any information pertinent to such issuance. The North Carolina Medical Board shall publish the names of those licensed in three daily newspapers published in the State of North Carolina, within 30 days after granting the same. A transcript of any such entry in the record books, or certificate that there is not entered therein the name and proficiency or date of granting such license of a person charged with the violation of the provisions of this Article, certified under the hand of the secretary and the seals of the ~~Board of Medical Examiners of the State of North Carolina,~~ North Carolina Medical Board, shall be admitted as evidence in any court of this State when it is otherwise competent.

The Board may in a closed session receive evidence involving or concerning the treatment of a patient who has not expressly or impliedly consented to the public disclosure of such treatment as may be necessary for the protection of the rights of such patient or of the accused physician and the full presentation of relevant evidence. All records, papers and other documents containing information collected and compiled by the Board, or its members or employees as a result of investigations, inquiries or interviews conducted in connection with a licensing or disciplinary matter shall not be considered public records within the meaning of Chapter 132 of the General Statutes; provided, however, that any notice or statement of charges against any licensee, or any notice to any licensee of a hearing in any proceeding shall be a public record within the meaning of Chapter 132 of the General Statutes, notwithstanding that it may contain information collected and compiled as a result of any such investigation, inquiry or interview; and provided, further, that if any such record, paper or other document containing information theretofore collected and compiled by the Board, as hereinbefore provided, is received and admitted in evidence in any hearing before the Board, it shall thereupon be a public record within the meaning of Chapter 132 of the General Statutes.

In any proceeding before the Board, in any record of any hearing before the Board, and in the notice of the charges against any licensee (notwithstanding any provision herein to the contrary) the Board may withhold from public disclosure the identity of a patient who has not expressly or impliedly consented to the public disclosure of treatment by the accused physician."

Section 4. This act is effective when it becomes law.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **MORGAN** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE.**

☐ Committee Substitute for
S.B. 595 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE NORTH CAROLINA MEDICAL BOARD TO LICENSE INSTEAD OF APPROVE PHYSICIAN ASSISTANTS, TO ISSUE A PHYSICIAN ASSISTANT LIMITED VOLUNTEER LICENSE, AND TO MAKE OTHER CHANGES IN THE STATUTES REGULATING PHYSICIAN ASSISTANTS.

☒ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 595

Short Title: Physician Assistant Licensure. (Public)

Sponsors: Senators Lucas; Dannelly, Forrester, Gulley, Jordan, Kinnaird, Martin of Guilford, and Shaw of Cumberland.

Referred to: Children & Human Resources.

April 1, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE NORTH CAROLINA MEDICAL BOARD TO LICENSE INSTEAD OF APPROVE PHYSICIAN ASSISTANTS, TO ISSUE A PHYSICIAN ASSISTANT LIMITED VOLUNTEER LICENSE, AND TO MAKE OTHER CHANGES IN THE STATUTES REGULATING PHYSICIAN ASSISTANTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-2(d) reads as rewritten:

"(d) Any member of the Board may be removed from office by the Governor for good cause shown. Any vacancy in the physician membership of the Board shall be filled for the period of the unexpired term by the Governor from a list of physicians submitted by the North Carolina Medical Society Executive Council. Any vacancy in the ~~public~~ public, physician assistant, or nurse practitioner membership of the Board shall be filled by the Governor for the unexpired term."

Section 2. G.S. 90-11 reads as rewritten:

"**§ 90-11. Qualifications of applicant for license.**

Every applicant for a license to practice medicine or ~~for approval~~ to perform medical ~~acts~~ acts, tasks, and functions as a physician assistant in the State shall satisfy the North Carolina Medical Board that ~~such~~ the applicant is of good moral character and meets the other qualifications for the issuance of ~~such~~ a license ~~or for such approval~~ before any such license ~~or approval~~ is granted by the Board to ~~such~~ the applicant."

Section 3. Article 1 of Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-12.1. Physician assistant limited volunteer license.**

The Board shall issue a limited volunteer license which shall authorize a physician assistant to perform medical acts, tasks, and functions without payment or other compensation if the physician assistant meets one of the following:

(1) Holds a current license or registration in another state and submits proof of this status to the Board.

(2) Holds a current license in this State and is not currently employed as a physician assistant.

(3) Is a member of the United States armed services or is employed by the Veterans' Administration or another federal agency."

Section 4. G.S. 90-18(13) reads as rewritten:

"(13) ~~Any act, task or function performed by an assistant to a person licensed as a physician by the North Carolina Medical Board when~~

~~a. Such assistant is approved by and annually registered with the Board as one qualified by training or experience to function as an assistant to a physician, except that no more than two assistants may be currently registered for any physician, and~~

~~b. Such act, task or function is performed at the direction or under the supervision of such physician, in accordance with rules and regulations promulgated by the Board, and~~

~~c. The services of the assistant are limited to assisting the physician in the particular field or fields for which the assistant has been trained, approved and registered;~~

The performance of any medical acts, tasks, and functions by a licensed physician assistant at the direction or under the supervision of a physician in accordance with rules adopted by the Board. ~~Provided that this~~ This subdivision shall not limit or prevent any physician from delegating to a qualified person any acts, ~~tasks or~~ tasks, and functions ~~which~~ that are otherwise permitted by law or established by custom. The Board shall authorize physician assistants licensed in this State or another state to perform specific medical acts, tasks, and functions during a disaster."

Section 5. G.S. 90-18.1 reads as rewritten:

"**§ 90-18.1. Limitations on physician assistants.**

(a) Any person who is ~~approved~~ licensed under the provisions of ~~G.S. 90-18(13)~~ G.S. 90-11 to perform medical acts, ~~tasks or~~ tasks, and functions as an assistant to a physician may use the title 'physician ~~assistant.~~' assistant'. Any other person who uses the title in any form or holds out to be a physician assistant or to be so ~~approved,~~ licensed, shall be deemed to be in violation of this Article.

(b) Physician assistants are authorized to write prescriptions for drugs under the following conditions:

(1) The North Carolina Medical Board has adopted regulations governing the approval of individual physician assistants to write prescriptions with such limitations as the Board may determine to be in the best interest of patient health and ~~safety;~~ safety.

(2) The physician assistant ~~has current approval from~~ holds a current license issued by the ~~Board;~~ Board.

(3) The North Carolina Medical Board has assigned an identification number to the physician assistant which is shown on the written ~~prescription; and~~ prescription.

(4) The supervising physician has provided to the physician assistant written instructions about indications and contraindications for prescribing drugs and a written policy for periodic review by the physician of the drugs prescribed.

(c) Physician assistants are authorized to compound and dispense drugs under the following conditions:

(1) The function is performed under the supervision of a licensed ~~pharmacist; and~~ pharmacist.

(2) Rules and regulations of the North Carolina Board of Pharmacy governing this function are complied with.

(3) The physician assistant holds a current license issued by the Board.

(d) Physician assistants are authorized to order medications, tests and treatments in hospitals, clinics, ~~nursing homes~~ nursing homes, and other health facilities under the following conditions:

(1) The North Carolina Medical Board has adopted regulations governing the approval of individual physician assistants to order medications, ~~tests~~ tests, and treatments with such limitations as the Board may determine to be in the best interest of patient health and ~~safety;~~ safety.

(2) The physician assistant ~~has~~ holds a current ~~approval from~~ license issued by the ~~Board;~~ Board.

(3) The supervising physician has provided to the physician assistant written instructions about ordering medications, ~~tests~~ tests, and treatments, and when appropriate, specific oral or written instructions for an individual patient, with provision for review by the physician of the order within a reasonable time, as determined by the Board, after the medication, ~~test~~ test, or treatment is ~~ordered; and~~ ordered.

(4) The hospital or other health facility has adopted a written policy, approved by the medical staff after consultation with the nursing administration, about ordering medications, ~~tests~~ tests, and treatments, including procedures for verification of the physician

assistants' orders by nurses and other facility employees and such other procedures as are in the interest of patient health and safety.

(e) Any prescription written by a physician assistant or order given by a physician assistant for medications, ~~tests~~ tests, or treatments shall be deemed to have been authorized by the physician approved by the Board as the supervisor of the physician assistant and ~~such~~ the supervising physician shall be responsible for authorizing ~~such~~ the prescription or order.

(f) Any registered nurse or licensed practical nurse who receives an order from a physician assistant for medications, ~~tests~~ tests, or treatments is authorized to perform that order in the same manner as if it were received from a licensed physician."

Section 6. This act is effective when it becomes law.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **MORGAN** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE.**

☒ Committee Substitute for
S.B. 757 A BILL TO BE ENTITLED AN ACT TO ESTABLISH ADVANCE INSTRUCTION FOR MENTAL HEALTH TREATMENT.

☐ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 757
Children and Human Resources Committee Substitute Adopted 4/30/97
Proposed House Committee Substitute S757-PCS7857

Short Title: Advance Instr./Mental Health. (Public)

Sponsors:

Referred to:

April 8, 1997

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH ADVANCE INSTRUCTION FOR MENTAL HEALTH TREATMENT.

The General Assembly of North Carolina enacts:

Section 1. Article 3 of Chapter 122C of the General Statutes is amended by designating G.S. 122C-51 through G.S. 122C-70 as "Part 1".

Section 2. Article 3 of Chapter 122C of the General Statutes is amended by adding the following new Part to read:

"Part 2. Advance Instruction for Mental Health Treatment.

"**§ 122C-71. Purpose.**

(a) The General Assembly recognizes as a matter of public policy the fundamental right of an individual to control the decisions relating to the individual's medical care, and that this right may be exercised on behalf of the individual by an agent chosen by the individual.

(b) The purpose of this Part is to establish an additional, nonexclusive method for an individual to exercise the right to consent to or refuse mental health treatment when the individual lacks sufficient understanding or capacity to make or communicate mental health treatment decisions.

(c) This Part is intended and shall be construed to be consistent with the provisions of Article 3 of Chapter 32A of the General Statutes, provided that in the event of a conflict between the provisions of this Part and Article 3 of Chapter 32A, the provisions of this Part control.

"**§ 122C-72. Definitions.**

As used in this Part, unless the context clearly requires otherwise, the following terms have the meanings specified:

(1) 'Advance instruction' or 'advance instruction for mental health treatment' means a written instrument, signed by two qualified witnesses, that makes a declaration of instructions, that also provides information and preferences regarding mental health treatment, and that may appoint an attorney-in-fact.

(2) 'Attending physician' means the physician who has primary responsibility for the care and treatment of the principal.

(3) 'Attorney-in-fact' means an adult validly appointed under G.S. 122C-75 to make mental health treatment decisions for a principal under an advance instruction for mental health treatment and also means an alternative attorney-in-fact.

(4) 'Incapable' means that, in the opinion of a physician or eligible psychologist, the person currently lacks the capacity to make and communicate mental health treatment decisions. As used in this subdivision, the term 'eligible psychologist' has the meaning given the term in G.S. 122C-3(13b).

(5) 'Mental health treatment' means the process of providing for the physical, emotional, psychological, and social needs of the principal. 'Mental health treatment' includes, but is not limited to, electroconvulsive treatment (ECT), commonly referred to as 'shock treatment', treatment of mental illness with psychotropic medication, and admission to and retention in a facility for care or treatment of mental illness.

(6) 'Principal' means the person making the advance instruction.

(7) 'Qualified witness' means a witness who affirms that the principal is personally known to the witness, that the principal signed or acknowledged the principal's signature on the advance instruction in the presence of the witness, that the witness believes the principal to be of sound mind and not to be under duress, fraud, or undue influence, and that the witness is not:

a. The attending physician or mental health service provider or a relative of the physician or provider; or

b. An owner, operator, or relative of an owner or operator of a health care facility in which the principal is a patient or resident.

"**§ 122C-73. Scope, use, and authority of advance instruction for mental health treatment.**

(a) Any adult of sound mind may make an advance instruction regarding mental health treatment. The advance instruction may include consent to or refusal of mental health treatment. The advance instruction may also appoint an attorney-in-fact.

(b) An advance instruction may include, but is not limited to, the names and telephone numbers of individuals to be contacted in case of mental health crisis, situations that may cause the principal to experience a mental health crisis, responses that may assist the principal to remain in the principal's home during a mental health crisis, the types of assistance that may help stabilize the principal if it becomes necessary to enter a facility, and medications that the principal is taking or has taken in the past and the effects of those medications.

(c) A person shall not be required to execute or to refrain from executing an advance instruction as a condition for insurance coverage, as a condition for receiving mental or physical health services, as a condition for receiving privileges while in a facility, or as a condition of discharge from a facility.

(d) A principal may nominate, by advance instruction for mental health treatment, the guardian of the person of the principal if a guardianship proceeding is thereafter commenced. The court shall make its appointment in accordance with the principal's most recent nomination in an unrevoked advance instruction for mental health treatment, except for good cause shown.

(e) If, following the execution of an advance instruction for mental health treatment, a court of competent jurisdiction appoints a guardian of the person of the principal, or a general guardian with powers over the person of the principal, the advance instruction for mental health treatment shall remain in effect and shall be superior to the powers and duties of the guardian of the person with respect to mental health treatment covered under the advance instruction.

(f) An advance instruction for mental health treatment may be combined with or incorporated into a health care power of attorney or general power of attorney that is executed in accordance with the requirements of Chapter 32A of the General Statutes.

"**§ 122C-74. Effectiveness and duration; revocation.**

(a) A validly executed advance instruction becomes effective when it is delivered to the principal's physician or other mental health treatment provider and remains valid until revoked or expired. The physician or provider shall act in accordance with an advance instruction when the principal has been determined to be incapable. The physician or provider shall continue to obtain the principal's informed consent to all mental health treatment decisions as required by law.

(b) Upon being presented with an advance instruction, a physician or other provider shall make the advance instruction a part of the principal's medical record. When acting under authority of an advance instruction, a physician or provider shall comply with it to the fullest extent possible, unless compliance is not consistent with:

(1) Best medical practice to benefit the principal;

(2) The availability of treatments requested; and

(3) Applicable law.

If the physician or other provider is unwilling at any time to comply with any part or parts of an advance instruction for one or more of the reasons set out in subdivisions (1) through (3) of this subsection, the physician or provider shall promptly notify the principal and, if applicable, the attorney-in-fact, and shall document the reason for

not complying with the advance instruction and shall document the notification in the principal's medical record.

(c) Except as provided in subsection (b) of this section, the physician or provider may subject the principal to mental health treatment in a manner contrary to the principal's instructions as expressed in an advance instruction for mental health treatment only:

(1) If the principal is committed to a 24-hour facility pursuant to Article 5 of G.S. 122C and treatment is authorized in compliance with G.S. 122C-57 and administrative rule; or

(2) In cases of emergency endangering life or health.

(d) An advance instruction does not limit any authority provided in Article 5 of G.S. 122C either to take a person into custody, or to admit, retain, or treat a person in a facility.

(e) An advance instruction for mental health treatment continues in effect for a period of two years, unless revoked. An advance instruction may be revoked in whole or in part at any time by the principal if the principal is capable. A revocation is effective when a capable principal communicates the revocation to the attending physician or other provider. The attending physician or other provider shall note the revocation as part of the principal's medical record. The authority of a named attorney-in-fact and any alternative attorney-in-fact named in the advance instruction continues in effect as long as the advance instruction appointing the attorney-in-fact is in effect or until the attorney-in-fact has withdrawn.

(f) A physician or provider who administers or does not administer mental health treatment according to and in good faith reliance upon the validity of an advance instruction is not subject to criminal prosecution, civil liability, or professional disciplinary action resulting from a subsequent finding of an advance instruction's invalidity.

"§ 122C-75. Scope of authority of attorney-in-fact; powers and duties; limitation on liability.

(a) An advance instruction may designate a competent adult to act as attorney-in-fact to make decisions about mental health treatment. An alternative attorney-in-fact may also be designated to act as attorney-in-fact if the original designee is unable or unwilling to act at any time. An attorney-in-fact who has accepted the appointment in writing may make decisions about mental health treatment on behalf of the principal only when the principal is incapable. The decisions shall be consistent with any desires the principal has expressed in the advance instruction.

(b) None of the following may serve as attorney-in-fact:

(1) The attending physician or mental health service provider or an employee of the physician or provider, if the physician, provider, or employee is unrelated to the principal by blood, marriage, or adoption.

(2) An owner, operator, or employee of a health care facility in which the principal is a patient or resident, if the owner, operator, or

employee is unrelated to the principal by blood, marriage, or adoption.

(c) The attorney-in-fact shall not have authority to make mental health treatment decisions unless the principal is incapable.

(d) The attorney-in-fact is not, as a result of acting in that capacity, personally liable for the cost of treatment provided to the principal.

(e) Except to the extent the right is limited by the advance instruction or any federal law, an attorney-in-fact has the same right as the principal to receive information regarding the proposed mental health treatment and to receive, review, and consent to disclosure of medical records relating to that treatment. This right of access does not waive any evidentiary privilege.

(f) In exercising authority under the advance instruction, the attorney-in-fact shall act consistently with the desires of the principal as expressed in the advance instruction. If the principal's desires are not expressed in the advance instruction and are not otherwise known by the attorney-in-fact, the attorney-in-fact shall act in what the attorney-in-fact in good faith believes to be the manner in which the principal would act if the principal was not incapable.

(g) The appointment of an attorney-in-fact shall not revoke, restrict, or otherwise affect any nonmental health treatment powers granted by the principal to a health care agent pursuant to a health care power of attorney or attorney-in-fact pursuant to a general power of attorney; provided that the mental health treatment powers granted to the attorney-in-fact shall be superior to any similar powers granted by the principal to a health care agent pursuant to a health care power of attorney or an attorney-in-fact pursuant to a general power of attorney.

(h) An attorney-in-fact is not subject to criminal prosecution, civil liability, or professional disciplinary action for any action taken in good faith pursuant to an advance instruction for mental health treatment.

(i) An attorney-in-fact may withdraw by giving notice to the principal. If a principal is incapable, the attorney-in-fact may withdraw by giving notice to the attending physician or provider. The attending physician or provider shall note the withdrawal as part of the principal's medical record.

(j) A person who has withdrawn under the provision of subsection (i) of this section may rescind the withdrawal by executing an acceptance after the date of the withdrawal. The acceptance shall be in the same or similar form as provided for in G.S. 122C-77 for accepting an appointment. A person who rescinds a withdrawal shall give notice to the principal if the principal is capable or to the principal's health care provider if the principal is incapable.

"§ 122C-76. Penalty.

It is a Class 2 misdemeanor for a person, without authorization of the principal, willfully to alter, forge, conceal, or destroy an instrument, the reinstatement or revocation of an instrument, or any other evidence or document reflecting the principal's desires and interests, with the intent or effect of affecting a mental health treatment decision.

"§ 122C-77. Statutory form for advance instruction for mental health treatment.

The use of the following or similar form in the creation of an advance instruction for mental health treatment is lawful, and when used, it shall be construed in accordance with the provisions of this Article.

'ADVANCE INSTRUCTION FOR MENTAL HEALTH TREATMENT

I, _____, being an adult of sound mind, willfully and voluntarily make this advance instruction for mental health treatment to be followed if it is determined by a physician or eligible psychologist that my ability to receive and evaluate information effectively or communicate decisions is impaired to such an extent that I lack the capacity to refuse or consent to mental health treatment. 'Mental health treatment' means the process of providing for the physical, emotional, psychological, and social needs of the principal. 'Mental health treatment' includes electroconvulsive treatment (ECT), commonly referred to as 'shock treatment', treatment of mental illness with psychotropic medication, and admission to and retention in a facility for care or treatment of mental illness.

I understand that psychoactive medications and electroconvulsive treatment (ECT) (commonly referred to as 'shock treatment') may not be administered without my express and informed written consent or, if I am incapable of giving my informed consent, the express and informed written consent of my legally responsible person, health care agent named pursuant to a valid health care power of attorney, or attorney-in-fact named pursuant to a valid advance instruction for mental health treatment, as required under G.S. 122C-57.

I understand that I may become incapable of giving or withholding informed consent for mental health treatment due to the symptoms of a diagnosed mental disorder. These symptoms may include:

_____

PSYCHOACTIVE MEDICATIONS

If I become incapable of giving or withholding informed consent for mental health treatment, my instructions regarding psychoactive medications are as follows:

____ I consent to the administration of the following medications:

_____

_____

____ I do not consent to the administration of the following medications:

_____

_____

Conditions or limitations: _____

_____

ADMISSION TO AND RETENTION IN FACILITY

If I become incapable of giving or withholding informed consent for mental health treatment, my instructions regarding admission to and retention in a health care facility for mental health treatment are as follows:

___ I consent to being admitted to a health care facility for mental health treatment.
My facility preference is _____
___ I do not consent to being admitted to a health care facility for mental health treatment.
This advance instruction cannot, by law, provide consent to retain me in a facility for more than 10 days.
Conditions or limitations: _____

ADDITIONAL INSTRUCTIONS

These instructions shall apply during the entire length of my incapacity.
In case of mental health crisis, please contact:
1. Name: _____
Home Address: _____
Home Telephone Number: _____ Work Telephone Number: _____
Relationship to Me: _____
2. Name: _____
Home Address: _____
Home Telephone Number: _____ Work Telephone Number: _____
Relationship to Me: _____
3. My Physician:
Name: _____ Telephone Number: _____
4. My Therapist:
Name: _____ Telephone Number: _____
The following may cause me to experience a mental health crisis: _____

The following may help me avoid a hospitalization: _____

I generally react to being hospitalized as follows: _____

Staff of the hospital or crisis unit can help me by doing the following: _____

I give permission for the following person or people to visit me:

Instructions concerning any other medical interventions, such as electroconvulsive (ECT) treatment (commonly referred to as 'shock treatment'): _____

_____

_____

_____

_____

Other instructions: _____

_____

_____

_____

_____

____ I have attached an additional sheet of instructions to be followed and considered part of this advance instruction.

ATTORNEY-IN-FACT

I hereby appoint:

Name: _____

Home Address: _____

Home Telephone Number: _____ Work Telephone Number: _____

to act as my attorney-in-fact to make decisions regarding my mental health treatment if I become incapable of giving or withholding informed consent for that treatment.

If the person named above refuses or is unable to act on my behalf, or if I revoke that person's authority to act as my attorney-in-fact, I authorize the following person to act as my attorney-in-fact:

Name: _____

Home Address: _____

Home Telephone Number: _____ Work Telephone Number: _____

My attorney-in-fact is authorized to make decisions that are consistent with the instructions I have expressed in this advance instruction or, if not expressed, as are otherwise known by my attorney-in-fact, my attorney-in-fact is to act in what he or she believes to be my best interests.

If it becomes necessary for the court to appoint a guardian for me, I hereby nominate my attorney-in-fact to serve in that capacity.

By signing here, I indicate that I am mentally alert and competent, fully informed as to the contents of this document, and understand the full import of this grant of powers to my attorney-in-fact.

_____ _____

Signature of Principal Date

AFFIRMATION OF WITNESSES

We affirm that the principal is personally known to us, that the principal signed or acknowledged the principal's signature on this advance instruction for mental health

treatment in our presence, that the principal appears to be of sound mind and not under duress, fraud, or undue influence, and that neither of us is:
A person appointed as an attorney-in-fact by this document;
The principal's attending physician or mental health service provider or a relative of the physician or provider;
The owner, operator, or relative of an owner or operator of a facility in which the principal is a patient or resident; or
A person related to the principal by blood, marriage, or adoption.
Witnessed by:
Witness:_____ Date:_____
Witness:_____ Date:_____
STATE OF NORTH CAROLINA
COUNTY OF_____

ACCEPTANCE OF APPOINTMENT AS ATTORNEY-IN-FACT

I accept this appointment and agree to serve as attorney-in-fact to make decisions about mental health treatment for the principal. I understand that I have a duty to act consistent with the desires of the principal as expressed in this appointment. I understand that this document gives me authority to make decisions about mental health treatment only while the principal is incapable as determined by a qualified crisis services professional and a physician or eligible psychologist. I understand that the principal may revoke this advance instruction in whole or in part at any time and in any manner when the principal is not incapable.

_____ _____
Signature of Attorney-in-fact Date

_____ _____
Signature of Alternative Attorney-in-fact Date' "

Section 3. G.S. 122C-57 reads as rewritten:

"**§ 122C-57. Right to treatment and consent to treatment.**

(a) Each client who is admitted to and is receiving services from a facility has the right to receive age-appropriate treatment for mental health, mental retardation, and substance abuse illness or disability. Each client within 30 days of admission to a facility shall have an individual written treatment or habilitation plan implemented by the facility. The client and ~~his~~ the client's legally responsible person shall be informed in ~~an~~ advance of the potential risks and alleged benefits of the treatment choices.

(b) Each client has the right to be free from unnecessary or excessive medication. Medication shall not be used for punishment, discipline, or staff convenience.

(c) Medication shall be administered in accordance with accepted medical standards and only upon the order of a physician as documented in the client's record.

(d) Each voluntarily admitted ~~client or his~~ client, the client's legally responsible ~~person~~ person, a health care agent named pursuant to a valid health care power of attorney, or an attorney-in-fact named pursuant to a valid advance instruction for

mental health treatment has the right to consent to or refuse any treatment offered by the facility. Consent may be withdrawn at any time by the person who gave the consent. If treatment is refused, the qualified professional shall determine whether treatment in some other modality is possible. If all appropriate treatment modalities are refused, the voluntarily admitted client may be discharged. In an emergency, a voluntarily admitted client may be administered treatment or medication, other than those specified in subsection (f) of this section, despite the refusal of the ~~client or his~~ client, the client's legally responsible ~~person.~~ person, a health care agent named pursuant to a valid health care power of attorney, or an attorney-in-fact named pursuant to a valid advance instruction for mental health treatment. The Commission may adopt rules to provide a procedure to be followed when a voluntarily admitted client refuses treatment.

(e) In the case of an involuntarily committed client, treatment measures other than those requiring express written consent as specified in subsection (f) of this section may be given despite the refusal of the ~~client or his~~ client, the client's legally responsible ~~person~~ person, a health care agent named pursuant to a valid health care power of attorney, or an attorney-in-fact named pursuant to a valid advance instruction for mental health treatment in the event of an emergency or when consideration of side effects related to the specific treatment measure is given and in the professional judgment, as documented in the client's record, of the treating physician and a second physician, who is either the director of clinical services of the facility, or ~~his~~ the director's designee, either:

(1) The client, without the benefit of the specific treatment measure, is incapable of participating in any available treatment plan which will give ~~him~~ the client a realistic opportunity of improving ~~his~~ the client's condition;

(2) There is, without the benefit of the specific treatment measure, a significant possibility that the client will harm ~~him~~self or others before improvement of ~~his~~ the client's condition is realized.

(f) Treatment involving electroshock therapy, the use of experimental drugs or procedures, or surgery other than emergency surgery may not be given without the express and informed written consent of the ~~client or his~~ client, the client's legally responsible ~~person.~~ person, a health care agent named pursuant to a valid health care power of attorney, or an attorney-in-fact named pursuant to a valid advance instruction for mental health treatment. This consent may be withdrawn at any time by the person who gave the consent. The Commission may adopt rules specifying other therapeutic and diagnostic procedures that require the express and informed written consent of the ~~client or his~~ client, the client's legally responsible ~~person~~ person, a health care agent named pursuant to a valid health care power of attorney, or an attorney-in-fact named pursuant to a valid advance instruction for mental health treatment prior to their initiation."

Section 4. This act becomes effective January 1, 1998.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 757
Children and Human Resources Committee Substitute Adopted 4/30/97

Short Title: Advance Instr./Mental Health. (Public)

Sponsors:

Referred to:

April 8, 1997

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH ADVANCE INSTRUCTION FOR MENTAL HEALTH TREATMENT.

The General Assembly of North Carolina enacts:

Section 1. Article 3 of Chapter 122C of the General Statutes is amended by designating G.S. 122C-51 through G.S. 122C-70 as "Part 1".

Section 2. Article 3 of Chapter 122C of the General Statutes is amended by adding the following new Part to read:

"Part 2. Advance Instruction for Mental Health Treatment.

"**§ 122C-71. Purpose.**

(a) The General Assembly recognizes as a matter of public policy the fundamental right of an individual to control the decisions relating to the individual's medical care, and that this right may be exercised on behalf of the individual by an agent chosen by the individual.

(b) The purpose of this Part is to establish an additional, nonexclusive method for an individual to exercise the right to consent to or refuse mental health treatment when the individual lacks sufficient understanding or capacity to make or communicate mental health treatment decisions.

(c) This Part is intended and shall be construed to be consistent with the provisions of Article 3 of Chapter 32A of the General Statutes, provided that in the event of a conflict between the provisions of this Part and Article 3 of Chapter 32A, the provisions of this Part control.

"**§ 122C-72. Definitions.**

As used in this Part, unless the context clearly requires otherwise, the following terms have the meanings specified:

(1) 'Advance instruction' or 'advance instruction for mental health treatment' means a written instrument, signed by two qualified witnesses, that makes a declaration of instructions, that also provides information and preferences regarding mental health treatment, and that may appoint an attorney-in-fact.

(2) 'Attending physician' means the physician who has primary responsibility for the care and treatment of the principal.

(3) 'Attorney-in-fact' means an adult validly appointed under G.S. 122C-75 to make mental health treatment decisions for a principal under an advance instruction for mental health treatment and also means an alternative attorney-in-fact.

(4) 'Incapable' means that, in the opinion of a physician or eligible psychologist, the person currently lacks the capacity to make and communicate mental health treatment decisions. As used in this subdivision, the term 'eligible psychologist' has the meaning given the term in G.S. 122C-3(13b).

(5) 'Mental health treatment' means the process of providing for the physical, emotional, psychological, and social needs of the principal. 'Mental health treatment' includes, but is not limited to, electroconvulsive treatment (ECT), commonly referred to as 'shock treatment', treatment of mental illness with psychotropic medication, and admission to and retention in a facility for care or treatment of mental illness.

(6) 'Principal' means the person making the advance instruction.

(7) 'Qualified witness' means a witness who affirms that the principal is personally known to the witness, that the principal signed or acknowledged the principal's signature on the advance instruction in the presence of the witness, that the witness believes the principal to be of sound mind and not to be under duress, fraud, or undue influence, and that the witness is not:

a. The attending physician or mental health service provider or a relative of the physician or provider; or

b. An owner, operator, or relative of an owner or operator of a health care facility in which the principal is a patient or resident.

"§ 122C-73. Scope, use, and authority of advance instruction for mental health treatment.

(a) Any adult of sound mind may make an advance instruction regarding mental health treatment. The advance instruction may include consent to or refusal of mental health treatment. The advance instruction may also appoint an attorney-in-fact.

(b) An advance instruction may include, but is not limited to, the names and telephone numbers of individuals to be contacted in case of mental health crisis, situations that may cause the principal to experience a mental health crisis, responses that may assist the principal to remain in the principal's home during a mental health crisis, the types of assistance that may help stabilize the principal if it becomes necessary to enter a facility, and medications that the principal is taking or has taken in the past and the effects of those medications.

(c) A person shall not be required to execute or to refrain from executing an advance instruction as a condition for insurance coverage, as a condition for receiving mental or physical health services, as a condition for receiving privileges while in a facility, or as a condition of discharge from a facility.

(d) A principal may nominate, by advance instruction for mental health treatment, the guardian of the person of the principal if a guardianship proceeding is thereafter commenced. The court shall make its appointment in accordance with the principal's most recent nomination in an unrevoked advance instruction for mental health treatment, except for good cause shown.

(e) If, following the execution of an advance instruction for mental health treatment, a court of competent jurisdiction appoints a guardian of the person of the principal, or a general guardian with powers over the person of the principal, the advance instruction for mental health treatment shall remain in effect and shall be superior to the powers and duties of the guardian of the person with respect to mental health treatment covered under the advance instruction.

(f) An advance instruction for mental health treatment may be combined with or incorporated into a health care power of attorney or general power of attorney that is executed in accordance with the requirements of Chapter 32A of the General Statutes.

"**§ 122C-74. Effectiveness and duration; revocation.**

(a) A validly executed advance instruction becomes effective when it is delivered to the principal's physician or other mental health treatment provider and remains valid until revoked or expired. The physician or provider shall act in accordance with an advance instruction when the principal has been determined to be incapable. The physician or provider shall continue to obtain the principal's informed consent to all mental health treatment decisions if the principal is capable of providing informed consent or refusal.

(b) Upon being presented with an advance instruction, a physician or other provider shall make the advance instruction a part of the principal's medical record. When acting under authority of an advance instruction, a physician or provider shall comply with it to the fullest extent possible, unless compliance is not consistent with:

(1) Best medical practice to benefit the principal;

(2) The availability of treatments requested; and

(3) Applicable law.

If the physician or other provider is unwilling at any time to comply with any part or parts of an advance instruction for one or more of the reasons set out in subdivisions (1) through (3) of this subsection, the physician or provider shall promptly notify the

principal and, if applicable, the attorney-in-fact, and shall document the reason for not complying with the advance instruction and shall document the notification in the principal's medical record.

(c) Except as provided in subsection (b) of this section, the physician or provider may subject the principal to mental health treatment in a manner contrary to the principal's wishes as expressed in an advance instruction for mental health treatment only:

(1) If the principal is committed to a 24-hour facility pursuant to Article 5 of G.S. 122C and treatment is authorized in compliance with G.S. 122C-57 and administrative rule; or

(2) In cases of emergency endangering life or health.

(d) An advance instruction does not limit any authority provided in Article 5 of G.S. 122C either to take a person into custody, or to admit, retain, or treat a person in a facility.

(e) When making an advance instruction, the principal shall indicate whether the advance instruction may be revoked only if the principal is capable, or if it may be revoked at any time. If the advance instruction directs that it may be revoked only if the principal is capable, then the revocation is effective when a capable principal communicates the revocation to the attending physician or other provider. If the advance instruction directs that the revocation may be made at any time, then a revocation is effective when made by a capable principal, or when an incapable principal communicates the revocation to the attending physician or other provider, as the case may be. The attending physician or other provider shall note the revocation as part of the principal's medical record.

(f) If an advance instruction indicates that it may be revoked at any time, then the advance instruction continues in effect unless and until it is revoked by the principal. If an advance instruction indicates that it may be revoked only if the principal is capable, then an advance instruction that has not become operative expires at the end of two years from the date of execution, unless earlier revoked by the capable principal. The authority of a named attorney-in-fact and any alternative attorney-in-fact named in the advance instruction continues in effect as long as the advance instruction appointing the attorney-in-fact is in effect or until the attorney-in-fact has withdrawn.

(g) A physician or provider who administers or does not administer mental health treatment according to and in good faith reliance upon the validity of an advance instruction is not subject to criminal prosecution, civil liability, or professional disciplinary action resulting from a subsequent finding of an advance instruction's invalidity.

"§ 122C-75. Scope of authority of attorney-in-fact; powers and duties; limitation on liability.

(a) An advance instruction may designate a competent adult to act as attorney-in-fact to make decisions about mental health treatment. An alternative attorney-in-fact may also be designated to act as attorney-in-fact if the original designee is unable or unwilling to act at any time. An attorney-in-fact who has accepted the appointment

in writing may make decisions about mental health treatment on behalf of the principal only when the principal is incapable. The decisions shall be consistent with any desires the principal has expressed in the advance instruction.

(b) None of the following may serve as attorney-in-fact:

(1) The attending physician or mental health service provider or an employee of the physician or provider, if the physician, provider, or employee is unrelated to the principal by blood, marriage, or adoption.

(2) An owner, operator, or employee of a health care facility in which the principal is a patient or resident, if the owner, operator, or employee is unrelated to the principal by blood, marriage, or adoption.

(c) The attorney-in-fact shall not have authority to make mental health treatment decisions unless the principal is incapable.

(d) The attorney-in-fact is not, as a result of acting in that capacity, personally liable for the cost of treatment provided to the principal.

(e) Except to the extent the right is limited by the advance instruction or any federal law, an attorney-in-fact has the same right as the principal to receive information regarding the proposed mental health treatment and to receive, review, and consent to disclosure of medical records relating to that treatment. This right of access does not waive any evidentiary privilege.

(f) In exercising authority under the advance instruction, the attorney-in-fact shall act consistently with the desires of the principal as expressed in the advance instruction. If the principal's desires are not expressed in the advance instruction and are not otherwise known by the attorney-in-fact, the attorney-in-fact shall act in what the attorney-in-fact in good faith believes to be the manner in which the principal would act if the principal was not incapable.

(g) The appointment of an attorney-in-fact shall not revoke, restrict, or otherwise affect any nonmental health treatment powers granted by the principal to a health care agent pursuant to a health care power of attorney or attorney-in-fact pursuant to a general power of attorney; provided that the mental health treatment powers granted to the attorney-in-fact shall be superior to any similar powers granted by the principal to a health care agent pursuant to a health care power of attorney or an attorney-in-fact pursuant to a general power of attorney.

(h) An attorney-in-fact is not subject to criminal prosecution, civil liability, or professional disciplinary action for any action taken in good faith pursuant to an advance instruction for mental health treatment.

(i) An attorney-in-fact may withdraw by giving notice to the principal. If a principal is incapable, the attorney-in-fact may withdraw by giving notice to the attending physician or provider. The attending physician or provider shall note the withdrawal as part of the principal's medical record.

(j) A person who has withdrawn under the provision of subsection (i) of this section may rescind the withdrawal by executing an acceptance after the date of the withdrawal. The acceptance shall be in the same or similar form as provided for in

G.S. 122C-77 for accepting an appointment. A person who rescinds a withdrawal shall give notice to the principal if the principal is capable or to the principal's health care provider if the principal is incapable.

"§ 122C-76. Penalty.

It is a Class 2 misdemeanor for a person, without authorization of the principal, willfully to alter, forge, conceal, or destroy an instrument, the reinstatement or revocation of an instrument, or any other evidence or document reflecting the principal's desires and interests, with the intent or effect of affecting a mental health treatment decision.

"§ 122C-77. Statutory form for advance instruction for mental health treatment.

The use of the following or similar form in the creation of an advance instruction for mental health treatment is lawful, and when used, it shall be construed in accordance with the provisions of this Article.

'ADVANCE INSTRUCTION FOR MENTAL HEALTH TREATMENT

I, _____, being an adult of sound mind, willfully and voluntarily make this advance instruction for mental health treatment to be followed if it is determined by a physician or eligible psychologist that my ability to receive and evaluate information effectively or communicate decisions is impaired to such an extent that I lack the capacity to refuse or consent to mental health treatment. 'Mental health treatment' means the process of providing for the physical, emotional, psychological, and social needs of the principal. 'Mental health treatment' includes electroconvulsive treatment (ECT), commonly referred to as 'shock treatment', treatment of mental illness with psychotropic medication, and admission to and retention in a facility for care or treatment of mental illness.

I understand that I may become incapable of giving or withholding informed consent for mental health treatment due to the symptoms of a diagnosed mental disorder. These symptoms may include:

_____

PSYCHOACTIVE MEDICATIONS

If I become incapable of giving or withholding informed consent for mental health treatment, my wishes regarding psychoactive medications are as follows:

____ I consent to the administration of the following medications:

_____

_____

____ I do not consent to the administration of the following medications:

_____

_____

Conditions or limitations: _____

_____

ELECTROCONVULSIVE (ECT) TREATMENT (Commonly referred

to as "Shock Treatment")

If I become incapable of giving or withholding informed consent for mental health treatment, my wishes regarding electroconvulsive treatment (ECT), (commonly referred to as "shock treatment") are as follows:

____ I consent to the administration of electroconvulsive treatment (ECT), (commonly referred to as "shock treatment").

____ I do not consent to the administration of electroconvulsive treatment (ECT), (commonly referred to as "shock treatment").

Conditions or limitations: _____

_____

ADMISSION TO AND RETENTION IN FACILITY

If I become incapable of giving or withholding informed consent for mental health treatment, my wishes regarding admission to and retention in a health care facility for mental health treatment are as follows:

____ I consent to being admitted to a health care facility for mental health treatment.

My facility preference is _____

____ I do not consent to being admitted to a health care facility for mental health treatment.

This advance instruction cannot, by law, provide consent to retain me in a facility for more than 10 days.

Conditions or limitations: _____

_____

ADDITIONAL INSTRUCTIONS

These instructions shall apply during the entire length of my incapacity.

In case of mental health crisis, please contact:

1. Name: _____
   Home Address: _____
   Home Telephone Number: _____ Work Telephone Number: _____
   Relationship to Me: _____
2. Name: _____
   Home Address: _____
   Home Telephone Number: _____ Work Telephone Number: _____
   Relationship to Me: _____
3. My Physician:
   Name: _____ Telephone Number: _____
4. My Therapist:
   Name: _____ Telephone Number: _____

The following may cause me to experience a mental health crisis: _____

_____

_____

The following may help me avoid a hospitalization: _____

I generally react to being hospitalized as follows:

Staff of the hospital or crisis unit can help me by doing the following:

I give permission for the following person or people to visit me:

Other instructions:

____ I have attached an additional sheet of instructions to be followed and considered part of this advance instruction.

REVOCATION

(Initial one or the other, but not both, of the following, as desired):

_____ If I become incapable, and this advance instruction becomes operative, I, at that point, give up my power to revoke this advance instruction. While I am incapable, I direct that this advance instruction remain in effect and operative to carry out my instructions for treatment as stated in this advance instruction. I understand that if I select this revocation option, this advance instruction, if it has not become operative, will expire at the end of two years from the date of its execution, or earlier if I revoke it before the two years have expired.

[or]

_____ If I become incapable, and this advance instruction goes into effect, I retain my power to revoke it at any time. I understand that any revocation made by me will, at the time the revocation is made, end any benefit that I now seek and that would otherwise derive through this advance instruction.

ATTORNEY-IN-FACT

I hereby appoint:

Name:

Home Address:

Home Telephone Number: Work Telephone Number:

to act as my attorney-in-fact to make decisions regarding my mental health treatment if I become incapable of giving or withholding informed consent for that treatment.
If the person named above refuses or is unable to act on my behalf, or if I revoke that person's authority to act as my attorney-in-fact, I authorize the following person to act as my attorney-in-fact:
Name: _____
Home Address: _____
Home Telephone Number: _____ Work Telephone Number: _____
My attorney-in-fact is authorized to make decisions that are consistent with the wishes I have expressed in this advance instruction or, if not expressed, as are otherwise known by my attorney-in-fact, my attorney-in-fact is to act in what he or she believes to be my best interests.
If it becomes necessary for the court to appoint a guardian for me, I hereby nominate my attorney-in-fact to serve in that capacity.
By signing here, I indicate that I am mentally alert and competent, fully informed as to the contents of this document, and understand the full import of this grant of powers to my attorney-in-fact.

_____ _____
Signature of Principal Date

AFFIRMATION OF WITNESSES

We affirm that the principal is personally known to us, that the principal signed or acknowledged the principal's signature on this advance instruction for mental health treatment in our presence, that the principal appears to be of sound mind and not under duress, fraud, or undue influence, and that neither of us is:
A person appointed as an attorney-in-fact by this document;
The principal's attending physician or mental health service provider or a relative of the physician or provider;
The owner, operator, or relative of an owner or operator of a facility in which the principal is a patient or resident; or
A person related to the principal by blood, marriage, or adoption.
Witnessed by:
Witness: _____ Date: _____
Witness: _____ Date: _____
STATE OF NORTH CAROLINA
COUNTY OF _____

ACCEPTANCE OF APPOINTMENT AS ATTORNEY-IN-FACT

I accept this appointment and agree to serve as attorney-in-fact to make decisions about mental health treatment for the principal. I understand that I have a duty to act consistent with the desires of the principal as expressed in this appointment. I understand that this document gives me authority to make decisions about mental health treatment only while the principal is incapable as determined by a qualified crisis services professional and a physician or eligible psychologist. I understand that

the principal may revoke this advance instruction in whole or in part at any time and in any manner when the principal is not incapable.

Signature of Attorney-in-fact	Date
Signature of Alternative Attorney-in-fact	Date' "

Section 3. G.S. 122C-57 reads as rewritten:

"**§ 122C-57. Right to treatment and consent to treatment.**

(a) Each client who is admitted to and is receiving services from a facility has the right to receive age-appropriate treatment for mental health, mental retardation, and substance abuse illness or disability. Each client within 30 days of admission to a facility shall have an individual written treatment or habilitation plan implemented by the facility. The client and ~~his~~ the client's legally responsible person shall be informed in ~~an~~ advance of the potential risks and alleged benefits of the treatment choices.

(b) Each client has the right to be free from unnecessary or excessive medication. Medication shall not be used for punishment, discipline, or staff convenience.

(c) Medication shall be administered in accordance with accepted medical standards and only upon the order of a physician as documented in the client's record.

(d) Each voluntarily admitted ~~client or his~~ client, the client's legally responsible ~~person~~ person, a health care agent named pursuant to a valid health care power of attorney, or an attorney-in-fact named pursuant to a valid advance instruction for mental health treatment has the right to consent to or refuse any treatment offered by the facility. Consent may be withdrawn at any time by the person who gave the consent. If treatment is refused, the qualified professional shall determine whether treatment in some other modality is possible. If all appropriate treatment modalities are refused, the voluntarily admitted client may be discharged. In an emergency, a voluntarily admitted client may be administered treatment or medication, other than those specified in subsection (f) of this section, despite the refusal of the ~~client or his~~ client, the client's legally responsible ~~person.~~ person, a health care agent named pursuant to a valid health care power of attorney, or an attorney-in-fact named pursuant to a valid advance instruction for mental health treatment. The Commission may adopt rules to provide a procedure to be followed when a voluntarily admitted client refuses treatment.

(e) In the case of an involuntarily committed client, treatment measures other than those requiring express written consent as specified in subsection (f) of this section may be given despite the refusal of the ~~client or his~~ client, the client's legally responsible ~~person~~ person, a health care agent named pursuant to a valid health care power of attorney, or an attorney-in-fact named pursuant to a valid advance instruction for mental health treatment in the event of an emergency or when consideration of side effects related to the specific treatment measure is given and in the professional judgment, as documented in the client's record, of the treating

physician and a second physician, who is either the director of clinical services of the facility, or ~~his~~ the director's designee, either:

(1) The client, without the benefit of the specific treatment measure, is incapable of participating in any available treatment plan which will give ~~him~~ the client a realistic opportunity of improving ~~his~~ the client's condition;

(2) There is, without the benefit of the specific treatment measure, a significant possibility that the client will harm ~~him~~self or others before improvement of ~~his~~ the client's condition is realized.

(f) Treatment involving electroshock therapy, the use of experimental drugs or procedures, or surgery other than emergency surgery may not be given without the express and informed written consent of the ~~client or his~~ client, the client's legally responsible ~~person.~~ person, a health care agent named pursuant to a valid health care power of attorney, or an attorney-in-fact named pursuant to a valid advance instruction for mental health treatment. This consent may be withdrawn at any time by the person who gave the consent. The Commission may adopt rules specifying other therapeutic and diagnostic procedures that require the express and informed written consent of the ~~client or his~~ client, the client's legally responsible ~~person~~ person, a health care agent named pursuant to a valid health care power of attorney, or an attorney-in-fact named pursuant to a valid advance instruction for mental health treatment prior to their initiation."

Section 4. This act becomes effective January 1, 1998.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative(s) **MORGAN** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE.**

☒ Committee Substitute for

S.B. 826 A BILL TO BE ENTITLED AN ACT TO PROVIDE "QUICK TAKE" PROCEDURES IN EMINENT DOMAIN PROCEEDINGS BY SCHOOL BOARDS; AND TO EXPAND THE CARTERET COUNTY BOARD OF EDUCATION FROM FIVE TO SEVEN MEMBERS AND TO PROVIDE THAT THEIR DISTRICTS ARE THE SAME AS FOR THE BOARD OF COMMISSIONERS, SUBJECT TO A REFERENDUM, AND TO PROVIDE FOR PARTISAN ELECTIONS, SUBJECT TO A REFERENDUM; AND TO PROVIDE THAT FIVE MEMBERS OF THE MOORE COUNTY BOARD OF EDUCATION BE ELECTED FROM THE SAME DISTRICTS AS ARE THE MEMBERS OF THE BOARD OF COMMISSIONERS AND THE REMAINING THREE MEMBERS OF THE MOORE COUNTY BOARD OF EDUCATION BE ELECTED AT LARGE, SUBJECT TO A REFERENDUM, AND TO PROVIDE FOR PARTISAN ELECTIONS, SUBJECT TO A REFERENDUM.

☐ 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 House committee substitute bill (# 2), ☒ which changes the title, unfavorable as to ~~original bill~~ (House Committee Substitute Bill # 1), ~~(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 D

SENATE BILL 826*
Second Edition Engrossed 4/30/97
House Committee Substitute Favorable 7/24/97
Proposed House Committee Substitute S826-PCS7854

Short Title: School Board Changes. (Public)

Sponsors:

Referred to:

April 14, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE "QUICK TAKE" PROCEDURES IN EMINENT DOMAIN PROCEEDINGS BY SCHOOL BOARDS; AND TO CHANGE THE TERM OF OFFICE OF THE CHARLOTTE-MECKLENBURG BOARD OF EDUCATION FROM FOUR YEARS TO TWO YEARS, SUBJECT TO A REFERENDUM.

The General Assembly of North Carolina enacts:

PART I. SCHOOL BOARD QUICK TAKE

Section 1. G.S. 40A-42(a) reads as rewritten:

"(a) When a local public condemnor is acquiring property by condemnation for a purpose set out in G.S. 40A-3(b)(1), (4) or (7), or when a city is acquiring property for a purpose set out in G.S. 160A-311(1), (2), (3), (4), (6), or (7), or when a county is acquiring property for a purpose set out in G.S. 153A-274(1), (2) or (3), or when a municipal or county board of education or any combination of those boards is acquiring property for any purpose set forth in G.S. 115C-517, or when a condemnor is acquiring property by condemnation as authorized by G.S. 40A-3(c)(8), (9), (10) or (12), title to the property and the right to immediate possession shall vest pursuant to this subsection. Unless an action for injunctive relief has been initiated, title to the property specified in the complaint, together with the right to immediate possession thereof, shall vest in the condemnor upon the filing of the complaint and the making of the deposit in accordance with G.S. 40A-41."

Section 2. G.S. 115C-517 reads as rewritten:

"**§ 115C-517. Acquisition of sites.**

Local boards of education may acquire suitable sites for schoolhouses or other school facilities either within or without the local school administrative unit; but no school may be operated by a local school administrative unit outside its own boundaries, although other school facilities such as repair shops, may be operated outside the boundaries of the local school administrative unit. Whenever any such board is unable to acquire or enlarge a suitable site or right-of-way for a school, school building, school bus garage or for a parking area or access road suitable for school buses or for other school facilities by gift or purchase, condemnation proceedings to acquire same may be instituted by such board under the provisions of Chapter 40A of the General Statutes, including the rights and procedures pursuant to G.S. 40A-42, et seq., and the determination of the local board of education of the land necessary for such purposes shall be conclusive. A local board shall not initiate a proceeding under G.S. 40A-42(a) unless the action is approved by a resolution adopted by the board of county commissioners."

PART II. CHARLOTTE-MECKLENBURG BOARD OF EDUCATION

Section 3. Section 2(a) of Chapter 167 of the 1993 Session Laws reads as rewritten:

"(a) In ~~1995~~ 1995, ~~and quadrennially thereafter,~~ three members of the Charlotte-Mecklenburg Board of Education shall be elected for four-year terms by all the qualified voters of Mecklenburg County. In 1999 and biennially thereafter, three members of the Charlotte-Mecklenburg Board of Education shall be elected for two-year terms by all the qualified voters of Mecklenburg County."

Section 4. Section 2(c) of Chapter 167 of the 1993 Session Laws reads as rewritten:

"(c) In 1995, one member of the Charlotte-Mecklenburg Board of Education shall be elected from each district for a two-year term by all the qualified voters of the district. In 1997 and ~~quadrennially~~ biennially thereafter, one member of the Charlotte-Mecklenburg Board of Education shall be elected from each district for a ~~four-year~~ two-year term by all the qualified voters of the district."

Section 5. Sections 3 and 4 of this act are effective only if approved by the qualified voters of Mecklenburg County in a referendum to be held on Tuesday after the first Monday in November of 1997. The referendum shall be conducted by the Mecklenburg County Board of Elections.

The question on the ballot shall be:

"[ ] FOR [ ] AGAINST

changing the manner of election of the Charlotte-Mecklenburg Board of Education to provide for two-year terms of office."

Section 6. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 3

SENATE BILL 826*
Second Edition Engrossed 4/30/97
House Committee Substitute Favorable 7/24/97

Short Title: School Board Changes. (Public)

Sponsors:

Referred to:

April 14, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE "QUICK TAKE" PROCEDURES IN EMINENT DOMAIN PROCEEDINGS BY SCHOOL BOARDS; AND TO EXPAND THE CARTERET COUNTY BOARD OF EDUCATION FROM FIVE TO SEVEN MEMBERS AND TO PROVIDE THAT THEIR DISTRICTS ARE THE SAME AS FOR THE BOARD OF COMMISSIONERS, SUBJECT TO A REFERENDUM, AND TO PROVIDE FOR PARTISAN ELECTIONS, SUBJECT TO A REFERENDUM; AND TO PROVIDE THAT FIVE MEMBERS OF THE MOORE COUNTY BOARD OF EDUCATION BE ELECTED FROM THE SAME DISTRICTS AS ARE THE MEMBERS OF THE BOARD OF COMMISSIONERS AND THE REMAINING THREE MEMBERS OF THE MOORE COUNTY BOARD OF EDUCATION BE ELECTED AT LARGE, SUBJECT TO A REFERENDUM, AND TO PROVIDE FOR PARTISAN ELECTIONS, SUBJECT TO A REFERENDUM.

The General Assembly of North Carolina enacts:

PART I. SCHOOL BOARD QUICK TAKE

Section 1. G.S. 40A-42(a) reads as rewritten:

"(a) When a local public condemnor is acquiring property by condemnation for a purpose set out in G.S. 40A-3(b)(1), (4) or (7), or when a city is acquiring property for a purpose set out in G.S. 160A-311(1), (2), (3), (4), (6), or (7), or when a county is acquiring property for a purpose set out in G.S. 153A-274(1), (2) or (3), or when a municipal or county board of education or any combination of those boards is

acquiring property for any purpose set forth in G.S. 115C-517, or when a condemnor is acquiring property by condemnation as authorized by G.S. 40A-3(c)(8), (9), (10) or (12), title to the property and the right to immediate possession shall vest pursuant to this subsection. Unless an action for injunctive relief has been initiated, title to the property specified in the complaint, together with the right to immediate possession thereof, shall vest in the condemnor upon the filing of the complaint and the making of the deposit in accordance with G.S. 40A-41."

Section 2. G.S. 115C-517 reads as rewritten:

"**§ 115C-517. Acquisition of sites.**

Local boards of education may acquire suitable sites for schoolhouses or other school facilities either within or without the local school administrative unit; but no school may be operated by a local school administrative unit outside its own boundaries, although other school facilities such as repair shops, may be operated outside the boundaries of the local school administrative unit. Whenever any such board is unable to acquire or enlarge a suitable site or right-of-way for a school, school building, school bus garage or for a parking area or access road suitable for school buses or for other school facilities by gift or purchase, condemnation proceedings to acquire same may be instituted by such board under the provisions of Chapter 40A of the General Statutes, including the rights and procedures pursuant to G.S. 40A-42, et seq., and the determination of the local board of education of the land necessary for such purposes shall be conclusive. A local board shall not initiate a proceeding under G.S. 40A-42(a) unless the action is approved by a resolution adopted by the board of county commissioners."

PART II. CARTERET COUNTY BOARD OF EDUCATION

Section 3. (a) Effective July 1, 1998, the Board of Education of Carteret County consists of seven members.

(b) One member of the Carteret County Board of Education shall be elected each from Districts 1, 2, 4, 5, and 6 as established for the Carteret County Board of Commissioners by Chapter 113 of the Session Laws of 1993, and two members of the Carteret County Board of Education shall be elected from District 3 as established for the Carteret County Board of Commissioners by Chapter 113 of the Session Laws of 1993.

(c) Of the existing members, Roger Newby is assigned to District 2, Rodney Kemp and Kim Willis are assigned to District 3, Ellen Piner is assigned to District 5, and June Fulcher is assigned to District 6. In 1998, one member shall be elected from each of Districts 1, 3, 5, and 6 for a four-year term, and one member from District 4 for a two-year term. In 2000 and quadrennially thereafter, one member shall be elected from Districts 2, 3, and 4 for a four-year term. In 2002 and quadrennially thereafter, one member shall be elected from Districts 1, 3, 5, and 6 for a four-year term.

(d) Members shall reside in and represent the districts, but all members are elected by the voters of the county at large in nonpartisan plurality elections at

the time of the primary election and take office on July 1 of the year of election, all as previously provided by law.

Section 4. The Carteret County Board of Elections shall conduct an election on November 4, 1997, on the question of approval of Section 3 of this act. The question on the ballot shall be:

"[ ] FOR [ ] AGAINST

Expansion of the Carteret County Board of Education to seven members and election from the same districts as the Carteret County Board of Commissioners."

If a majority of the votes cast are FOR the question, then Section 3 of this act becomes effective. If less than a majority of the votes cast are FOR the question, then Section 3 of this act does not become effective.

Section 5. Notwithstanding any provision of Section 3(d) of this act or Chapter 774 of the 1991 Session Laws, the members of the Carteret County Board of Education shall be elected on a partisan basis at the same time as county officers. To the extent that they do not conflict with this act and that act, the elections shall be conducted in accordance with Chapters 115C and 163 of the General Statutes. Vacancies on the Board of Education for positions elected on a nonpartisan basis in 1994 and 1996 shall be filled in accordance with G.S. 115C-37(f). Vacancies on the Board of Education for positions elected on a partisan basis shall be filled in accordance with G.S. 115C-37.1. Beginning in 1998, members elected shall take office and qualify on the first Monday in December of the year of their election, and the terms of their predecessors shall expire at that same time.

Section 6. The Carteret County Board of Elections shall conduct an election on November 4, 1997, on the question of approval of Section 5 of this act. The question on the ballot shall be:

"[ ] FOR [ ] AGAINST

Election of the Carteret County Board of Education on a partisan basis."

If a majority of the votes cast are FOR the question, then Section 5 of this act becomes effective. If less than a majority of the votes cast are FOR the question, then Section 5 of this act does not become effective.

PART III. MOORE COUNTY BOARD OF EDUCATION

Section 7. (a) The Board of Education of Moore County consists of eight members.

(b) One member of the Moore County Board of Education shall be elected each from Electoral Districts 1, 2, 3, 4, and 5 for members of the Moore County Board of Commissioners as those districts existed on January 1, 1997, and three members of the Moore County Board of Education shall be elected from the County at large.

(c) Of the existing Moore County Board of Education members, Mike Ritter is assigned to District 1; Ken Baer is assigned to District 2; Bill Garner is assigned to District 3; Linda McCaskill is assigned to District 4; and Dianne Lawrence is assigned to District 5. In 1998 and quadrennially thereafter, a member shall be elected from District 3, and three members shall be elected from the county at large

for four-year terms. In 2000 and quadrennially thereafter, members shall be elected from Districts 1, 2, 4, and 5 for four-year terms.

(d) Members shall reside in and represent the districts, but all members are elected by the voters of the county at large by the nonpartisan primary and election method, all as previously provided by law.

Section 8. The Moore County Board of Elections shall conduct an election on November 4, 1997, on the question of approval of Section 7 of this act. The question on the ballot shall be:

"[ ] FOR [ ] AGAINST

Providing that five of the Moore County Board of Education members have the same districts as the Moore County Board of County Commissioners and that three of the Moore County Board of Education members be elected at large."

If a majority of the votes cast are FOR the question, then Section 7 of this act becomes effective. If less than a majority of the votes cast are FOR the question, then Section 7 of this act does not become effective.

Section 9. Notwithstanding any provision of Section 7(d) of this act, Chapter 882 of the 1967 Session Laws, or Chapter 442 of the 1977 Session Laws, the members of the Moore County Board of Education shall be elected on a partisan basis at the same time as county officers. To the extent that they do not conflict with this act, Chapter 882 of the 1967 Session Laws, or Chapter 442 of the 1977 Session Laws, the elections shall be conducted in accordance with Chapters 115C and 163 of the General Statutes. Vacancies on the Board of Education for positions elected on a nonpartisan basis in 1994 and 1996 shall be filled in accordance with G.S. 115C-37(f). Vacancies on the Board of Education for positions elected on a partisan basis shall be filled in accordance with G.S. 115C-37.1.

Section 10. The Moore County Board of Elections shall conduct an election on November 4, 1997, on the question of approval of Section 9 of this act. The question on the ballot shall be:

"[ ] FOR [ ] AGAINST

Election of the Moore County Board of Education on a partisan basis."

If a majority of the votes cast are FOR the question, then Section 9 of this act becomes effective. If less than a majority of the votes cast are FOR the question, then Section 9 of this act does not become effective.

Section 11. This act is effective when it becomes law.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **MORGAN** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE.**

☐ Committee Substitute for
H.B. 1077 A BILL TO BE ENTITLED AN ACT REGULATING THE PRACTICE OF MASSAGE AND BODYWORK THERAPIES.

☐ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

HOUSE BILL 1077

Short Title: Massage and Bodywork Therapies. (Public)

Sponsors: Representatives Clary; Bonner, Capps, Culp, Dedmon, Earle, Gulley, McAllister, Moore, Morris, Reynolds, Saunders, Sexton, Sherrill, Shubert, Starnes, Thompson, Watson, and Weatherly.

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

April 21, 1997

A BILL TO BE ENTITLED

AN ACT REGULATING THE PRACTICE OF MASSAGE AND BODYWORK THERAPIES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 90 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 33.

"Massage and Bodywork Therapies Practice.

"**§ 90-520. Short title.**

This Article shall be known as the North Carolina Massage and Bodywork Therapies Practice Act.

"**§ 90-521. Declaration of purpose.**

The General Assembly recognizes that the improper practice of massage and bodywork therapies is potentially harmful to the public. Mandatory licensure of those engaged in the practice of massage and bodywork therapies is necessary to ensure minimum standards of competency and to protect the public health, safety, and welfare.

"**§ 90-522. Definitions.**

The following definitions apply in this Article:

(1) Board. -- The North Carolina Board of Massage and Bodywork Therapies.

(2) Board approved school. -- Any massage and bodywork therapies school or training program in this State or another state that has met the criteria established by the Board.

(3) Massage and bodywork therapies. -- Systems of activities applied to the soft tissues of the body for therapeutic, educational, or relaxation purposes. The application may include:

a. Manual techniques.

b. Passive or active stretching within the normal anatomical range of movement.

c. Complementary methods, including the external application of water, heat, cold, lubricants, or other topical preparations.

d. Mechanical devices that mimic or enhance the actions possible by the hands.

(4) Massage and bodywork therapist. -- A person licensed under this Article.

(5) Practice of massage and bodywork therapies. -- The application of massage and bodywork therapies to any person for a fee or other consideration. 'Practice of massage and bodywork therapies' does not include the diagnosis of illness or disease, medical procedures, chiropractic adjustive procedures, electrical stimulation, ultrasound, prescription of medicines, or the use of modalities for which a license to practice medicine, chiropractic, physical therapy, occupational therapy, acupuncture, or podiatry is required by law.

"§ 90-523. License required.

(a) A person shall not practice or hold out himself or herself to others as a massage and bodywork therapist without first applying for and receiving from the Board a license to engage in that practice.

(b) A person holds out himself or herself to others as a massage and bodywork therapist when the person adopts or uses any title or description including 'massage therapist', 'bodywork therapist', 'masseur', 'masseuse', 'massagist', 'somatic practitioner', 'body therapist', 'structural integrator', or any derivation of those terms that implies this practice.

(c) It shall be unlawful to advertise using the term 'massage therapist' or 'bodywork therapist' or any other term that implies a soft tissue technique or method in any public or private publication or communication by a person not licensed under this Article as a massage and bodywork therapist. Any person who holds a license to practice as a massage and bodywork therapist in this State may use the title 'Licensed Massage Therapist' or 'Licensed Bodywork Therapist'. No other person shall assume these titles or use these abbreviations or any other words, letters, signs, or figures to indicate that the person using the title is a licensed massage and bodywork therapist. An establishment employing or contracting with persons licensed under this Article may advertise on behalf of those persons.

"§ 90-524. Exemptions.

Nothing in this Article shall be construed to prohibit or affect:

(1) The practice of a profession by persons who are licensed, certified, or registered under other laws of this State and who are performing services within their authorized scope of practice.

(2) The practice of massage and bodywork therapy by a person employed by the government of the United States while the person is engaged in the performance of duties prescribed by the laws and regulations of the United States.

(3) The practice of massage and bodywork therapy by persons duly licensed in another state, territory, or the District of Columbia when incidentally called into this State for consultation with a person licensed under this Article.

(4) Students enrolled in a Board approved school while completing a clinical requirement for graduation that shall be performed under the supervision of a person licensed under this Article.

(5) A person giving massage and bodywork therapy to members of that person's immediate family.

(6) The practice of movement educators such as dance therapists or teachers, yoga teachers, personal trainers, martial arts instructors, movement repatterning practitioners, and other such professions.

"**§ 90-525. North Carolina Board of Massage and Bodywork Therapies.**

(a) The North Carolina Board of Massage and Bodywork Therapies is created. The Board shall consist of seven members who are residents of this State and are as follows:

(1) Five members shall be massage and bodywork therapists with at least five years of experience in massage and bodywork practice. The appointments shall be made from lists provided by those covered in this Article. Consideration shall be given to geographical distribution, practice setting, clinical specialty, and other factors that will promote diversity of the profession on the Board. One of the five members shall be appointed by the General Assembly, upon the recommendation of the Speaker of the House of Representatives, one shall be appointed by the General Assembly, upon the recommendation of the President Pro Tempore of the Senate, and three shall be appointed by the Governor.

(2) The remaining two members shall be members of the general public who shall not be licensed under this Article or the spouse of a person who is so licensed, or have any financial interest, direct or indirect, in the profession regulated. One of these members shall be appointed by the General Assembly, upon the recommendation of the Speaker of the House of Representatives, and one shall be appointed by the General Assembly, upon the recommendation of the President Pro Tempore of the Senate.

(b) Legislative appointments shall be made in accordance with G.S. 120-121. A vacancy in a legislative appointment shall be filled in accordance with G.S. 120-122.

(c) Each member of the Board shall serve for a term of three years, ending on June 30 of the last year of the term. A member shall not be appointed to serve more than two consecutive terms.

(d) The Board shall elect annually a chair and other officers as it deems necessary. The Board shall meet as often as necessary for the conduct of business but no less than twice a year. The Board shall establish procedures governing the calling, holding, and conducting of regular and special meetings. A majority of the Board shall constitute a quorum.

(e) Each member of the Board may receive per diem and reimbursement for travel and subsistence as set forth in G.S. 93B-5.

(f) Members may be removed by the official who appointed the member for neglect of duty, incompetence, or unprofessional conduct. A member subject to disciplinary proceedings as a licensee shall be disqualified from participating in the official business of the Board until the charges have been resolved.

"**§ 90-526. Powers and duties.**

The Board shall have the following powers and duties:

(1) The Board shall at all times represent the diversity within the profession and shall stay informed regarding the various branches of massage and bodywork therapies.

(2) Evaluate the qualifications of applicants for licensure under this Article.

(3) Issue, renew, deny, suspend, or revoke licenses under this Article.

(4) Reprimand or otherwise discipline licensees under this Article.

(5) Conduct investigations to determine whether violations of this Article exist or constitute grounds for disciplinary action against licensees under this Article.

(6) Conduct administrative hearings in accordance with Chapter 150B of the General Statutes when a contested case, as defined in G.S. 150B-2(2), arises under this Article.

(7) Employ professional, clerical, or other special personnel necessary to carry out the provisions of this Article and purchase or rent necessary office space, equipment, and supplies.

(8) Establish reasonable fees for applications for examination, certificates of licensure and renewal, and other services provided by the Board.

(9) Adopt, amend, or repeal any rules necessary to carry out the purposes of this Article and the duties and responsibilities of the Board, including rules related to the approval of massage and bodywork therapies schools, continuing education providers, examinations for licensure, the practice of advanced techniques or specialties, and massage and bodywork therapies establishments.

(10) Appoint from its own membership one or more members to act as representatives of the Board at any meeting where such representation is deemed desirable.

(11) Maintain a record of all proceedings and make available to certificate holders and other concerned parties an annual report of the Board.

(12) Adopt a seal containing the name of the Board for use on all certificates and official reports issued by it.

(13) Approve or establish requirements for bodywork therapies schools, instructors, education curriculum, examinations for licensure, the practice of advanced techniques or specialties, and bodywork therapies establishments.

(14) Provide a system for grievances to be presented and resolved.

The powers and duties set out in this section are granted for the purpose of enabling the Board to safeguard the public health, safety, and welfare against unqualified or incompetent practitioners and are to be liberally construed to accomplish this objective.

"§ 90-527. Custody and use of funds.

All fees and other moneys collected and received by the Board shall be used for the purposes of implementing this Article.

"§ 90-528. Expenses and fees.

(a) All salaries, compensation, and expenses incurred or allowed for the purposes of this Article shall be paid by the Board exclusively out of the fees received by the Board as authorized by this Article or from funds received from other sources. In no case shall any salary, expense, or other obligations of the Board be charged against the State treasury.

(b) The schedule of fees may include the following and may be adjusted as the Board deems necessary:

(1)	Application for examination	$150.00
(2)	License fee	100.00
(3)	License renewal	75.00
(4)	Late renewal penalty	50.00
(5)	License by reciprocity	50.00
(6)	Duplicate license	15.00
(7)	Provisional license	100.00.

"§ 90-529. Requirements for licensure.

Upon application to the Board and the payment of the required fees, an applicant may be licensed as a massage and bodywork therapist if the applicant meets all of the following qualifications:

(1) Has obtained a high school diploma or equivalent.

(2) Is 18 years of age or older.

(3) Is of good moral character as determined by the Board.

(4) Has successfully completed a course of study consisting of a minimum of 500 classroom hours of supervised instruction at a Board approved school.

(5) Has successfully passed an examination administered by a certifying agency that has been approved by the National Commission of Certifying Agencies (NCCA) and is in good standing with such agency or has successfully passed an examination administered or approved by the Board.

"**§ 90-530. Reciprocity.**

(a) An applicant shall be eligible for licensure if the applicant has been licensed in another state that has standards for massage and bodywork therapists that are substantially equivalent to those in this State or the applicant holds a valid certificate from the National Certification Board for Therapeutic Massage and Bodywork or another agency that meets NCCA standards.

(b) Upon receipt of an application for reciprocity, the Board shall contact each jurisdiction that has previously certified or licensed the applicant to determine whether there are disciplinary proceedings or unresolved complaints pending against the applicant. In the event a disciplinary proceeding or an unresolved complaint is pending, the applicant shall not be licensed until the proceeding or the complaint has been resolved in the applicant's favor.

(c) Reciprocity may not be granted if the state in which the applicant is licensed has not granted a similar reciprocity to licensees in this State.

"**§ 90-531. Massage and bodywork therapies schools.**

The Board shall establish rules for the approval of massage and bodywork therapies schools. These rules shall include:

(1) Basic curriculum standards that ensure graduates have the education and skills necessary to carry out the safe and effective practice of massage and bodywork therapies.

(2) Standards for faculty and learning resources.

(3) Requirements for reporting changes in instructional staff and curriculum.

(4) A description of the process used by the Board to approve a school.

Any school that offers a training program in massage and bodywork therapies may make application for approval to the Board. The Board shall grant approval to schools, whether in this State or another state, that meet the criteria established by the Board. The Board shall maintain a list of approved schools.

"**§ 90-532. License renewal and continuing education.**

The license to practice under this Article shall be renewed every two years. When renewing a license, each licensee shall submit to the Board evidence of the successful completion of at least 25 hours of study, as approved by the Board, during the immediately preceding two years, in the practice of massage and bodywork therapies.

"**§ 90-533. Disciplinary action.**

The Board may deny, suspend, revoke, or refuse to license a massage and bodywork therapist or applicant for any of the following:

(1) The employment of fraud, deceit, or misrepresentation in obtaining or attempting to obtain a license or the renewal of a license.

(2) The use of drugs or intoxicating liquors to an extent that affects professional competency.

(3) Conviction of an offense under any municipal, State, or federal narcotic or controlled substance law until proof of rehabilitation can be established.

(4) Conviction of a felony or other public offense involving moral turpitude until proof of rehabilitation can be established.

(5) An adjudication of insanity or incompetency until proof of recovery from the condition can be established.

(6) Engaging in any act or practice in violation of any of the provisions of this Article or of any of the rules adopted by the Board, or aiding, abetting, or assisting any other person in the violation of these provisions or rules.

(7) The commission of an act of malpractice, gross negligence, or incompetency.

(8) Practice as a licensee under this Article without a valid certificate or renewal.

(9) Engaging in conduct that could result in harm or injury to the public.

(10) The employment of fraud, deceit, or misrepresentation when communicating with the general public, health care professionals, or other business professionals.

(11) Falsely holding out himself or herself as licensed or certified in any discipline of massage and bodywork therapies without successfully completing training approved by the Board in that specialty.

"**§ 90-534. Enforcement; injunctive relief.**

(a) It is unlawful for a person not licensed or exempted under this Article to engage in any of the following:

(1) Practice of massage and bodywork therapies.

(2) Advertise, represent, or hold out himself or herself to others to be a massage and bodywork therapist.

(3) Use any title descriptive of any branch of massage and bodywork therapies as provided in G.S. 90-523, to describe his or her practice.

(b) A person who violates subsection (a) of this section shall be guilty of a Class 1 misdemeanor.

(c) The Board may make application to superior court for an order enjoining a violation of this Article. Upon a showing by the Board that a person has violated or is about to violate this Article, the court may grant an injunction or take other appropriate action.

"§ 90-535. Third-party reimbursement.

Nothing in this Article shall be construed to require direct third-party reimbursement to persons licensed under this Article."

Section 2. Notwithstanding the provisions of G.S. 90-525(a), as enacted in Section 1 of this act, the terms of initial appointments to the North Carolina Board of Massage and Bodywork Therapies shall be as follows:

(1) The terms of the three members appointed by the Governor pursuant to G.S. 90-525(a)(1), as enacted in Section 1 of this act, shall expire June 30, 2000.

(2) The terms of all other members shall expire June 30, 1999.

Section 3. The five initial appointments to the North Carolina Board of Bodywork Therapies pursuant to G.S. 90-525(a)(1), as enacted in Section 1 of this act, shall satisfy all of the provisions of G.S. 90-525(a)(1), except the licensure requirement, and shall satisfy the provisions of G.S. 90-529(1) through (4), as enacted in Section 1 of this act, except the 500 classroom hours of supervised instruction does not have to be in a curriculum that meets the basic guidelines established by the North Carolina Board of Massage and Bodywork Therapies.

Section 4. If an applicant does not meet the educational or examinations requirements in G.S. 90-529(4) and (5), as enacted in Section 1 of this act, then for a maximum period of two years after the effective date of this act, the Board may permanently waive those requirements and grant a provisional license to the applicant. At the end of two years after the granting of the provisional license, the applicant shall submit evidence to the Board of his or her compliance with the continuing education requirements in G.S. 90-532, as enacted in Section 1 of this act. Upon receipt of proper documentation, the applicant shall be issued a license to practice massage and bodywork therapies. An applicant for a provisional license shall meet the requirements set forth in G.S. 90-529 (1) through (3), as enacted in Section 1 of this act, and shall submit all of the following for consideration by the Board:

(1) Documentation that the applicant has been engaged in the professional practice of massage and bodywork therapies.

(2) Documentation of a minimum of 500 hours of professional practice in the field of massage and bodywork therapies.

(3) Verification that the applicant has been practicing in the State at the time the application is submitted.

(4) Three letters of reference from sources approved by the Board attesting to the sound moral character, professional qualifications, and competence of the applicant.

Section 5. This act becomes effective January 1, 1998, and applies to offenses occurring on or after that date.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **MORGAN** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE.**

☒ Committee Substitute for
S.B. 973 A BILL TO BE ENTITLED AN ACT TO REQUIRE HEALTH BENEFIT PLANS TO PROVIDE CERTAIN INFORMATION.

☐ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 973
Commerce Committee Substitute Adopted 4/30/97
Third Edition Engrossed 5/1/97
Proposed House Committee Substitute S973-PCS2804

Short Title: Health Plan Information. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO REQUIRE HEALTH BENEFIT PLANS TO PROVIDE CERTAIN INFORMATION.

The General Assembly of North Carolina enacts:

Section 1. Article 3 of Chapter 58 of the General Statutes is amended by adding the following new section to read:

"**§ 58-3-190. Managed care reporting and disclosure requirements.**

(a) Each health benefit plan shall annually, on or before the first day of March of each year, file in the office of the Commissioner the following information, to the extent applicable:

(1) The number of and reasons for complaints by plan participants regarding medical treatment received by the plan;

(2) The number of participants who terminated coverage under the plan for any reason;

(3) The number of provider contracts that were terminated in the preceding year and the reasons for termination. This information shall include the number of providers leaving the plan and the number of new providers. This paragraph does not require the disclosure of any identifying information about a provider, and no civil liability shall arise from compliance with this paragraph;

(4) Utilization data that includes statistics relating to the utilization, quality, availability, and accessibility of services, as defined by the Commissioner; and

(5) Aggregate financial compensation data, including the percentage of providers paid under a capitation arrangement, discounted fee-for-service or salary, the services included in the capitation payment, and the range of compensation paid by withhold or incentive payments. This information shall be submitted on a form prescribed by the Commissioner.

(b) Disclosure requirements. -- Each health benefit plan shall provide the following applicable information to plan participants and prospective participants upon request:

(1) The evidence of coverage (G.S. 58-67-50), subscriber contract (G.S. 58-65-60, 58-65-140), health insurance policy (G.S. 58-51-80, 58-50-125, 58-50-55), or the contract and benefit summary of any other type of health benefit plan.

(2) The plan's utilization review criteria or treatment protocol used to determine the medical necessity of a specific procedure or treatment;

(3) The plan's restrictive formularies or prior approval requirements for obtaining prescription drugs, whether a particular drug or therapeutic class of drugs is excluded from its formulary, and the circumstances under which a nonformulary drug may be covered; and

(4) The plan's procedures and medically based criteria for determining whether a specified procedure, test, or treatment is experimental.

(c) For purposes of this section, 'health benefit plan' or 'plan' means (i) health maintenance organization (HMO) subscriber contracts and (ii) preferred provider benefit plans in which utilization review or quality management programs are used to manage the provision of covered health care services, and enrollees are given incentives through benefit differentials to limit the receipt of covered health care services to those provided by participating providers."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 3

SENATE BILL 973
Commerce Committee Substitute Adopted 4/30/97
Third Edition Engrossed 5/1/97

Short Title: Health Plan Information. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO REQUIRE HEALTH BENEFIT PLANS TO PROVIDE CERTAIN INFORMATION.

The General Assembly of North Carolina enacts:

Section 1. Article 3 of Chapter 58 of the General Statutes is amended by adding the following new section to read:

"**§ 58-3-190. Managed care reporting and disclosure requirements.**

(a) Each health benefit plan shall annually, on or before the first day of March of each year, file in the office of the Commissioner the following information, to the extent applicable:

(1) The number of and reasons for complaints by plan participants regarding medical treatment received by the plan;

(2) The number of participants who terminated coverage under the plan for any reason;

(3) The number of provider contracts that were terminated in the preceding year and the reasons for termination. This information shall include the number of providers leaving the plan and the number of new providers. This paragraph does not require the disclosure of any identifying information about a provider, and no civil liability shall arise from compliance with this paragraph;

(4) Utilization data that includes statistics relating to the utilization, quality, availability, and accessibility of services, as defined by the Commissioner; and

(5) Aggregate financial compensation data, including the percentage of providers paid under a capitation arrangement, discounted fee-for-service or salary, the services included in the capitation payment, and the range of compensation paid by withhold or incentive payments. This information shall be submitted on a form prescribed by the Commissioner.

(b) Disclosure requirements. -- Each health benefit plan shall provide the following applicable information to plan participants and prospective participants upon request:

(1) The evidence of coverage (G.S. 58-67-50), subscriber contract (G.S. 58-65-60, 58-65-140), health insurance policy (G.S. 58-51-80, 58-50-125, 58-50-55), or the contract and benefit summary of any other type of health benefit plan.

(2) The plan's utilization review criteria or treatment protocol used to determine the medical necessity of a specific procedure or treatment;

(3) The plan's restrictive formularies or prior approval requirements for obtaining prescription drugs, whether a particular drug or therapeutic class of drugs is excluded from its formulary, and the circumstances under which a nonformulary drug may be covered; and

(4) The plan's procedures and medically based criteria for determining whether a specified procedure, test, or treatment is experimental.

(c) For purposes of this section, 'health benefit plan' or 'plan' means accident and health insurance policies or certificates; hospital, medical, or dental service corporation contracts; health maintenance organization (HMO) subscriber contracts; and plans provided by a MEWA or plans provided by other benefit arrangements, to the extent permitted by ERISA."

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

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative(s) **MORGAN** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE.**

☒ Committee Substitute for #2

S.B. 1 A BILL TO BE ENTITLED AN ACT TO CHANGE THE FILING SCHEDULE OF CAMPAIGN REPORTS; TO REQUIRE THE LISTING OF A CONTRIBUTOR'S PRINCIPAL OCCUPATION AND TO PROVIDE FOR A "BEST EFFORTS" RULE; TO REQUIRE THAT COORDINATED PARTY EXPENDITURES BE REPORTED; TO EXPAND REPORTING IN LOCAL ELECTIONS AND REFERENDA AND TO SET A THREE THOUSAND DOLLAR THRESHOLD FOR REPORTING GENERALLY; TO REQUIRE ELECTRONIC FILING OF CERTAIN CAMPAIGN REPORTS AND INTERNET ACCESS; TO PROVIDE FOR CIVIL PENALTIES FOR LATE FILING OF CAMPAIGN REPORTS; TO CLOSE THE SECOND PRIMARY LOOPHOLE FOR CONTRIBUTION LIMITS; TO REWRITE AND EXPAND THE LIMITS ON FUND-RAISING DURING LEGISLATIVE SESSIONS; TO PROVIDE FOR A TWO DOLLAR CHECKOFF FOR THE POLITICAL PARTIES FINANCING FUND AND TO CHANGE THE METHOD FOR DISTRIBUTING MONEY FROM THAT FUND; TO REQUIRE THE DISCLOSURE OF SPENDING FOR MATERIAL THAT NAMES CANDIDATES, ELECTIONS, PARTIES, AND ISSUES; AND TO DISCLOSE THE FLOW OF MONEY THROUGH NORTH CAROLINA AND NATIONAL POLITICAL ORGANIZATIONS.

☐ 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 House committee substitute bill (# 3), ☒ which changes the title, unfavorable as to ~~original bill~~ (House Committee Substitute Bill # 2), (~~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.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1
Judiciary Committee Substitute Adopted 2/5/97
Third Edition Engrossed 2/10/97
House Committee Substitute Favorable 4/14/97
House Committee Substitute #2 Favorable 5/12/97
Sixth Edition Engrossed 5/20/97
Proposed House Committee Substitute S1-PCS4642

Short Title: Full Disclosure Act of 1997. (Public)

Sponsors:

Referred to:

February 3, 1997

A BILL TO BE ENTITLED

AN ACT TO CHANGE THE FILING SCHEDULE OF CAMPAIGN REPORTS; TO REQUIRE THE LISTING OF A CONTRIBUTOR'S PRINCIPAL OCCUPATION AND TO PROVIDE FOR A "BEST EFFORTS" RULE; TO REQUIRE THAT COORDINATED PARTY EXPENDITURES BE REPORTED; TO EXPAND REPORTING IN LOCAL ELECTIONS AND REFERENDA AND TO SET A THREE THOUSAND DOLLAR THRESHOLD FOR REPORTING GENERALLY; TO REQUIRE ELECTRONIC FILING OF CERTAIN CAMPAIGN REPORTS AND INTERNET ACCESS; TO PROVIDE FOR CIVIL PENALTIES FOR LATE FILING OF CAMPAIGN REPORTS; TO CLOSE THE SECOND PRIMARY LOOPHOLE FOR CONTRIBUTION LIMITS; TO REWRITE AND EXPAND THE LIMITS ON FUND-RAISING DURING LEGISLATIVE SESSIONS; TO CHANGE THE METHOD FOR DISTRIBUTING MONEY FROM THE POLITICAL PARTIES FINANCING FUND; TO REQUIRE THE DISCLOSURE OF SPENDING FOR MATERIAL THAT NAMES CANDIDATES; TO DISCLOSE THE FLOW OF MONEY THROUGH NORTH CAROLINA AND NATIONAL POLITICAL ORGANIZATIONS AND TO PROHIBIT A COUNCIL OF STATE MEMBER FROM USING STATE FUNDS FOR ADS AND ANNOUNCEMENTS WITHIN

A YEAR BEFORE AN ELECTION CONTAINING THE MEMBER'S NAME, PICTURE, OR VOICE.

The General Assembly of North Carolina enacts:

-- QUARTERLY AND SEMIANNUAL REPORTING.

Section 1. (a) G.S. 163-278.9(a) reads as rewritten:

"(a) ~~The~~ Except as provided in G.S. 163-278.10A, the treasurer of each candidate and of each political committee shall file under verification with the Board the following reports:

(1) Organizational Report. -- The appointment of the treasurer as required by G.S. 163-278.7(a), the statement of organization required by G.S. 163-278.7(b), and a report of all contributions and expenditures not previously reported shall be filed with the Board no later than the tenth day following the day the candidate files ~~his~~ notice of candidacy or the tenth day following the organization of the political committee, whichever occurs first. Any candidate whose campaign is being conducted by a political committee which is handling all contributions and expenditures for his campaign shall file a statement with the Board stating such fact at the time required herein for the organizational report. Thereafter, the candidate's political committee shall be responsible for filing all reports required by law.

(2) Preprimary Report. -- The treasurer shall file a report with the Board no later than the tenth day preceding the primary election. A candidate who is not on the ballot in the primary and who has filed a first quarter report pursuant to subdivision (5a) of this subsection shall not be required to file a separate preprimary report under this subdivision.

~~(3) Postprimary Report(s). -- The treasurer shall file a report with the Board no later than the 30th day after the primary election if the candidate was eliminated in the primary. If there is a second primary, the treasurer shall file a report with the Board no later than the 30th day after the second primary election if the candidate was eliminated in the second primary.~~

~~(4) Preelection Report. -- The treasurer shall file a report with the Board not later than the tenth day preceding the general election.~~

~~(5) Repealed by Session Laws 1985, c. 164, s. 1.~~

(5a) Quarterly Reports. -- During even-numbered years during which there is an election for that candidate or in which the campaign committee is supporting a candidate, the treasurer shall file a report by mailing or otherwise delivering it to the Board no later than seven working days after the end of each calendar quarter covering the prior calendar quarter, except that the report for the third quarter shall also cover the period in October through the seventeenth day before the election, the third quarter report shall

be due seven days after that date, and the fourth quarter report shall not include that period if a third quarter report was required to be filed.

(6) ~~Annual~~ Semiannual Reports. -- If contributions are received or expenditures made ~~during a calendar year,~~ for which no reports are otherwise required by this Article, any and all such contributions and expenditures shall be reported by the last Friday in ~~January~~ July, covering the period through the last day of June, and shall be reported by the last Friday in January, covering the period through the last day of December. ~~of the following year.~~"

(b) This section becomes effective January 1, 1998.

--DONOR'S PRINCIPAL OCCUPATION; BEST EFFORTS RULE.

Section 2. (a) G.S. 163-278.11(a)(1) reads as rewritten:

"(1) Contributions. -- A list of all contributions required to be listed under G.S. 163-278.8 received by or on behalf of a candidate, political committee, or referendum committee. The statement shall list the name and complete mailing address of each contributor, the amount contributed, the principal occupation of the donor, and the date such contribution was received. The total sum of all contributions to date shall be plainly exhibited. Forms for required reports shall be prescribed by the Board. The State Board of Elections shall prepare a schedule of occupational classifications, adapting as it deems suitable the occupational classifications of the Internal Revenue Code and equivalent classifications of the Office of State Personnel. In reporting the occupation of a contributor, the treasurer shall use the classifications prepared by the State Board."

(b) G.S. 163-278.11 is amended by adding a new subsection to read:

"(c) Best Efforts. -- When a treasurer shows that best efforts have been used to obtain, maintain, and submit the information required by this Article for the candidate or political committee, any report of that candidate or committee is deemed to comply with this Article. The State Board of Elections shall adopt rules that specify what are 'best efforts' for purposes of this Article, adapting as it deems suitable the provisions of 11 C.F.R. § 104.7. If the treasurer, after complying with the rules, does not know the occupation of the contributor, the treasurer may report 'unable to obtain'."

(c) This section becomes effective February 1, 1998, and applies to all reports due on or after that date.

-- REPORTING OF COORDINATED EXPENDITURES.

Section 3. (a) G.S. 163-278.11(b) reads as rewritten:

"(b) Statements shall reflect anything of value paid for or contributed by any person or individual, both as a contribution and expenditure. A political party executive committee that makes an expenditure that benefits a candidate or group of candidates shall report the expenditure, including the date, amount, and purpose of

the expenditure and the name of and office sought by the candidate or candidates on whose behalf the expenditure was made. A candidate who benefits from the expenditure shall report the expenditure or the proportionate share of the expenditure from which the candidate benefitted as an in-kind contribution if the candidate or the candidate's committee has coordinated with the political party executive committee concerning the expenditure."

(b) This section becomes effective February 1, 1998, and applies to all reports due on or after that date.

-- EXPANDED REPORTING IN LOCAL ELECTIONS AND REFERENDA; $3,000 THRESHOLD FOR ALL REPORTING.

Section 4. (a) G.S. 163-278.6(1) reads as rewritten:

"(1) The term 'board' means the State Board of Elections with respect to all candidates for State and multi-county district offices and the county or municipal board of elections with respect to all candidates for single-county district, county and municipal offices. The term means the State Board of Elections with respect to all statewide ~~referenda.~~ referenda and the county or municipal board of elections conducting all local referenda."

(b) G.S. 163-278.6(18) reads as rewritten:

"(18) The term 'public office' means any office filled by election by the people on a statewide, county, municipal or district basis, and this Article shall be applicable to such elective offices whether the election therefor is partisan or ~~nonpartisan, provided candidates for municipal and county offices in those municipalities and counties having less than 50,000 population, according to the most recent decennial census figures, shall not be required to file reports required by this Article, but this Article shall otherwise be applicable to such candidates for municipal and county offices.~~ nonpartisan."

(c) G.S. 163-278.6(18a) reads as rewritten:

"(18a) The term 'referendum' means any question, issue, or act referred to a vote of the people of the entire State by the General ~~Assembly~~ Assembly, a unit of local government, or by the people under any applicable local act and includes constitutional amendments and State bond issues. The term 'referendum' ~~does not include~~ includes any type of municipal, county, or special district referendum."

(d) G.S. 163-278.40(2) reads as rewritten:

"(2) The term 'city' means any incorporated city, town, or ~~village with a population of 50,000 or over, according to the most recent decennial federal census.~~ village."

(d1) G.S. 163-278.9(d) reads as rewritten:

"(d) Candidates and committees for municipal offices ~~in a city with a population of 50,000 or greater, which are required to submit reports by G.S. 163-278.6(18)~~ are not

subject to subsections (a), (b) and (c) of this section. Reports for those candidates and committees are covered by Part 2 of this Article."

(e) G.S. 163-278.10A reads as rewritten:

"**§ 163-278.10A. Threshold of ~~$1,000.00~~ $3,000 for Financial Reports.**

(a) Notwithstanding any other provision of this Chapter, a candidate shall be exempted from the reports of contributions, loans, and expenditures required in G.S. 163-278.9(a), 163-278.40B, 163-278.40C, 163-278.40D, and 163-278.40E if to further his campaign that candidate:

(1) Does not receive more than ~~one~~ three thousand dollars ~~($1,000.00)~~ ($3,000) in contributions, and

(2) Does not receive more than ~~one~~ three thousand dollars ~~($1,000.00)~~ ($3,000) in loans, and

(3) Does not spend more than ~~one~~ three thousand dollars ~~($1,000.00).~~ ($3,000).

To qualify for the exemption from those reports, the candidate's treasurer shall file a certification under oath that he does not intend to receive in contributions or loans or expend more than ~~one~~ three thousand dollars ~~($1,000.00)~~ ($3,000) to further his campaign. The certification shall be filed with the Board at the same time the candidate files his Organizational Report as required in G.S. 163-278.7, G.S. 163-278.9, and G.S. 163-278.40A. If the candidate's campaign is being conducted by a political committee which is handling all contributions, loans, and expenditures for his campaign, the treasurer of the political committee shall file a certification of intent to stay within the threshold amount. If the intent to stay within the threshold changes, or if the ~~$1,000~~ three thousand dollar ($3,000) threshold is exceeded, the treasurer shall immediately notify the Board and shall be responsible for filing all reports required in G.S. 163-278.9 and 163-278.40B, 163-278.40C, 163-278.40D, and 163-278.40E; provided that any contribution, loan, or expenditure which would have been required to be reported on an earlier report but for this section shall be included on the next report required after the intent changes or the threshold is exceeded.

(b) The exemption in subsection (a) of this section applies to political party committees under the same terms as for candidates, except that the term 'to further his campaign' does not relate to a political party committee's exemption, and all contributions, expenditures, and loans during an election shall be counted against the political party committee's threshold amount."

(f) This section applies to primaries, elections, and referenda beginning in 1998.

-- ELECTRONIC REPORTING.

Section 5. (a) G.S. 163-278.9 is amended by adding a new subsection to read:

"(j) Treasurers for the following entities shall electronically file each report required by this section that shows in excess of ten thousand dollars ($10,000) in contributions, in expenditures, or in loans, according to rules adopted by the State Board of Elections:

investigators, attorneys, travel costs for State Board employees and its attorneys, to the extent the costs do not constitute more than fifty percent (50%) of the sum levied for the enforcement costs and civil late penalty."

(e) G.S. 163-278.22 is amended by adding a new subdivision to read:

"(14) To calculate, assess, and collect civil penalties pursuant to this Article."

(f) This section becomes effective January 1, 1998, and applies to all reports due on or after that date.

--CLOSE THE LOOPHOLE FOR SECOND PRIMARIES.

Section 8. (a) G.S. 163-278.13(d) reads as rewritten:

"(d) For the purposes of this section, the term 'an election' means any primary, second primary, or general election in which the candidate or political committee may be involved, without regard to whether the candidate is opposed or unopposed in the ~~election.~~ election, except that where a candidate is not on the ballot in a second primary, that second primary is not 'an election' with respect to that candidate."

(b) This section becomes effective January 1, 1998, and applies to all elections occurring on or after that date.

-- FUND-RAISING IN SESSION.

Section 9. (a) G.S. 163-278.13A is repealed.

(b) Article 22A of the General Statutes is amended by adding a new section to read:

"**§ 163-278.13B. Limitation on fund-raising during legislative session.**

(a) Definitions. -- For purposes of this section:

(1) 'Limited contributor' means a lobbyist registered pursuant to Article 9A of Chapter 120 of the General Statutes, that lobbyist's agent, or a political committee that employs or contracts with or whose parent entity employs or contracts with a lobbyist registered pursuant to Article 9A of Chapter 120 of the General Statutes.

(2) 'Limited contributee' means a member of or candidate for the Council of State, a member of or candidate for the General Assembly, or a political committee the purpose of which is to assist a member or members of or candidate or candidates for the Council of State or General Assembly.

(3) The General Assembly is in 'regular session' from the date set by law or resolution that the General Assembly convenes until the General Assembly either adjourns sine die or recesses or adjourns for more than 10 days.

(4) A contribution is 'made' during regular session if the check or other instrument is dated during the session, or if the check or other instrument is delivered to the limited contributee during session, or if the limited contributor pledges during the session to deliver the check or other instrument at a later time.

(5) A contribution is 'accepted' during regular session if the check or other instrument is dated during the session, or if the limited contributee receives the check or other instrument during session and does not return it within 10 days, or agrees during session to receive the check or other instrument at a later time.

(b) Prohibited Solicitations. -- While the General Assembly is in regular session, no limited contributee or the real or purported agent of a limited contributee shall:

(1) Solicit a contribution from a limited contributor to be made to that limited contributee or to be made to any other candidate, officeholder, or political committee; or

(2) Solicit a third party, requesting or directing that the third party directly or indirectly relay to the prohibited contributor the prohibited contributee's solicitation of a contribution.

(c) Prohibited Contributions. -- While the General Assembly is in regular session:

(1) No limited contributor shall make or offer to make a contribution to a limited contributee.

(2) No limited contributor shall make a contribution to any candidate, officeholder, or political committee, directing or requesting that the contribution be made in turn to a limited contributee.

(3) No limited contributor shall transfer any amount of money or anything of value to any entity, directing or requesting that the entity use what was transferred to contribute to a limited contributee.

(4) No limited contributee shall accept a contribution from a limited contributor.

(d) Prosecution. -- A violation of this section is a Class 2 misdemeanor."

(c) This section becomes effective January 1, 1998, and applies to all contributions solicited, made, or accepted on or after that date.

-- CHANGE THE METHOD OF DISTRIBUTING MONEY FROM THE POLITICAL PARTIES FINANCING FUND.

Section 10. (a) G.S. 105-159.1(a) reads as rewritten:

"(a) Every individual whose income tax liability for the taxable year is one dollar ($1.00) or more may designate on his or her income tax return that one dollar ($1.00) of the tax shall be credited to the North Carolina Political Parties Financing ~~Fund.~~ Fund for the use of the political party designated by the taxpayer. In the case of a married couple filing a joint return whose income tax liability for the taxable year is two dollars ($2.00) or more, each spouse may designate on the income tax return that one dollar ($1.00) of the tax shall be credited to the North Carolina Political Parties Financing ~~Fund.~~ Fund for the use of the political party designated by the taxpayer. Amounts credited to the Fund shall be allocated among the political parties according to the designation of the taxpayer. Where any taxpayer elects to designate but does not specify a particular political party, those funds shall be distributed among the political parties on a pro rata basis according to their respective party voter registrations as determined by the most recent certification of the State Board

of Elections. As used in this section, the term 'political party' means one of the following that has at least one percent (1%) of the total number of registered voters in the State:

(1) A political party that at the last preceding general State election received at least ten percent (10%) of the entire vote cast in the State for Governor or for presidential electors.

(2) A group of voters who by July 1 of the preceding calendar year, by virtue of a petition as a new political party, had duly qualified as a new political party within the meaning of Chapter 163 of the General Statutes."

(b) This section becomes effective with respect to the 1997 taxable year and subsequent taxable years.

--DISCLOSURE OF SPENDING FOR MATERIAL THAT NAMES CANDIDATES.

Section 11. (a) Article 22A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-278.12A. Disclosure of spending for material that names candidates.**

(a) General Duty to Report. -- Any individual, person, political committee, or other entity that makes an expenditure for printed material or advertisements broadcast or distributed to anyone other than members of the entity shall report those expenditures in accordance with subsection (b) of this section if the printed material or advertisement names a candidate or names an individual whose prospective or potential candidacy is the principal purpose of a political committee. The disclosure requirements of this section do not apply to the following:

(1) Material that is solely informational and is not intended to advocate the election or defeat of a candidate or prospective candidate; or

(2) The owner of a newspaper, magazine, radio outlet, or television outlet, if that owner is not a candidate, political committee, or the parent entity of a political committee under G.S. 163-278.19.

(b) Procedures for Reporting; Exceptions. -- Any political committee or other entity otherwise required by this Article to file reports with a board of elections shall include an expenditure described in subsection (a) of this section on those reports. Any entity not otherwise required by this Article to file reports shall report expenditures described in subsection (a) of this section to the State Board of Elections within 10 days after the aggregate expenditure has reached the lowest threshold amount set for candidates and political party committees in G.S. 163-278.10A. After the initial report, each entity shall report subsequent expenditures described in subsection (a) of this section according to the schedule set out in G.S. 163-278.9(a) or Part 2 of this Article, whichever is appropriate.

(c) Definition. -- For the purpose of this section, notwithstanding G.S. 163-278.6(9), the term 'expenditure' means any purchase, advance, conveyance, deposit, distribution, transfer of funds, loans, payment, gift, pledge, or subscription of money or anything of value whatsoever, whether or not made in an election year, and any

contract, agreement, promise, or other obligation, whether or not legally enforceable. An individual or entity is deemed to have made an expenditure for printed material or advertisements if that individual or entity has agreed to compensate another individual or entity for purchasing such printed material or advertisements.

(d) No Criminal Liability. -- No duty imposed by this section alone, and by no other law, shall be relied upon or otherwise interpreted to create criminal liability for any person."

(b) This section becomes effective December 1, 1997.

--DISCLOSING THE FLOW OF MONEY THROUGH NORTH CAROLINA AND NATIONAL POLITICAL ORGANIZATIONS.

Section 12. (a) G.S. 163-278.9(a) is amended by adding a new subdivision to read:

"(4a) 48-Hour Report. -- A political committee or political party that receives a contribution or transfer of funds from any political committee shall disclose within 48 hours of receipt a contribution or transfer of one thousand dollars ($1,000) or more received after the last preelection report but before an election. The disclosure shall be by report to the State Board of Elections identifying the source and amount of the funds. The State Board of Elections shall specify the form and manner of making the report."

(b) G.S. 163-278.9A(a) is amended by adding a new subdivision to read:

"(2a) 48-Hour Report. -- A referendum committee that receives a contribution or transfer of funds from any political committee shall disclose within 48 hours of receipt a contribution or transfer of one thousand dollars ($1,000) or more received after the last preelection report but before an election. The disclosure shall be by report to the State Board of Elections identifying the source and amount of such funds. The State Board of Elections shall specify the form and manner of making the report."

(c) This section becomes effective December 1, 1997.

--PROHIBIT A COUNCIL OF STATE MEMBER FROM USING STATE FUNDS FOR ADS AND ANNOUNCEMENTS WITHIN A YEAR BEFORE AN ELECTION CONTAINING THE MEMBER'S NAME, PICTURE, OR VOICE.

Section 13. (a) Article 22A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-278.16A. Restriction on use of State funds by Council of State members for advertising or public service announcements using their names, pictures, or voices.**

Within one year prior to a general election in which a member of the Council of State shall be subject to election, that member shall not use or permit the use of State funds for any advertisement or public service announcement in a newspaper, on radio, or on television that contains that member's name, picture, or voice."

(b) This section becomes effective November 1, 1997.

Section 14. The provisions of this act are severable. If any provision is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the act that can be given effect without the invalid provision.

Section 15. Except as otherwise provided herein, this act is effective when it becomes law. Prosecutions for, or sentences based on, offenses occurring before the relevant effective dates in this act are not abated or affected by this act, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

S1-ARR-032

Date_____,1997

Comm. Sub. [Y]
Amends Title [Y]

Representative Wood

moves to amend the bill on page 1, line 17,
by deleting the word "AND"; and

on page 1, line 19,
by replacing the period with a semicolon and inserting thereafter
the following:
"AND PERMITTING LIMITED CONTRIBUTIONS, IF DISCLOSED, BY BUSINESS
ENTITIES."; and

on page 11, line 44,
by inserting after that line the following:

"--PERMITTING LIMITED CONTRIBUTIONS, IF DISCLOSED, BY BUSINESS
ENTITIES.

Section 13. (a) Article 22A of Chapter 163 of the General Statutes is amended by adding a new section to read:

'**§ 163-278.19B. Limited contributions by business entities permitted if disclosed.**

Notwithstanding any other provision of this Chapter, a business entity may contribute to a candidate or political committee, provided that no business entity, labor union, or professional association shall contribute in excess of four thousand dollars ($4,000.00) for any election. The term "an election" shall be as defined in G.S. 163-278.13. Any business entity that makes a contribution shall file a statement with the State Board of Elections within 10 days of making the contribution and shall report subsequent contributions to the State Board of Elections according

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

S1-ARR-032

to the reporting schedule set forth in G.S. 163-278.9 or in Part 2 of this Article, whichever is appropriate. The State Board of Elections shall adopt rules for the enforcement of this section.'

(b) This section becomes effective January 1, 1998."

by renumbering any subsequent subsection of that section of the bill accordingly.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

S1-ARR-031

Date_____,1997

Comm. Sub. [Y]
Amends Title [Y]
Sixth Edition

Representative Mitchell

moves to amend the bill on page 1, line 17,
by deleting the term "AND"; and

on page 1, line 19,
by inserting before the period the following:
"AND TO PROHIBIT A COUNCIL OF STATE MEMBER FROM USING STATE FUNDS FOR ADS AND ANNOUNCEMENTS WITHIN A YEAR BEFORE AN ELECTION CONTAINING THE MEMBER'S NAME, PICTURE, OR VOICE."; and

on page 11, line 44,
by inserting after that line the following:
"--PROHIBIT A COUNCIL OF STATE MEMBER FROM USING STATE FUNDS FOR ADS AND ANNOUNCEMENTS WITHIN A YEAR BEFORE AN ELECTION CONTAINING THE MEMBER'S NAME, PICTURE, OR VOICE.

Section 13. (a) Article 22A of Chapter 163 of the General Statutes is amended by adding a new section to read:

'§ 163-278.16A. Restriction on use of State funds by Council of State members for advertising or public service announcements using their names, pictures, or voices.

Within one year prior to a general election in which a member of the Council of State shall be subject to election, that member shall not use or permit the use of State funds for any advertisement or public service announcement in a newspaper, on radio, or on television that contains that member's name, picture, or voice.'

(b) This section becomes effective November 1, 1997."; and

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

S1-ARR-031

by renumbering any subsequent section of the bill accordingly.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1
Judiciary Committee Substitute Adopted 2/5/97
Third Edition Engrossed 2/10/97
House Committee Substitute Favorable 4/14/97
House Committee Substitute #2 Favorable 5/12/97
Sixth Edition Engrossed 5/20/97
Proposed House Committee Substitute S1-PCS4641

Short Title: Full Disclosure Act of 1997. (Public)

Sponsors:

Referred to:

February 3, 1997

A BILL TO BE ENTITLED

AN ACT TO CHANGE THE FILING SCHEDULE OF CAMPAIGN REPORTS; TO REQUIRE THE LISTING OF A CONTRIBUTOR'S PRINCIPAL OCCUPATION AND TO PROVIDE FOR A "BEST EFFORTS" RULE; TO REQUIRE THAT COORDINATED PARTY EXPENDITURES BE REPORTED; TO EXPAND REPORTING IN LOCAL ELECTIONS AND REFERENDA AND TO SET A THREE THOUSAND DOLLAR THRESHOLD FOR REPORTING GENERALLY; TO REQUIRE ELECTRONIC FILING OF CERTAIN CAMPAIGN REPORTS AND INTERNET ACCESS; TO PROVIDE FOR CIVIL PENALTIES FOR LATE FILING OF CAMPAIGN REPORTS; TO CLOSE THE SECOND PRIMARY LOOPHOLE FOR CONTRIBUTION LIMITS; TO REWRITE AND EXPAND THE LIMITS ON FUND-RAISING DURING LEGISLATIVE SESSIONS; TO CHANGE THE METHOD FOR DISTRIBUTING MONEY FROM THE POLITICAL PARTIES FINANCING FUND; TO REQUIRE THE DISCLOSURE OF SPENDING FOR MATERIAL THAT NAMES CANDIDATES; AND TO DISCLOSE THE FLOW OF MONEY THROUGH NORTH CAROLINA AND NATIONAL POLITICAL ORGANIZATIONS.

The General Assembly of North Carolina enacts:

-- QUARTERLY AND SEMIANNUAL REPORTING.

Section 1. (a) G.S. 163-278.9(a) reads as rewritten:

"(a) ~~The~~ Except as provided in G.S. 163-278.10A, the treasurer of each candidate and of each political committee shall file under verification with the Board the following reports:

(1) Organizational Report. -- The appointment of the treasurer as required by G.S. 163-278.7(a), the statement of organization required by G.S. 163-278.7(b), and a report of all contributions and expenditures not previously reported shall be filed with the Board no later than the tenth day following the day the candidate files ~~his~~ notice of candidacy or the tenth day following the organization of the political committee, whichever occurs first. Any candidate whose campaign is being conducted by a political committee which is handling all contributions and expenditures for his campaign shall file a statement with the Board stating such fact at the time required herein for the organizational report. Thereafter, the candidate's political committee shall be responsible for filing all reports required by law.

(2) Preprimary Report. -- The treasurer shall file a report with the Board no later than the tenth day preceding the primary election. A candidate who is not on the ballot in the primary and who has filed a first quarter report pursuant to subdivision (5a) of this subsection shall not be required to file a separate preprimary report under this subdivision.

~~(3) Postprimary Report(s). -- The treasurer shall file a report with the Board no later than the 30th day after the primary election if the candidate was eliminated in the primary. If there is a second primary, the treasurer shall file a report with the Board no later than the 30th day after the second primary election if the candidate was eliminated in the second primary.~~

~~(4) Preelection Report. -- The treasurer shall file a report with the Board not later than the tenth day preceding the general election.~~

~~(5) Repealed by Session Laws 1985, c. 164, s. 1.~~

(5a) Quarterly Reports. -- During even-numbered years during which there is an election for that candidate or in which the campaign committee is supporting a candidate, the treasurer shall file a report by mailing or otherwise delivering it to the Board no later than seven working days after the end of each calendar quarter covering the prior calendar quarter, except that the report for the third quarter shall also cover the period in October through the seventeenth day before the election, the third quarter report shall be due seven days after that date, and the fourth quarter report shall not include that period if a third quarter report was required to be filed.

(6) ~~Annual~~ Semiannual Reports. -- If contributions are received or expenditures made ~~during a calendar year,~~ for which no reports are otherwise required by this Article, any and all such contributions and expenditures shall be reported by the last Friday in ~~January~~ July, covering the period through the last day of June, and shall be reported by the last Friday in January, covering the period through the last day of December. ~~of the following year.~~"

(b) This section becomes effective January 1, 1998.

--DONOR'S PRINCIPAL OCCUPATION; BEST EFFORTS RULE.

Section 2. (a) G.S. 163-278.11(a)(1) reads as rewritten:

"(1) Contributions. -- A list of all contributions required to be listed under G.S. 163-278.8 received by or on behalf of a candidate, political committee, or referendum committee. The statement shall list the name and complete mailing address of each contributor, the amount contributed, the principal occupation of the donor, and the date such contribution was received. The total sum of all contributions to date shall be plainly exhibited. Forms for required reports shall be prescribed by the Board. The State Board of Elections shall prepare a schedule of occupational classifications, adapting as it deems suitable the occupational classifications of the Internal Revenue Code and equivalent classifications of the Office of State Personnel. In reporting the occupation of a contributor, the treasurer shall use the classifications prepared by the State Board."

(b) G.S. 163-278.11 is amended by adding a new subsection to read:

"(c) Best Efforts. -- When a treasurer shows that best efforts have been used to obtain, maintain, and submit the information required by this Article for the candidate or political committee, any report of that candidate or committee is deemed to comply with this Article. The State Board of Elections shall adopt rules that specify what are 'best efforts' for purposes of this Article, adapting as it deems suitable the provisions of 11 C.F.R. § 104.7. If the treasurer, after complying with the rules, does not know the occupation of the contributor, the treasurer may report 'unable to obtain'."

(c) This section becomes effective February 1, 1998, and applies to all reports due on or after that date.

-- REPORTING OF COORDINATED EXPENDITURES.

Section 3. (a) G.S. 163-278.11(b) reads as rewritten:

"(b) Statements shall reflect anything of value paid for or contributed by any person or individual, both as a contribution and expenditure. A political party executive committee that makes an expenditure that benefits a candidate or group of candidates shall report the expenditure, including the date, amount, and purpose of the expenditure and the name of and office sought by the candidate or candidates on whose behalf the expenditure was made. A candidate who benefits from the expenditure shall report the expenditure or the proportionate share of the

expenditure from which the candidate benefitted as an in-kind contribution if the candidate or the candidate's committee has coordinated with the political party executive committee concerning the expenditure."

(b) This section becomes effective February 1, 1998, and applies to all reports due on or after that date.

-- EXPANDED REPORTING IN LOCAL ELECTIONS AND REFERENDA; $3,000 THRESHOLD FOR ALL REPORTING.

Section 4. (a) G.S. 163-278.6(1) reads as rewritten:

"(1) The term 'board' means the State Board of Elections with respect to all candidates for State and multi-county district offices and the county or municipal board of elections with respect to all candidates for single-county district, county and municipal offices. The term means the State Board of Elections with respect to all statewide ~~referenda.~~ referenda and the county or municipal board of elections conducting all local referenda."

(b) G.S. 163-278.6(18) reads as rewritten:

"(18) The term 'public office' means any office filled by election by the people on a statewide, county, municipal or district basis, and this Article shall be applicable to such elective offices whether the election therefor is partisan or ~~nonpartisan, provided candidates for municipal and county offices in those municipalities and counties having less than 50,000 population, according to the most recent decennial census figures, shall not be required to file reports required by this Article, but this Article shall otherwise be applicable to such candidates for municipal and county offices.~~ nonpartisan."

(c) G.S. 163-278.6(18a) reads as rewritten:

"(18a) The term 'referendum' means any question, issue, or act referred to a vote of the people of the entire State by the General ~~Assembly~~ Assembly, a unit of local government, or by the people under any applicable local act and includes constitutional amendments and State bond issues. The term 'referendum' ~~does not include~~ includes any type of municipal, county, or special district referendum."

(d) G.S. 163-278.40(2) reads as rewritten:

"(2) The term 'city' means any incorporated city, town, or ~~village with a population of 50,000 or over, according to the most recent decennial federal census.~~ village."

(d1) G.S. 163-278.9(d) reads as rewritten:

"(d) Candidates and committees for municipal offices ~~in a city with a population of 50,000 or greater, which are required to submit reports by G.S. 163-278.6(18)~~ are not subject to subsections (a), (b) and (c) of this section. Reports for those candidates and committees are covered by Part 2 of this Article."

(e) G.S. 163-278.10A reads as rewritten:

"**§ 163-278.10A. Threshold of ~~$1,000.00~~ $3,000 for Financial Reports.**

(a) Notwithstanding any other provision of this Chapter, a candidate shall be exempted from the reports of contributions, loans, and expenditures required in G.S. 163-278.9(a), 163-278.40B, 163-278.40C, 163-278.40D, and 163-278.40E if to further his campaign that candidate:

(1) Does not receive more than ~~one~~ three thousand dollars ~~($1,000.00)~~ ($3,000) in contributions, and

(2) Does not receive more than ~~one~~ three thousand dollars ~~($1,000.00)~~ ($3,000) in loans, and

(3) Does not spend more than ~~one~~ three thousand dollars ~~($1,000.00).~~ ($3,000).

To qualify for the exemption from those reports, the candidate's treasurer shall file a certification under oath that he does not intend to receive in contributions or loans or expend more than ~~one~~ three thousand dollars ~~($1,000.00)~~ ($3,000) to further his campaign. The certification shall be filed with the Board at the same time the candidate files his Organizational Report as required in G.S. 163-278.7, G.S. 163-278.9, and G.S. 163-278.40A. If the candidate's campaign is being conducted by a political committee which is handling all contributions, loans, and expenditures for his campaign, the treasurer of the political committee shall file a certification of intent to stay within the threshold amount. If the intent to stay within the threshold changes, or if the ~~$1,000~~ three thousand dollar ($3,000) threshold is exceeded, the treasurer shall immediately notify the Board and shall be responsible for filing all reports required in G.S. 163-278.9 and 163-278.40B, 163-278.40C, 163-278.40D, and 163-278.40E; provided that any contribution, loan, or expenditure which would have been required to be reported on an earlier report but for this section shall be included on the next report required after the intent changes or the threshold is exceeded.

(b) The exemption in subsection (a) of this section applies to political party committees under the same terms as for candidates, except that the term 'to further his campaign' does not relate to a political party committee's exemption, and all contributions, expenditures, and loans during an election shall be counted against the political party committee's threshold amount."

(f) This section applies to primaries, elections, and referenda beginning in 1998.

-- ELECTRONIC REPORTING.

Section 5. (a) G.S. 163-278.9 is amended by adding a new subsection to read:

"(j) Treasurers for the following entities shall electronically file each report required by this section that shows in excess of ten thousand dollars ($10,000) in contributions, in expenditures, or in loans, according to rules adopted by the State Board of Elections:

(1) A candidate for statewide office;

(2) A State, district, county, or precinct executive committee of a political party, if the committee makes contributions or

independent expenditures in excess of ten thousand dollars ($10,000) that affect contests for statewide office;

(3) A political committee that makes contributions in excess of ten thousand dollars ($10,000) to candidates for statewide office or makes independent expenditures in excess of ten thousand dollars ($10,000) that affect contests for statewide office.

The State Board of Elections shall provide the software necessary to file an electronic report to a treasurer required to file an electronic report at no cost to the treasurer."

(b) This section applies to reports to be filed during or after 1998.

-- INTERNET ACCESS.

Section 6. The State Board of Elections shall provide full access to the public of campaign finance reports over the Internet as soon as technically feasible.

-- CIVIL PENALTIES FOR LATE FILING.

Section 7. (a) G.S. 163-278.34 reads as rewritten:

"**§ 163-278.34. Filings; penalty for late filings.**

(a) ~~All~~ Except as provided in G.S. 163-278.9, all reports, statements or other documents required by this Article to be filed with the Board shall be filed either by manual delivery to or by ~~certified or registered~~ mail addressed to the Board. Timely filing shall be complete if postmarked on the day the reports, statements or other documents are to be delivered to the Board. If a report, statement or other document is not filed within the time required by this Article, then the individual, person, media, candidate, political committee, referendum committee or treasurer responsible for filing shall pay to the State Board of Elections election enforcement costs and a civil late penalty ~~of twenty dollars ($20.00) per day for each day the filing is late not to exceed five days.~~ as follows:

(1) Two hundred fifty dollars ($250.00) per day for each day the filing is late for a report that affects statewide elections, not to exceed a total of ten thousand dollars ($10,000); and

(2) Fifty dollars ($50.00) per day for each day the filing is late for a report that affects only nonstatewide elections, not to exceed a total of five hundred dollars ($500.00).

The State Board shall immediately notify, or cause to be notified, late filers, from which reports are apparently due, by registered or certified mail, return receipt requested, of the penalties under this section. ~~If the penalty has not been paid to or the report has not been filed with the Board within five days after receipt of the notification, then the Board shall report the late filing or failure to file to the appropriate district attorney who shall indict and prosecute the offender as required in G.S. 163-278.27. No criminal penalty shall be imposed if the penalty required by this section is paid and the delinquent report is filed within five days after notification by the Board.~~

(a1) The State Board shall calculate and assess the amount of the civil penalty due under subsection (a) of this section and shall notify the person who is assessed the civil penalty of the amount. The notice of assessment shall be served by any means authorized under G.S. 1A-1, Rule 4, and shall direct the violator either to pay the

assessment or to contest the assessment within 30 days by filing a petition for a contested case under Article 3 of Chapter 150B of the General Statutes. If a violator does not pay a civil penalty assessed by the Board within 30 days after it is due, the Board shall request the Attorney General to institute a civil action to recover the amount of the assessment. The civil action may be brought in the superior court of any county where the report was due to be filed or any county where the violator resides or maintains an office. A civil action must be filed within three years of the date the assessment was due. An assessment that is not contested is due when the violator is served with a notice of assessment. An assessment that is contested is due at the conclusion of the administrative and judicial review of the assessment. Consistent with G.S. 115C-437, the State Controller shall pay the clear proceeds of civil penalties collected under this section to the County School Fund in the county in which the person charged with the violation resides. The State Controller shall reduce the monies collected by the enforcement costs and the collection costs to determine the clear proceeds payable to the County School Fund. Monies set aside for the costs of enforcement and the costs of collection shall be credited to accounts of the State Board of Elections.

(b) ~~When a report, statement or other document, required by this Article is not apparently due (i.e., media, inactive candidate, individual, no organizational report filed, supplementary final report or annual report), the Board shall notify, as set forth above, the person or persons responsible for filing if information is presented indicating that the report, statement, or other document was in fact due. No criminal penalties shall be imposed if the late penalty is paid and the delinquent report is filed within five days after notification.~~ The State Board of Elections may waive a late penalty if it determines there is reasonable cause."

(b) G.S. 163-278.6 is amended by adding a new subdivision to read:

"(7a) The term 'costs of collection' means monies spent by the State Board of Elections in the collection of the penalties levied under this Article to the extent the costs do not constitute more than fifty percent (50%) of the civil penalty. The costs are presumed to be ten percent (10%) of the civil penalty unless otherwise determined by the State Board of Elections based on the records of expenses incurred by the State Board of Elections for its collection procedures."

(c) G.S. 163-278.6 is amended by adding a new subdivision to read:

"(7b) The term 'day' means calendar day."

(d) G.S. 163-278.6 is amended by adding a new subdivision to read:

"(8a) The term 'enforcement costs' means salaries, overhead, and other monies spent by the State Board of Elections in the enforcement of the penalties provisions of this Article, including the costs of investigators, attorneys, travel costs for State Board employees and its attorneys, to the extent the costs do not constitute more than fifty percent (50%) of the sum levied for the enforcement costs and civil late penalty."

(e) G.S. 163-278.22 is amended by adding a new subdivision to read:

"(14) To calculate, assess, and collect civil penalties pursuant to this Article."

(f) This section becomes effective January 1, 1998, and applies to all reports due on or after that date.

--CLOSE THE LOOPHOLE FOR SECOND PRIMARIES.

Section 8. (a) G.S. 163-278.13(d) reads as rewritten:

"(d) For the purposes of this section, the term 'an election' means any primary, second primary, or general election in which the candidate or political committee may be involved, without regard to whether the candidate is opposed or unopposed in the ~~election.~~ election, except that where a candidate is not on the ballot in a second primary, that second primary is not 'an election' with respect to that candidate."

(b) This section becomes effective January 1, 1998, and applies to all elections occurring on or after that date.

-- FUND-RAISING IN SESSION.

Section 9. (a) G.S. 163-278.13A is repealed.

(b) Article 22A of the General Statutes is amended by adding a new section to read:

"**§ 163-278.13B. Limitation on fund-raising during legislative session.**

(a) Definitions. -- For purposes of this section:

(1) 'Limited contributor' means a lobbyist registered pursuant to Article 9A of Chapter 120 of the General Statutes, that lobbyist's agent, or a political committee that employs or contracts with or whose parent entity employs or contracts with a lobbyist registered pursuant to Article 9A of Chapter 120 of the General Statutes.

(2) 'Limited contributee' means a member of or candidate for the Council of State, a member of or candidate for the General Assembly, or a political committee the purpose of which is to assist a member or members of or candidate or candidates for the Council of State or General Assembly.

(3) The General Assembly is in 'regular session' from the date set by law or resolution that the General Assembly convenes until the General Assembly either adjourns sine die or recesses or adjourns for more than 10 days.

(4) A contribution is 'made' during regular session if the check or other instrument is dated during the session, or if the check or other instrument is delivered to the limited contributee during session, or if the limited contributor pledges during the session to deliver the check or other instrument at a later time.

(5) A contribution is 'accepted' during regular session if the check or other instrument is dated during the session, or if the limited contributee receives the check or other instrument during session

and does not return it within 10 days, or agrees during session to receive the check or other instrument at a later time.

(b) Prohibited Solicitations. -- While the General Assembly is in regular session, no limited contributee or the real or purported agent of a limited contributee shall:

(1) Solicit a contribution from a limited contributor to be made to that limited contributee or to be made to any other candidate, officeholder, or political committee; or

(2) Solicit a third party, requesting or directing that the third party directly or indirectly relay to the prohibited contributor the prohibited contributee's solicitation of a contribution.

(c) Prohibited Contributions. -- While the General Assembly is in regular session:

(1) No limited contributor shall make or offer to make a contribution to a limited contributee.

(2) No limited contributor shall make a contribution to any candidate, officeholder, or political committee, directing or requesting that the contribution be made in turn to a limited contributee.

(3) No limited contributor shall transfer any amount of money or anything of value to any entity, directing or requesting that the entity use what was transferred to contribute to a limited contributee.

(4) No limited contributee shall accept a contribution from a limited contributor.

(d) Prosecution. -- A violation of this section is a Class 2 misdemeanor."

(c) This section becomes effective January 1, 1998, and applies to all contributions solicited, made, or accepted on or after that date.

-- CHANGE THE METHOD OF DISTRIBUTING MONEY FROM THE POLITICAL PARTIES FINANCING FUND.

Section 10. (a) G.S. 105-159.1(a) reads as rewritten:

"(a) Every individual whose income tax liability for the taxable year is one dollar ($1.00) or more may designate on his or her income tax return that one dollar ($1.00) of the tax shall be credited to the North Carolina Political Parties Financing ~~Fund.~~ Fund for the use of the political party designated by the taxpayer. In the case of a married couple filing a joint return whose income tax liability for the taxable year is two dollars ($2.00) or more, each spouse may designate on the income tax return that one dollar ($1.00) of the tax shall be credited to the North Carolina Political Parties Financing ~~Fund.~~ Fund for the use of the political party designated by the taxpayer. Amounts credited to the Fund shall be allocated among the political parties according to the designation of the taxpayer. Where any taxpayer elects to designate but does not specify a particular political party, those funds shall be distributed among the political parties on a pro rata basis according to their respective party voter registrations as determined by the most recent certification of the State Board of Elections. As used in this section, the term 'political party' means one of the following that has at least one percent (1%) of the total number of registered voters in the State:

(1) A political party that at the last preceding general State election received at least ten percent (10%) of the entire vote cast in the State for Governor or for presidential electors.

(2) A group of voters who by July 1 of the preceding calendar year, by virtue of a petition as a new political party, had duly qualified as a new political party within the meaning of Chapter 163 of the General Statutes."

(b) This section becomes effective with respect to the 1997 taxable year and subsequent taxable years.

--DISCLOSURE OF SPENDING FOR MATERIAL THAT NAMES CANDIDATES.

Section 11. (a) Article 22A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-278.12A. Disclosure of spending for material that names candidates.**

(a) General Duty to Report. -- Any individual, person, political committee, or other entity that makes an expenditure for printed material or advertisements broadcast or distributed to anyone other than members of the entity shall report those expenditures in accordance with subsection (b) of this section if the printed material or advertisement names a candidate or names an individual whose prospective or potential candidacy is the principal purpose of a political committee. The disclosure requirements of this section do not apply to the following:

(1) Material that is solely informational and is not intended to advocate the election or defeat of a candidate or prospective candidate; or

(2) The owner of a newspaper, magazine, radio outlet, or television outlet, if that owner is not a candidate, political committee, or the parent entity of a political committee under G.S. 163-278.19.

(b) Procedures for Reporting; Exceptions. -- Any political committee or other entity otherwise required by this Article to file reports with a board of elections shall include an expenditure described in subsection (a) of this section on those reports. Any entity not otherwise required by this Article to file reports shall report expenditures described in subsection (a) of this section to the State Board of Elections within 10 days after the aggregate expenditure has reached the lowest threshold amount set for candidates and political party committees in G.S. 163-278.10A. After the initial report, each entity shall report subsequent expenditures described in subsection (a) of this section according to the schedule set out in G.S. 163-278.9(a) or Part 2 of this Article, whichever is appropriate.

(c) Definition. -- For the purpose of this section, notwithstanding G.S. 163-278.6(9), the term 'expenditure' means any purchase, advance, conveyance, deposit, distribution, transfer of funds, loans, payment, gift, pledge, or subscription of money or anything of value whatsoever, whether or not made in an election year, and any contract, agreement, promise, or other obligation, whether or not legally enforceable. An individual or entity is deemed to have made an expenditure for printed material

or advertisements if that individual or entity has agreed to compensate another individual or entity for purchasing such printed material or advertisements.

(d) No Criminal Liability. -- No duty imposed by this section alone, and by no other law, shall be relied upon or otherwise interpreted to create criminal liability for any person."

(b) This section becomes effective December 1, 1997.

--DISCLOSING THE FLOW OF MONEY THROUGH NORTH CAROLINA AND NATIONAL POLITICAL ORGANIZATIONS.

Section 12. (a) G.S. 163-278.9(a) is amended by adding a new subdivision to read:

"(4a) 48-Hour Report. -- A political committee or political party that receives a contribution or transfer of funds from any political committee shall disclose within 48 hours of receipt a contribution or transfer of one thousand dollars ($1,000) or more received after the last preelection report but before an election. The disclosure shall be by report to the State Board of Elections identifying the source and amount of the funds. The State Board of Elections shall specify the form and manner of making the report."

(b) G.S. 163-278.9A(a) is amended by adding a new subdivision to read:

"(2a) 48-Hour Report. -- A referendum committee that receives a contribution or transfer of funds from any political committee shall disclose within 48 hours of receipt a contribution or transfer of one thousand dollars ($1,000) or more received after the last preelection report but before an election. The disclosure shall be by report to the State Board of Elections identifying the source and amount of such funds. The State Board of Elections shall specify the form and manner of making the report."

(c) This section becomes effective December 1, 1997.

Section 13. The provisions of this act are severable. If any provision is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the act that can be given effect without the invalid provision.

Section 14. Except as otherwise provided herein, this act is effective when it becomes law. Prosecutions for, or sentences based on, offenses occurring before the relevant effective dates in this act are not abated or affected by this act, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.

NORTH CAROLINA ALLIANCE FOR DEMOCRACY
604 Hatch Road, Chapel Hill, NC 27516 TEL (919) 967-1699 FAX (919) 967-7595
email: NCAD@ mindspring.com Website: http://www.rtpnet.org/~alliance

August 12, 1997

To: The Hon. Rep. Harold Brubaker,
Members of the House Rules Committee

Dear Representatives,

Our state is on the threshold of an historic opportunity to pass some meaningful campaign reform measures. S.B.1, the Full Disclosure Act, could be a genuine step forward if it includes employer disclosure and other key provisions described on the next page.

The public's desire for this kind of reform has been clearly illustrated in the polls, in attendance at Legislative Committee meetings, and in the thousands of signatures collected during the Alliance for Democracy" petition drives across this state.

Fewer people have the time to put their thoughts in writing, but many citizens have taken the time to write letters to the editors of their local papers, to voice their support for real campaign finance reform in our state.

Several of those letters are included in the attached packet. There are letters from **Hillsborough, Burlington, Greensboro, Southern Pines, Buies Creek, Wilmington, Wrightsville Beach, Durham, Raleigh, Pinehurst, Winston-Salem** and **Rockingham.**

We ask that you look over these letters, and recognize that these are the voices of your constituents from across the state. Passing a strong campaign disclosure measure is the right thing to do for the voters of this state.

Sincerely,

Paul M. Rosenberg
North Carolina Alliance for Democracy

ESSENTIAL INGREDIENTS FOR A NEW FULL-DISCLOSURE ACT

We appreciate that some aspects of a new disclosure law will inconvenience you as a candidate. But please recognize that you are designing rules that also apply to candidates raising hundreds of thousands, even millions of dollars. Other states - including a majority in the South - already have requirements for economic-interest disclosure and frequent reporting that are as strict as those proposed here and that apply to state legislative candidates. Your willingness to accept some inconvenience for the sake of sharing information with the public is a testament to your respect for good government and the healthy power of sunshine in public affairs.

In the comments below, we refer to three versions of SB1: the one passed by the Senate in February (Senate), the one advanced through House committees and to the floor under the able leadership of Connie Wilson (Wilson), and the July version circulated by Cary Allred (Allred). We believe the essential ingredients for a Full Disclosure Bill are:

(a) ***Require disclosure of donor's occupation and employer*** (in Senate & Allred versions). A majority of states and the federal government require such disclosure. It is the most fundamental provision in understanding the concentration or the diversity of support candidates receive from various financial interests. To provide meaningful disclosure, the occupational classification system in the Wilson version would be exceedingly complex and difficult to implement.

(b) ***Require more frequent reporting*** (in Senate and Connie Wilson versions). A majority of states and the federal government also require more frequent reports than N.C. A minimum improvement would be semi-annual reports in the off-election year and one additional report in the election year, due 42 days before the general election. The reports should be current through four days (not seven) before the deadline (as in Allred version). A quarterly reporting schedule helps, but leaves a long gap in reporting in the highly active period from July 1 to mid-October.

(c) ***Extend reporting requirements to elections in smaller jurisdictions***, down to those with populations of 5,000 or perhaps even less, from the current 50,000 (in all versions). Candidates with minimal spending or fundraising activity can be exempted from disclosure requirements.

(d) ***Require electronic reporting for all political committees and major campaigns*** (in Senate & Allred version). Wilson's version exempts legislative races. A reasonable compromise is to require electronic reporting for committees, statewide candidates, plus all other candidates beginning with the reporting period in which their total spending or fundraising exceeds $25,000. Candidates with this much activity should probably keep computerized records any way.

(e) ***Strengthen penalties for failure to report on time***. The Wilson version provides the best framework for the essential provision. Increasing civil penalties for failure to report is the absolute minimum improvement needed for North Carolina's weak enforcement system.

(f) ***Require disclosure of candidate(s) benefiting from party spending to aid specific campaign***. (in Wilson & Allred versions). If we can not get resolution of bringing party finances under the same rules as other committees, then we should at least require disclosure of activity targeted to assist particular candidates, an increasingly important reality in NC elections.

These are the basics. Other provisions – e.g., eliminating the 2nd primary loophole – are also welcome. The important goal is to enact a new law in 1997 with at least the elements above.

WINSTON-SALEM JOURNAL Monday, June 30, 1997

LETTERS TO THE EDITOR

A vote for better government

On June 3, Sen. Ham Horton made a courageous vote in the Senate Judiciary Committee. He voted for the N.C. Clean Elections Act, a bill to fix our corrupt campaign system.

In voting for the Clean Elections Act, Horton took a step toward reforming a campaign system that favors incumbents and wealthy corporate interests at the expense of ordinary folks. Since Horton himself is a long-term incumbent, his vote to change the system was particularly selfless.

The act would help slow down the flow of money into the campaign system by lowering the contribution limit to $500. It would also make it easier for citizens to track the money and the influence it buys by making donors disclose their employers, so we could tell when particular industries are funneling money toward candidates.

Most important, the act allows upstanding candidates the opportunity to opt out of the money chase entirely. If the proposal passes, candidates could receive publicly funded clean money, so long as they prove they have broad support and agree to accept no private contributions except for small in-kind donations.

The Clean Elections Act passed the Judiciary Committee with a strong 14-to-8 majority. Horton deserves our thanks for his vote for better government.

Additionally, the small group of citizens who took the time to write, call or sign the petition in favor of the bill also deserve applause. Their efforts were essential in allaying Horton's initial doubts about the bill. They proved democracy still can work for the people, as long as the people are willing to work for democracy.

The Clean Elections Act and the other reform legislation still have a long way to go before the tide of influence-buying campaign donations is stopped. Still, with ethical legislators such as Horton and strong supporters of clean elections, such as the growing activist base of Winston-Salem, the days of our corrupt campaign finance system may finally be numbered.

—AVI GREEN

Winston-Salem.

THE NEWS & OBSERVER
WEDNESDAY, APRIL 16, 1997

High time for reform

One of the more interesting characteristics of our current legislative and congressional sessions is the apathy of us citizens toward reform in campaign financing and lobby influence.

We wonder at low voter turnout, and every day in the news there are stories of special-interest influences in Raleigh and Washington. And yet we don't seem to correlate these circumstances.

Most people who study special influences agree that only a very few incumbent politicians want to change the current systems. It seems obvious that to get back to voter representation and to reduce the big-moneyed control over our everyday living, we must generate a groundswell of demand for reforming the uneven influences in our lawmaking processes.

Recent polls show that two-thirds or more of Americans want changes — but how many of us have contacted our representatives? Let us get busy writing and calling to support state Senate Bill 381 (Sen. Wib Gulley's "N.C. Clean Elections Act"); and on the national level the McCain-Feingold S-25, "Bipartisan Campaign Finance Reform Act of 1997."

LAWRENCE B. MCGEE

Raleigh

THE HERALD-SUN, DURHAM, N.C.

TUESDAY, DECEMBER 10, 1996

Demand campaign reform

Many people question campaign finance reform, saying "It's never worked before, so we shouldn't try it again." The truth is that all the reform measures that have been tried contained such big loopholes they couldn't solve the money problem.

State Sen. Wib Gulley of Durham is proposing an excellent campaign reform bill for North Carolina. In Washington, a bipartisan group in the Congress is working on real campaign-reform legislation.

Those who vote should vote again: Write your senators and representatives and demand clean elections.

Mr. and Mrs. C.B. THOMPSON

DAILY JOURNAL
ROCKINGHAM, N. C.

MAR -9 97

386

To the Editor:

I see by the papers that the U.S. Congress and the N.C. Legislature are talking political campaign finance reform. How far they will go is anybody's guess. Certainly the last election shows that reform is badly needed. One political party is as bad as the other.

Right now we have a state legislature mostly elected by special interests and lobbyists. This has come about because the cost of running for political office has gotten out of hand. Both political parties are putting the bite on the lobbyists for money. The lobbyists are crying on the outside that they are being squeezed to death for money, but they are laughing on the inside because they know they have bought influence, i.e. ownership.

In the last election the N.C. Senate and N.C. House, both Democrats and Republicans, hired expensive political consultants and put the bite on the lobbyists for campaign contributions. The lobbyists who represent mostly corporate America, insurance companies, banks and industry, largely financed both the Democrats and the Republicans in their quest for control of each house. It mattered little which party won because the lobbyists and their clients could not lose. Of course, all of this was perfectly legal, but it leaves the little ordinary working Joe out of the loop, with a voice that is seldom heard.

It is pleasing to see that Senator Wib Gulley has introduced a bill in the senate lowering the maximum individual contribution to candidates from $4,000 to $2,000, and limiting contributions to political parties to $2,000 and requiring candidates to report both the occupation and the employer of donors who donate $100 and more. The idea behind Senator Gulley's bill is to reduce the influence of wealthy contributors and to reduce the impact of anonymous donors.

I understand that Representative Connie Wilson has or will introduce a bill that would require more frequent campaign reporting of contributions, and that all campaign contributions must be reported. This I fully agree with.

Senator Richard Conder has introduced a bill to shorten the campaign season by moving primaries to late summer, which is an excellent idea because the campaigns are too long and too expensive. However, Senator Conder added to his bill that the highest vote-getter in a primary would be that political party's candidate, this eliminating second primaries. In my judgment, this is wrong because it will result in candidates who do not have the support of most of those who make up a political party. Conceivably, in a multi-candidate campaign, a person could become a party's candidate with as little as 10 to 15 percent of the vote. This would effectively kill the loyalty which is required if our two-party system, which has served us so well, is to survive.

Campaign finance reform is much needed and the three bills mentioned are excellent starts, except for the provision in the Conder bill eliminating second primaries. There is no simple answer.

I happened to read in the Asheville Citizen-Times a proposal that in my judgment merits attention, although it may be a little too extreme in some respects. The proposal was attributed to a Mr. Walter M. Plave, of Asheville. Mr. Plave said that only registered voters should be allowed to contribute to political campaigns, which would mean that big business, big labor, foreign countries, foreign companies, foreign individuals, PAC's, undocumented aliens, etc., would not be able to buy our elected officials. He said presidential campaigns should be limited to six months and all other campaigns, both state and national, be limited to three months. I really liked Mr. Plave's further recommendation that candidates who knowingly lie about their opponents would be subject to legal action — this could make interesting court cases.

What kind of political campaign finance reform comes, only time will tell. But the bottom line is that no matter what happens, the ball is in the voters' and the news media's court. The voter must study the candidates and then exercise his vote based on reliable information. The news media must report fairly and accurately, and the news media can make an instant start if they would report all campaign contributions in their coverage area. All they have to do is go to the State Board of Elections office in Raleigh. The information they have is public.

As my friend Chub Sewell used to say, "Call your next case."

Hugh Lee

There's a case for public campaign financing

It is unfortunate that public financing of political campaigns is trivialized by state Senate President Pro Tem Marc Basnight ("Under The Dome," Feb. 9).

The incumbents, especially the powerful ones, might not lose their power if they had to run on the same level with first-time candidates. But the big businesses and monied interests would lose their advantages in having access and insider standing.

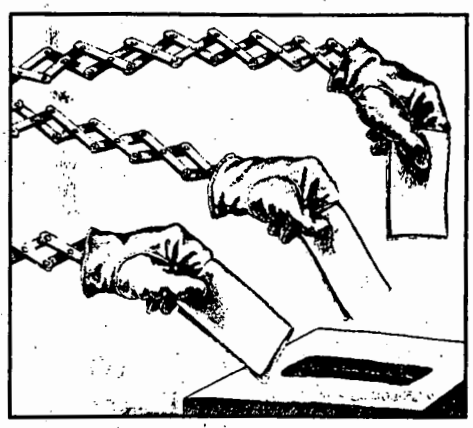
The environmental and consumer interests would be just as powerful as the bank lobby, for example.

At present the banks of North Carolina get a $50 million tax break for their spending $1 million in campaign financing.

This one tax break would reimburse the taxpayers many times over for the tax funds spent. When the taxpayers get this message, they will like it.

Basnight was quoted as saying that it would be ridiculous to ask folks at a country store to pay for his campaign. Of course they would not. But that is not the way to state the issue.

Rather, we must ask: "Friends, do you want private big money to pay for the elections so they can get back from the taxpayers millions in profits by special



tax exclusions and relaxed environmental regulations?"

Big businesses know investments in election campaigns are some of the biggest yields they can find in North Carolina. They fight for the opportunity. And if legislators continue to confuse their constituents about what "public financing" really means, the present corrupted practice will continue.

Surely Basnight knows better than his remarks suggest.

SAMUEL H. BROWN
Chairperson
Common Cause/North Carolina
Raleigh

News + Observer 2-17-97

STAR NEWS
WILIMINGTON, N. C.

MAR 16 97

-386 EL

Free TV time could help

EDITOR: We are living in dangerous times, and I don't just mean the violence in the streets, although that is bad enough. I am talking about the apathy that has seized our nation, as scandal after scandal has swept through every level of government. . . .

Our citizens realize that the common man's voice is no longer heard. Special interest groups, large corporations and wealthy individuals control our government through large campaign contributions. This has been brought out in recent headlines involving both sides of the political street.

Our officials no longer vote for what will help the majority of the people. They vote for their pocket books. Political candidates are forced to raise huge amounts of money for their campaigns, if they hope to get elected.

I've read that television advertising is the most expensive part of any campaign budget. I think the federal government should make each television station donate free air time for the candidates as a condition for their license to operate with the FCC. This would allow more candidates to get into the political arena, give the voter more choice and reduce the need for term limits.

If network television can afford to pay performers like Roseanne $2.5 million an episode, they can certainly provide air time for such an important public service. . . .

LISA PAVLECICH
Wilmington

"The Pilot"
Southern Pines
3/24/97

Public financing of campaigns would result in true reform

BY BOB MARTELL

Serious consideration should be given to some form of public financing of campaigns for state offices in North Carolina. Current proposals for campaign finance reform do not appreciably alter the insidious influence of money in the election of our representatives.

It takes money, big money, to get elected. The average price tag for a state house race is now $50,000; and for the Senate, $70,000. It follows that those who provide the campaign funds expect to get the attention of the candidate when he or she is elected.

That's just the way it is--perfectly legal. The politicians and their sponsors are not necessarily crass or dishonorable. Many are comfortable with the situation. Some are not.

Proposals for reform now being considered by the General Assembly include:

--More timely reporting of campaign contributions, since post-election revelations are not very helpful.

--Full disclosure of the occupation and employer of the donor. This idea is now in trouble in the legislature.

--Limits on "soft money," largely untraceable funds contributed to political parties rather than to candidates. The Republican-controlled House characterizes this as an infringement of free speech.

--Reduction of the maximum of individual contribution to a candidate from the current $4,000 to half that.

--A shorter campaign period, which theoretically would reduce expenditures.

It would appear effective reform proposals hold little promise.

To the degree these measures become law they will be accepted as a solution and the issue will fade away. Moreover, such halfway measures will feed public cynicism and reduce voter interest in the electoral process.

The recent report of the Better Campaigns Commission, led by four former governors, didn't light any fires. It appears the honorables, in the solid tradition of political pragmatism, think their tepid approach reflects political reality.

Even the surge of media attention to campaign finance reform may not be helpful because it tends to emphasize the extreme examples of how the electoral process goes astray. Witness the unsavory image of the White House as a bed-and-breakfast inn for high rollers. Or a Republican warning to the Business Roundtable, a group of 200 CEOs, to cease any support to Democrats. Such stories stimulate a public turn-off rather than a call to action.

That action should be directed to the root of the problem--money or more precisely, the influence money buys.

Public financing would make a difference. It's a system whereby candidates voluntarily agree to spending limits in exchange for public money. If privately financed candidates spend more than their publicly financed opponents, the latter would receive additional money to help bridge the difference. Allocation of funds would be based upon the average campaign expenditure during the previous two elections for the particular office.

State Sen. Wib Gulley, D-Durham, sponsor of a public-financing bill, advises that the estimated maximum cost of such a measure is $12 million. The N.C. Alliance For Democracy, an advocacy group, puts the annual cost at $4 per household.

To a skeptical public's question, "Why should we pay for a politician's campaign?", I ask another question: Would we rather have the special interests, whose agenda may not coincide with yours or mine, elect our representatives?

The public has a chance to make a difference in the electoral process. Legislators in Raleigh are attuned to the problem, even as they seek cosmetic solutions. It's time for all of us to get into the act. Let's give force to Theodore Roosevelt's words: "We are the government, you and I."

Bob Martell, who lives in Pinehurst is a former chairman of the Moore County Democratic Party and former candidate for the State House of Representatives.

NEWS RECORD
GREENSBORO, N. C.

APR 12 97

386 LETTE

Election reforms fall well short of a real solution

Selling access to the president and inviting lobbyists to write the laws that regulate their industries may seem shocking; however, they are logical consequences of the way our elections are financed. TV-based election campaigns are expensive, and that creates many opportunities for special interests to buy access and influence. Consequently, the country loses billions of tax dollars due to subsidies and tax breaks for wealthy individuals and corporations, and political and economic policymaking is distorted.

I fear many reforms proposed at the federal and state levels would merely plug a few more loopholes. Money would still find its way around these additional barriers and would still come from the same interests it came from before. Nothing would really change.

I have come to favor public funding of political campaigns. Most politicians are going to be beholden to someone for the money to run for office. I would rather it be we, the people, than a narrow range of special interests.

The North Carolina Clean Election Act would provide public funds to candidates who demonstrate public support by raising a certain amount in $5 contributions, who accept spending limits, and who refused to accept any further private donations. Additional matching funds would be available to candidates who were outspent by non-participating opponents.

If we want public servants who are going to put the public interest first, we need to free them from dependence on special interest money.

Barbara Council
Greensboro

THE NEWS & OBSERVER
FRIDAY, MARCH 14, 1997

Which costs more?

Rob Christensen's Feb. 16 article on campaign finance reform demonstrated that a public groundswell against the selling of elections to the highest bidder is pushing even the most recalcitrant politicians toward some endorsement of campaign finance reform.

Unfortunately, Christensen's parenthetical coverage of state Sen. Wib Gulley's N. C. Clean Elections Act, in which he dismisses the bill's chances by stating that "most state leaders say there is little public taste for taxpayer-subsidized campaigns," perpetuated the notion that closing loopholes and broadening disclosure laws are the only legitimate options for cleaning up the system.

In weighing the merits of Gulley's bill, we need to adopt a broader definition of "taxpayer-subsidized campaigns."

Contributions from large corporations to the campaign coffers of our elected officials have bought wealthy corporations a compliant legislature eager to tailor tax, finance, worker safety and environmental laws to their needs. Consider, for instance, the cookie manufacturer whose promise to build a Garner factory, and thus create jobs, netted it a $40 million tax break. The factory was never built but this $40 million taxpayer-financed subsidy remains on the books.

In contrast, the cost estimated to publicly finance all North Carolina elections under Gulley's bill is only $13 million — about $4 per person per year. For that price the people could have elected officials who are beholden to their needs for a clean environment, jobs at a livable wage, a comprehensive educational system and a fairer tax code, rather than to the demands bought by corporate donations.

Under which system are the taxpayers paying the higher subsidy?

JON PADGHAM

Durham

Return-Path: <ROSAGK@aol.com>
From: ROSAGK@aol.com
Date: Tue, 1 Jul 1997 07:42:44 -0400 (EDT)
To: haroldb@ms.ncga.state.nc.us, carrya@ms.ncga.state.nc.us,
patrickb@ms.ncga.state.nc.us, lutherj@ms.ncga.state.nc.us,
dannym@ms.ncga.state.nc.us, tomw@ms.ncga.state.nc.us,
ncad@mindspring.com
Subject: Campaign Finance Reform

Dear Speaker Brubaker:

Recent reports have it that S.B. 1, the signicant proposal on campaign finance reform, has now been much amended and is currently stalled in a House committee. I have written to my representatives here in the Cape Fear area before to express my support for this measure, but let me again add my voice to the many others that have encouraged North Carolina leaders to stand up for democracy in our time. It seems to me quite evident how wrong it is to allow a limited group of business concerns to dominate government for the sake of their own special interests. When that happens, the great majority of the people lose faith in government, which is the case today, judging by the poor turnout among the voters at election time. A handful of big corporate interests, if allowed to exert a dominant influence, will divert the function of government away from the public interest and in the direction of private profit for a limited group of people. Everything may go well enough as long as the economy is growing, but when boom turns to bust- as it will when all regulations are suspended and unbridled speculation is allowed to work its will upon the economy- then the people will be outraged and many people will seek to do away with free enterprise and eliminate the property rights of big business altogether.

The greatest danger of government by the special interests as I see it is that the people's business will not be done. Instead, the government will be diverted to the purposes of the very wealthy, and thereby lose the popular support of the majority of people, setting in motion a dangerous process of reform whose end no one can forsee. The best way to forestall this, I believe, is through signicant campaign finance reform now, undertaken in a public spirited manner by those who want to see government perform its proper function.

Through campaign finance reform which requires full disclosure of corporate contributors, which limits campaign contributions to a reasonable amount, and provides a public financing mechanism for those who can qualify, the balance of power in our society may well be restored, giving democracy back to the people and ensuring public interest government. We in North Carolina are in a position to lead the nation in the direction of better government and away from the tide of ultra-conservatism that is slowly but surely creating a reputation that future generations will have to live with.

I therefore urge you to do the right thing and stand up for the principles of democracy as we have inherited it from the founding fathers of this nation. Let government serve the public interest and I believe, business will prosper. But let government serve the interests of a limited group, and revolution will just as surely be the result.

Sincerely yours,
John L. Godwin
Wrightsville Beach, N.C.

Corporations too

Several recent op-ed page columns have given the pros and cons of campaign finance reform. Molly Ivins stated that both the president and congressional Republicans "agree that if you can't vote, you shouldn't be able to contribute." That seems to be a good beginning for reform.

I was interested to note that state Rep. Connie Wilson of Charlotte ("Campaign reform in for a fight," Dec. 18) proposed a law requiring all labor unions and professional associations to get the approval of members before making political contributions. Glaring omissions from that proposal are corporations and political action committees.

I am not a member of a union, professional association or PAC. I am, however, a stockholder/owner of several corporations that shamelessly use my money without my consent.

No meaningful campaign finance reform will ever occur without including business corporations in the list. If corporations were not allowed to give away that money, it could be returned in dividends to stockholders or in reduced prices to customers. All these individuals could then contribute to the causes they choose to support.

What better way to cure voter apathy than to return elections to the voters?

MARY JANE MARSHBANKS
Buies Creek

The N&O Jan. 10, 1997

DURHAM HERALD EDITOR
DURHAM, N. C.

MAR 07 97

320-386

THE HERALD-SUN, DURHAM, N.C.
THURSDAY, MARCH 13, 1997

LETTERS to the EDITOR

Reform local campaigns

There has been talk of campaign finance reform on the national level, and it is desperately needed. However, we also need it right here on the state and local levels. The wealthy and big corporations currently have the ability to buy and control our state legislators and local officials.

Two things need to change: Voters need to know who contributes to election campaigns, and candidates need access to public funding so that good people can win elections without the help of big money.

We can't have a real democracy as long as moneyed interests can secretly contribute to election campaigns. The N.C. Clean Elections Act sponsored by Durham Sen. Wib Gulley would require full and timely disclosure of each donor's name, the company they work for, and the nature of that company's business. For example, with this information voters could decide whether to vote for a candidate whose campaign money comes primarily from the tobacco companies.

Public funding for election campaigns would not require increased taxes. One of the main reasons that big companies make large campaign donations is to get huge tax breaks. If we end corporate welfare in the form of huge tax breaks, we can easily afford to support election campaigns with public funds.

JOAN F. WALSH

Kinnaird correct on public financing idea

On Feb. 19 state Sen. Ellie Kinnaird wrote a very interesting guest column about public financing for political campaigns. She is correct in her way of thinking, and in some ways I agree with her.

I work for Orange County. My coworkers, as well as many people that I know who work for Duke, have policies where we cannot take gifts, money, samples, lunch, etc. from any vendor or other persons coming into our work place. So, this means the working class people cannot be bribed, but the government officials [under current campaign financing] can be! Now we know how people in the Legislature afford their homes and cars.

If the people came together and put a law on the books, it might read like this: Any person or party taking money, gifts, etc. from any special interest group or major company will be impeached from office, from the president to the mayor. Then the representatives would be accountable to the citizens of the United States, and not to the industries and billion-dollar companies that are running the politicians and our country.

Wake up people.

Stephen Browning
Hillsborough

SB 381 is best bet to clean up N.C. elections

● Let your legislators know these efforts have your support.

Criticisms of the N. C. Department of Transportation continue to mount, as do ideas for reform. The most promising is Sen. Jim "Wib" Gulley's thoughtful Clean Elections Act, Senate Bill 381.

BILL KNOX

The News & Record's lead editorial of April 11 rightly condemned the ethically bankrupt system of patronage appointments to the department's board. Appointment is a virtual license for construction and development interests to print money and a governor's payoff for munificent campaign contributions. The system is equally corrupt regardless of which party is in power.

The six board members appointed in early April each gave between $1,200 to $16,000 to Governor Hunt's 1996 re-election campaign. In all, current board members and their relatives donated more than $231,000.

For years this system of patronage has given control over transportation policy (and $1 billion a year) to construction and development interests. The News & Record recommended that Jim Hunt, with no re-election possibilities, break historical ground by composing the DOT board of non-contributors.

This unrealistic suggestion unfortunately ignores that over the years the system has become deeply entrenched: a web of bargains, implicit and explicit, in which money power and commitments are crystallized perpetually in a pattern of exchanges detrimental to the common good.

Other promising starts at destroying this pernicious system do not bank on gubernatorial whim.

First, board membership could be a locally elected office.

Second, county commissioners could have their voice in transportation planning restored, a voice stripped away more than 60 years ago and given to the Department of Prisons, then responsible for building roads.

Third, Gordon Smith recommended in February that Gov. Hunt transfer transportation planning out of the Division of Highways and into a "Division of Transportation Planning." Smith, president of the N.C. Sierra Club, pointed to "a series of arrogant and troublesome decisions made by the Department of Highways that will increase, instead of decrease, our air pollution and environmental problems."

Smith cited reasons — continuing highway construction and higher speed limits despite their effect on increased air pollution; and the state's refusal to accept more flexible federal transportation planning — planning should be transferred. While Smith's ideas are praiseworthy, insulating any such new body from the taint of patronage is crucial.

Senate Bill 381 is the best antidote to poisons now in our system. Under this act candidates for governor, council of state and the General Assembly could choose to run for office using public financing if they agreed to certain strict conditions. To be constitutional, the system must be voluntary.

Candidates could decide to finance their campaigns the old way, but they would be prohibited from receiving outside contributions of more than $500 per election. The current limit for individual contributions to campaigns is $4,000.

Candidates would have to qualify for public financing by receiving a specified number of $5 qualifying contributions to show broad public support. They would also have to agree to spend no more than authorized by a five-member N.C. Commission on Electoral Practices according to a formula based on average costs for similar races.

Moreover, candidates could accept no private contributions except for in-kind donations up to a value of 10 percent of the candidate's public financing. Furthermore, they would have to agree not to start campaign activities until January of an election year.

When candidates accepting public financing are outspent by those who don't or are targeted by an independent expenditure campaign, the publicly financed campaign will get extra matching funds up to twice the original limit.

Funds for public financing would come from contributions and allocations from the state's general fund. The cost of public financing would be a real bargain — cleaner elections at about a tenth of 1 per cent of the general fund.

Reforms contained in this act can help end his evil system and mitigate the stranglehold of special interests over truly representative government. The State of Maine recently enacted a similar reform by voter initiative — and some twelve other states are considering like reforms. The N.C. Alliance for Democracy and its 47 member groups, including the N.C. League of Women Voters and Common Cause of North Carolina are all in the vanguard of groups that designed this measure. It is time for citizens to let their senators and representatives know we want real and meaningful electoral change.

Dr. Bill Knox is corresponding secretary for Citizens for Responsible Government.

From an 'agitator'

As a middle-aged mother of three teen-agers and Bible teacher at my Methodist church, I find it intriguing to be branded an "agitator" by state Rep. Cary Allred (Times-News, July 16.)

Several of us from the citizens group N.C. Alliance for Democracy spent a few hours Tuesday at Holly Hill Mall listening to local shoppers who chose to sign our petition in favor of requiring more information about major campaign donors. Nine out of 10 people signed my petition.

We sought to test the reality of Rep. Allred's assertion that people back home aren't interested in his committee's bill on campaign-finance reform. The bill is mainly about disclosure vs. secrecy: whether to identify more thoroughly the major donors to election campaigns so we the people can better track special interests. Is there anyone in the general public who doesn't think influence peddling is a problem?

Campaign-finance reform was a hot topic at the beginning of this legislative session in January. Senate Bill I passed the Senate with much fanfare, and it is that campaign-finance reform bill that sits in Rep. Allred's Ways and Means Committee, where House leaders intended it to be buried.

Rep. Allred was quoted Wednesday as saying he hasn't heard complaints from anyone in his district "I would characterize as representing the average citizen."

"Agitators" like myself and the members of the other 47 groups in the Alliance for Democracy are regular people, Rep. Allred, just as busy as your "average citizens" with our families, jobs and community commitments. But we see ourselves as patriots, like Tom Paine with his pamphlets. We care enough about our democracy to spend time working for a system where votes count more than campaign donations.

Agitators won us independence from England, won women the right to vote and stopped Jim Crow. Legislators who scoff at those of us who care the most about our state and who will work for a better democracy look a lot more loyal to their donors, their "cash constituency," than to their average voters. Read those petitions, Rep. Allred. Your voters want change — now.

[redacted]

Burlington News-Times
July 20, 1997

THE NEWS & OBSERVER
MONDAY, JULY 21, 1997

Terrified by reform...

State Rep. C. Robert Brawley, in his July 2 People's Forum letter, made the extraordinary statement that campaign finance reform will lead to "socialism, conformity, and communism." This is surely the statement of an elected official so terrified by the prospect of an honest election that he is driven to utter nonsense.

The present problem of campaign finance is one of recent years. Campaign expenses were no problem at all anywhere in America before 1950 or so. As recently as 1920, almost no one was paid money to express other people's political views. There were handbills and campaign buttons to buy and very little else. Somehow, the people withstood the blandishments of Marx.

Radio changed that somewhat. Television changed it more dramatically. And as the effectiveness of the media blitzkrieg has proved itself, politicians of all persuasions have been driven to a financial arms race. While many local offices in our state are not yet substantially affected, there are others in which money has become indeed the mother's milk of politics.

One need not be a socialist, conformist or communist to deplore that reality. One need only care about the integrity of democratic government.

Where did Brawley get his campaign funds? And what did he do to secure them? What public trust did he betray? It is difficult to resist the inference that he cannot bear discussion of these questions. Quite possibly Brawley is an honest representative of his constituents, but his position on campaign finance reform suggests otherwise.

PAUL D. CARRINGTON
Professor of Law
Duke University
Durham

THE NEWS & OBSERVER
SATURDAY, MARCH 8, 1997

• Sensible election finance

The Lincoln bedroom use by President Clinton as a fund-raiser is a novel twist on a tried and true tactic. All that's been shown so far in this case is these contributors got to spend the night in a historic spot as a guest of the president of the United States.

The Republicans will be fighting like mad to restrict the investigation of political fund-raising to the White House. If they fail, get ready for the real news.

Common sense will tell you that elections are being bought and sold to the highest bidder. Yet the public is not to the point of outrage. It isn't yet willing to do the obvious: establish a publicly financed election process in which special-interest money is strictly limited. It'll be the best money we've ever spent.

Read the provisions of state Sen. Wib Gulley's proposal to publicly finance elections in North Carolina and see if it isn't just about the most sensible thing you've seen in years. Get educated on this issue and then get behind your representative to see to it that some sense of integrity is brought back into the political process.

LARRY BUMGARDNER

Durham

STAR NEWS
WILMINGTON, N. C.

JUN 02 97

386 A6

Clean campaigns

EDITOR: Thank you very much for your pithy editorial of May 26 on the fate of campaign finance reform in the North Carolina legislature.

The so-called campaign finance reform bill proposed by Rep. Connie Wilson provided little or no real reform to a system that is now dominated by big-money interests who are now able to wield tremendous influence over politicians through unrestricted soft money contributions.

Rep. Wilson removed all the substantive parts of the Senate proposal for reform, including lowering the maximum contribution from $4,000 to $2,000 and limiting soft money contributions. Soft money is that money contributed to political parties, which can pass it along to candidates. There is no limit on soft contributions now. . . .

Sen. Wib Gulley's North Carolina Clean Elections Act will come before the Senate Judiciary Committee for a vote June 3. This bill would lower the individual contribution from $4,000 to $2,000 and provide for public financing of campaigns that would enable a citizen of ordinary means to run for political office.

It would cost approximately $10 million per election cycle, which amounts to about $4 per voter. It is a small price to pay when you consider that millions of dollars the present system costs us in pork-barrel funding and special-interest tax breaks to big-money interests provided by the legislature. . . .

MICHAEL GLANCY
Wilmington

EDITOR'S NOTE: The writer is the chairman of the New Hanover County Democratic Party. He ran an unsuccessful campaign for the N.C. House in 1996.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1
Judiciary Committee Substitute Adopted 2/5/97
Third Edition Engrossed 2/10/97
House Committee Substitute Favorable 4/14/97
House Committee Substitute #2 Favorable 5/12/97
Sixth Edition Engrossed 5/20/97
Proposed Committee Substitute -- S1-PCSRR-022

Short Title: Campaign Reform Act of 1997. (Public)

Sponsors:

Referred to:

February 3, 1997

A BILL TO BE ENTITLED

AN ACT TO FILL THE FAMILY AND SECOND PRIMARY LOOPHOLES IN THE LIMITS ON POLITICAL CONTRIBUTIONS; TO CHANGE THE SCHEDULE FOR CAMPAIGN FINANCE REPORTING; TO REQUIRE DISCLOSURE OF A CONTRIBUTOR'S OCCUPATION AND EMPLOYER; TO EXPAND THE REPORTING REQUIREMENTS FOR LOCAL ELECTIONS AND REFERENDA; TO REQUIRE ELECTRONIC REPORTING AND INTERNET ACCESS; TO CHANGE THE MAXIMUM PENALTY FOR LATE FILING; TO STRENGTHEN THE FUND-RAISING LAWS RELATED TO LOBBYISTS; TO CHANGE THE DISTRIBUTION METHOD FOR THE POLITICAL PARTIES FINANCING FUND AND ABOLISH THE CANDIDATES FINANCING FUND; TO REQUIRE DISCLOSURE OF SPENDING THAT NAMES CANDIDATES; AND TO PROVIDE A WAITING PERIOD BEFORE FORMER LEGISLATORS MAY SERVE AS LOBBYISTS, LEGISLATIVE LIAISON PERSONNEL, OR GOVERNOR'S APPOINTEES.

The General Assembly of North Carolina enacts:

-- CONTRIBUTION LIMITS: CLOSING FAMILY AND SECOND PRIMARY LOOPHOLES.

Section 1. (a) G.S. 163-278.13 reads as rewritten:

"**§ 163-278.13. Limitation on contributions.**

(a) No individual or political committee shall contribute to any candidate or other political committee any money or make any other contribution in any election in excess of four thousand dollars ($4,000) for that election.

(b) No candidate or political committee shall accept or solicit any contribution from any individual or other political committee of any money or any other contribution in any election in excess of four thousand dollars ($4,000) for that election.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, it shall be lawful for a candidate or a candidate's ~~spouse, parents, brothers and sisters~~ spouse to make a contribution to the candidate or to the candidate's treasurer of any amount of money or to make any other contribution in any election in excess of four thousand dollars ($4,000) for that election.

(d) For the purposes of this section, the term 'an election' means any primary, second primary, or general election in which the candidate or political committee may be involved, without regard to whether the candidate is opposed or unopposed in the ~~election.~~ election, except that where a candidate is not on the ballot in a second primary, that second primary is not 'an election' with respect to that candidate."

(e) This section shall not apply to any State, district or county executive committee of any political party. For the purposes of this section only, the term 'political party' means only those political parties officially recognized under G.S. 163-96.

(e1) No referendum committee which received any contribution from a corporation, labor union, insurance company, business entity, or professional association may make any contribution to another referendum committee, to a candidate or to a political committee.

(f) Any individual, candidate, political committee, or referendum committee who violates the provisions of this section is guilty of a Class 2 misdemeanor."

(b) This section becomes effective January 1, 1998, and applies to all elections occurring on or after that date.

-- SCHEDULE OF REPORTING.

Section 2. (a) G.S. 163-278.9(a) reads as rewritten:

"(a) ~~The~~ Except as provided in G.S. 163-278.10A, the treasurer of each candidate and of each political committee shall file under verification with the Board the following reports:

(1) Organizational Report. -- The appointment of the treasurer as required by G.S. 163-278.7(a), the

statement of organization required by G.S. 163-278.7(b), and a report of all contributions and expenditures not previously reported shall be filed with the Board no later than the tenth day following the ~~day the candidate files his~~ deadline for filing a notice of candidacy or the tenth day following the organization of the political committee, whichever occurs first. Any candidate whose campaign is being conducted by a political committee which is handling all contributions and expenditures for his campaign shall file a statement with the Board stating such fact at the time required herein for the organizational report. Thereafter, the candidate's political committee shall be responsible for filing all reports required by law.

(2) Preprimary Report. -- The treasurer shall file a report with the Board no later than the tenth day preceding the primary election.

(3) Postprimary Report(s). -- The treasurer shall file a report with the Board no later than the 30th day after the primary ~~election if the candidate was eliminated in the primary.~~ election. If there is a second primary, the treasurer shall file a report with the Board no later than the 30th day after the second primary ~~election if the candidate was eliminated in the second primary.~~ election.

(4) Preelection Report. -- The treasurer shall file a report with the Board not later than the tenth day preceding the general election.

(4a) 48-Hour Report. -- Any candidate, political committee or political party which receives a contribution or transfer of funds from any political committee shall make disclosure within 48 hours of receipt of a contribution or transfer of one thousand dollars ($1,000) or more received after the last preelection report but before an election. The disclosure shall be by report to the State Board of Elections identifying the source and amount of such funds. The State Board of Elections shall specify the form and manner of making the report. For purposes of this subdivision, 'political committee' means a combination of two or more individuals, or any person, committee,

association, or organization, the primary or incidental purpose of which is to support or oppose any candidate or political party or to influence or attempt to influence the result of an election or which accepts contributions or makes expenditures for the purpose of influencing or attempting to influence the nomination or election of any candidate at any election, or which receives contributions to repay loans or cover a deficit. The term includes, without limitation, any political party's State, county, or district executive committee and includes out-of-state political committees.

~~(5) Repealed by Session Laws 1985, c. 164, s. 1.~~

(6) Annual Reports. -- If contributions are received or expenditures made during a calendar year, for which no reports are otherwise required by this Article, any and all such contributions and expenditures shall be reported by the last Friday in January of the following year."

(b) G.S. 163-278.9(b) reads as rewritten:

"(b) Except as otherwise provided in this Article, each report required by subdivisions (1) through (4) of subsection (a) of this section shall be current within ~~seven~~ four days prior to the date the report is due and shall list all contributions received and expenditures made which have not been previously reported."

(c) G.S. 163-278.9A(a) is amended by adding a new subdivision to read:

"(2a) 48-Hour Report. -- Any referendum committee which receives a contribution or transfer of funds from any political committee shall make disclosure within 48 hours of receipt of a contribution or transfer of one thousand dollars ($1,000) or more received after the last preelection report but before an election. The disclosure shall be by report to the State Board of Elections identifying the source and amount of such funds. The State Board of Elections shall specify the form and manner of making the report. For purposes of this subdivision, 'political committee' means a combination of two or more individuals, or any person, committee, association, or

organization, the primary or incidental purpose of which is to support or oppose any candidate or political party or to influence or attempt to influence the result of an election or which accepts contributions or makes expenditures for the purpose of influencing or attempting to influence the nomination or election of any candidate at any election, or which receives contributions to repay loans or cover a deficit. The term includes, without limitation, any political party's State, county, or district executive committee and includes out-of-state political committees."

(d) G.S. 163-278.40A(b) reads as rewritten:

"(b) The organizational report shall state the bank account and number of such campaign fund. Each report required by this Part shall reflect all contributions, expenditures and loans made in behalf of a candidate. The organizational report shall be filed with the county board of elections within 10 days after the ~~candidate files~~ deadline for filing a notice of candidacy with the county board of elections, or within 10 days following the organization of the political committee, whichever occurs first."

(e) G.S. 163-278.40G reads as rewritten:

"**§ 163-278.40G. Content.**

Except as otherwise provided in this Part, each report shall be current within ~~seven~~ four days prior to the date the report is due and shall list all contributions received and expenditures made which have not been previously reported."

(f) This section becomes effective December 1, 1997.

--DISCLOSURE OF DONOR'S PRINCIPAL OCCUPATION AND EMPLOYER; BEST EFFORTS RULE.

Section 3. (a) G.S. 163-278.11(a)(1) reads as rewritten:

"(1) Contributions. -- A list of all contributions required to be listed under G.S. 163-278.8 received by or on behalf of a candidate, political committee, or referendum committee. The statement shall list the name and complete mailing address of each contributor, the amount contributed, the principal occupation and employer of the donor, and the date such contribution was received. The total sum of all contributions to date shall be plainly

exhibited. Forms for required reports shall be prescribed by the Board."

(b) G.S. 163-278.11 is amended by adding a new subsection to read:

"(c) Best Efforts. -- When a treasurer shows that best efforts have been used to obtain, maintain, and submit the information required by this Article for the candidate or political committee, any report of that candidate or committee shall be considered in compliance with this Article. The State Board of Elections shall promulgate rules that specify what are 'best efforts' for purposes of this Article, adapting as it deems suitable the provisions of 11 C.F.R. § 104.7. The rules shall include the provision that if the treasurer, after complying with the rules, does not know the occupation of the contributor, it shall suffice for the treasurer to report 'unable to obtain'."

(c) G.S. 163-278.8(c) reads as rewritten:

"(c) A treasurer may not accept a contribution of more than one hundred dollars ($100.00) from a nonresident of this State unless the contribution is accompanied by a written statement setting forth the name and address of each ~~contributor.~~ contributor, as well as the other information required to be reported in G.S. 163-278.11.

(d) This section becomes effective February 1, 1998, and applies to all reports due on or after that date.

-- EXPANDED REPORTING IN LOCAL ELECTIONS AND REFERENDA.

Section 4. (a) G.S. 163-278.6(1) reads as rewritten:

"(1) The term 'board' means the State Board of Elections with respect to all candidates for State and multi-county district offices and the county or municipal board of elections with respect to all candidates for single-county district, county and municipal offices. The term means the State Board of Elections with respect to all statewide ~~referenda.~~ referenda and the county or municipal board of elections conducting all local referenda."

(b) G.S. 163-278.6(18) reads as rewritten:

"(18) The term 'public office' means any office filled by election by the people on a statewide, county, municipal or district basis, and this Article shall be applicable to such elective offices whether the election therefor is partisan or ~~nonpartisan, provided candidates for municipal and county offices in those municipalities and counties having less~~

~~than 50,000 population, according to the most recent decennial census figures, shall not be required to file reports required by this Article, but this Article shall otherwise be applicable to such candidates for municipal and county offices.~~ nonpartisan."

(c) G.S. 163-278.6(18a) reads as rewritten:

"(18a) The term 'referendum' means any question, issue, or act referred to a vote of the people of the entire State by the General ~~Assembly~~ Assembly, a unit of local government, or by the people under any applicable local act and includes constitutional amendments and State bond issues. The term 'referendum' ~~does not include~~ includes any type of municipal, county, or special district referendum."

(d) G.S. 163-278.9(d) reads as rewritten:

"(d) Candidates and committees for municipal offices ~~in a city with a population of 50,000 or greater, which are required to submit reports by G.S. 163-278.6(18)~~ are not subject to subsections (a), (b) and (c) of this section. Reports for those candidates and committees are covered by Part 2 of this Article."

(e) G.S. 163-278.40(2) reads as rewritten:

"(2) The term 'city' means any incorporated city, town, or ~~village with a population of 50,000 or over, according to the most recent decennial federal census.~~ village."

(f) This section applies to primaries, elections, and referenda beginning in 1998.

-- ELECTRONIC REPORTING AND INTERNET ACCESS.

Section 5. (a) G.S. 163-278.9 is amended by adding a new subsection to read:

"(j) Treasurers for the following entities shall file any report required by this section electronically, according to rules which shall be promulgated by the State Board of Elections:

(1) Candidates for statewide office;

(2) The State, district, county, and precinct executive committees of political parties, if any such committee makes contributions or independent expenditures in excess of ten thousand dollars ($10,000) that affect contests for statewide office;

(3) Political committees that make contributions in excess of ten thousand dollars ($10,000) to

candidates for statewide office or make independent expenditures in excess of ten thousand dollars ($10,000) that affect contests for statewide office,

if the report shows in excess of ten thousand dollars ($10,000) in contributions, in expenditures, or in loans. The State Board of Elections shall provide at no cost to any treasurer required to file an electronic report the software necessary to do so."

(b) This section applies to reports to be filed in 1998.

Section 5.1. The State Board of Elections shall provide full access to the public of campaign finance reports over the Internet as soon as technically feasible.

-- PENALTIES FOR LATE FILING.

Section 6. (a) G.S. 163-278.34 reads as rewritten:

"**§163-278.34. Filings; penalty for late filings.**

(a) All reports, statements or other documents required by this Article to be filed with the Board shall be filed either by manual delivery to or by certified or registered mail addressed to the Board. Timely filing shall be complete if postmarked on the day the reports, statements or other documents are to be delivered to the Board. If a report, statement or other document is not filed within the time required by this Article, then the individual, person, media, candidate, political committee, referendum committee or treasurer responsible for filing shall pay to the State Board of Elections a late penalty of twenty dollars ($20.00) per day for each day the filing is late not to exceed ~~five~~ ten days. The Board shall immediately notify, or cause to be notified, late filers, from which reports are apparently due, by registered or certified mail, return receipt requested, of the penalties under this section. If the penalty has not been paid to or the report has not been filed with the Board within five days after receipt of the notification, then the Board shall report the late filing or failure to file to the appropriate district attorney who shall indict and prosecute the offender as required in G.S. 163-278.27. No criminal penalty shall be imposed if the penalty required by this section is paid and the delinquent report is filed within five days after notification by the Board.

(b) When a report, statement or other document, required by this Article is not apparently due (i.e., media, inactive candidate, individual, no organizational report filed, supplementary final report or annual report), the Board shall notify, as set forth above, the person or persons responsible for filing if information is presented indicating that the report,

statement, or other document was in fact due. No criminal penalties shall be imposed if the late penalty is paid and the delinquent report is filed within five days after notification."

(b) This section becomes effective January 1, 1998 and applies to offenses committed on or after that date.

-- FUND-RAISING RELATED TO LOBBYISTS.

Section 7. (a) G.S. 163-278.13A is repealed.

(b) Article 22A of the General Statutes is amended by adding a new section to read:

"§ 163-278.13B. Limitation on fund-raising related to lobbyists.

(a) Definitions. -- For purposes of this section:

(1) 'Limited contributor' means a lobbyist registered pursuant to Article 9A of Chapter 120 of the General Statutes, that lobbyist's agent, that lobbyist's spouse, or a political committee that employs or contracts with or whose parent entity employs or contracts with a lobbyist registered pursuant to Article 9A of Chapter 120 of the General Statutes.

(2) 'Limited contributee' means a member of or candidate for the Council of State, a member of or candidate for the General Assembly, a political committee the purpose of which is to assist a member or members of or candidate or candidates for the Council of State or General Assembly.

(3) The General Assembly is in 'regular session' from the date set by law or resolution that the General Assembly convenes until the General Assembly either adjourns sine die or recesses or adjourns for more than 10 days.

(4) A contribution is 'made' during regular session if the check or other instrument is dated during the session, or if the check or other instrument is delivered to the limited contributee during session, or if the limited contributor pledges during the session to deliver the check or other instrument at a later time.

(5) A contribution is 'accepted' during regular session if the check or other instrument is dated during the session, or if the limited contributee receives the check or other instrument during session and does not return it within 10 days, or agrees during session to receive the check or other instrument at a later time.

(b) Prohibited Solicitations During Session. -- While the General Assembly is in regular session, no limited contributee or the real or purported agent of a limited contributee shall:

(1) Solicit a contribution from a limited contributor to be made to that limited contributee or to be made to any other candidate, officeholder, or political committee; or

(2) Solicit a third party, requesting or directing that the third party directly or indirectly relay to the prohibited contributor the prohibited contributee's solicitation of a contribution.

(c) Prohibited Contributions During Session. -- While the General Assembly is in regular session:

(1) No limited contributor shall make or offer to make a contribution to a limited contributee.

(2) No limited contributor shall make a contribution to any candidate, officeholder, or political committee, directing or requesting that the contribution be made in turn to a limited contributee.

(3) No limited contributor shall transfer any amount of money or anything of value to any entity, directing or requesting that that entity use what was transferred to contribute to a limited contributee.

(4) No limited contributee shall accept a contribution from a limited contributor.

(d) Prohibited Solicitations at Any Time. -- No limited contributee or the real or purported agent of a limited contributee shall at any time:

(1) Solicit a contribution from a lobbyist registered pursuant to Article 9A of Chapter 120 of the General Statutes, that lobbyist's agent, or that lobbyist's spouse, to be made to that limited contributee or to be made to any other candidate, officeholder, or political committee; or

(2) Solicit a third party, requesting or directing that the third party directly or indirectly relay to the prohibited contributor the prohibited contributee's solicitation of a contribution.

(e) Prohibited Contributions at Any Time. -- At no time shall:

(1) A lobbyist registered pursuant to Article 9A of Chapter 120 of the General Statutes, that lobbyist's agent, or that lobbyist's spouse make or

offer to make a contribution to a limited contributee.

(2) A lobbyist registered pursuant to Article 9A of Chapter 120 of the General Statutes, that lobbyist's agent, or that lobbyist's spouse make a contribution to any candidate, officeholder, or political committee, directing or requesting that the contribution be made in turn to a limited contributee.

(3) A lobbyist registered pursuant to Article 9A of Chapter 120 of the General Statutes, that lobbyist's agent, or that lobbyist's spouse transfer any amount of money or anything of value to any entity, directing or requesting that that entity use what was transferred to contribute to a limited contributee.

(4) A limited contributee accept a contribution from a lobbyist registered pursuant to Article 9A of Chapter 120 of the General Statutes, that lobbyist's agent, or that lobbyist's spouse.

(d) Prosecution. -- A violation of this section is a Class 2 misdemeanor."

(c) G.S. 120-47.9 reads as rewritten:

"**§ 120-47.9. Punishment for violation.**

(a) Whoever willfully violates any provision of this Article shall be guilty of a Class 1 misdemeanor. In addition, no lobbyist who is convicted of a violation of the provisions of this Article shall in any way act as a lobbyist for a period of two years following his conviction.

(b) No lobbyist who is convicted of a second violation of G.S. 163-278.13B shall in any way act as a lobbyist for a period of two years following conviction. No lobbyist who is convicted of a third violation of G.S. 163-278.13B shall in any way act as a lobbyist."

(d) This section becomes effective January 1, 1998, and applies to all contributions solicited, made, or accepted on or after that date.

-- CHANGE DISTRIBUTION METHOD FOR POLITICAL PARTIES FINANCING FUND AND ABOLISH CANDIDATES FINANCING FUND.

Section 8. (a) Effective with respect to the 1997 taxable year and subsequent taxable years, G.S. 105-159.1(a) reads as rewritten:

"(a) Every individual whose income tax liability for the taxable year is one dollar ($1.00) or more may designate on his

or her income tax return that one dollar ($1.00) of the tax shall be credited to the North Carolina Political Parties Financing ~~Fund.~~ Fund for the use of the political party designated by the taxpayer. In the case of a married couple filing a joint return whose income tax liability for the taxable year is two dollars ($2.00) or more, each spouse may designate on the income tax return that one dollar ($1.00) of the tax shall be credited to the North Carolina Political Parties Financing Fund. Amounts credited to the Fund shall be allocated among the political parties according to the designation of the taxpayer. Where any taxpayer elects to designate but does not specify a particular political party, those funds shall be distributed among the political parties on a pro rata basis according to their respective party voter registrations as determined by the most recent certification of the State Board of Elections. As used in this section, the term 'political party' means one of the following that has at least one percent (1%) of the total number of registered voters in the State:

(1) A political party that at the last preceding general State election received at least ten percent (10%) of the entire vote cast in the State for Governor or for presidential electors.

(2) A group of voters who by July 1 of the preceding calendar year, by virtue of a petition as a new political party, had duly qualified as a new political party within the meaning of Chapter 163 of the General Statutes."

(b) Effective with respect to taxable years beginning on or after January 1, 1997, G.S. 105-269.6 is repealed.

(c) Effective when this section becomes law, Article 22C of Chapter 163 of the General Statutes, constituting G.S. 163-278.46 through G.S. 163-278.57, is repealed.

(d) Any funds held by the State Treasurer pursuant to G.S. 105-269.6 for the North Carolina Candidates Financing Fund as of the ratification of this act shall be distributed to the state executive committee of the two political parties with the largest number of registered voters pro rata according to the percentage of the vote each party's nominee for Governor received in the 1996 general election. Any funds subsequently received by the State Treasurer pursuant to G.S. 105-269.6 shall be transferred by the State Treasurer to those parties on the same basis.

--DISCLOSURE OF SPENDING FOR MATERIAL THAT NAMES CANDIDATES.

Section 9. (a) Article 22A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"§ 163-278.12A. Disclosure of spending for material that names candidates.

(a) General Duty to Report. -- Any individual, person, political committee, or other entity that makes an expenditure for printed material or advertisements broadcast or distributed to anyone other than members of the entity shall report those expenditures in accordance with subsection (b) of this section if a candidate or an individual whose prospective or potential candidacy is the principal purpose of a political committee is named in the printed material or advertisement. The disclosure requirements of this section do not apply to the following:

(1) Material that is solely informational and could not reasonably be understood as encouraging action to affect the outcome of an election; or

(2) The owner of a newspaper, magazine, radio outlet, or television outlet, if that owner is not a candidate, political committee, the parent entity of a political committee under G.S. 163-278.19.

(b) Procedures for Reporting; Exceptions. -- Any political committee or other entity otherwise required by this Article to file reports with a board of elections shall include any expenditure described in subsection (a) of this section on those reports. Any entity not otherwise required by this Article to file reports shall report expenditures described in subsection (a) of this section to the State Board of Elections within 10 days after the aggregate expenditure has reached the lowest threshold amount set for candidates and political party committees in G.S. 163-278.10A. After the initial report, each entity shall report subsequent expenditure described in subsection (a) of this section according to the schedule set out in G.S. 163-278.9(a) or Part 2 of this Article, whichever is appropriate.

(c) Definition. -- For the purpose of this section, the term 'expenditure' means any purchase, advance, conveyance, deposit, distribution, transfer of funds, loans, payment, gift, pledge, or subscription of money or anything of value whatsoever, whether or not made in an election year, and any contract, agreement, promise, or other obligation, whether or not legally enforceable. An individual or entity is deemed to have made an expenditure for printed material or advertisements if that individual or entity has agreed to compensate another individual or entity for purchasing such printed material or advertisements.

(d) No Criminal Liability; Authority to Petition for Equitable Relief. -- No duty imposed by this section alone, and by no other law, shall be relied upon or otherwise interpreted to create criminal liability for any person. The State Board of Elections shall have the authority to petition a superior court for mandamus or other appropriate equitable relief when the State Board finds that violation of this section has occurred."

(b) This section becomes effective December 1, 1997.

--TO PROVIDE A WAITING PERIOD BEFORE FORMER LEGISLATORS MAY SERVE AS LOBBYISTS, LEGISLATIVE LIAISON PERSONNEL, OR GOVERNOR'S APPOINTEES.

Section 10. (a) Article 9A of Chapter 120 of the General Statutes is amended by adding a new section to read:

"§ 120-47.12. Waiting period before former State legislators may serve as lobbyists, legislative liaison personnel, or Governor's appointees.

No person who has been elected or appointed to the General Assembly shall:

(1) Engage in any employment or other activity which would require registration as a lobbyist or designation as official legislative liaison personnel under this Article; or

(2) Serve in any position filled by appointment by the Governor

earlier than one year after the convening of the next General Assembly after the one for which that person was elected or appointed."

(b) This section is effective when it becomes law, and applies to any person who is a member of either the Senate or House of Representatives on or after that date.

Section 11. The provisions of this act are severable. If any provision is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the act that can be given effect without the invalid provision.

Section 12. This act is effective when it becomes law. Prosecutions for, or sentences based on, offenses occurring before the relevant effective date in this act are not abated or affected by this act, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.

S1-PCSRR-022 – SENATE BILL 1
CAMPAIGN REFORM ACT OF 1997

	CURRENT LAW	S1-PCSRR-022
1. General Limits on Contributions	Basic rule is that an individual or political committee may contribute no more than $4,000 to a candidate or political committee per election. An "election" for purposes of the $4,000 contribution limit is a 1st primary, a 2nd primary, or a general election. A candidate may receive an extra $4,000 from a contributor for a 2nd primary even if the candidate is not on the ballot in a second primary. Exceptions to the $4,000 limit: • A political party executive committee may receive from individuals and political committees, and give to candidates and political committees, an unlimited amount. A member of a candidate's family (spouse, parents, siblings) may give an unlimited amount to that candidate.	• Says that a second primary triggers an extra $4,000 in contributions only if the candidate is on the ballot in a second primary. • Says the candidate's spouse is the only relative who may give that candidate an unlimited amount. Eff. 1-1-1998.
2. Schedule of Reporting	Requires these reports for election year: • Organizational Report 10 days after filing candidacy or forming committee. • Pre-primary Report 10 days before primary. • Post-primary Report 30 days after primary—for losers only. • Pre-election Report 10 days before general election. • Annual Report by last Friday in January of next year. And this report for the off-year: The Annual Report only. (All reports cover period ending 7 days before due date.)	Requires these reports for election year: • Organizational Report 10 days after filing period ends or forming committee. • Pre-primary Report 10 days before primary. • Post-primary Report 30 days after primary—for winners and losers. • Pre-election Report10 days before general election. • Annual Report by last Friday in January of next year. • 48-Hour Reports – due from candidates, political committees, or parties within 48 hours after they receive any contribution of $1,000 or more after the last pre-election report from any political committee in or out of the state. (Effective Dec. 1, 1997.) • Annual Report by last Fri. in Jan. And this report for the off-year: The Annual Report-only (Pre-Primary and Pre-Election reports must cover period ending 4 days before due date.) Effective December 1, 1997.

	CURRENT LAW	S1-PCSRR-022
3. Reporting of Contributors; Best Efforts Rule	Report must show name and address of each contributor who gives over $100.	• Report must also show occupation and employer of contributor who gives over $100. • SBOE also required to write rules defining what are "best efforts" to gather the information, and deems reports to be in compliance if best efforts are used. Eff. for reports due after Feb. 1, 1998.
4. Exemptions from Reporting	• Exempts from reporting local races in counties and municipalities under 50,000 in population. • Exempts from reporting local referenda regardless of population. • Exempts from reporting candidates and party executive committees that have financial activity in their campaigns of less than $1,000.	• Removes the 50,000 population exemption for city and county races. • Removes the local referendum exemption. Eff.. for elections beginning in 1998.
5. Electronic Reporting and Internet Access.	No requirement of electronic reporting, although SBOE encourages it. SBOE puts some campaign report into on its web site, but is not required to.	Requires electronic filing, beginning in 1998, of any report by: • candidate for statewide office • political committee that makes more than $10,000 in contributions or independent expenditures affecting statewide races • party exec.committee at any level that makes more than $10,000 in contributions or independent expenditures affecting statewide races if report shows more than $10,000 in contributions, expenditures, or loans. SBOE must provide software to treasurers at no cost. SBOE would be required to provide full Internet access to campaign reports as soon as technically feasible. Eff. Beginning with 1998 reports.
6. Penalties for Late Filing	Penalty for late filing of campaign finance reports is $20 a day with a maximum of $100. Enforcement depends upon prosecution by a district attorney.	Raises the ceiling on $20-a-day penalties from $100 (five days) to $200 (ten days). Eff. 1-1-98.

7/30/97

	CURRENT LAW	S1-PCSRR-022
7. No Lobbyist Contributions.	Legislators and Council of State members are prohibited from soliciting or accepting contributions made by "or at the behest or recommendation of" a registered lobbyist during the long session of the General Assembly. The ban on soliciting and accepting extends to political committees whose principal purpose is to assist a member or members of the General Assembly , but the statute exempts from that group any political party executive committee or any "political committee that operates on a statewide basis in conjunction with the executive committee of a political party for the purpose of assisting that party's candidates for Council of State or General Assembly."	Extends the limitation in several ways: • Not only solicitation of lobbyists banned, but also lobbyists' spouse and solicitation of political committees whose parent entities hire lobbyists. • Ban is in effect not just during long session, but during long and short sessions for lobbyist-connected PACs, and at any time for lobbyists, their agents and spouses. • Not only incumbent legislators and Council of State members covered , but also candidates for those offices. • Not only direct solicitations banned, but also indirect solicitations on behalf of the officeholder or candidate. • Not only direct contributions banned, but also indirect contributions through third parties. • Political party committees no longer exempted from the groups that could not solicit or accept contributions. • Second-time offense by a lobbyist results in 2-year ban on lobbying. Third-time offense means ban for life. • Effective Jan. 1, 1998.
8. Allow Taxpayers to Choose the Party to Which They Give Their $1 Check-off for Political Parties Financing Fund & Abolish Income Tax Add-on for Candidates Financing Fund.	A person owing at least $1 of State income tax may designate $1 of that tax to go into the N.C. Political Parties Financing Fund. The Fund is distributed to the 2 largest parties in proportion to share of registered voters. A person who is due an income tax refund may donate any portion of the refund to the N.C. Candidates Financing Fund, which has been building up since 1988 to provide public financing for candidates for Governor who agreed to spending limits. As of late May, that Fund had accumulated $237,000. It has never been distributed.	Would allow taxpayers to choose which party they give their $1 check-off for the Political Parties Financing Fund. Would abolish Candidates Financing Fund and distribute the money to the two biggest political parties according to their percentage of the vote their nominees received in the 1996 general election for Governor. Effective beginning with 1997 taxable year.

7/30/97

	CURRENT LAW	S1-PCSRR-022
9. Disclosure of Issue Advocacy	• Candidates and political committees required to report "contributions" and "expenditures," both defined to mean spending to support or oppose a candidate, political committee, referendum committee, or party. • Individuals required to report independent expenditures (i.e., those made without consultation with the contributee. But no requirement to disclose spending for "issue advocacy" (e.g., ads that do not expressly urge voting for or against. Courts have ruled spending for issue advocacy cannot be limited, even if a candidate is consulted. But courts have not precluded requiring its disclosure.	Requires that spending be reported for any material or advertising that names a candidate or potential candidate who has an ongoing committee. The reporting is required whether or not the ad constitutes direct advocacy of a candidate. Exemptions: • Purely informational material that does not advocate; and • News media. If the sponsor is already required to file a campaign finance report, this kind of ad would be included on it. If the sponsor is not a candidate or political committee and not required to file a report, the sponsor would be as soon as spending on such material reaches the threshold for candidates to report. That threshold is currently $1,000. Effective December 1, 1997.
10. Waiting Period for Employment of Former Legislators.	No restriction is placed on employment of former legislators.	Would require a legislator to wait for one year after the beginning of the next General Assembly after the one for which that legislator was elected (or appointed to a vacancy) before serving either: • As a lobbyist or agency liaison; or • As an appointee of the Governor. Would be effective upon becoming law and would apply to any legislator in office at that time.

7/30/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 6

SENATE BILL 1
Judiciary Committee Substitute Adopted 2/5/97
Third Edition Engrossed 2/10/97
House Committee Substitute Favorable 4/14/97
House Committee Substitute #2 Favorable 5/12/97
Sixth Edition Engrossed 5/20/97

Short Title: Full Disclosure Act of 1997. (Public)

Sponsors:

Referred to:

February 3, 1997

A BILL TO BE ENTITLED

AN ACT TO CHANGE THE FILING SCHEDULE OF CAMPAIGN REPORTS; TO REQUIRE THE LISTING OF A CONTRIBUTOR'S PRINCIPAL OCCUPATION AND TO PROVIDE FOR A "BEST EFFORTS" RULE; TO REQUIRE THAT COORDINATED PARTY EXPENDITURES BE REPORTED; TO EXPAND REPORTING IN LOCAL ELECTIONS AND REFERENDA AND TO SET A THREE THOUSAND DOLLAR THRESHOLD FOR REPORTING GENERALLY; TO REQUIRE ELECTRONIC FILING OF CERTAIN CAMPAIGN REPORTS AND INTERNET ACCESS; TO PROVIDE FOR CIVIL PENALTIES FOR LATE FILING OF CAMPAIGN REPORTS; TO CLOSE THE SECOND PRIMARY LOOPHOLE FOR CONTRIBUTION LIMITS; TO REWRITE AND EXPAND THE LIMITS ON FUND-RAISING DURING LEGISLATIVE SESSIONS; TO PROVIDE FOR A TWO DOLLAR CHECKOFF FOR THE POLITICAL PARTIES FINANCING FUND AND TO CHANGE THE METHOD FOR DISTRIBUTING MONEY FROM THAT FUND; TO REQUIRE THE DISCLOSURE OF SPENDING FOR MATERIAL THAT NAMES CANDIDATES, ELECTIONS, PARTIES, AND ISSUES; AND TO DISCLOSE THE FLOW OF MONEY THROUGH NORTH CAROLINA AND NATIONAL POLITICAL ORGANIZATIONS.

The General Assembly of North Carolina enacts:

-- QUARTERLY AND SEMIANNUAL REPORTING.

Section 1. (a) G.S. 163-278.9(a) reads as rewritten:

"(a) ~~The~~ Except as provided in G.S. 163-278.10A, the treasurer of each candidate and of each political committee shall file under verification with the Board the following reports:

(1) Organizational Report. -- The appointment of the treasurer as required by G.S. 163-278.7(a), the statement of organization required by G.S. 163-278.7(b), and a report of all contributions and expenditures not previously reported shall be filed with the Board no later than the tenth day following the day the candidate files ~~his~~ notice of candidacy or the tenth day following the organization of the political committee, whichever occurs first. Any candidate whose campaign is being conducted by a political committee which is handling all contributions and expenditures for his campaign shall file a statement with the Board stating such fact at the time required herein for the organizational report. Thereafter, the candidate's political committee shall be responsible for filing all reports required by law.

(2) Preprimary Report. -- The treasurer shall file a report with the Board no later than the tenth day preceding the primary election. A candidate who is not on the ballot in the primary and who has filed a first quarter report pursuant to subdivision (5a) of this subsection shall not be required to file a separate preprimary report under this subdivision.

~~(3) Postprimary Report(s). -- The treasurer shall file a report with the Board no later than the 30th day after the primary election if the candidate was eliminated in the primary. If there is a second primary, the treasurer shall file a report with the Board no later than the 30th day after the second primary election if the candidate was eliminated in the second primary.~~

~~(4) Preelection Report. -- The treasurer shall file a report with the Board not later than the tenth day preceding the general election.~~

~~(5) Repealed by Session Laws 1985, c. 164, s. 1.~~

(5a) Quarterly Reports. -- During even-numbered years during which there is an election for that candidate or in which the campaign committee is supporting a candidate, the treasurer shall file a report by mailing or otherwise delivering it to the Board no later than seven working days after the end of each calendar quarter covering the prior calendar quarter, except that the report for the third quarter shall also cover the period in October through the seventeenth day before the election, the third quarter report shall be due seven days after that date, and the fourth quarter report shall not include that period if a third quarter report was required to be filed.

(6) ~~Annual~~ Semiannual Reports. -- If contributions are received or expenditures made ~~during a calendar year,~~ for which no reports are otherwise required by this Article, any and all such contributions and expenditures shall be reported by the last Friday in ~~January~~ July, covering the period through the last day of June, and shall be reported by the last Friday in January, covering the period through the last day of December. ~~of the following year.~~"

(b) This section becomes effective January 1, 1998.

--DONOR'S PRINCIPAL OCCUPATION; BEST EFFORTS RULE.

Section 2. (a) G.S. 163-278.11(a)(1) reads as rewritten:

"(1) Contributions. -- A list of all contributions required to be listed under G.S. 163-278.8 received by or on behalf of a candidate, political committee, or referendum committee. The statement shall list the name and complete mailing address of each contributor, the amount contributed, the principal occupation of the donor, and the date such contribution was received. The total sum of all contributions to date shall be plainly exhibited. Forms for required reports shall be prescribed by the Board. The State Board of Elections shall prepare a schedule of occupational classifications, adapting as it deems suitable the occupational classifications of the Internal Revenue Code and equivalent classifications of the Office of State Personnel. In reporting the occupation of a contributor, the treasurer shall use the classifications prepared by the State Board."

(b) G.S. 163-278.11 is amended by adding a new subsection to read:

"(c) Best Efforts. -- When a treasurer shows that best efforts have been used to obtain, maintain, and submit the information required by this Article for the candidate or political committee, any report of that candidate or committee shall be considered in compliance with this Article. The State Board of Elections shall promulgate rules that specify what are 'best efforts' for purposes of this Article, adapting as it deems suitable the provisions of 11 C.F.R. § 104.7. The rules shall include the provision that if the treasurer, after complying with the rules, does not know the occupation of the contributor, it shall suffice for the treasurer to report 'unable to obtain'."

(c) This section becomes effective February 1, 1998, and applies to all reports due on or after that date.

-- REPORTING OF COORDINATED EXPENDITURES.

Section 3. (a) G.S. 163-278.11(b) reads as rewritten:

"(b) Statements shall reflect anything of value paid for or contributed by any person or individual, both as a contribution and expenditure. If a political party executive committee makes an expenditure that benefits a candidate or group of candidates, that political party executive committee shall report that expenditure, together with the date, amount, and purpose of any such expenditure as well as the name of and office sought by any candidate or candidates on whose behalf the

expenditure was made. A candidate who benefits from that expenditure shall report that expenditure or the proportionate share of the expenditure that benefitted that candidate as an in-kind contribution if the candidate or the candidate's committee has coordinated with the political party executive committee concerning the expenditure."

(b) This section becomes effective February 1, 1998, and applies to reports due on and after that date.

-- EXPANDED REPORTING IN LOCAL ELECTIONS AND REFERENDA; $3,000 THRESHOLD FOR ALL REPORTING.

Section 4. (a) G.S. 163-278.6(1) reads as rewritten:

"(1) The term 'board' means the State Board of Elections with respect to all candidates for State and multi-county district offices and the county or municipal board of elections with respect to all candidates for single-county district, county and municipal offices. The term means the State Board of Elections with respect to all statewide ~~referenda.~~ referenda and the county or municipal board of elections conducting all local referenda."

(b) G.S. 163-278.6(18) reads as rewritten:

"(18) The term 'public office' means any office filled by election by the people on a statewide, county, municipal or district basis, and this Article shall be applicable to such elective offices whether the election therefor is partisan or ~~nonpartisan, provided candidates for municipal and county offices in those municipalities and counties having less than 50,000 population, according to the most recent decennial census figures, shall not be required to file reports required by this Article, but this Article shall otherwise be applicable to such candidates for municipal and county offices.~~ nonpartisan."

(c) G.S. 163-278.6(18a) reads as rewritten:

"(18a) The term 'referendum' means any question, issue, or act referred to a vote of the people of the entire State by the General ~~Assembly~~ Assembly, a unit of local government, or by the people under any applicable local act and includes constitutional amendments and State bond issues. The term 'referendum' ~~does not include~~ includes any type of municipal, county, or special district referendum."

(d) G.S. 163-278.40(2) reads as rewritten:

"(2) The term 'city' means any incorporated city, town, or ~~village with a population of 50,000 or over, according to the most recent decennial federal census.~~ village."

(e) G.S. 163-278.10A reads as rewritten:

"**§ 163-278.10A. Threshold of ~~$1,000.00~~ $3,000 for Financial Reports.**

(a) Notwithstanding any other provision of this Chapter, a candidate shall be exempted from the reports of contributions, loans, and expenditures required in G.S.

163-278.9(a), 163-278.40B, 163-278.40C, 163-278.40D, and 163-278.40E if to further his campaign that candidate:

(1) Does not receive more than ~~one~~ three thousand dollars ~~($1,000.00)~~ ($3,000) in contributions, and

(2) Does not receive more than ~~one~~ three thousand dollars ~~($1,000.00)~~ ($3,000) in loans, and

(3) Does not spend more than ~~one~~ three thousand dollars ~~($1,000.00).~~ ($3,000).

To qualify for the exemption from those reports, the candidate's treasurer shall file a certification under oath that he does not intend to receive in contributions or loans or expend more than ~~one~~ three thousand dollars ~~($1,000.00)~~ ($3,000) to further his campaign. The certification shall be filed with the Board at the same time the candidate files his Organizational Report as required in G.S. 163-278.7, G.S. 163-278.9, and G.S. 163-278.40A. If the candidate's campaign is being conducted by a political committee which is handling all contributions, loans, and expenditures for his campaign, the treasurer of the political committee shall file a certification of intent to stay within the threshold amount. If the intent to stay within the threshold changes, or if the ~~$1,000~~ three thousand dollars ($3,000) threshold is exceeded, the treasurer shall immediately notify the Board and shall be responsible for filing all reports required in G.S. 163-278.9 and 163-278.40B, 163-278.40C, 163-278.40D, and 163-278.40E; provided that any contribution, loan, or expenditure which would have been required to be reported on an earlier report but for this section shall be included on the next report required after the intent changes or the threshold is exceeded.

(b) The exemption in subsection (a) of this section applies to political party committees under the same terms as for candidates, except that the term 'to further his campaign' does not relate to a political party committee's exemption, and all contributions, expenditures, and loans during an election shall be counted against the political party committee's threshold amount."

(f) This section applies to primaries, elections, and referenda beginning in 1998.

-- ELECTRONIC REPORTING.

Section 5. (a) G.S. 163-278.9 is amended by adding a new subsection to read:

"(j) Treasurers for the following entities shall file any report required by this section electronically, according to rules which shall be promulgated by the State Board of Elections:

(1) Candidates for statewide office;

(2) The State, district, county, and precinct executive committees of political parties;

(3) Political committees that make contributions in excess of ten thousand dollars ($10,000) to candidates for statewide office or make independent expenditures in excess of ten thousand dollars ($10,000) that affect contests for statewide office.

if the report shows in excess of ten thousand dollars ($10,000) in contributions, in expenditures, or in loans."

(b) This section applies to reports to be filed in 1998.

-- INTERNET ACCESS.

Section 6. The State Board of Elections shall provide full access to the public of campaign finance reports over the Internet as soon as technically feasible.

-- CIVIL PENALTIES FOR LATE FILING.

Section 7. (a) G.S. 163-278.34 reads as rewritten:

"**§ 163-278.34. Filings; penalty for late filings.**

(a) ~~All~~ Except as provided in G.S. 163-278.9, all reports, statements or other documents required by this Article to be filed with the Board shall be filed either by manual delivery to or by ~~certified or registered~~ mail addressed to the Board. Timely filing shall be complete if postmarked on the day the reports, statements or other documents are to be delivered to the Board. If a report, statement or other document is not filed within the time required by this Article, then the individual, person, media, candidate, political committee, referendum committee or treasurer responsible for filing shall pay to the State Board of Elections election enforcement costs and ~~a~~ civil late penalty ~~of twenty dollars ($20.00) per day for each day the filing is late not to exceed five days.~~ as follows:

(1) Two hundred fifty dollars ($250.00) per day for each day the filing is late for a report that affects statewide elections, not to exceed a total of ten thousand dollars ($10,000); and

(2) Fifty dollars ($50.00) per day for each day the filing is late for a report that affects only nonstatewide elections, not to exceed a total of five hundred dollars ($500.00).

The State Board shall immediately notify, or cause to be notified, late filers, from which reports are apparently due, by registered or certified mail, return receipt requested, of the penalties under this section. ~~If the penalty has not been paid to or the report has not been filed with the Board within five days after receipt of the notification, then the Board shall report the late filing or failure to file to the appropriate district attorney who shall indict and prosecute the offender as required in G.S. 163-278.27. No criminal penalty shall be imposed if the penalty required by this section is paid and the delinquent report is filed within five days after notification by the Board.~~

(a1) The State Board shall calculate and assess the amount of the civil penalty due under subsection (a) of this section and shall notify the person who is assessed the civil penalty of the amount of the penalty. The notice of assessment shall be served by any means authorized under G.S. 1A-1, Rule 4, and shall direct the violator either to pay the assessment or to contest the assessment within 30 days by filing a petition for a contested case under Article 3 of Chapter 150B of the General Statutes. If a violator does not pay a civil penalty assessed by the Board within 30 days after it is due, the Board shall request the Attorney General to institute a civil action to recover the amount of the assessment. The civil action may be brought in the superior court of any county where the report was due to be filed or any county where the violator

resides or maintains an office. A civil action must be filed within three years of the date the assessment was due. An assessment that is not contested is due when the violator is served with a notice of assessment. An assessment that is contested is due at the conclusion of the administrative and judicial review of the assessment. Consistent with G.S. 115C-437, the State Controller shall pay the clear proceeds of civil penalties collected under this section to the County School Fund in the county in which the person charged with the violation resides. The State Controller shall reduce the monies collected by the enforcement costs and the collection costs to determine the clear proceeds payable to the County School Fund. Monies set aside for the costs of enforcement and the costs of collection shall be credited to accounts of the State Board of Elections.

(b) ~~When a report, statement or other document, required by this Article is not apparently due (i.e., media, inactive candidate, individual, no organizational report filed, supplementary final report or annual report), the Board shall notify, as set forth above, the person or persons responsible for filing if information is presented indicating that the report, statement, or other document was in fact due. No criminal penalties shall be imposed if the late penalty is paid and the delinquent report is filed within five days after notification.~~ The State Board of Elections may waive a late penalty where it determines there is reasonable cause."

(b) G.S. 163-278.6 is amended by adding a new subdivision to read:

"(7a) The term 'costs of collection' means monies spent by the State Board of Elections in the collection of the penalties levied pursuant to provisions in this Article to the extent the costs do not constitute more than fifty percent (50%) of the civil penalty. The costs shall be presumed to be ten percent (10%) of the civil penalty unless otherwise determined by the State Board of Elections based on the records of expenses incurred by the State Board of Elections for its collection procedures."

(c) G.S. 163-278.6 is amended by adding a new subdivision to read:

"(7b) The term 'day' means calendar day."

(d) G.S. 163-278.6 is amended by adding a new subdivision to read:

"(8a) The term 'enforcement costs' means salaries, overhead, and other monies spent by the State Board of Elections in the enforcement of the penalties provisions of this Article, including the costs of investigators, attorneys, travel costs for State Board employees and its attorneys, to the extent the costs do not constitute more than fifty percent (50%) of the sum levied for the enforcement costs and civil late penalty."

(e) G.S. 163-278.22 is amended by adding a new subdivision to read:

"(14) To calculate, assess, and collect civil penalties pursuant to this Article."

(f) This section becomes effective January 1, 1998, and applies to all reports due on or after that date.

--CLOSE THE LOOPHOLE FOR SECOND PRIMARIES.

Section 8. (a) G.S. 163-278.13(d) reads as rewritten:

"(d) For the purposes of this section, the term 'an election' means any primary, second primary, or general election in which the candidate or political committee may be involved, without regard to whether the candidate is opposed or unopposed in the ~~election.~~ election, except that where a candidate is not on the ballot in a second primary, that second primary is not 'an election' with respect to that candidate."

(b) This section becomes effective January 1, 1998, and applies to all elections occurring on or after that date.

-- FUND-RAISING IN SESSION.

Section 9. (a) G.S. 163-278.13A is repealed.

(b) Article 22A of the General Statutes is amended by adding a new section to read:

"**§ 163-278.13B. Limitation on fund-raising during legislative session.**

(a) Definitions. -- For purposes of this section:

(1) 'Limited contributor' means a lobbyist registered pursuant to Article 9A of Chapter 120 of the General Statutes, that lobbyist's agent, or a political committee that employs or contracts with or whose parent entity employs or contracts with a lobbyist registered pursuant to Article 9A of Chapter 120 of the General Statutes.

(2) 'Limited contributee' means a member of or candidate for the Council of State, a member of or candidate for the General Assembly, a political committee the purpose of which is to assist a member or members of or candidate or candidates for the Council of State or General Assembly.

(3) The General Assembly is in 'regular session' from the date set by law or resolution that the General Assembly convenes until the General Assembly either adjourns sine die or recesses or adjourns for more than 10 days.

(4) A contribution is 'made' during regular session if the check or other instrument is dated during the session, or if the check or other instrument is delivered to the limited contributee during session, or if the limited contributor pledges during the session to deliver the check or other instrument at a later time.

(5) A contribution is 'accepted' during regular session if the check or other instrument is dated during the session, or if the limited contributee receives the check or other instrument during session and does not return it within 10 days, or agrees during session to receive the check or other instrument at a later time.

(b) Prohibited Solicitations. -- While the General Assembly is in regular session, no limited contributee or the real or purported agent of a limited contributee shall:

(1) Solicit a contribution from a limited contributor to be made to that limited contributee or to be made to any other candidate, officeholder, or political committee; or

(2) Solicit a third party, requesting or directing that the third party directly or indirectly relay to the prohibited contributor the prohibited contributee's solicitation of a contribution.

(c) Prohibited Contributions. -- While the General Assembly is in regular session:

(1) No limited contributor shall make or offer to make a contribution to a limited contributee.

(2) No limited contributor shall make a contribution to any candidate, officeholder, or political committee, directing or requesting that the contribution be made in turn to a limited contributee.

(3) No limited contributor shall transfer any amount of money or anything of value to any entity, directing or requesting that that entity use what was transferred to contribute to a limited contributee.

(4) No limited contributee shall accept a contribution from a limited contributor.

(d) Prosecution. -- A violation of this section is a Class 2 misdemeanor."

(c) This section becomes effective January 1, 1998, and applies to all contributions solicited, made, or accepted on or after that date.

-- $2 CHECKOFF FOR POLITICAL PARTIES FINANCING FUND AND CHANGE IN THE METHOD OF DISTRIBUTING MONEY FROM THAT FUND.

Section 10. (a) G.S. 105-159.1(a) reads as rewritten:

"(a) Every individual whose income tax liability for the taxable year is ~~one dollar ($1.00)~~ two dollars ($2.00) or more may designate on his or her income tax return that ~~one dollar ($1.00)~~ two dollars ($2.00) of the tax shall be credited to the North Carolina Political Parties Financing ~~Fund.~~ Fund for the use of the political party designated by the taxpayer. In the case of a married couple filing a joint return whose income tax liability for the taxable year is ~~two dollars ($2.00)~~ four dollars ($4.00) or more, each spouse may designate on the income tax return that ~~one dollar ($1.00)~~ two dollars ($2.00) of the tax shall be credited to the North Carolina Political Parties Financing ~~Fund.~~ Fund for the use of the political party designated by the taxpayer. Amounts credited to the Fund shall be allocated among the political parties according to the designation of the taxpayer. Where any taxpayer elects to designate but does not specify a particular political party, those funds shall be distributed among the political parties on a pro rata basis according to their respective party voter registrations as determined by the most recent certification of the State Board of Elections. As used in this section, the term 'political party' means one of the following that has at least one percent (1%) of the total number of registered voters in the State:

(1) A political party that at the last preceding general State election received at least ten percent (10%) of the entire vote cast in the State for Governor or for presidential electors.

(2) A group of voters who by July 1 of the preceding calendar year, by virtue of a petition as a new political party, had duly qualified as a

new political party within the meaning of Chapter 163 of the General Statutes."

(b) This section becomes effective with respect to the 1997 taxable year and subsequent taxable years.

--DISCLOSURE OF SPENDING FOR MATERIAL THAT NAMES CANDIDATES, ELECTIONS, PARTIES, AND ISSUES.

Section 11. (a) G.S. 163-278.12 is repealed.

(b) Article 22A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-278.12A. Disclosure of spending for material that names elections, candidates, parties, elected officials, and referendum issues.**

(a) General Duty to Report. -- Any individual, person, political committee, or other entity that makes an expenditure for printed materials or advertisements broadcast or distributed to anyone other than members of the entity shall report those expenditures in accordance with subsection (b) of this section if a candidate, elected official, political party, public office, referendum issue, or election is named in the printed material or advertisement.

(b) Procedures for Reporting; Exceptions. -- Any political committee otherwise required by this Article to file reports with a board of elections shall include any expenditure described in subsection (a) of this section on those reports. Any entity not otherwise required by this Article to file reports shall report expenditures described in subsection (a) of this section to the State Board of Elections within 10 days after the aggregate expenditure has reached the threshold amount set for candidates and political party committees in G.S. 163-278.10A. After the initial report, each entity shall report subsequent expenditure described in subsection (a) of this section according to the schedule set out in G.S. 163-278.9(a), G.S. 163-278.9A(a), or Part 2 of this Article, whichever is appropriate. Individuals who incur expenses with respect to referendum issues are not subject to the disclosure requirements of this section.

(c) Applicability of Labeling Requirements. -- Persons shall be subject to the labeling provisions of G.S. 163-278.16(f) for any advertising in the media, as defined by that subsection, if that advertising is subject to subsection (a) of this section.

(d) Definition. -- For the purpose of this section, the term 'expenditure' means any purchase, advance, conveyance, deposit, distribution, transfer of funds, loans, payment, gift, pledge, or subscription of money or anything of value whatsoever, whether or not made in an election year, and any contract, agreement, promise, or other obligation, whether or not legally enforceable. An individual or entity is deemed to have made an expenditure for printed materials or advertisements if that individual or entity has agreed to compensate another individual or entity for purchasing such materials or advertisements."

(c) This section becomes effective December 1, 1997.

--DISCLOSING THE FLOW OF MONEY THROUGH NORTH CAROLINA AND NATIONAL POLITICAL ORGANIZATIONS.

Section 12. (a) G.S. 163-278.9(a) is amended by adding a new subdivision to read:

"(4a) 48-Hour Report. -- Any political committee or political party which receives a contribution or transfer of funds from any political committee shall make disclosure within 48 hours of receipt of a contribution or transfer of one thousand dollars ($1,000) or more received after the last preelection report but before an election. The disclosure shall be by report to the State Board of Elections identifying the source and amount of such funds. The State Board of Elections shall specify the form and manner of making the report. For purposes of this subdivision, 'political committee' means a combination of two or more individuals, or any person, committee, association, or organization, the primary or incidental purpose of which is to support or oppose any candidate or political party or to influence or attempt to influence the result of an election or which accepts contributions or makes expenditures for the purpose of influencing or attempting to influence the nomination or election of any candidate at any election, or which receives contributions to repay loans or cover a deficit. The term includes, without limitation, any political party's State, county, or district executive committee and includes out-of-state political committees."

(b) G.S. 163-278.9A(a) is amended by adding a new subdivision to read:

"(2a) 48-Hour Report. -- Any referendum committee which receives a contribution or transfer of funds from any political committee shall make disclosure within 48 hours of receipt of a contribution or transfer of one thousand dollars ($1,000) or more received after the last preelection report but before an election. The disclosure shall be by report to the State Board of Elections identifying the source and amount of such funds. The State Board of Elections shall specify the form and manner of making the report. For purposes of this subdivision, 'political committee' means a combination of two or more individuals, or any person, committee, association, or organization, the primary or incidental purpose of which is to support or oppose any candidate or political party or to influence or attempt to influence the result of an election or which accepts contributions or makes expenditures for the purpose of influencing or attempting to influence the nomination or election of any candidate at any election, or which receives contributions to repay loans or cover a deficit. The term includes, without limitation, any political party's State, county, or district executive committee and includes out-of-state political committees."

(c) This section becomes effective December 1, 1997.

Section 13. The provisions of this act are severable. If any provision is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the act that can be given effect without the invalid provision.

Section 14. This act is effective when it becomes law. Prosecutions for, or sentences based on, offenses occurring before the relevant effective date in this act are not abated or affected by this act, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **MORGAN** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE.**

☒ Committee Substitute for
S.B. 918 A BILL TO BE ENTITLED AN ACT TO AMEND THE DUTY OF PERSONS WHO DISCHARGE OIL OR ANY HAZARDOUS SUBSTANCE TO REPORT THE DISCHARGE TO THE DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES.

☐ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 918
Agriculture/Environment/Natural Resources Committee Substitute Adopted 4/28/97
Proposed House Committee Substitute S918-PCS8750

Short Title: Notice of Hazardous Discharge. (Public)

Sponsors:

Referred to:

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE DUTY OF PERSONS WHO DISCHARGE OIL OR ANY HAZARDOUS SUBSTANCE TO REPORT THE DISCHARGE TO THE DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-215.85 reads as rewritten:

"**§ 143-215.85. Required notice.**

(a) Every person owning or having control over a reportable quantity of oil or other substances discharged in any circumstances other than pursuant to a rule adopted by the Commission, a regulation of the U. S. Environmental Protection Agency, or a permit required by G.S. 143-215.1 or the Federal Water Pollution Control Act, upon notice that such discharge has occurred, shall immediately notify the Department, or any of its agents or employees, of the nature, location and time of the discharge and of the measures which are being taken or are proposed to be taken to contain and remove the discharge. The agent or employee of the Department receiving the notification shall immediately notify the Secretary or such member or members of the permanent staff of the Department as the Secretary may designate. If the discharged substance of which the Department is notified is a pesticide regulated by the North Carolina Pesticide Board, the Department shall immediately inform the Chairman of the Pesticide Board. Removal operations under this Article of substances identified as pesticides defined in G.S. 143-460 shall be coordinated in accordance

with the Pesticide Emergency Plan adopted by the North Carolina Pesticide Board; provided that, in instances where entry of such hazardous substances into waters of the State is imminent, the Department may take such actions as are necessary to physically contain or divert such substance so as to prevent entry into the surface waters.

(b) This section does not relieve any person of the obligation to remove the discharge and restore the area affected by the discharge as provided in G.S. 143-215.84.

(c) As used in subsection (a) of this section, 'reportable quantity' means:

(1) Any amount of oil discharged into the waters of the State;

(2) Five gallons or more of oil discharged that is reasonably likely to reach the waters of the State; or

(3) Any amount of a hazardous substance discharged in a quantity equal to or greater than the reportable quantity, as defined in federal regulations adopted pursuant to 33 U.S.C. § 1321(b)(2)(A), including Part 302 of 40 Code of Federal Regulations (1 July 1996 Edition), and in comparable rules adopted by the Commission."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 918
Agriculture/Environment/Natural Resources Committee Substitute Adopted 4/28/97

Short Title: Notice of Hazardous Discharge. (Public)

Sponsors:

Referred to:

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE DUTY OF PERSONS WHO DISCHARGE OIL OR ANY HAZARDOUS SUBSTANCE TO REPORT THE DISCHARGE TO THE DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-215.85 reads as rewritten:

"**§ 143-215.85. Required notice.**

(a) Every person owning or having control over a reportable quantity of oil or other substances discharged in any circumstances other than pursuant to a rule adopted by the Commission, a regulation of the U. S. Environmental Protection Agency, or a permit required by G.S. 143-215.1 or the Federal Water Pollution Control Act, upon notice that such discharge has occurred, shall immediately notify the Department, or any of its agents or employees, of the nature, location and time of the discharge and of the measures which are being taken or are proposed to be taken to contain and remove the discharge. The agent or employee of the Department receiving the notification shall immediately notify the Secretary or such member or members of the permanent staff of the Department as the Secretary may designate. If the discharged substance of which the Department is notified is a pesticide regulated by the North Carolina Pesticide Board, the Department shall immediately inform the Chairman of the Pesticide Board. Removal operations under this Article of substances identified as pesticides defined in G.S. 143-460 shall be coordinated in accordance with the Pesticide Emergency Plan adopted by the North Carolina Pesticide Board;

provided that, in instances where entry of such hazardous substances into waters of the State is imminent, the Department may take such actions as are necessary to physically contain or divert such substance so as to prevent entry into the surface waters.

(b) Any person who owns or has control over oil or other hazardous substance that is discharged and who is not required to notify the Department of the discharge under subsection (a) of this section shall comply with the removal and restoration provisions of G.S. 143-215.84.

(c) As used in subsection (a) of this section, 'reportable quantity' means:

(1) Any amount of oil discharged into the waters of the State;

(2) Five gallons or more of oil discharged in any manner that makes it reasonably likely for any amount of the oil to reach the waters of the State; or

(3) Any amount of a hazardous substance discharged in a quantity equal to or greater than the reportable quantity, as defined in federal regulations adopted pursuant to 33 U.S.C. § 1321(b)(2)(A), including Part 302 of 40 Code of Federal Regulations (1 July 1996 Edition), and in comparable rules adopted by the Commission."

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

VISITOR REGISTRATION SHEET

RULES, CALENDAR, AND OPERATIONS OF THE HOUSE **AUGUST 12, 1997**

Name of Committee Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Raynard Cumin	Cary - Carney
Tom Dyon	NC DEPT OF REVENUE
Rich Rudd	N.C.D.O.R.
Martha Glass	DOA
Alice Sharpe	State Construction 505 Wanda Ridge
Myra Thompson	Common Cause Durham NC
Ron Levine	DENR
Roz Smith	Lobbyist
George Reed	NC Council of Churches
Barbara Earls	NC Council of Churches
Rob Christensen	N+O
Susan Watson	Cosmetic Art Board
Douglas H. Van Essen	NC State Board of Cosmetic Art
Beckie Strut	PPAB
Natalie Haskins	Charlotte Chamber
Bob Kaylor	Kaylor Law Firm
Nat Mund	Conservation Council NC
Lucia Peel	NC Medical Society
Sandy Sands	WCSR
Michael Thompson	NC Power
Andy Bulam	SBE
W. Potter	NCDENR SOC
	Nanda Call of Stanly
	Sandra
Payne Mayo	

VISITOR REGISTRATION SHEET

RULES, CALENDAR, AND OPERATIONS OF THE HOUSE **AUGUST 12, 1997**

Name of Committee Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Pat McDowell	Democracy South
Sam Brown	Common Cause
Lisa Hamill	NC Alliance for Democracy
Henry A. Landsberger	AARP; a NC All for Democracy
Doug Howey	NCBIMIA
Cam Cover	BPMHL
Leslie Bewarge	NCCBF
Andy Case	DEHNR
[illegible]	NCFB
Robert PASchal	Young, Moore & Henderson, P.A.
Jason Valahni	Nationwide
Stan Goff	Democracy South
SAVI HORNE	Democracy South
Bruce Summers	NC Equity
Sonia Schmidt	NCWCBC
Rob Schofield	NCJCDC
David Ferrell	Hofler, McNamara, Caldwell, McElroy & Cutler, PA
David Simmons	ZDA, PA
Tommy Worth	Carolinas HealthCare System
David Richard	Arc/NC
John Tate	NHA/NC
N.T. Burnette	GACPD - DOA
LEIGHTON PRICE	ZDA, PA
Amy Anderson	Hunton & Williams
Chip Killian	Moore & Van Allen
Amy Jo Bain	Smith Anderson
[illegible]	

VISITOR REGISTRATION SHEET

RULES, CALENDAR, AND OPERATIONS OF THE HOUSE **AUGUST 12, 1997**

Name of Committee Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Marni Smith	Brist of. Myers Squibb
John Bourbeau	2e6 Alley P.A.
Dave Simpson	CAROLINAS AGC
Lee Atkinson	Kennon Craven, Long Grove LLC
Michael Ottaviano	Kennon Craven, Charlotte
Alan Miles	Barley & Dixon LLP
PERRI MORGAN	NFIB
Mary Caggiola	Mecklenburg County
Andy Connett	N.C.A.M.
Curt Williams	Governor's Office
[illegible]	DRHNR
WRC Hale	NC department of Insurance
DeAnne Nelson	"
Strozia N. McKinney	NC Dept. of Insurance
[illegible]	
Helen Pollard Feagles	N.C. Board of Cosmetic Art
Robert Pinn	Jordan Price Wall Gray & Jones
Mike Carroll	NCHSA
John Palisano	AT&T
BILL SLOGGIN	NCBA
Henry Jones	Attorney - Raleigh
R. Paul Williams	NCMBA
Jon Holmes	Council Swim Clubs
[illegible]	ACSR
Juanita Mask	CAPIA
[illegible]	NASW-NC
Paula A. Noel	Covenant w/ NC's Children

MINUTES
COMMITTEE ON RULES, CALENDAR, AND OPERATIONS OF THE HOUSE
August 13, 1997

The Committee on Rules, Calendar, and Operation of the House met August 13, 1997, at 3:00 p.m. in Room 421 in the Legislative Office Building. Representative Morgan, Committee Chair, called the meeting to order and asked the clerk to call the roll. The following members were present: Representative Bowie, Vice Chair; and Representatives Culp, Dockham, Gulley, Hill, McMahan, Miner, Mitchell, Thompson, and Wood.

The first bill before the Committee was the Senate committee substitute for House Bill 183 -A BILL TO BE ENTITLED AN ACT TO INCLUDE PRIOR IMPAIRED DRIVING CONVICTIONS IN FELONY PRIOR RECORD LEVEL CALCULATION, AND TO PROVIDE FOR AN INDEFINITE CIVIL SUSPENSION OF A DRIVERS LICENSE WHEN A DRIVER IS CHARGED WITH AN IMPAIRED DRIVING OFFENSE WHILE ANOTHER IMPAIRED DRIVING OFFENSE IS PENDING DISPOSITION. Representative Bowie, bill sponsor, was recognized to explain the Senate changes that occurred in the second section. Representative Bowie asked that Representative McComas explain the changes made in section two. The Chair recognized Representative McComas, who asked that Counsel Linwood Jones explain the changes in section two. The Chair recognized Counsel Jones to explain the changes. Chair Morgan temporarily displaced the bill without objection.

The next bill before the Committee was the Senate amendment for House Bill 437 - A BILL TO BE ENTITLED AN ACT CHANGING THE METHOD FOR APPOINTMENT OF MEMBERS OF THE PILOT MOUNTAIN CIVIC AND RECREATION CENTER AUTHORITY. The Chair recognized Representative Hiatt, bill sponsor, to speak on the Senate changes to the bill. Representative Hiatt recommended that the Committee recommend that the House not concur with the Senate on the amendment for House Bill 437. Representative Dockham moved that the Committee recommend to the House to not concur with the Senate amendment for House Bill 437 and request conferees to be appointed. Motion carried.

The Senate committee substitute for House Bill 1115 - A BILL TO BE ENTITLED AN ACT TO PROHIBIT THE CANCELLATION OF INSURANCE POLICIES THAT PROVIDE COVERAGE FOR CHURCHES FOR LOSSES RESULTING FROM A FIRE - was next before the Committee. Representative Boyd - McIntyre, bill sponsor, was recognized to explain the Senate changes to the House bill. Representative Boyd - McIntyre recommended that the House do concur with the Senate substitute. Representative Morgan, Chair, stated that the Committee's legal counsel had also reviewed the Senate changes. Representative Culp moved that the Committee recommend that the House do concur with the Senate committee substitute for House Bill 1115. Motion carried.

The next bill before the Committee was Senate committee substitute for House Bill 1157- A BILL TO BE ENTITLED AN ACT TO CLARIFY THE CORPORATE INCOME TAX ON CERTAIN TAX-EXEMPT OBLIGATIONS, TO DELETE THE CAP ON CORPORATE INCOME TAX DEDUCTIONS OF DIVIDENDS RECEIVED FROM REGULATED INVESTMENT COMPANIES, AND TO ALLOW THE DEPARTMENT OF REVENUE TO DEDUCT ITS COST OF ADMINISTERING THE DISTRIBUTION OF GROSS RECEIPTS TO CITIES. Chairman Morgan recognized Representative Morris, bill sponsor, to explain the Senate committee substitute for House Bill 1157. Representative Morris recommended concurrence. Representative McMahan moved that the Committee recommend that the House do concur with the Senate Committee Substitute for House bill 1151. Motion carried.

The Senate committee substitute for House Bill 183 was back before the Committee. Representative Bowie recommended that the Committee recommend that the House not concur with the Senate committee substitute for House Bill 183 and that conferees be appointed to work out the technical changes. Motion carried.

The next bill before the Committee was House committee substitute for Senate Bill 441 - A BILL TO BE ENTITLED AN ACT TO INCREASE THE AMOUNT ALLOCATED TO SHERIFFS FROM THE FEES CHARGED FOR CONCEALED HANDGUN APPLICATIONS AND RENEWALS. Counsel Linwood Jones was recognized to explain the Senate committee substitute. Representative Dockham moved that the Committee recommend a favorable report as to the House Committee Substitute for Senate Bill 441. Motion carried.

House Bill 814 - A BILL TO BE ENTITLED AN ACT REQUIRING THAT NONRESIDENT PHYSICIANS WHO TREAT PATIENTS IN THIS STATE THROUGH THE USE OF ELECTRONIC OR OTHER MEDIUMS SHALL BE LICENSED IN THIS STATE AND SHALL BE SUBJECT TO REASONABLE REGULATIONS BY THE NORTH CAROLINA MEDICAL BOARD - was next before the Committee, without objection. The Chair recognized Representative Bowie, bill sponsor, to explain the bill. Representative Bowie moved to adopt the amendment for House Bill 814. The Chair recognized Counsel to explain the amendment. Motion carried. Representative Bowie was recognized to explain the bill as amended. Representative McMahan moved for the amendment to be rolled into a committee substitute for House Bill 814; a favorable report to the committee substitute and an unfavorable report to the original bill. The motion carried.

The next bill before the Committee was Senate Bill 780 - A BILL TO BE ENTITLED AN ACT REQUIRING THAT NONRESIDENT PHYSICIANS WHO TREAT PATIENTS IN THIS STATE THROUGH THE USE OF ELECTRONIC OR OTHER MEDIUMS SHALL BE LICENSED IN THIS STATE AND SHALL BE SUBJECT TO REASONABLE REGULATIONS BY THE NORTH CAROLINA MEDICAL BOARD. Representative Bowie moved for the adoption of the amendment for Senate Bill 780. Counsel was recognized to explain the amendment. Motion carried. Representative Bowie moved that the amendment be rolled into a committee substitute for Senate Bill 780, and the committee substitute be given a favorable report. Motion carried.

Next before the Committee were four gubernatorial appointments to the State Personnel Commission. Counsel was recognized to explain the letters of appointment from the Governor. The appointees were the following: Stephen Davis, Becky Keith, Garey Ballance, and Tom Miriello. Chairman Morgan stated that procedurally, the Committee needs to take action in the form of a letter of recommendation prepared by the legal counsel to the House. Representative McMahan moved that a letter be prepared and approved by the Rules Committee recommending that the House confirm the four appointments to the State Personnel Commission. Motion carried.

The Committee adjourned at 3:25 p.m.

Representative Richard T. Morgan
Committee Chair

Anne M. Cole
Acting Committee Clerk

Attachments:
Committee Reports
Bills
Visitor's Sheet
Gubernatorial letters of recommendations with biographical information
Statute for State Personnel Commission

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative(s) **MORGAN** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE.**

Senate

☒ Committee Substitute for

H.B. 183 A BILL TO BE ENTITLED AN ACT TO INCLUDE PRIOR IMPAIRED DRIVING CONVICTIONS IN FELONY PRIOR RECORD LEVEL CALCULATION, AND TO PROVIDE FOR AN INDEFINITE CIVIL SUSPENSION OF A DRIVERS LICENSE WHEN A DRIVER IS CHARGED WITH AN IMPAIRED DRIVING OFFENSE WHILE ANOTHER IMPAIRED DRIVING OFFENSE IS PENDING DISPOSITION.

☐ 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)

4/24/97

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **MORGAN** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE.**

☒ Committee Substitute for
H.B. 437 A BILL TO BE ENTITLED AN ACT CHANGING THE METHOD FOR APPOINTMENT OF MEMBERS OF THE PILOT MOUNTAIN CIVIC AND RECREATION CENTER AUTHORITY.

☐ 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)

4/24/97

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative(s) **MORGAN** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE.**

Senate

☒ Committee Substitute for

H.B. 1115 A BILL TO BE ENTITLED AN ACT TO PROHIBIT THE CANCELLATION OF INSURANCE POLICIES THAT PROVIDE COVERAGE FOR CHURCHES FOR LOSSES RESULTING FROM A FIRE.

☐ 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)

4/24/97

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative(s) **MORGAN** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE.**

☒ Committee Substitute for

H.B. 1157 A BILL TO BE ENTITLED AN ACT TO CLARIFY THE CORPORATE INCOME TAX ON CERTAIN TAX-EXEMPT OBLIGATIONS, TO DELETE THE CAP ON CORPORATE INCOME TAX DEDUCTIONS OF DIVIDENDS RECEIVED FROM REGULATED INVESTMENT COMPANIES, AND TO ALLOW THE DEPARTMENT OF REVENUE TO DEDUCT ITS COST OF ADMINISTERING THE DISTRIBUTION OF GROSS RECEIPTS TO CITIES.

☐ 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)

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative(s) **MORGAN** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE.**

☒ Committee Substitute for

S.B. 441 A BILL TO BE ENTITLED AN ACT TO INCREASE THE AMOUNT ALLOCATED TO SHERIFFS FROM THE FEES CHARGED FOR CONCEALED HANDGUN APPLICATIONS AND RENEWALS.

☒ 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)

4/24/97

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **MORGAN** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE.**

☐ Committee Substitute for
H.B. 814 A BILL TO BE ENTITLED AN ACT REQUIRING THAT NONRESIDENT PHYSICIANS WHO TREAT PATIENTS IN THIS STATE THROUGH THE USE OF ELECTRONIC OR OTHER MEDIUMS SHALL BE LICENSED IN THIS STATE AND SHALL BE SUBJECT TO REASONABLE REGULATIONS BY THE NORTH CAROLINA MEDICAL BOARD.

☐ 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)

4/24/97

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **MORGAN** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE.**

☐ Committee Substitute for
S.B. 780 A BILL TO BE ENTITLED AN ACT REQUIRING THAT NONRESIDENT PHYSICIANS WHO TREAT PATIENTS IN THIS STATE THROUGH THE USE OF ELECTRONIC OR OTHER MEDIUMS SHALL BE LICENSED IN THIS STATE AND SHALL BE SUBJECT TO REASONABLE REGULATIONS BY THE NORTH CAROLINA MEDICAL BOARD.

☐ 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 House 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 183
Committee Substitute Favorable 4/22/97
Senate Judiciary Committee Substitute Adopted 8/4/97

Short Title: DWI/Felony Prior Record Level. (Public)

Sponsors:

Referred to:

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO INCLUDE PRIOR IMPAIRED DRIVING CONVICTIONS IN FELONY PRIOR RECORD LEVEL CALCULATION, AND TO PROVIDE FOR AN INDEFINITE CIVIL SUSPENSION OF A DRIVERS LICENSE WHEN A DRIVER IS CHARGED WITH AN IMPAIRED DRIVING OFFENSE WHILE ANOTHER IMPAIRED DRIVING OFFENSE IS PENDING DISPOSITION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-1340.14(b) reads as rewritten:

"(b) Points. -- Points are assigned as follows:

(1) For each prior felony Class A conviction, 10 points.

(1a) For each prior felony Class B1 conviction, 9 points.

(2) For each prior felony Class B2, C, or D conviction, 6 points.

(3) For each prior felony Class E, F, or G conviction, 4 points.

(4) For each prior felony Class H or I conviction, 2 points.

(5) For each prior Class A1 or Class 1 misdemeanor conviction or prior impaired driving conviction under G.S. 20-138.1, 1 point, except that convictions for Class 1 misdemeanor offenses under Chapter 20 of the General Statutes, other than conviction for misdemeanor death by vehicle ~~(G.S. 20-141.4(a2))~~, (G.S. 20-141.4(a2)) and conviction for impaired driving in a commercial vehicle (G.S. 20-138.2), shall not be assigned any points for

purposes of determining a person's prior record for felony sentencing.

(6) If all the elements of the present offense are included in the prior offense, 1 point.

(7) If the offense was committed while the offender was on probation or parole, or while the offender was serving a sentence of imprisonment, or while the offender was on escape from a correctional institution while serving a sentence of imprisonment, 1 point.

For purposes of determining prior record points under this subsection, a conviction for a first degree rape or a first degree sexual offense committed prior to the effective date of this subsection shall be treated as a felony Class B1 conviction, and a conviction for any other felony Class B offense committed prior to the effective date of this subsection shall be treated as a felony Class B2 conviction."

Section 2. G.S. 20-16.5(a) reads as rewritten:

"(a) Definitions. -- As used in this section the following words and phrases have the following meanings:

(1) Charging Officer. -- As described in G.S. 20-16.2(a1).

(2) Clerk. -- As defined in G.S. 15A-101(2).

(3) Judicial Official. -- As defined in G.S. 15A-101(5).

(4) Revocation Report. -- A sworn statement by a charging officer and a chemical analyst containing facts indicating that the conditions of subsection (b) have been ~~met.~~ met, and whether the person has a pending offense for which the person's license had been or is revoked under this section. When one chemical analyst analyzes a person's blood and another chemical analyst informs a person of his rights and responsibilities under G.S. 20-16.2, the report must include the statements of both analysts.

(5) Surrender of a Driver's License. -- The act of turning over to a court or a law-enforcement officer the person's most recent, valid driver's license or learner's permit issued by the Division or by a similar agency in another jurisdiction, or a limited driving privilege issued by a North Carolina court. A person who is validly licensed but who is unable to locate his license card may file an affidavit with the clerk setting out facts that indicate that he is unable to locate his license card and that he is validly licensed; the filing of the affidavit constitutes a surrender of the person's license."

Section 3. G.S. 20-16.5(e) reads as rewritten:

"(e) Procedure if Report Filed with Judicial Official When Person Is Present. -- If a properly executed revocation report concerning a person is filed with a judicial official when the person is present before that official, the judicial official must, after completing any other proceedings involving the person, determine whether there is probable cause to believe that each of the conditions of subsection (b) has been met. If he determines that there is such probable cause, he must enter an order revoking

the person's driver's license for the period required in this subsection. The judicial official must order the person to surrender his license and if necessary may order a law-enforcement officer to seize the license. The judicial official must give the person a copy of the revocation order. In addition to setting it out in the order the judicial official must personally inform the person of his right to a hearing as specified in subsection (g), and that his license remains revoked pending the hearing. ~~Unless the person is not currently licensed, the~~ The revocation under this subsection begins at the time the revocation order is issued and continues until the person's license has been ~~surrendered for 10 days and the person has paid the applicable costs. If the person is not currently licensed, the revocation continues until 10 days from the date the revocation order is issued and the person has paid the applicable costs.~~ revoked for the period specified in this subsection and the person has paid the applicable costs. The period of revocation is 10 days, if there are no pending offenses for which the person's license had been or is revoked under this section. If at the time of the current offense, the person has one or more pending offenses for which his license had been or is revoked under this section, the revocation shall remain in effect until a final judgment, including all appeals, has been entered for the current offense and for all pending offenses. In no event may the period of revocation under this subsection be less than 10 days. If within five working days of the effective date of the order, the person does not surrender his license or demonstrate that he is not currently licensed, the clerk must immediately issue a pick-up order. The pick-up order must be issued to a member of a local law-enforcement agency if the charging officer was employed by the agency at the time of the charge and the person resides in or is present in the agency's territorial jurisdiction. In all other cases, the pick-up order must be issued to an officer or inspector of the Division. A pick-up order issued pursuant to this section is to be served in accordance with G.S. 20-29 as if the order had been issued by the Division."

Section 4. G.S. 20-16.5(f) reads as rewritten:

"(f) Procedure if Report Filed with Clerk of Court When Person Not Present. -- When a clerk receives a properly executed report under subdivision (d)(3) and the person named in the revocation report is not present before the clerk, the clerk must determine whether there is probable cause to believe that each of the conditions of subsection (b) has been met. If he determines that there is such probable cause, he must mail to the person a revocation order by first-class mail. The order must direct that the person on or before the effective date of the order either surrender his license to the clerk or appear before the clerk and demonstrate that he is not currently licensed, and the order must inform the person of the time and effective date of the revocation and of its duration, of his right to a hearing as specified in subsection (g), and that the revocation remains in effect pending the hearing. Revocation orders mailed under this subsection become effective on the fourth day after the order is deposited in the United States mail. If within five working days of the effective date of the order, the person does not surrender his license to the clerk or appear before the clerk to demonstrate that he is not currently licensed, the clerk must immediately issue a pick-up order. The pick-up order must be issued and

served in the same manner as specified in subsection (e) for pick-up orders issued pursuant to that subsection. A revocation under this subsection begins at the date specified in the order and continues until the person's license has been revoked for the period specified in this subsection and the person has paid the applicable costs. ~~The~~ If the person has no pending offenses for which his license had been or is revoked under this section, the period of revocation under this subsection is:

(1) Ten days from the time the person surrenders his license to the court, if the surrender occurs within five working days of the effective date of the order; or

(2) Ten days after the person appears before the clerk and demonstrates that he is not currently licensed to drive, if the appearance occurs within five working days of the effective date of the revocation order; or

(3) Thirty days from the time:

a. The person's driver's license is picked up by a law-enforcement officer following service of a pick-up order; or

b. The person demonstrates to a law-enforcement officer who has a pick-up order for his license that he is not currently licensed; or

c. The person's driver's license is surrendered to the court if the surrender occurs more than five working days after the effective date of the revocation order; or

d. The person appears before the clerk to demonstrate that he is not currently licensed, if he appears more than five working days after the effective date of the revocation order.

If at the time of the current offense, the person has one or more pending offenses for which his license had been or is revoked under this section, the revocation shall remain in effect until a final judgment, including all appeals, has been entered for the current offense and for all pending offenses. In no event may the period of revocation for the current offense be less than the applicable period of revocation in subdivision (1), (2), or (3) of this subsection. When a pick-up order is issued, it must inform the person of his right to a hearing as specified in subsection (g), and that the revocation remains in effect pending the hearing. An officer serving a pick-up order under this subsection must return the order to the court indicating the date it was served or that he was unable to serve the order. If the license was surrendered, the officer serving the order must deposit it with the clerk within three days of the surrender."

Section 5. G.S. 20-16.5(i) reads as rewritten:

"(i) Effect of Revocations. -- A revocation under this section revokes a person's privilege to drive in North Carolina whatever the source of his authorization to drive. Revocations under this section are independent of and run concurrently with any other revocations. No court imposing a period of revocation following conviction of an offense involving impaired driving may give credit for any period of revocation imposed under this section. ~~A~~ Except as provided in subsection (i1) of this section, a

person is not eligible for a limited driving privilege under any statute while his license is revoked under this section."

Section 6. G.S. 20-16.5 is amended by adding a new subsection to read:

"(i1) A person whose license has been indefinitely revoked under this section may, after completion of 10 days under subsection (e) of this section or the applicable period of time under subdivision (1), (2), or (3) of subsection (f) of this section, apply for a limited driving privilege as provided in G.S. 20-179.3. A judge of the division in which the current offense is pending may issue the limited driving privilege only if the privilege is necessary to overcome undue hardship and the person meets the eligibility requirements of G.S. 20-179.3, except that the requirements in G.S. 20-179.3(b)(1)c. and G.S. 20-179.3(e) shall not apply."

Section 7. G.S. 20-16.5(k) reads as rewritten:

"(k) Report to Division. -- Except as provided below, the clerk must mail a report to the ~~Division within~~ Division:

(1) If the license is revoked indefinitely, within 10 working days of the revocation of the license; and

(2) In all cases, within 10 working days of the return of a license under this section or of the termination of a revocation of the driving privilege of a person not currently licensed.

The report must identify the person whose license has been ~~revoked and~~ revoked, specify the date on which his license was ~~revoked.~~ revoked, and indicate whether the license has been returned. The report must also provide, if applicable, whether the license is revoked indefinitely. No report need be made to the Division, however, if there was a surrender of the driver's license issued by the Division, a 10-day minimum revocation was imposed, and the license was properly returned to the person under subsection (h) within five working days after the 10-day period had elapsed."

Section 8. The Judicial Department shall implement the provisions of this act from existing funds available to it.

Section 9. Section 1 of this act becomes effective December 1, 1997. Sections 2 through 7 of this act become effective July 1, 1998.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 437

AMENDMENT NO. 1
(to be filled in by Principal Clerk)

H437-ALM-1

Date 7/3, 1997

Comm. Sub. [YES]
Amends Title [YES]
Second Edition

Senator Odom

moves to amend the bill on page 1, line 3, by inserting before the period:
"AND AUTHORIZING THE TOWNS OF CORNELIUS, DAVIDSON, HUNTERSVILLE, AND NAGS HEAD TO ADOPT ORDINANCES REGULATING REMOVAL, REPLACEMENT, AND PRESERVATION OF TREES WITHIN THE TOWNS.";

and on page 1, line 21, by rewriting the line to read:
"Section 4. In order to preserve and enhance one of the most valuable natural resources of the community and to protect the health, safety, and welfare of its citizens, a municipality may adopt ordinances to regulate the planting, removal, and preservation of trees on public and private property within the municipality.
Section 5. Prior to adopting an ordinance authorized by Section 4 of this act, a public hearing shall be held before the municipality's governing board. Notice of the hearing shall be given in accordance with G.S. 160A-364.
Section 6. Sections 4, 5, and 6 of this act shall apply only to the Towns of Cornelius, Davidson, Huntersville, and Nags Head.
Section 7. This act is effective when it becomes law.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ 45-3 FAILED _____ TABLED _____

Janet Pruitt 7/3/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 437
Committee Substitute Favorable 4/30/97

Short Title: Pilot Mountain Recreation. (Local)

Sponsors:

Referred to:

March 10, 1997

A BILL TO BE ENTITLED

AN ACT CHANGING THE METHOD FOR APPOINTMENT OF MEMBERS OF THE PILOT MOUNTAIN CIVIC AND RECREATION CENTER AUTHORITY.

The General Assembly of North Carolina enacts:

Section 1. (a) Members of the Pilot Mountain Civic and Recreation Center Authority, heretofore appointed by the Board of Commissioners of the Town of Pilot Mountain after receiving nominations from the Pilot Mountain Foundation, Inc., shall henceforth be appointed solely by the Pilot Mountain Foundation, Inc.

(b) In case of a vacancy by resignation or death, the vacancy shall be filled by appointment of the Pilot Mountain Foundation, Inc. If any vacancy shall exist for more than 60 days after written notification of the vacancy has been given to the Pilot Mountain Foundation, Inc., by the Pilot Mountain Civic and Recreation Authority, the remaining members of the Authority may fill the vacancy for the remainder of the unexpired term.

Section 2. The Authority shall have the power to adopt rules, regulations, and bylaws governing its own operation subject only to approval of the Pilot Mountain Foundation, Inc.

Section 3. The Authority shall forward to the Pilot Mountain Foundation, Inc., copies of the minutes of its meetings, and may, but shall not be required to, forward copies of such minutes to the Town of Pilot Mountain.

Section 4. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 1115
Senate Pensions & Retirement and Insurance Committee Substitute Adopted 7/30/97
Third Edition Engrossed 8/6/97

Short Title: Church Insurance Coverage. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE CANCELLATION OF INSURANCE POLICIES THAT PROVIDE COVERAGE FOR CHURCHES FOR LOSSES RESULTING FROM A FIRE.

The General Assembly of North Carolina enacts:

Section 1. Article 43 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-43-40. Cancellation of fire insurance for buildings owned by religious organizations prohibited in certain circumstances.**

(a) An insurer shall not cancel or decline to renew an insurance policy providing coverage for losses resulting from fire for a building owned by a religious organization solely because of:

(1) A previous occurrence of arson, unless the occurrence of arson was the act of a member of the religious organization that owns the building; or

(2) An oral or written statement directed to the religious organization or a member of the religious organization and threatening an act of arson against the religious organization.

This subsection applies only if:

(1) The religious organization reports all arson threats, arson attempts, or acts of arson to the appropriate law enforcement agency within 48 hours of discovery of such event and to the insurer not later

than the second business day after the arson threat, arson attempt or act of arson is reported to the appropriate law enforcement agency; and

(2) The members of the religious organization fully cooperate with law enforcement and the insurer in any investigation of and the prosecution of all offenses related to, an arson threat, an arson attempt, or an act of arson.

(b) As a condition of insurance policy renewal or continuance, an insurer may require that a religious organization implement all reasonable mitigation, loss control, and fire control measures recommended by the local law enforcement agency, the local fire department, or the insurer.

(c) As used in this section, 'religious organization' means any church, ecclesiastical, or denominational organization, or any organization that meets at an established physical place for worship in this State at which nonprofit religious services and activities are regularly conducted.

(d) The Commissioner may revoke, suspend, or refuse to renew the license of any insurer that violates this section pursuant to G.S. 58-3-100."

Section 2. This act becomes effective October 1, 1997, and applies to insurance policies issued or renewed on or after January 1, 1998. This act expires January 1, 2000.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 1157
Senate Finance Committee Substitute Adopted 7/10/97
Third Edition Engrossed 7/31/97

Short Title: Various Corporate Tax Law Changes. (Public)

Sponsors:

Referred to:

April 24, 1997

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE CORPORATE INCOME TAX ON CERTAIN TAX-EXEMPT OBLIGATIONS, TO DELETE THE CAP ON CORPORATE INCOME TAX DEDUCTIONS OF DIVIDENDS RECEIVED FROM REGULATED INVESTMENT COMPANIES, AND TO ALLOW THE DEPARTMENT OF REVENUE TO DEDUCT ITS COST OF ADMINISTERING THE DISTRIBUTION OF GROSS RECEIPTS TO CITIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-130.5(b) is amended by adding a new subdivision to read:

"(1a) Interest upon the obligations of any of the following, net of related expenses, to the extent included in federal taxable income:

a. This State, a political subdivision of this State, or a commission, an authority, or another agency of this State or of a political subdivision of this State.

b. A nonprofit educational institution organized or chartered under the laws of this State."

Section 2. G.S. 105-130.7 reads as rewritten:

"**§ 105-130.7. Deductible portion of dividends.**

(a) Regulated Investment Companies. -- A corporation may deduct the proportionate part of dividends received by it from a regulated investment company or a real estate investment trust, as defined in G.S. 105-130.12, as represents and

corresponds to income received by the regulated investment company or real estate investment trust that would not be taxed by this State if received directly by the corporation.

(b) Subsidiary Dividends. -- A corporation that, at the close of its taxable year, has its commercial domicile within North Carolina may deduct all dividends received from corporations in which it owns more than fifty percent (50%) of the outstanding voting stock.

~~Dividends from stock issued by a corporation are deductible to the extent provided in this section.~~

~~(1), (2). Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 3.~~

~~(3) A corporation may deduct such proportionate part of dividends received by it from a regulated investment company or a real estate investment trust, as defined in G.S. 105-130.12, as represents and corresponds to income received by such regulated investment company or real estate investment trust which would not be taxed by this State if received directly by the corporation.~~

~~(3a) Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 3.~~

~~(4) A corporation that, at the close of its taxable year, has its commercial domicile within North Carolina shall be allowed to deduct all dividends received from corporations in which it owns more than fifty percent (50%) of the outstanding voting stock.~~

~~(5) Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 3.~~

~~(6) In no case shall the total amount of dividends that are allowed as a deduction to a corporation under subdivision (3) of this section exceed fifteen thousand dollars ($15,000) for the taxable year.~~"

Section 3. G.S. 105-116.1(b), as enacted by Section 1 of Session Law 97-118, reads as rewritten:

"(b) Distribution. -- The Secretary must distribute to the cities part of the taxes collected under this Article on electric power companies, natural gas companies, and telephone companies. Each city's share for a calendar quarter is the percentage distribution amount for that city for that quarter minus one-fourth of the city's hold-back ~~amount.~~ amount and one-fourth of the city's proportionate share of the annual cost to the Department of administering the distribution. The Secretary must make the distribution within 75 days after the end of each calendar quarter."

Section 4. Sections 1 and 2 of this act are effective for taxable years beginning on or after January 1, 1997. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 441
House Committee Substitute Favorable 7/21/97

Short Title: Handgun Fee Reallocation. (Public)

Sponsors:

Referred to:

March 20, 1997

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE AMOUNT ALLOCATED TO SHERIFFS FROM THE FEES CHARGED FOR CONCEALED HANDGUN APPLICATIONS AND RENEWALS.

The General Assembly of North Carolina enacts:

Section 1. G.S 14-415.19(a) reads as rewritten:

"(a) The permit fees assessed under this Article are payable to the sheriff. The sheriff shall transmit the proceeds of these fees to the county finance officer to be remitted or credited by the county finance officer in accordance with the provisions of this subsection. The permit fees are as follows:

Application fee $80.00
Renewal fee $80.00
Duplicate permit fee $15.00

The county finance officer shall remit ~~sixty dollars ($60.00)~~ forty-five dollars ($45.00) of each application or renewal fee to the North Carolina Department of Justice for the costs of State and federal criminal record checks performed in connection with processing applications and for the implementation of the provisions of this Article. The remaining ~~twenty dollars ($20.00)~~ thirty-five dollars ($35.00) of each application or renewal fee shall be used by the sheriff to pay the costs of administering this Article and for other law enforcement purposes. The county shall expend the restricted funds for these purposes only."

Section 2. This act becomes effective September 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 814
Proposed Committee Substitute H814-PCS6318

Short Title: Telemedicine By Licensed Doctors. (Public)

Sponsors:

Referred to:

April 7, 1997

A BILL TO BE ENTITLED

AN ACT REQUIRING THAT NONRESIDENT PHYSICIANS WHO TREAT PATIENTS IN THIS STATE THROUGH THE USE OF ELECTRONIC OR OTHER MEDIUMS SHALL BE LICENSED IN THIS STATE AND SHALL BE SUBJECT TO REASONABLE REGULATIONS BY THE NORTH CAROLINA MEDICAL BOARD.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-18 reads as rewritten:

"**§ 90-18. Practicing without license; practicing defined; penalties.**

(a) No person shall practice medicine or surgery, or any of the branches thereof, nor in any case prescribe for the cure of diseases unless ~~he~~ the person shall have been first licensed and registered so to do in the manner provided in this Article, and if any person shall practice medicine or surgery without being duly licensed and registered, as provided in this Article, ~~he~~ the person shall not be allowed to maintain any action to collect any fee for such services. The person so practicing without license shall be guilty of a Class 1 misdemeanor.

(b) Any person shall be regarded as practicing medicine or surgery within the meaning of this Article who shall diagnose or attempt to diagnose, treat or attempt to treat, operate or attempt to operate on, or prescribe for or administer to, or profess to treat any human ailment, physical or mental, or any physical injury to or deformity of another ~~person.~~ person. A person who resides in any state and who, by use of any electronic or other mediums, performs any of the acts described in this subsection shall be regarded as practicing medicine or surgery and shall be subject to the

provisions of this Article and appropriate regulation by the North Carolina Medical Board.

(c) ~~Provided, that the~~ The following ~~cases~~ shall not ~~come within the definition above recited:~~ constitute practicing medicine or surgery as defined in subsection (b) of this section:

(1) The administration of domestic or family remedies in cases of emergency.

(2) The practice of dentistry by any legally licensed dentist engaged in the practice of dentistry and dental surgery.

(3) The practice of pharmacy by any legally licensed pharmacist engaged in the practice of pharmacy.

(4) The practice of medicine and surgery by any surgeon or physician of the United States army, navy, or public health service in the discharge of his official duties.

(5) The treatment of the sick or suffering by mental or spiritual means without the use of any drugs or other material means.

(6) The practice of optometry by any legally licensed optometrist engaged in the practice of optometry.

(7) The practice of midwifery as defined in G.S. 90-178.2.

(8) The practice of chiropody by any legally licensed chiropodist when engaged in the practice of chiropody, and without the use of any drug.

(9) The practice of osteopathy by any legally licensed osteopath when engaged in the practice of osteopathy as defined by law, and especially G.S. 90-129.

(10) The practice of chiropractic by any legally licensed chiropractor when engaged in the practice of chiropractic as defined by law, and without the use of any drug or surgery.

(11) The practice of medicine or surgery by any nonregistered reputable physician or surgeon ~~in a neighboring state coming~~ who comes into this ~~State for consultation~~ State, either in person or by use of any electronic or other mediums, on an irregular basis, to consult with a resident registered ~~physician.~~ physician or to consult with personnel at a medical school about educational or medical training. This proviso shall not apply to physicians resident in a neighboring state and regularly practicing in this State.

(12) Any person practicing radiology as hereinafter defined shall be deemed to be engaged in the practice of medicine within the meaning of this Article. 'Radiology' shall be defined as, that method of medical practice in which demonstration and examination of the normal and abnormal structures, parts or functions of the human body are made by use of X ray. Any person shall be regarded as engaged in the practice of radiology who makes or offers to make, for a consideration, a demonstration

or examination of a human being or a part or parts of a human body by means of fluoroscopic exhibition or by the shadow imagery registered with photographic materials and the use of X rays; or holds himself out to diagnose or able to make or makes any interpretation or explanation by word of mouth, writing or otherwise of the meaning of such fluoroscopic or registered shadow imagery of any part of the human body by use of X rays; or who treats any disease or condition of the human body by the application of X rays or radium. Nothing in this subdivision shall prevent the practice of radiology by any person licensed under the provisions of Articles 2, 7, 8, and 12A of this Chapter.

(13) Any act, task or function performed by an assistant to a person licensed as a physician by the North Carolina Medical Board when

a. Such assistant is approved by and annually registered with the Board as one qualified by training or experience to function as an assistant to a physician, except that no more than two assistants may be currently registered for any physician, and

b. Such act, task or function is performed at the direction or under the supervision of such physician, in accordance with rules and regulations promulgated by the Board, and

c. The services of the assistant are limited to assisting the physician in the particular field or fields for which the assistant has been trained, approved and registered;

Provided that this subdivision shall not limit or prevent any physician from delegating to a qualified person any acts, tasks or functions which are otherwise permitted by law or established by custom.

(14) The practice of nursing by a registered nurse engaged in the practice of nursing and the performance of acts otherwise constituting medical practice by a registered nurse when performed in accordance with rules and regulations developed by a joint subcommittee of the North Carolina Medical Board and the Board of Nursing and adopted by both boards.

(15) The practice of dietetics/nutrition by a licensed dietitian/nutritionist under the provisions of Article 25 of this Chapter.

(16) The practice of acupuncture by a licensed acupuncturist in accordance with the provisions of Article 30 of this Chapter."

Section 2. Article 1B of Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-21.12A. Nonresident physicians.**

A patient may bring a medical malpractice claim in the courts of this State against a nonresident physician who practices medicine or surgery by use of any electronic or other mediums in this State."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

HOUSE BILL 814

Short Title: Telemedicine By Licensed Doctors. (Public)

Sponsors: Representatives Bowie; Adams, Barbee, Bonner, Cansler, Dickson, Dockham, Esposito, Gulley, Hardy, Holmes, Jarrell, Jeffus, McComas, McMahan, Neely, Rayfield, Russell, Saunders, Sherrill, Tallent, Wainwright, Watson, and Wright.

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

April 7, 1997

A BILL TO BE ENTITLED

AN ACT REQUIRING THAT NONRESIDENT PHYSICIANS WHO TREAT PATIENTS IN THIS STATE THROUGH THE USE OF ELECTRONIC OR OTHER MEDIUMS SHALL BE LICENSED IN THIS STATE AND SHALL BE SUBJECT TO REASONABLE REGULATIONS BY THE NORTH CAROLINA MEDICAL BOARD.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-18 reads as rewritten:

"**§ 90-18. Practicing without license; practicing defined; penalties.**

(a) No person shall practice medicine or surgery, or any of the branches thereof, nor in any case prescribe for the cure of diseases unless ~~he~~ the person shall have been first licensed and registered so to do in the manner provided in this Article, and if any person shall practice medicine or surgery without being duly licensed and registered, as provided in this Article, ~~he~~ the person shall not be allowed to maintain any action to collect any fee for such services. The person so practicing without license shall be guilty of a Class 1 misdemeanor.

(b) Any person shall be regarded as practicing medicine or surgery within the meaning of this Article who shall diagnose or attempt to diagnose, treat or attempt to treat, operate or attempt to operate on, or prescribe for or administer to, or profess to treat any human ailment, physical or mental, or any physical injury to or deformity of another ~~person.~~ person. A person who resides in another state and who, by use of

any electronic or other mediums, performs any of the acts described in this subsection shall be regarded as practicing medicine or surgery and shall be subject to the provisions of this Article and appropriate regulation by the North Carolina Medical Board.

(c) ~~Provided, that the~~ The following ~~cases~~ shall not ~~come within the definition above recited:~~ constitute practicing medicine or surgery as defined in subsection (b) of this section:

(1) The administration of domestic or family remedies in cases of emergency.

(2) The practice of dentistry by any legally licensed dentist engaged in the practice of dentistry and dental surgery.

(3) The practice of pharmacy by any legally licensed pharmacist engaged in the practice of pharmacy.

(4) The practice of medicine and surgery by any surgeon or physician of the United States army, navy, or public health service in the discharge of his official duties.

(5) The treatment of the sick or suffering by mental or spiritual means without the use of any drugs or other material means.

(6) The practice of optometry by any legally licensed optometrist engaged in the practice of optometry.

(7) The practice of midwifery as defined in G.S. 90-178.2.

(8) The practice of chiropody by any legally licensed chiropodist when engaged in the practice of chiropody, and without the use of any drug.

(9) The practice of osteopathy by any legally licensed osteopath when engaged in the practice of osteopathy as defined by law, and especially G.S. 90-129.

(10) The practice of chiropractic by any legally licensed chiropractor when engaged in the practice of chiropractic as defined by law, and without the use of any drug or surgery.

(11) The practice of medicine or surgery by any nonregistered reputable physician or surgeon ~~in a neighboring state coming~~ who comes into this ~~State for consultation~~ State, either in person or by use of any electronic or other mediums, on an irregular basis, to consult with a resident registered ~~physician.~~ physician or to consult with personnel at a medical school about educational or medical training. This proviso shall not apply to physicians resident in a neighboring state and regularly practicing in this State.

(12) Any person practicing radiology as hereinafter defined shall be deemed to be engaged in the practice of medicine within the meaning of this Article. 'Radiology' shall be defined as, that method of medical practice in which demonstration and examination of the normal and abnormal structures, parts or functions of the human body are made by use of X ray. Any

person shall be regarded as engaged in the practice of radiology who makes or offers to make, for a consideration, a demonstration or examination of a human being or a part or parts of a human body by means of fluoroscopic exhibition or by the shadow imagery registered with photographic materials and the use of X rays; or holds himself out to diagnose or able to make or makes any interpretation or explanation by word of mouth, writing or otherwise of the meaning of such fluoroscopic or registered shadow imagery of any part of the human body by use of X rays; or who treats any disease or condition of the human body by the application of X rays or radium. Nothing in this subdivision shall prevent the practice of radiology by any person licensed under the provisions of Articles 2, 7, 8, and 12A of this Chapter.

(13) Any act, task or function performed by an assistant to a person licensed as a physician by the North Carolina Medical Board when

a. Such assistant is approved by and annually registered with the Board as one qualified by training or experience to function as an assistant to a physician, except that no more than two assistants may be currently registered for any physician, and

b. Such act, task or function is performed at the direction or under the supervision of such physician, in accordance with rules and regulations promulgated by the Board, and

c. The services of the assistant are limited to assisting the physician in the particular field or fields for which the assistant has been trained, approved and registered;

Provided that this subdivision shall not limit or prevent any physician from delegating to a qualified person any acts, tasks or functions which are otherwise permitted by law or established by custom.

(14) The practice of nursing by a registered nurse engaged in the practice of nursing and the performance of acts otherwise constituting medical practice by a registered nurse when performed in accordance with rules and regulations developed by a joint subcommittee of the North Carolina Medical Board and the Board of Nursing and adopted by both boards.

(15) The practice of dietetics/nutrition by a licensed dietitian/nutritionist under the provisions of Article 25 of this Chapter.

(16) The practice of acupuncture by a licensed acupuncturist in accordance with the provisions of Article 30 of this Chapter."

Section 2. Article 1B of Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-21.12A. Nonresident physicians.**

A patient may bring a medical malpractice claim in the courts of this State against a nonresident physician who practices medicine or surgery by use of any electronic or other mediums in this State."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 780
Proposed House Committee Substitute S780-PCS2808

Short Title: Telemedicine by Licensed Doctors. (Public)

Sponsors:

Referred to:

April 10, 1997

A BILL TO BE ENTITLED

AN ACT REQUIRING THAT NONRESIDENT PHYSICIANS WHO TREAT PATIENTS IN THIS STATE THROUGH THE USE OF ELECTRONIC OR OTHER MEDIUMS SHALL BE LICENSED IN THIS STATE AND SHALL BE SUBJECT TO REASONABLE REGULATIONS BY THE NORTH CAROLINA MEDICAL BOARD.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-18 reads as rewritten:

"**§ 90-18. Practicing without license; practicing defined; penalties.**

(a) No person shall practice medicine or surgery, or any of the branches thereof, nor in any case prescribe for the cure of diseases unless ~~he~~ the person shall have been first licensed and registered so to do in the manner provided in this Article, and if any person shall practice medicine or surgery without being duly licensed and registered, as provided in this Article, ~~he~~ the person shall not be allowed to maintain any action to collect any fee for such services. The person so practicing without license shall be guilty of a Class 1 misdemeanor.

(b) Any person shall be regarded as practicing medicine or surgery within the meaning of this Article who shall diagnose or attempt to diagnose, treat or attempt to treat, operate or attempt to operate on, or prescribe for or administer to, or profess to treat any human ailment, physical or mental, or any physical injury to or deformity of another ~~person:~~ person. A person who resides in any state and who, by use of any electronic or other mediums, performs any of the acts described in this subsection shall be regarded as practicing medicine or surgery and shall be subject to the

provisions of this Article and appropriate regulation by the North Carolina Medical Board.

(c) ~~Provided, that the~~ The following ~~cases~~ shall not ~~come within the definition above recited:~~ constitute practicing medicine or surgery as defined in subsection (b) of this section:

(1) The administration of domestic or family remedies in cases of emergency.

(2) The practice of dentistry by any legally licensed dentist engaged in the practice of dentistry and dental surgery.

(3) The practice of pharmacy by any legally licensed pharmacist engaged in the practice of pharmacy.

(4) The practice of medicine and surgery by any surgeon or physician of the United States army, navy, or public health service in the discharge of his official duties.

(5) The treatment of the sick or suffering by mental or spiritual means without the use of any drugs or other material means.

(6) The practice of optometry by any legally licensed optometrist engaged in the practice of optometry.

(7) The practice of midwifery as defined in G.S. 90-178.2.

(8) The practice of chiropody by any legally licensed chiropodist when engaged in the practice of chiropody, and without the use of any drug.

(9) The practice of osteopathy by any legally licensed osteopath when engaged in the practice of osteopathy as defined by law, and especially G.S. 90-129.

(10) The practice of chiropractic by any legally licensed chiropractor when engaged in the practice of chiropractic as defined by law, and without the use of any drug or surgery.

(11) The practice of medicine or surgery by any nonregistered reputable physician or surgeon ~~in a neighboring state coming~~ who comes into this ~~State for consultation~~ State, either in person or by use of any electronic or other mediums, on an irregular basis, to consult with a resident registered ~~physician.~~ physician or to consult with personnel at a medical school about educational or medical training. This proviso shall not apply to physicians resident in a neighboring state and regularly practicing in this State.

(12) Any person practicing radiology as hereinafter defined shall be deemed to be engaged in the practice of medicine within the meaning of this Article. "Radiology" shall be defined as, that method of medical practice in which demonstration and examination of the normal and abnormal structures, parts or functions of the human body are made by use of X ray. Any person shall be regarded as engaged in the practice of radiology who makes or offers to make, for a consideration, a demonstration

or examination of a human being or a part or parts of a human body by means of fluoroscopic exhibition or by the shadow imagery registered with photographic materials and the use of X rays; or holds himself out to diagnose or able to make or makes any interpretation or explanation by word of mouth, writing or otherwise of the meaning of such fluoroscopic or registered shadow imagery of any part of the human body by use of X rays; or who treats any disease or condition of the human body by the application of X rays or radium. Nothing in this subdivision shall prevent the practice of radiology by any person licensed under the provisions of Articles 2, 7, 8, and 12A of this Chapter.

(13) Any act, task or function performed by an assistant to a person licensed as a physician by the North Carolina Medical Board when

a. Such assistant is approved by and annually registered with the Board as one qualified by training or experience to function as an assistant to a physician, except that no more than two assistants may be currently registered for any physician, and

b. Such act, task or function is performed at the direction or under the supervision of such physician, in accordance with rules and regulations promulgated by the Board, and

c. The services of the assistant are limited to assisting the physician in the particular field or fields for which the assistant has been trained, approved and registered;

Provided that this subdivision shall not limit or prevent any physician from delegating to a qualified person any acts, tasks or functions which are otherwise permitted by law or established by custom.

(14) The practice of nursing by a registered nurse engaged in the practice of nursing and the performance of acts otherwise constituting medical practice by a registered nurse when performed in accordance with rules and regulations developed by a joint subcommittee of the North Carolina Medical Board and the Board of Nursing and adopted by both boards.

(15) The practice of dietetics/nutrition by a licensed dietitian/nutritionist under the provisions of Article 25 of this Chapter.

(16) The practice of acupuncture by a licensed acupuncturist in accordance with the provisions of Article 30 of this Chapter."

Section 2. Article 1B of Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-21.12A. Nonresident physicians.**

A patient may bring a medical malpractice claim in the courts of this State against a nonresident physician who practices medicine or surgery by use of any electronic or other media in this State."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 780

Short Title: Telemedicine By Licensed Doctors. (Public)

Sponsors: Senators Gulley; Rand.

Referred to: Children & Human Resources.

April 10, 1997

A BILL TO BE ENTITLED

AN ACT REQUIRING THAT NONRESIDENT PHYSICIANS WHO TREAT PATIENTS IN THIS STATE THROUGH THE USE OF ELECTRONIC OR OTHER MEDIUMS SHALL BE LICENSED IN THIS STATE AND SHALL BE SUBJECT TO REASONABLE REGULATIONS BY THE NORTH CAROLINA MEDICAL BOARD.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-18 reads as rewritten:

"**§ 90-18. Practicing without license; practicing defined; penalties.**

(a) No person shall practice medicine or surgery, or any of the branches thereof, nor in any case prescribe for the cure of diseases unless ~~he~~ the person shall have been first licensed and registered so to do in the manner provided in this Article, and if any person shall practice medicine or surgery without being duly licensed and registered, as provided in this Article, ~~he~~ the person shall not be allowed to maintain any action to collect any fee for such services. The person so practicing without license shall be guilty of a Class 1 misdemeanor.

(b) Any person shall be regarded as practicing medicine or surgery within the meaning of this Article who shall diagnose or attempt to diagnose, treat or attempt to treat, operate or attempt to operate on, or prescribe for or administer to, or profess to treat any human ailment, physical or mental, or any physical injury to or deformity of another ~~person.~~ person. A person who resides in another state and who, by use of any electronic or other mediums, performs any of the acts described in this subsection shall be regarded as practicing medicine or surgery and shall be subject to the

provisions of this Article and appropriate regulation by the North Carolina Medical Board.

(c) ~~Provided, that the~~ The following ~~cases~~ shall not ~~come within the definition above recited:~~ constitute practicing medicine or surgery as defined in subsection (b) of this section:

(1) The administration of domestic or family remedies in cases of emergency.

(2) The practice of dentistry by any legally licensed dentist engaged in the practice of dentistry and dental surgery.

(3) The practice of pharmacy by any legally licensed pharmacist engaged in the practice of pharmacy.

(4) The practice of medicine and surgery by any surgeon or physician of the United States army, navy, or public health service in the discharge of his official duties.

(5) The treatment of the sick or suffering by mental or spiritual means without the use of any drugs or other material means.

(6) The practice of optometry by any legally licensed optometrist engaged in the practice of optometry.

(7) The practice of midwifery as defined in G.S. 90-178.2.

(8) The practice of chiropody by any legally licensed chiropodist when engaged in the practice of chiropody, and without the use of any drug.

(9) The practice of osteopathy by any legally licensed osteopath when engaged in the practice of osteopathy as defined by law, and especially G.S. 90-129.

(10) The practice of chiropractic by any legally licensed chiropractor when engaged in the practice of chiropractic as defined by law, and without the use of any drug or surgery.

(11) The practice of medicine or surgery by any nonregistered reputable physician or surgeon ~~in a neighboring state coming~~ who comes into this ~~State for consultation~~ State, either in person or by use of any electronic or other mediums, on an irregular basis, to consult with a resident registered ~~physician.~~ physician or to consult with personnel at a medical school about educational or medical training. This proviso shall not apply to physicians resident in a neighboring state and regularly practicing in this State.

(12) Any person practicing radiology as hereinafter defined shall be deemed to be engaged in the practice of medicine within the meaning of this Article. "Radiology" shall be defined as, that method of medical practice in which demonstration and examination of the normal and abnormal structures, parts or functions of the human body are made by use of X ray. Any person shall be regarded as engaged in the practice of radiology who makes or offers to make, for a consideration, a demonstration

or examination of a human being or a part or parts of a human body by means of fluoroscopic exhibition or by the shadow imagery registered with photographic materials and the use of X rays; or holds himself out to diagnose or able to make or makes any interpretation or explanation by word of mouth, writing or otherwise of the meaning of such fluoroscopic or registered shadow imagery of any part of the human body by use of X rays; or who treats any disease or condition of the human body by the application of X rays or radium. Nothing in this subdivision shall prevent the practice of radiology by any person licensed under the provisions of Articles 2, 7, 8, and 12A of this Chapter.

(13) Any act, task or function performed by an assistant to a person licensed as a physician by the North Carolina Medical Board when

a. Such assistant is approved by and annually registered with the Board as one qualified by training or experience to function as an assistant to a physician, except that no more than two assistants may be currently registered for any physician, and

b. Such act, task or function is performed at the direction or under the supervision of such physician, in accordance with rules and regulations promulgated by the Board, and

c. The services of the assistant are limited to assisting the physician in the particular field or fields for which the assistant has been trained, approved and registered;

Provided that this subdivision shall not limit or prevent any physician from delegating to a qualified person any acts, tasks or functions which are otherwise permitted by law or established by custom.

(14) The practice of nursing by a registered nurse engaged in the practice of nursing and the performance of acts otherwise constituting medical practice by a registered nurse when performed in accordance with rules and regulations developed by a joint subcommittee of the North Carolina Medical Board and the Board of Nursing and adopted by both boards.

(15) The practice of dietetics/nutrition by a licensed dietitian/nutritionist under the provisions of Article 25 of this Chapter.

(16) The practice of acupuncture by a licensed acupuncturist in accordance with the provisions of Article 30 of this Chapter."

Section 2. Article 1B of Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-21.12A. Nonresident physicians.**

A patient may bring a medical malpractice claim in the courts of this State against a nonresident physician who practices medicine or surgery by use of any electronic or other media in this State."

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

VISITOR REGISTRATION SHEET

RULES, CALENDAR, AND OPERATIONS OF THE HOUSE **AUGUST 13, 1997**

Name of Committee Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Katherine Davis	Electricities of NC
Lucius Fullen	ATTORNEY
Zeb Alley	F.F.F.
Andy Romanet	N.C.L.M.
Ed Scott	NCCBD
T.A. Holt	NCDR
Bill Rossi	ATTORNEY
Bernard Allen	Secy. of State
Susan Valaam	Nationwide
Ed Regan	N.C. Assoc of Co. Comm.
Barry Smith	IBM Corp
Willie Riddick	DOR
Ann Case	DEHNR
Amy Anderson	Hunton & Williams
John Rustin	NCFPC
Jim Brown	NC State Ports
KEITH HUNDLEY	WASCO
Cam Casey	BPMHL
Rob Riddle	N.C.D.O.R.
[illegible]	[illegible]
Tommy Wood	CHS
David Simmons	ZOA, DA
John McMillan	Manning, Fulton & Skinner PA
Ann Duncan	WCSR
Brenda Daugherty	Sprint
Stan Williams	State Highway Admin.
Jenny Dorsett	" " "

VISITOR REGISTRATION SHEET

RULES, CALENDAR, AND OPERATIONS OF THE HOUSE **AUGUST 13, 1997**

Name of Committee Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jerry Jo Bain	Smith Anderson
John Palmisano	AT&T
W. R. Hale	NC Dept. of Insurance
Rodney E. Glover	NCPA
Gene Upchurch	CP&L
Natalie Haskins	Charlotte Chamber
Mary Carmichael	Mecklenburg County
Josh Cozart	Parker Poe
Ron Aiken	CNANC
Mike Rusher	News & Observer
Rob Schofield	NCJCOC
Henry Jones	Attorney - Raleigh
Jim Blackburn	NCPC
Martha Glass	DOA
Bill Lee	NCAHC
Dan Gerlach	Smith Anderson
Alan Miles	Bailey & Dixon LLP
Mike Carpenter	NCHSA
Jennifer Ingram	NCBA
Terry Kaplan	
Pamela Kinnier	E&HS

§ 126-2. State Personnel Commission.

(a) There is hereby established the State Personnel Commission (hereinafter referred to as "the Commission").

(b) The Commission shall consist of seven members who shall be appointed by the Governor on July 1, 1965, or as soon thereafter as is practicable. Two members of the Commission shall be chosen from employees of the State subject to the provisions of this Chapter; two members shall be appointed, of which one shall be an employee of local government subject to the provisions of this Chapter, from a list of individuals nominated by the North Carolina association of county commissioners; two members shall be individuals actively engaged in the management of a private business or industry; and one member shall be appointed from the public at large. Of the initial members of the Commission, two shall be appointed to serve for terms of two years, two shall be appointed to serve for terms of four years, and three shall be appointed to serve for terms of six years. Their successors shall be appointed by the Governor for terms of six years. Any vacancy occurring prior to the expiration of a term shall be filled by appointment for the unexpired term.

(c) Members of the Commission appointed after February 1, 1976, shall be appointed subject to confirmation by the General Assembly of North Carolina. If the General Assembly is not in session when an appointment is made, the appointee shall temporarily exercise all of the powers of a confirmed member until the convening of the next legislative session. If the General Assembly does not act on confirmation of a proposed member within 30 legislative days of the submission of the name, the member shall be considered confirmed. If the Governor does not appoint a new member within 60 calendar days of the occurrence of a vacancy or the rejection of an appointment by the General Assembly, the remaining members of the Commission shall have the authority to fill the vacancy.

(d) The Governor may at any time after notice and hearing remove any Commission member for gross inefficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance in office.

(e) Members of the Commission who are employees of the State subject to the provisions of this Article shall be entitled to administrative leave without loss of pay for all periods of time required to conduct the business of the Commission.

(f) Four members of the Commission shall constitute a quorum.

(g) The Governor shall designate one member of the Commission as chairman.

(h) The Commission shall meet quarterly, and at other times at the call of the chairman. (1965, c. 640, s. 2; 1975, c. 667, ss. 2-4; 1989, c. 540.)

CASE NOTES

Cited in Nantz v. Employment Sec. Comm'n, 290 N.C. 473, 226 S.E.2d 340 (1976); Reed v. Byrd, 41 N.C. App. 625, 255 S.E.2d 606 (1979); Jones v. Department of Human Resources, 44 N.C. App. 116, 260 S.E.2d 654 (1979).

STATE OF NORTH CAROLINA
OFFICE OF THE GOVERNOR
RALEIGH 27603-8001

JAMES B. HUNT JR.
GOVERNOR

June 30, 1997

The Honorable Harold Brubaker
Speaker of the House
2304 Legislative Building
Raleigh, NC 27601

Dear Mr. Speaker:

Pursuant to General Statute 126-2, I hereby appoint Stephen Davis to serve as a member of the North Carolina State Personnel Commission and submit his name for confirmation by the North Carolina General Assembly. Mr. Davis will serve a term to begin July 1, 1997 and to expire June 30, 2003.

Enclosed is biographical information on Mr. Davis. Please feel free to call on him or members of my staff if you need additional information.

My warmest personal regards.

Sincerely,

James B. Hunt Jr.

cc: The Honorable Dennis Wicker
The Honorable Marc Basnight
Ms. Janet Pruitt
Ms. Denise Weeks

Stephen E. Davis
1336 Baez Street
Raleigh, North Carolina 27608

Home: [919] 546-0208 Business: [919] 733-2940

NC Department of Human Resources 1993 - present
Director, Division of Personnel Services

Manage and direct the department's personnel and human resource management programs for 18,500 employees subject to the State Personnel Act and 27,000 local government employees engaged in the delivery of social services, mental health and public health programs. The department's personnel program also includes a separate personnel system for 700+ employees subject to the provisions of NCGS 115C for teachers and educational administrators. Oversee the work of approximately 160 professional, paraprofessional and support staff in central and field locations across North Carolina. Primary responsibilities include consultation to the Secretary and other executive staff on issues concerning the department's workforce, settlement of employee relations cases subject to litigation, workforce and budgetary reductions, allocation and deployment of positions within the department, and overall management of the personnel programs in 23 internal divisions and institutions. Other key responsibilities include administration of a $2.3 million division budget for direct and indirect costs, a $3.0 million Worker's Compensation program, and authority to approve settlements resulting from employee grievances. The work requires sufficient depth of professional knowledge of human resource administration to ensure the department's compliance with an array of federal, state and local statutes including Title VII of the 1964 Civil Rights Act, the 1963 Equal Pay Act, and Americans with Disabilities Act, the Fair Labor Standards Act, and the Family Medical Leave Act. The role is intensively involved at an executive level in the management and administration of the department's programs and services through service on the department's Executive Committee.

NC Office of the State Controller 1989-1993
Director of Personnel, Policy & Communications

Responsible for planning and directing comprehensive human resources program serving 297 employees engaged in systems accounting, telecommunications, applications development, mainframe services, information resource management, and technical/administrative support activities. Directed and managed employee relations, position classification, wage/hour, employee benefits, employee/management development, employee selection, equal employment opportunity, safety and health, and employee wellness programs. Consulted with agency management on staffing, organization design, and position management issues. Chaired the agency's Insurance Committee and advised all agency standing committees including Safety & Health, Performance appraisal Advisory Board, and Affirmative Action Committee. Served on the agency's Executive Management Team with primary role for strategic planning to include both annual and long-range forecasting, advising on contemporary issues affecting employees and managers; and recommending course of action in dealing with various administrative matters. Monitored and reviewed legislation dealing with administrative, managerial, and personnel-related matters and advised the State Controller on implementation. Served as the agency's liaison with the Governor's Office on development of annual departmental plan which includes mission statements, goals and management objectives, strategies and outcome measures for programs and services.

Directed and managed agency-wide program for employee communications and public information. Directed staff in the creation and design of agency publications including employee newsletter, technical newsletter, marketing and promotional brochures and pamphlets, and related printed materials for distribution to clients and associates both within and external to state government.

NC Department of Administration 1985-1989
Assistant Personnel Director

Primary responsibility was for position classification, salary administration, recruitment and employee relations. Served as agency EEO Officer and chaired Insurance Committee. Administered administrative budget for personnel and staff development services in an agency serving 1200 employees engaged in physical plant, purchasing and contract, law enforcement, state construction, public telecommunications and motor fleet services.

NC Office of State Personnel 1981-1985
Personnel Analyst II

Accountable for administration of various human services classes throughout state government. Directed and led statewide occupational, pay, and/or organizational studies which include compensation surveys, data analysis, and formulation of recommendations to the State Personnel Commission.

NC Division of Health Services 1979-1981
Personnel Analyst I

Participated in position classification studies; determined appropriate levels of work according to standard allocation factors; and recommended salary ranges compatible with complexity of work performed. Emphasis was on analytical skills, interpersonal relations, and oral/written communications. Determined administrative and professional exemptions to FLSA.

George Shinn & Associates 1972-79
Charlotte, North Carolina

Functioned as a corporate educational consultant with responsibility for advising independent for-profit business colleges in the South and Midwest on development and implementation of student recruitment and admissions programs. Served as Director of Admissions for King's College in Raleigh, NC and as Director, King's College in Durham, NC.

EDUCATION

East Carolina University AB, Political Science
Greenville, North Carolina
1967-71

PROFESSIONAL ACTIVITIES

Graduate, NC Public Manager Program
Graduate, NC Fundamentals of Management program
Member, NC Work & Family Council
Member, State Employees Combined Campaign Advisory Board
    Executive Committee
    Chair, Training Subcommittee
Member, Governors Commission on State Employees
Member, statewide EEO Policy Review Committee
Member, statewide 504/ADA Interagency Task Force

STATE OF NORTH CAROLINA
OFFICE OF THE GOVERNOR
RALEIGH 27603-8001

JAMES B. HUNT JR.
GOVERNOR

June 30, 1997

The Honorable Harold Brubaker
Speaker of the House
2304 Legislative Building
Raleigh, NC 27601

Dear Mr. Speaker:

Pursuant to General Statute 126-2, I hereby appoint Becky Keith to serve as a member of the North Carolina State Personnel Commission and submit her name for confirmation by the North Carolina General Assembly. Ms. Keith will serve a term to begin July 1, 1997 and to expire June 30, 2003.

Enclosed is biographical information on Ms. Keith. Please feel free to call on her or members of my staff if you need additional information.

My warmest personal regards.

Sincerely,

James B. Hunt Jr.

cc: The Honorable Dennis Wicker
The Honorable Marc Basnight
Ms. Janet Pruitt
Ms. Denise Weeks

RESUME

Rebecca D. Keith
P. O. Box 74
Rolesville, North Carolina 27571

Objective: To obtain an appointment to the State Personnel Commission

Education: High School with college-level coursework

Work Experience:

1963-79 Office of State Personnel: Various jobs within the Position Management area, including technical support, classification & pay, and administration of the local salary plans.

1979-93 Department of Transportation: Position Management Analyst with duties including classification & pay for all areas of DOT and DMV.

1993-Present Department of Transportation: Deputy Personnel Director with duties including administering day-to-day and technical aspects of the DOT Personnel Office which provides services to approximately 14,000 employees located statewide.

Committee Appointments and Special Projects:

* Development Committee Member for COMAS Category of N. C. Factor Ranking Benchmark/Guidechart System of job evaluation.
* Pay Equity Study Committee Member.
* Cafeteria Benefits Study Committee for SEANC.

Committee Appointments and Special Projects (Continued):

* SEANC Committee Member to assist in development of the Comprehensive Pay Plan for State Employees.

* OSP Steering Committee Member to develop and implement evaluation tool for classes in the Office Support Services Occupational Group. Assisted in developing and providing training for other state agencies.

* SEANC District Chairperson and various other chapter and district positions.

Special Recognitions: 1996 Nominee for Governor's Award of Excellence

Community Activities:

* Sunday School Teacher at Rolesville Baptist Church for Adult Couples Class for past 10 years.

* Community volunteer for various fund raisers and events to help someone with a special need.

* Chaired Rolesville Baptist Church Personnel Committee and led in the development of job descriptions and personnel policies; presented and justified the establishment of a full-time Minister of Education and Youth; committee actively recruited and hired two new employees under my leadership.

STATE OF NORTH CAROLINA
OFFICE OF THE GOVERNOR
RALEIGH 27603-8001

JAMES B. HUNT JR.
GOVERNOR

June 30, 1997

The Honorable Harold Brubaker
Speaker of the House
2304 Legislative Building
Raleigh, NC 27601

Dear Mr. Speaker:

Pursuant to General Statute 126-2, I hereby appoint Garey Ballance to serve as a member of the North Carolina State Personnel Commission and submit his name for confirmation by the North Carolina General Assembly. Mr. Ballance will serve a term to begin immediately and to expire June 30, 2001.

Enclosed is biographical information on Mr. Ballance. Please feel free to call on him or members of my staff if you need additional information.

My warmest personal regards.

Sincerely,

James B. Hunt Jr.

cc: The Honorable Dennis Wicker
The Honorable Marc Basnight
Ms. Janet Pruitt
Ms. Denise Weeks

GAREY M. BALLANCE
Route 4, Box 671
Warrenton, NC 27589

EDUCATION:

Univ. of North Carolina Law/Chapel Hill, NC
J.D. 5/95
Honors/Activities:
President, Black Law Student's Association (1994-95)
Environmental Justice Task Force (1994 spr.)
Intramural Sports

Hampton University/Hampton, VA
B.S. Economics, 5/92
Honors/Activities:
Honor Graduate (1992)
Debate Team (1989-91)
Omega Psi Phi Fraternity-Vice Pres. (1990-92)

EXPERIENCE:

Associate, Frank W. Ballance, Jr. & Associates, P.A
8/1/95-Present Warrenton, N.C.
Practice consists of Criminal Law, Personal Injury, Domestic Law, Worker's Compensation, Real Estate, and Civil Law.

Intern, Wake County District Attorney's Office
6/1/94-12/21/94 Raleigh, N.C.
Responsible for prosecuting misdeameanor cases, such as simple assaults, DWIs, and various other traffic offenses.

Law Clerk, Gilbert Chichester, P.A.
6/16/94-8/10/94 Littleton, N.C.
Responsible for assisting Mr. Chichester in his civil and criminal law practice. Conducted research, interviewed clients, and performed field investigation.

Law Clerk, Carolina Power & Light Company
6/1/93- 8/6/93 Raleigh, N.C.
Responsible for conducting research for attorney staff dealing with environmental, contract, and regulatory law. Also assisted with pro-bono cases.

Extracurricular/
Volunteer Activ.:

Volunteer for Warren Co. One-on-One Program where I serve as a mentor for an at-risk teenager. President of a church youth group.

REFERENCES AND WRITING SAMPLE AVAILABLE UPON REQUEST.

STATE OF NORTH CAROLINA
OFFICE OF THE GOVERNOR
RALEIGH 27603-8001

JAMES B. HUNT JR.
GOVERNOR

June 30, 1997

The Honorable Harold Brubaker
Speaker of the House
2304 Legislative Building
Raleigh, NC 27601

Dear Mr. Speaker:

Pursuant to General Statute 126-2, I hereby appoint Tom Miriello to serve as a member of the North Carolina State Personnel Commission and submit his name for confirmation by the North Carolina General Assembly. Mr. Miriello will serve a term to begin immediately and to expire June 30, 1999.

Enclosed is biographical information on Mr. Miriello. Please feel free to call on him or members of my staff if you need additional information.

My warmest personal regards.

Sincerely,

James B. Hunt Jr.

cc: The Honorable Dennis Wicker
The Honorable Marc Basnight
Ms. Janet Pruitt
Ms. Denise Weeks

3-1065

THOMAS F. MIRIELLO

2615 Torcross Drive
Fayetteville, NC 28304

Telephone:
(910)-323-3376

WORK EXPERIENCE AND EXPERTISE

Management: Extensive experience in directing mental health community based, institutional, regional and statewide level prevention, education, intervention and treatment service delivery programs in the public and private sector. Expertise in planning, implementation, management, evaluation, budgeting, contracting, grantsmanship, monitoring, consultation and application of federal and state regulations.

Supervision: Extensive experience in supervising a diversity of mental health management, clinical, educational and technical personnel at community, institutional and state levels. Expertise in personnel policy administration, employer-employee relations, techniques in employee productivity, performance evaluation systems.

Personnel: Extensive experience in position development, leveling, classification administration, recruitment, interviewing techniques and training of technical and professional personnel in the public and private sector. Expertise in personnel analysis, methods improvement techniques, credentialing systems development and administering personnel policies/procedures promulgated by local, state and federal agencies.

Service Delivery: Extensive experience in providing "hands on" clinical and education services at community, institutional, regional and statewide levels. Expertise in providing prevention, education,

EMPLOYMENT HISTORY SUMMARY

EMPLOYER	POSITION
Cumberland County Mental Health Center Fayetteville, NC	**Area Director** -Management of a comprehensive service delivery system with a $21 million budget and 395 staff (7/15/92 to date)
Self-Employed Consulting Practice Raleigh, North Carolina and **Program Resource Institute, President** Dunn, North Carolina	**Private Consultant** -Contract consultant services provided to public and private education, intervention and treatment agencies and corporations (7/15/92)
N.C. Division of Mental Health, Developmental Disabilities, and Substance Abuse Services State Office Headquarters	**State Director, Alcohol/Drug Abuse Services** Director and manager of statewide service delivery operations and management of $50 million federal, state and local resources (7-85 to 8-88)
Same As Above State Office Headquarters Raleigh, North Carolina	**Chief of Special Projects, Division Director Office** - Management and Productivity improvement consultant to 15 hospitals, state and regional offices and 41 programs (7-82 to 7-85)

Same As Above
State Office Headquarters
Raleigh, North Carolina

Same As Above
State Office Headquarters
Raleigh, North Carolina

Same As Above
South Central Regional Office
Fayetteville, North Carolina

Cumberland-Sampson Mental Health Center
Cumberland and Sampson Counties
Fayetteville and Clinton, North Carolina

Chief, Operations Branch - Management of 7 statewide speciality programs and supervision of 7 unit managers (1-79 to 7-82)

Chief, Drug Programs - Directed and managed statewide service delivery system and supervised 3 auditors (9-75 to 1-79)

Regional Coordinator -Consultant and program auditor for 20 community programs and 2 regional institutions (9-74 to 9-75)

Assistant Area Director/Additions Program Director - Managed operations of a 2 county area program and supervised service delivery and management staff (8-71 to 9-74)

EDUCATION AND TRAINING

State, National and International Certifications - Drug Abuse Counselor: International Certification Reciprocity Consortium and N. C. Substance Abuse Professional Certification Board (1984-98)

Methodist College: Bachelor of Arts Degree (1970); Major in Sociology with Counseling concentration and mental health internship

University of Miami: Center for Urban Studies Training Course (1971); Graduate Credit

Appalachian State University: Employee Assistance Course (1972)

East Carolina University: Professional Practicum Program (1972)

Rutgers University: Community Organization and Management Course (1973); Graduate Credit and State scholarship recipient

East Carolina University: The Occupational Program Consultant's Training Institute Course (1974)

University of North Carolina: School on Alcohol and Drug Studies - various courses on prevention, education and clinical services (1978-87)

University of Georgia: Southeastern States School on Alcohol and Drug Studies - Board of Directors (1985-88)

Nonacademic: Completed numerous training programs in management, organizational development, planning, budgeting, personnel supervision, evaluation methodologies and service delivery operations

MILITARY SERVICE

United States Army, National Guard: Completed Combat Basic Training (1970) at Fort Campbell, Kentucky and served as a squad leader, platoon guide and honor graduate nominee. Graduated from U.S. Army Engineer School, Fort Belvoir, Virginia (1971) and was honorably discharged from active and reserve duty in 1976.

ACTIVITIES AND HONORS

State President: Addiction Professionals of North Carolina (1995 - 97)

Norbert L. Kelly Distinguished Service Award: Addiction Professionals of North Carolina (1996)

Board of Directors/Founding Member: Cumberland County Partnership for Children (1994-96)

Board of Visitors: Methodist College (1993 to date)

State Representative: National Association of State Alcohol and Drug Abuse Directors (1985-88)

Select Reviewer: U.S. Department of Education and U.S. Department of Health and Human Services (1988 to date)

State Delegate: The White House Conference for a Drug Free America (1986)

Board of Directors/Founding Member: N.C. Substance Abuse Professional Certification Board (1984-87)

Who's Who in Health Care: (1977)

Outstanding Young Men of America Award: (1976)

Honor Graduate Candidate: U.S. Army Engineer School, Fort Belvoir, Virginia (1971)

Internal Vice President: Hometown Jaycee Chapter (1970)

Dean's List Graduate: Methodist College (1970)

Industrial Arts Award: Erwin High School (1966)

Eagle Scout and Assistant Scout Master: (1962-66)

SUMMARY OF PROFESSIONAL ACHIEVEMENTS AND ACCOMPLISHMENTS

°Implemented first statewide prevention, intervention and treatment standards which became a national model in development of the "Federal Funding Criteria."

°Established first statewide forum for public and private managers of services at local, regional and state levels.

°Initiated first statewide prevention-education clearinghouse and information center.

°Established first state interagency advisory team to Governor on alcohol/drug issues.

°Designed and implemented first statewide DWI offender education and treatment program.

°Developed first "Academic Linkages" education and training program with colleges and universities.

°Implemented first employee assistance program for state government employees.

°Implemented first statewide adolescent alcohol/drug service delivery system.

°Established first state level mental health, retardation and substance abuse criminal justice office.

°Developed first "Management and Productivity Improvement" projects to increase efficiency/effectiveness of state and regional operations.

°Authored and implemented first statewide substance abuse personnel classification and specification series.

°Designed and developed first statewide alcohol/drug training and information publication.

°Authored and established first "Statewide Services Contract" in state administering federal funds.

°Developed and implemented first institutional on-site review process for state alcohol/drug hospitals.

°Co-authored state plans for federal formula contract and grant project funds.

°Co-authored first drug professional and substance abuse professional credentialing system in state.

°Established one of the first partial hospitalization programs in the state focusing on deinstitutionalization.

°Developed and managed largest public alcohol/drug "comprehensive" community program in state comprised of prevention, education, outreach, intervention and treatment services.

°Established first county school employee assistance program in the nation.

°Authored one of the first mental health center information directories in the state.

°Authored and served as project manager for numerous grants, contracts and formula budgets for urban and rural county programs.

°Designed and developed first "inventory" of treatment, intervention and informational services by county, regional and statewide

°Implemented first "Outcome/Impact Study" of alcohol and drug services on a county and regional basis.

°Developed needs assessment instruments, demographic reporting formats and fiscal impact reporting for categorical funding requirements of local, state and federal agencies.

°Established first organized and continuous in-service and video training program for public alcohol/drug, mental health and mental retardation professionals in urban county program and regional subdivision of state.

°Generated numerous "drafts" of bills prompting legislative appropriations and/or regulations for prevention, intervention, treatment and regulatory services.

°State delegate, presenter or lecturer:

-The Learning Channel, internationally syndicated television production to over 30 million viewers

-Open Net, statewide syndicated television production to over 4 million viewers

-Governor's Press Conference forums for written and electronic media

-National Governor's Association Public Hearings

-Southeastern Governor's Conference Public Forums

-National and regional White House Conferences For A Drug Free America

-The President's Conference for Drug Free Workplace

-Federal Statewide Services Contract Managers Conference

-National Association of State Alcohol and Drug Abuse Directors

-Southeastern States Credentialing Reciprocity Network

-Southeastern States Regional Training and Education Center

-The Governor's Crime Commission

-The Governor's Cabinet Cluster Education Committee

-Metrolina Chapter of Employee Assistance Program Professionals

-The John Umstead Series of Distinguished Lectures

-The Governor's Council on Substance Abuse Among Children and Youth

-The North Carolina General Assembly sessions 1975-90, numerous Senate, House and Joint Conference Committees

-Commission on Mental Health, Developmental Disabilities and Substance Abuse

-Numerous statewide professional associations and advocacy organizations

North Carolina General Assembly
House of Representatives
Legislative Office Building
Raleigh 27601-1096

REPRESENTATIVE RICHARD T. MORGAN
31ST DISTRICT

OFFICE ADDRESS: LEGISLATIVE OFFICE BUILDING
ROOM 404
RALEIGH, N.C. 27601-1096
TELEPHONE: (919) 715-3028
(919) 733-3113 FAX

DISTRICT ADDRESS: 570 PINEHURST SOUTH
PINEHURST, N.C. 28374
TELEPHONE: (910) 295-4575

August 20, 1997

COMMITTEES:

CHAIRMAN
RULES, CALENDAR & OPERATIONS
OF THE HOUSE
APPROPRIATIONS
TRANSPORTATION
COMMERCE
PUBLIC UTILITIES
CONGRESSIONAL REDISTRICTING
ETHICS
FINANCE
LOCAL, REGIONAL, AND STATE REVENUES
JUDICIARY I

The Speaker and Members of the House
North Carolina General Assembly
State Legislative Building
Raleigh, NC 27603

Dear Mr. Speaker and Members of the House:

In compliance with the provisions of G.S. 126-2, requiring appointees to the State Personnel Commission to be confirmed by the General Assembly, Governor Hunt has submitted his appointees, Mr. Stephen Davis, Mr. Tom Miriello, Ms. Becky Keith, and Mr. Garey Ballance, for confirmation.

Mr. Davis and Ms. Keith, appointed to the two Commission positions for State employees, have been appointed to terms that begin July 1, 1997 and expire June 30, 2003.

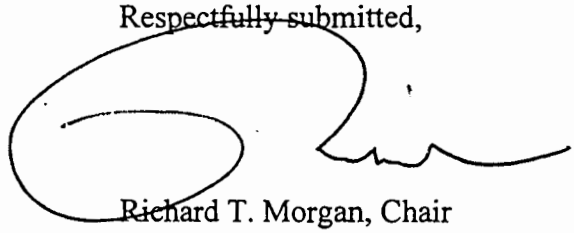
Mr. Miriello was appointed immediately to fill the unexpired remainder of the term for the vacant local government employee position on the Commission. This term expires June 30, 1999.

Mr. Ballance was appointed immediately to fill the unexpired remainder of the term for the vacant private industry/business management position on the Commission. This term expires June 30, 2001.

The Committee on Rules, Calendar, and Operations of the House has considered the appointments and makes the following recommendation to the General Assembly:

That the appointments of Mr. Stephen Davis, Mr. Tom Miriello, Ms. Becky Keith, and Mr. Garey Ballance to the State Personnel Commission be confirmed, with their respective terms of office to commence upon confirmation.

Respectfully submitted,



Richard T. Morgan, Chair
Committee on Rules, Calendar, and
Operations of the House

STATE OF NORTH CAROLINA
OFFICE OF THE GOVERNOR
RALEIGH 27603-8001

JAMES B. HUNT JR.
GOVERNOR

June 30, 1997

The Honorable Harold Brubaker
Speaker of the House
2304 Legislative Building
Raleigh, NC 27601

Dear Mr. Speaker:

Pursuant to General Statute 126-2, I hereby appoint Tom Miriello to serve as a member of the North Carolina State Personnel Commission and submit his name for confirmation by the North Carolina General Assembly. Mr. Miriello will serve a term to begin immediately and to expire June 30, 1999.

Enclosed is biographical information on Mr. Miriello. Please feel free to call on him or members of my staff if you need additional information.

My warmest personal regards.

Sincerely,

James B. Hunt Jr.

cc: The Honorable Dennis Wicker
The Honorable Marc Basnight
Ms. Janet Pruitt
Ms. Denise Weeks

3-1065

THOMAS F. MIRIELLO

2615 Torcross Drive
Fayetteville, NC 28304

Telephone:
(910)-323-3376

WORK EXPERIENCE AND EXPERTISE

Management: Extensive experience in directing mental health community based, institutional, regional and statewide level prevention, education, intervention and treatment service delivery programs in the public and private sector. Expertise in planning, implementation, management, evaluation, budgeting, contracting, grantsmanship, monitoring, consultation and application of federal and state regulations.

Supervision: Extensive experience in supervising a diversity of mental health management, clinical, educational and technical personnel at community, institutional and state levels. Expertise in personnel policy administration, employer-employee relations, techniques in employee productivity, performance evaluation systems.

Personnel: Extensive experience in position development, leveling, classification administration, recruitment, interviewing techniques and training of technical and professional personnel in the public and private sector. Expertise in personnel analysis, methods improvement techniques, credentialing systems development and administering personnel policies/procedures promulgated by local, state and federal agencies.

Service Delivery: Extensive experience in providing "hands on" clinical and education services at community, institutional, regional and statewide levels. Expertise in providing prevention, education,

EMPLOYMENT HISTORY SUMMARY

EMPLOYER	POSITION
Cumberland County Mental Health Center Fayetteville, NC	**Area Director** -Management of a comprehensive service delivery system with a $21 million budget and 395 staff (7/15/92 to date)
Self-Employed Consulting Practice Raleigh, North Carolina and **Program Resource Institute, President** Dunn, North Carolina	**Private Consultant** -Contract consultant services provided to public and private education, intervention and treatment agencies and corporations (7/15/92)
N.C. Division of Mental Health, Developmental Disabilities, and Substance Abuse Services State Office Headquarters	**State Director, Alcohol/Drug Abuse Services** Director and manager of statewide service delivery operations and management of $50 million federal, state and local resources (7-85 to 8-88)
Same As Above State Office Headquarters Raleigh, North Carolina	**Chief of Special Projects, Division Director Office** - Management and Productivity improvement consultant to 15 hospitals, state and regional offices and 41 programs (7-82 to 7-85)

Same As Above
State Office Headquarters
Raleigh, North Carolina

Chief, Operations Branch - Management of 7 statewide speciality programs and supervision of 7 unit managers (1-79 to 7-82)

Same As Above
State Office Headquarters
Raleigh, North Carolina

Chief, Drug Programs - Directed and managed statewide service delivery system and supervised 3 auditors (9-75 to 1-79)

Same As Above
South Central Regional Office
Fayetteville, North Carolina

Regional Coordinator -Consultant and program auditor for 20 community programs and 2 regional institutions (9-74 to 9-75)

Cumberland-Sampson Mental Health Center
Cumberland and Sampson Counties
Fayetteville and Clinton, North Carolina

Assistant Area Director/Additions Program Director - Managed operations of a 2 county area program and supervised service delivery and management staff (8-71 to 9-74)

EDUCATION AND TRAINING

State, National and International Certifications - Drug Abuse Counselor: International Certification Reciprocity Consortium and N. C. Substance Abuse Professional Certification Board (1984-98)

Methodist College: Bachelor of Arts Degree (1970); Major in Sociology with Counseling concentration and mental health internship

University of Miami: Center for Urban Studies Training Course (1971); Graduate Credit

Appalachian State University: Employee Assistance Course (1972)

East Carolina University: Professional Practicum Program (1972)

Rutgers University: Community Organization and Management Course (1973); Graduate Credit and State scholarship recipient

East Carolina University: The Occupational Program Consultant's Training Institute Course (1974)

University of North Carolina: School on Alcohol and Drug Studies - various courses on prevention, education and clinical services (1978-87)

University of Georgia: Southeastern States School on Alcohol and Drug Studies - Board of Directors (1985-88)

Nonacademic: Completed numerous training programs in management, organizational development, planning, budgeting, personnel supervision, evaluation methodologies and service delivery operations

MILITARY SERVICE

United States Army, National Guard: Completed Combat Basic Training (1970) at Fort Campbell, Kentucky and served as a squad leader, platoon guide and honor graduate nominee. Graduated from U.S. Army Engineer School, Fort Belvoir, Virginia (1971) and was honorably discharged from active and reserve duty in 1976.

ACTIVITIES AND HONORS

State President: Addiction Professionals of North Carolina (1995 - 97)

Norbert L. Kelly Distinguished Service Award: Addiction Professionals of North Carolina (1996)

Board of Directors/Founding Member: Cumberland County Partnership for Children (1994-96)

Board of Visitors: Methodist College (1993 to date)

State Representative: National Association of State Alcohol and Drug Abuse Directors (1985-88)

Select Reviewer: U.S. Department of Education and U.S. Department of Health and Human Services (1988 to date)

State Delegate: The White House Conference for a Drug Free America (1986)

Board of Directors/Founding Member: N.C. Substance Abuse Professional Certification Board (1984-87)

Who's Who in Health Care: (1977)

Outstanding Young Men of America Award: (1976)

Honor Graduate Candidate: U.S. Army Engineer School, Fort Belvoir, Virginia (1971)

Internal Vice President: Hometown Jaycee Chapter (1970)

Dean's List Graduate: Methodist College (1970)

Industrial Arts Award: Erwin High School (1966)

Eagle Scout and Assistant Scout Master: (1962-66)

SUMMARY OF PROFESSIONAL ACHIEVEMENTS AND ACCOMPLISHMENTS

°Implemented first statewide prevention, intervention and treatment standards which became a national model in development of the "Federal Funding Criteria."

°Established first statewide forum for public and private managers of services at local, regional and state levels.

°Initiated first statewide prevention-education clearinghouse and information center.

°Established first state interagency advisory team to Governor on alcohol/drug issues.

°Designed and implemented first statewide DWI offender education and treatment program.

°Developed first "Academic Linkages" education and training program with colleges and universities.

°Implemented first employee assistance program for state government employees.

°Implemented first statewide adolescent alcohol/drug service delivery system.

°Established first state level mental health, retardation and substance abuse criminal justice office.

°Developed first "Management and Productivity Improvement" projects to increase efficiency/effectiveness of state and regional operations.

°Authored and implemented first statewide substance abuse personnel classification and specification series.

°Designed and developed first statewide alcohol/drug training and information publication.

°Authored and established first "Statewide Services Contract" in state administering federal funds.

°Developed and implemented first institutional on-site review process for state alcohol/drug hospitals.

°Co-authored state plans for federal formula contract and grant project funds.

°Co-authored first drug professional and substance abuse professional credentialing system in state.

°Established one of the first partial hospitalization programs in the state focusing on deinstitutionalization.

°Developed and managed largest public alcohol/drug "comprehensive" community program in state comprised of prevention, education, outreach, intervention and treatment services.

°Established first county school employee assistance program in the nation.

°Authored one of the first mental health center information directories in the state.

°Authored and served as project manager for numerous grants, contracts and formula budgets for urban and rural county programs.

°Designed and developed first "inventory" of treatment, intervention and informational services by county, regional and statewide

°Implemented first "Outcome/Impact Study" of alcohol and drug services on a county and regional basis.

°Developed needs assessment instruments, demographic reporting formats and fiscal impact reporting for categorical funding requirements of local, state and federal agencies.

°Established first organized and continuous in-service and video training program for public alcohol/drug, mental health and mental retardation professionals in urban county program and regional subdivision of state.

°Generated numerous "drafts" of bills prompting legislative appropriations and/or regulations for prevention, intervention, treatment and regulatory services.

°State delegate, presenter or lecturer:

-The Learning Channel, internationally syndicated television production to over 30 million viewers

-Open Net, statewide syndicated television production to over 4 million viewers

-Governor's Press Conference forums for written and electronic media

-National Governor's Association Public Hearings

-Southeastern Governor's Conference Public Forums

-National and regional White House Conferences For A Drug Free America

-The President's Conference for Drug Free Workplace

-Federal Statewide Services Contract Managers Conference

-National Association of State Alcohol and Drug Abuse Directors

-Southeastern States Credentialing Reciprocity Network

-Southeastern States Regional Training and Education Center

-The Governor's Crime Commission

-The Governor's Cabinet Cluster Education Committee

-Metrolina Chapter of Employee Assistance Program Professionals

-The John Umstead Series of Distinguished Lectures

-The Governor's Council on Substance Abuse Among Children and Youth

-The North Carolina General Assembly sessions 1975-90, numerous Senate, House and Joint Conference Committees

-Commission on Mental Health, Developmental Disabilities and Substance Abuse

-Numerous statewide professional associations and advocacy organizations

STATE OF NORTH CAROLINA
OFFICE OF THE GOVERNOR
RALEIGH 27603-8001

JAMES B. HUNT JR.
GOVERNOR

June 30, 1997

The Honorable Harold Brubaker
Speaker of the House
2304 Legislative Building
Raleigh, NC 27601

Dear Mr. Speaker:

Pursuant to General Statute 126-2, I hereby appoint Garey Ballance to serve as a member of the North Carolina State Personnel Commission and submit his name for confirmation by the North Carolina General Assembly. Mr. Ballance will serve a term to begin immediately and to expire June 30, 2001.

Enclosed is biographical information on Mr. Ballance. Please feel free to call on him or members of my staff if you need additional information.

My warmest personal regards.

Sincerely,

James B. Hunt Jr.

cc: The Honorable Dennis Wicker
The Honorable Marc Basnight
Ms. Janet Pruitt
Ms. Denise Weeks

GAREY M. BALLANCE
Route 4, Box 671
Warrenton, NC 27589

EDUCATION:

Univ. of North Carolina Law/Chapel Hill, NC
J.D. 5/95
Honors/Activities:
President, Black Law Student's Association (1994-95)
Environmental Justice Task Force (1994 spr.)
Intramural Sports

Hampton University/Hampton, VA
B.S. Economics, 5/92
Honors/Activities:
Honor Graduate (1992)
Debate Team (1989-91)
Omega Psi Phi Fraternity-Vice Pres. (1990-92)

EXPERIENCE:

Associate, Frank W. Ballance, Jr. & Associates, P.A
8/1/95-Present Warrenton, N.C.
Practice consists of Criminal Law, Personal Injury, Domestic Law, Worker's Compensation, Real Estate, and Civil Law.

Intern, Wake County District Attorney's Office
6/1/94-12/21/94 Raleigh, N.C.
Responsible for prosecuting misdeameanor cases, such as simple assaults, DWIs, and various other traffic offenses.

Law Clerk, Gilbert Chichester, P.A.
6/16/94-8/10/94 Littleton, N.C.
Responsible for assisting Mr. Chichester in his civil and criminal law practice. Conducted research, interviewed clients, and performed field investigation.

Law Clerk, Carolina Power & Light Company
6/1/93- 8/6/93 Raleigh, N.C.
Responsible for conducting research for attorney staff dealing with environmental, contract, and regulatory law. Also assisted with pro-bono cases.

Extracurricular/
Volunteer Activ.:

Volunteer for Warren Co. One-on-One Program where I serve as a mentor for an at-risk teenager. President of a church youth group.

REFERENCES AND WRITING SAMPLE AVAILABLE UPON REQUEST.

STATE OF NORTH CAROLINA
OFFICE OF THE GOVERNOR
RALEIGH 27603-8001

JAMES B. HUNT JR.
GOVERNOR

June 30, 1997

The Honorable Harold Brubaker
Speaker of the House
2304 Legislative Building
Raleigh, NC 27601

Dear Mr. Speaker:

Pursuant to General Statute 126-2, I hereby appoint Becky Keith to serve as a member of the North Carolina State Personnel Commission and submit her name for confirmation by the North Carolina General Assembly. Ms. Keith will serve a term to begin July 1, 1997 and to expire June 30, 2003.

Enclosed is biographical information on Ms. Keith. Please feel free to call on her or members of my staff if you need additional information.

My warmest personal regards.

Sincerely,

James B. Hunt Jr.

cc: The Honorable Dennis Wicker
The Honorable Marc Basnight
Ms. Janet Pruitt
Ms. Denise Weeks

RESUME

Rebecca D. Keith
P. O. Box 74
Rolesville, North Carolina 27571

Objective: To obtain an appointment to the State Personnel Commission

Education: High School with college-level coursework

Work Experience:

1963-79	Office of State Personnel: Various jobs within the Position Management area, including technical support, classification & pay, and administration of the local salary plans.
1979-93	Department of Transportation: Position Management Analyst with duties including classification & pay for all areas of DOT and DMV.
1993-Present	Department of Transportation: Deputy Personnel Director with duties including administering day-to-day and technical aspects of the DOT Personnel Office which provides services to approximately 14,000 employees located statewide.

Committee Appointments and Special Projects:

* Development Committee Member for COMAS Category of N. C. Factor Ranking Benchmark/Guidechart System of job evaluation.
* Pay Equity Study Committee Member.
* Cafeteria Benefits Study Committee for SEANC.

Committee Appointments and Special Projects (Continued):

* SEANC Committee Member to assist in development of the Comprehensive Pay Plan for State Employees.

* OSP Steering Committee Member to develop and implement evaluation tool for classes in the Office Support Services Occupational Group. Assisted in developing and providing training for other state agencies.

* SEANC District Chairperson and various other chapter and district positions.

Special Recognitions: 1996 Nominee for Governor's Award of Excellence

Community Activities:

* Sunday School Teacher at Rolesville Baptist Church for Adult Couples Class for past 10 years.

* Community volunteer for various fund raisers and events to help someone with a special need.

* Chaired Rolesville Baptist Church Personnel Committee and led in the development of job descriptions and personnel policies; presented and justified the establishment of a full-time Minister of Education and Youth; committee actively recruited and hired two new employees under my leadership.

STATE OF NORTH CAROLINA
OFFICE OF THE GOVERNOR
RALEIGH 27603-8001

JAMES B. HUNT JR.
GOVERNOR

June 30, 1997

The Honorable Harold Brubaker
Speaker of the House
2304 Legislative Building
Raleigh, NC 27601

Dear Mr. Speaker:

Pursuant to General Statute 126-2, I hereby appoint Stephen Davis to serve as a member of the North Carolina State Personnel Commission and submit his name for confirmation by the North Carolina General Assembly. Mr. Davis will serve a term to begin July 1, 1997 and to expire June 30, 2003.

Enclosed is biographical information on Mr. Davis. Please feel free to call on him or members of my staff if you need additional information.

My warmest personal regards.

Sincerely,

James B. Hunt Jr.

cc: The Honorable Dennis Wicker
The Honorable Marc Basnight
Ms. Janet Pruitt
Ms. Denise Weeks

Stephen E. Davis
1336 Baez Street
Raleigh, North Carolina 27608

Home: [919] 546-0208 Business: [919] 733-2940

NC Department of Human Resources 1993 - present
Director, Division of Personnel Services

Manage and direct the department's personnel and human resource management programs for 18,500 employees subject to the State Personnel Act and 27,000 local government employees engaged in the delivery of social services, mental health and public health programs. The department's personnel program also includes a separate personnel system for 700+ employees subject to the provisions of NCGS 115C for teachers and educational administrators. Oversee the work of approximately 160 professional, paraprofessional and support staff in central and field locations across North Carolina. Primary responsibilities include consultation to the Secretary and other executive staff on issues concerning the department's workforce, settlement of employee relations cases subject to litigation, workforce and budgetary reductions, allocation and deployment of positions within the department, and overall management of the personnel programs in 23 internal divisions and institutions. Other key responsibilities include administration of a $2.3 million division budget for direct and indirect costs, a $3.0 million Worker's Compensation program, and authority to approve settlements resulting from employee grievances. The work requires sufficient depth of professional knowledge of human resource administration to ensure the department's compliance with an array of federal, state and local statutes including Title VII of the 1964 Civil Rights Act, the 1963 Equal Pay Act, and Americans with Disabilities Act, the Fair Labor Standards Act, and the Family Medical Leave Act. The role is intensively involved at an executive level in the management and administration of the department's programs and services through service on the department's Executive Committee.

NC Office of the State Controller 1989-1993
Director of Personnel, Policy & Communications

Responsible for planning and directing comprehensive human resources program serving 297 employees engaged in systems accounting, telecommunications, applications development, mainframe services, information resource management, and technical/administrative support activities. Directed and managed employee relations, position classification, wage/hour, employee benefits, employee/management development, employee selection, equal employment opportunity, safety and health, and employee wellness programs. Consulted with agency management on staffing, organization design, and position management issues. Chaired the agency's Insurance Committee and advised all agency standing committees including Safety & Health, Performance appraisal Advisory Board, and Affirmative Action Committee. Served on the agency's Executive Management Team with primary role for strategic planning to include both annual and long-range forecasting, advising on contemporary issues affecting employees and managers; and recommending course of action in dealing with various administrative matters. Monitored and reviewed legislation dealing with administrative, managerial, and personnel-related matters and advised the State Controller on implementation. Served as the agency's liaison with the Governor's Office on development of annual departmental plan which includes mission statements, goals and management objectives, strategies and outcome measures for programs and services.

Directed and managed agency-wide program for employee communications and public information. Directed staff in the creation and design of agency publications including employee newsletter, technical newsletter, marketing and promotional brochures and pamphlets, and related printed materials for distribution to clients and associates both within and external to state government.

NC Department of Administration 1985-1989
Assistant Personnel Director

Primary responsibility was for position classification, salary administration, recruitment and employee relations. Served as agency EEO Officer and chaired Insurance Committee. Administered administrative budget for personnel and staff development services in an agency serving 1200 employees engaged in physical plant, purchasing and contract, law enforcement, state construction, public telecommunications and motor fleet services.

NC Office of State Personnel 1981-1985
Personnel Analyst II

Accountable for administration of various human services classes throughout state government. Directed and led statewide occupational, pay, and/or organizational studies which include compensation surveys, data analysis, and formulation of recommendations to the State Personnel Commission.

NC Division of Health Services 1979-1981
Personnel Analyst I

Participated in position classification studies; determined appropriate levels of work according to standard allocation factors; and recommended salary ranges compatible with complexity of work performed. Emphasis was on analytical skills, interpersonal relations, and oral/written communications. Determined administrative and professional exemptions to FLSA.

George Shinn & Associates 1972-79
Charlotte, North Carolina

Functioned as a corporate educational consultant with responsibility for advising independent for-profit business colleges in the South and Midwest on development and implementation of student recruitment and admissions programs. Served as Director of Admissions for King's College in Raleigh, NC and as Director, King's College in Durham, NC.

EDUCATION

East Carolina University — AB, Political Science
Greenville, North Carolina
1967-71

PROFESSIONAL ACTIVITIES

Graduate, NC Public Manager Program
Graduate, NC Fundamentals of Management program
Member, NC Work & Family Council
Member, State Employees Combined Campaign Advisory Board
    Executive Committee
    Chair, Training Subcommittee
Member, Governors Commission on State Employees
Member, statewide EEO Policy Review Committee
Member, statewide 504/ADA Interagency Task Force

MINUTES
COMMITTEE ON RULES, CALENDAR, AND OPERATIONS OF THE HOUSE
August 18, 1997

The Committee on Rules, Calendar, and Operations of the House met on August 18, 1997 at 3:00 p.m. in the House Conference Room in the Legislative Building. Representative Morgan, Committee Chair, called the meeting to order and asked the clerk to call the roll. The following members were present: Representative Bowie, Vice Chair; and Representatives Crawford, Culp, Dockham, Esposito, Gulley, Hill, Mitchell, Neely, Thompson, and C. Wilson.

Chairman Morgan brought before the Committee Senate Bill 360 -AN ACT TO INCREASE THE FEE PAID TO AGENTS OF THE WILDLIFE RESOURCES COMMISSION TO AWARD CERTIFICATES OF BOAT NUMBER OR OTHER VESSEL TRANSACTION AND TO AMEND THE DUTIES OF THE WILDLIFE RESOURCES COMMISSION WITH REGARD TO THE APPOINTMENT OF AGENTS FOR THE ISSUANCE OF BOAT NUMBERS, TO RAISE THE REPORTING REQUIREMENT FOR BOATING ACCIDENTS TO DAMAGES IN EXCESS OF FIVE HUNDRED DOLLARS, AND TO REPEAL THE LAW REQUIRING PERMITS FROM THE WILDLIFE RESOURCES COMMISSION TO HOLD REGATTAS AND OTHER EVENTS, sponsored by Senator Albertson. Committee Staff Counsel Linwood Jones explained the bill. Representative Mitchell moved for a favorable report with a re-referral to the Committee on Finance and the motion carried.

Chairman Morgan assigned Senate Bill 966 - AN ACT TO MAKE NO DAMAGE FOR DELAY CLAUSES IN PUBLIC CONTRACTS UNENFORCEABLE; and Senate Bill 1028 - AN ACT TO ALLOW A CONTRACTOR, ON BEHALF OF A SUBCONTRACTOR, TO FILE AN ACTION AGAINST THE OWNER REGARDING A CLAIM ARISING OUT OF THE CONTRACT BETWEEN THE SUBCONTRACTOR AND THE CONTRACTOR FOR THE SAME PROJECT THAT IS THE SUBJECT OF THE CONTRACT BETWEEN THE CONTRACTOR AND THE OWNER to a sub-committee to be chaired by Representative McMahan. Representatives Thompson and Mitchell were also appointed to serve on the sub-committee.

There being no further business, the meeting adjourned at 3:10.

Representative Richard T. Morgan, Committee Chair

Dixie Epps, Committee Clerk

Attachments:
Committee Report
Bill
Visitor's Sheet

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **MORGAN** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE.**

☒ Committee Substitute for
S.B. 360 A BILL TO BE ENTITLED AN ACT TO INCREASE THE FEE PAID TO AGENTS OF THE WILDLIFE RESOURCES COMMISSION TO AWARD CERTIFICATES OF BOAT NUMBER OR OTHER VESSEL TRANSACTION AND TO AMEND THE DUTIES OF THE WILDLIFE RESOURCES COMMISSION WITH REGARD TO THE APPOINTMENT OF AGENTS FOR THE ISSUANCE OF BOAT NUMBERS, TO RAISE THE REPORTING REQUIREMENT FOR BOATING ACCIDENTS TO DAMAGES IN EXCESS OF FIVE HUNDRED DOLLARS, AND TO REPEAL THE LAW REQUIRING PERMITS FROM THE WILDLIFE RESOURCES COMMISSION TO HOLD REGATTAS AND OTHER EVENTS.

☐ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 360
Judiciary Committee Substitute Adopted 6/12/97

Short Title: Boat Number Fees. (Public)

Sponsors:

Referred to: Finance.

March 11, 1997

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE FEE PAID TO AGENTS OF THE WILDLIFE RESOURCES COMMISSION TO AWARD CERTIFICATES OF BOAT NUMBER OR OTHER VESSEL TRANSACTION AND TO AMEND THE DUTIES OF THE WILDLIFE RESOURCES COMMISSION WITH REGARD TO THE APPOINTMENT OF AGENTS FOR THE ISSUANCE OF BOAT NUMBERS, TO RAISE THE REPORTING REQUIREMENT FOR BOATING ACCIDENTS TO DAMAGES IN EXCESS OF FIVE HUNDRED DOLLARS, AND TO REPEAL THE LAW REQUIRING PERMITS FROM THE WILDLIFE RESOURCES COMMISSION TO HOLD REGATTAS AND OTHER EVENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 75A-5(e) reads as rewritten:

"(e) The Wildlife Resources Commission may ~~award~~ issue any ~~certificate of number~~ vessel transaction pursuant to the provisions of Article 1 or 4 of this Chapter directly or may authorize any person qualified as prescribed in subsection (l) of this section to act as agent for the ~~awarding thereof.~~ issuance of vessel transactions subject to the requirements set forth in this Chapter. ~~In the event that a person accepts such authorization, he may be assigned a block of numbers and certificates therefor which upon award,~~ Upon acceptance of this authorization, an agent's actions in issuing any vessel transaction pursuant to this Chapter ~~in conformity with this Chapter and with any rules and regulations of the Commission,~~ shall be valid as if ~~awarded~~ issued directly by the Commission. As compensation for ~~his services any such agent shall be allowed to retain for his own use fifty cents (50¢).~~ services rendered to the

Commission and to the general public, the agent shall receive the following specified commission from the statutory fee for each listed transaction:

(1) Renewal of vessel registration - $1.25.
(2) Transfer of ownership and registration of a vessel - $3.00.
(3) Issuance of new certificate of vessel number and registration - $3.00.
(4) Issuance of duplicate vessel registration - $0.50.
(5) Issuance, transfer, duplication, or lien recordation of vessel title - $3.00.

It is a Class 1 misdemeanor for any such agent to charge or accept any additional fee, remuneration, or other thing of value for such services."

Section 2. G.S. 75A-5(l) reads as rewritten:

"(l) When certificates of number are to be issued by agents as provided by subsection (e) of this section, the Wildlife Resources Commission ~~is authorized by regulation to establish the qualifications of such agents, including, but not limited to, their financial responsibility, the locations and types of business operated by them and their facilities for safekeeping of unused certificates of number, validation decals, and the monetary proceeds of certificates which have been issued; to prescribe the duties of such agents, including, but not limited to, the methods of issuing certificates of number and validation decals, the evidence of ownership of vessels to be numbered by applicants for number, the times and methods of making periodic and final reports of certificates and decals issued and remaining unissued and remittances of public moneys and unissued certificates and decals; to establish methods and procedures of ensuring accountability of such agents for the proceeds of certificates and decals issued and for certificates and decals remaining unissued; to require individual or blanket bonds of such agents in amounts sufficient to protect the State against loss of public moneys and unissued certificates and decals, the premiums for such bonds to be paid by the agents; to permit such agents to issue both original certificates of number and validation decals and renewals thereof or to limit such agents, or any of them, to the issuance of the originals only; to authorize some or all of such agents to issue temporary certificates of number for use during a limited time pending delivery of regular certificates of number and validation decals; to establish methods and procedures, including submission of the amounts and kinds of evidence which the Commission may deem sufficient, whereby any such agent may be relieved of accountability for the value of unissued certificates and validation decals, or of the monetary proceeds of those which have been issued, which have been lost or destroyed as the result of any occurrence which is beyond the control of such agent; and to prescribe such other reasonable requirements and conditions as the Commission may, in its discretion, deem necessary or desirable to expedite and control the issuance of certificates of number by such agents.~~ may establish administrative guidelines that prescribe:

(1) The qualifications of agents;
(2) The duties of agents;

(3) Methods and procedures to ensure accountability and security for proceeds and unissued certificates of number;

(4) Requirements for security bonds in amounts sufficient to protect the State against loss of public funds or documents;

(5) Methods and procedures, including submission of the kinds and amounts of evidence deemed sufficient to relieve an agent of responsibility for losses due to occurrences beyond the agent's control; and

(6) Any other reasonable requirement or condition deemed necessary and desirable to expedite and control the issuance of certificates of boat number by agents.

In accordance with ~~such regulations,~~ administrative guidelines developed pursuant to this section, the executive director ~~is authorized to prepare and distribute all forms necessary or convenient for application for and the appointment and bonding of such agents and for receipts, reports and remittances by such agents; to select and appoint such agents in areas most convenient to the boating public and to limit the number of such agents in any locality; to require prompt and accurate reporting and remission of public moneys and unissued certificates and decals by such agents, and to require periodic or special audits of their accounts; to revoke or terminate any such agency for failure to make timely reports and remittances or to comply with any administrative directive or regulation of the Commission, or when he has reason to believe that State money or property is in jeopardy; and to require immediate surrender of all agency accounts, forms, certificates, decals and State moneys in the event of such revocation or termination of any such agency.~~ may:

(1) Select and appoint agents in the areas most convenient to the boating public and limit the number of agents in any one area if necessary for efficiency of operation;

(2) Require prompt and accurate reporting and remittance of public funds or documents by agents;

(3) Conduct periodic and special audits of accounts;

(4) Terminate the authorization of any agent found to be in noncompliance with administrative guidelines or directives of the Commission or when State funds or property are reasonably believed to be in jeopardy; and

(5) Demand the immediate surrender of all accounts, forms, certificates, decals, records, and State funds in the event of the termination of an agency.

A person who is denied the authority to act as an agent for the issuance of certificates of number and validation decals or whose authority to do so is revoked may not commence a contested case under G.S. 150B-23. ~~Any violation of the regulations authorized by this subsection shall be a Class 1 misdemeanor.~~ If any check or draft of any agent for the issuance of certificates of boat number shall be returned by the banking facility upon which the same is drawn for lack of funds, such agent shall be liable to the Wildlife Resources Commission for a penalty of five

percent (5%) of the amount of such check or draft, but in no event shall such penalty be less than five dollars ($5.00) or more than two hundred dollars ($200.00). Agents shall be assessed a penalty of twenty-five percent (25%) of their issuing fee on all remittances to the Commission after the fifteenth day of the month immediately following the month of sale."

Section 3. G.S. 75A-11(b) reads as rewritten:

"(b) In the case of collision, accident, or other casualty involving a vessel, the operator thereof, if the collision, accident, or other casualty results in death or injury to a person or damage to property in excess of ~~one~~ five hundred dollars ~~($100.00),~~ ($500.00), shall, within 10 days, file with the Wildlife Resources Commission a full description of the collision, accident, or other casualty, including such information as said agency may, by regulation, require. Such report shall not be admissible as evidence."

Section 4. G.S. 75A-14 is repealed.

Section 5. This act is effective when it becomes law.

VISITOR REGISTRATION SHEET

RULES, CALENDAR, AND OPERATIONS OF THE HOUSE **AUGUST 18, 1997**

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Amy Jo BAIN	SMITH Anderson
Susan Valcarcel	Nationwide
LINDA M. Melhan	United Healthcare of NC
R. Paul Wilms	NCMBA
Denis Ramquist	NCSOS
Sandra Long	Martin Marietta
Jan Dyson	REVENUE
Bernard McGlew	Secy of State
Richard Riddle	Cleveland
Ron Akins	GNANC
Lucius Fuller	Attorney
Martha Glass	DOA
Kiran Mitchell	NCSHRMC
Susan Watson	Board of Cosmetic Arts
Doug Van Essen	Board of Cosmetic Arts

MINUTES
COMMITTEE ON RULES, CALENDAR, AND OPERATIONS OF THE HOUSE
August 19, 1997

The Committee on Rules, Calendar, and Operations of the House met August 19, 1997, at 4:00 p.m. in Room 421 in the Legislative Office Building. Representative Morgan, Committee Chair, called the meeting to order and asked the clerk to call the roll. The following members were present: Representative Bowie, Vice Chair; and Representatives Culp, Gulley, Hill, Miner, Mitchell, Thompson, and C. Wilson.

The first bill before the Committee was House Bill 1064 - A BILL TO BE ENTITLED AN ACT TO ALLOW A HOUSING AUTHORITY TO TERMINATE OR FAIL TO RENEW A LEASE IF A TENANT ENGAGES IN CRIMINAL ACTIVITY, TO ALLOW CERTAIN SUMMARY EJECTMENT ACTIONS INITIATED BY A HOUSING AUTHORITY TO BE HELD IN DISTRICT COURT INSTEAD OF IN MAGISTRATE'S COURT, AND TO CLARIFY THAT A BOND IS NOT REQUIRED BEFORE FILING AN ANSWER IN A SUMMARY EJECTMENT PROCEEDING. The Chair recognized Representative Fox, bill sponsor, to explain the Senate changes. Representative Fox was in favor of concurrence. Representative Wilson moved that the Committee recommend that the House do concur with the Senate Committee Substitute for House Bill 1064. Motion carried.

The next bill before the Committee was Senate Bill 826 - A BILL TO BE ENTITLED AN ACT TO PROVIDE "QUICK TAKE" PROCEDURES IN EMINENT DOMAIN PROCEEDINGS BY SCHOOL BOARDS; AND TO CHANGE THE TERM OF OFFICE OF THE CHARLOTTE-MECKLENBURG BOARD OF EDUCATION FROM FOUR YEARS TO TWO YEARS, SUBJECT TO A REFERENDUM. The Chair recognized Senator Miller, bill sponsor, to explain the bill. Representative Thompson moved for the adoption of the House committee substitute for Senate Bill 826 for the purpose of discussion. Motion carried. Counsel was recognized by Chairman Morgan to explain the changes in the House committee substitute for Senate Bill 826. Representative Wilson moved for a favorable report as to the House committee substitute for Senate Bill 826 and an unfavorable report as to the original bill. Motion carried. There was a title change to Senate Bill 826.

Senate Bill 725 - A BILL TO BE ENTITLED AN ACT PERTAINING TO THE FILING OF A DEFERRED CHARGE WITH EEOC OR THE OFFICE OF ADMINISTRATIVE HEARINGS BY STATE OR LOCAL GOVERNMENT EMPLOYEES - was next before the Committee. Senator Miller, bill sponsor, was recognized to explain the bill. Representative Mitchell moved for adoption of the proposed House committee substitute for Senate Bill 725 for the purpose of discussion. Motion carried. Representative Cansler was recognized to explain the proposed House committee substitute. Representative Cansler urged concurrence for House committee

substitute for Senate Bill 725. Representative Gulley moved for a favorable report as to the House committee substitute, and an unfavorable report to the original bill. Motion carried. There was a title change to Senate Bill 725.

The next bill before the Committee was House Bill 568 - A BILL TO BE ENTITLED AN ACT CONCERNING SATELLITE ANNEXATIONS BY THE TOWN OF WAKE FOREST AND CONCERNING A SATELLITE ANNEXATION BY THE TOWN OF BEAUFORT. Representative Eddins was recognized by the Chair to explain the Senate changes. Representative Eddins urged concurrence. Representative Mitchell moved that the Committee recommend that the House do concur with the Senate committee substitute for House Bill 568. Motion carried.

Senate Bill 488 - A BILL TO BE ENTITLED AN ACT TO AMEND THE PROCESS OF SELECTING THE CHAIR OF THE VOCATIONAL REHABILITATION ADVISORY COUNSEL TO CONFORM WITH FEDERAL LAW AND TO PROVIDE THAT THE CHAIR'S TERM SHALL NOT EXCEED THREE YEARS - was the next bill before the Committee. Counsel advised the Committee that a federal certification note was necessary for this bill. Copies of the federal certification note were distributed. Senator Kinnaird, bill sponsor, was recognized to explain the bill. Representative Connie Wilson moved for a favorable report for Senate Bill 488. Motion carried.

The Committee adjourned at 4:15 p.m.

Representative Richard T. Morgan
Committee Chair

Anne M. Cole
Acting Committee Clerk

Attachments:
Committee Reports
Bills
Federal Certification for Senate Bill 488
Visitor's Sheet

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative(s) **MORGAN** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE.**

Senate

☒ Committee Substitute for

H.B. 1064 A BILL TO BE ENTITLED AN ACT TO ALLOW A HOUSING AUTHORITY TO TERMINATE OR FAIL TO RENEW A LEASE IF A TENANT ENGAGES IN CRIMINAL ACTIVITY, TO ALLOW CERTAIN SUMMARY EJECTMENT ACTIONS INITIATED BY A HOUSING AUTHORITY TO BE HELD IN DISTRICT COURT INSTEAD OF IN MAGISTRATE'S COURT, AND TO CLARIFY THAT A BOND IS NOT REQUIRED BEFORE FILING AN ANSWER IN A SUMMARY EJECTMENT PROCEEDING.

☐ 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.

☐

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **MORGAN** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE**.

☒ Committee Substitute for
S.B. 826 A BILL TO BE ENTITLED AN ACT TO PROVIDE "QUICK TAKE" PROCEDURES IN EMINENT DOMAIN PROCEEDINGS BY SCHOOL BOARDS; AND TO CHANGE THE TERM OF OFFICE OF THE CHARLOTTE-MECKLENBURG BOARD OF EDUCATION FROM FOUR YEARS TO TWO YEARS, SUBJECT TO A REFERENDUM.

☐ 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 House committee substitute bill (# 3), ☒ which changes the title, unfavorable as to ~~original bill~~ (Committee Substitute Bill # 2), ~~(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)

4/24/97

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **MORGAN** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE.**

☒ Committee Substitute for
S.B. 725 A BILL TO BE ENTITLED AN ACT PERTAINING TO THE FILING OF A DEFERRED CHARGE WITH EEOC OR THE OFFICE OF ADMINISTRATIVE HEARINGS BY STATE OR LOCAL GOVERNMENT EMPLOYEES.

☐ 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)

4/24/97

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative(s) **MORGAN** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE.**

Senate

☒ Committee Substitute for

H.B. 568 A BILL TO BE ENTITLED AN ACT CONCERNING SATELLITE ANNEXATIONS BY THE TOWN OF WAKE FOREST AND CONCERNING A SATELLITE ANNEXATION BY THE TOWN OF BEAUFORT.

☐ 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)

4/24/97

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **MORGAN** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE.**

☐ Committee Substitute for
S.B. 488 A BILL TO BE ENTITLED AN ACT TO AMEND THE PROCESS OF SELECTING THE CHAIR OF THE VOCATIONAL REHABILITATION ADVISORY COUNCIL TO CONFORM WITH FEDERAL LAW AND TO PROVIDE THAT THE CHAIR'S TERM SHALL NOT EXCEED THREE YEARS.

☒ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 1064
Committee Substitute Favorable 4/29/97
Senate Judiciary Committee Substitute Adopted 7/31/97

Short Title: Housing Authority Amendments. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW A HOUSING AUTHORITY TO TERMINATE OR FAIL TO RENEW A LEASE IF A TENANT ENGAGES IN CRIMINAL ACTIVITY, TO ALLOW CERTAIN SUMMARY EJECTMENT ACTIONS INITIATED BY A HOUSING AUTHORITY TO BE HELD IN DISTRICT COURT INSTEAD OF IN MAGISTRATE'S COURT, AND TO CLARIFY THAT A BOND IS NOT REQUIRED BEFORE FILING AN ANSWER IN A SUMMARY EJECTMENT PROCEEDING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 157-29 reads as rewritten:

"**§ 157-29.** ~~**Rentals and tenant selections.**~~ **Rentals; tenant selections; and summary ejectments.**

(a) It is hereby declared to be the policy of this State that each housing authority shall manage and operate its housing projects in an efficient manner so as to enable it to fix the cost of dwelling accommodations for persons of low income at the lowest possible rates consistent with its providing decent, safe, and sanitary dwelling accommodations. No housing authority may construct or operate its housing projects so as to provide revenues for other activities of the city.

(b) In the operation or management of housing projects, or portions of projects, for persons of low income, an authority shall at all times observe the following duties with respect to rentals and tenant selection:

(1) It may rent or lease dwelling accommodations set aside for persons of low income only to persons who lack the amount of income ~~which~~ that is necessary (as determined by the housing authority undertaking the project) to enable them, without financial assistance, to live in decent, safe, and sanitary dwellings, without overcrowding; and

(2) It may rent or lease dwelling accommodations to persons of low income only at rentals within the financial reach of such persons.

(c) An authority may terminate or refuse to renew a rental agreement for a serious or repeated violation of a material term of the rental agreement such as (i) failure to make payments due under the rental agreement, if such payments were properly and promptly calculated according to applicable HUD regulation, whether or not such failure was the fault of the tenant, (ii) failure to fulfill the tenant obligations set forth in 24 C.F.R. Section 966.4(f) or other applicable provisions of federal law as they may be amended from time to time, or (iii) other good cause. Except in the case of failure to make payments due under a rental agreement, fault on the part of a tenant may be considered in determining whether good cause exists to terminate a rental agreement.

(d) The receipt or acceptance of rent by an authority, with or without knowledge of a prior default or failure by the tenant under a rental agreement, shall not constitute a waiver of that default or failure unless (i) the authority expressly agrees to such waiver in writing, or (ii) within 120 days after obtaining knowledge of the default or failure, the authority fails either to notify the tenant that a violation of the rental agreement has occurred or to exercise one of the authority's remedies for such violation.

(e) In any summary ejectment action wherein a housing authority alleges that a tenant's lease has been terminated because the tenant, a household member, or a guest has engaged in a criminal activity that threatens the health and safety of others or the peaceful enjoyment of the premises by others, or has engaged in activity involving illegal drugs, as defined in 24 C.F.R. § 966.4, the housing authority may bring an action under Article 7 of Chapter 42 of the General Statutes."

Section 2. G.S. 1-112 reads as rewritten:

"**§ 1-112. Defense without bond.**

(a) The undertaking prescribed in ~~the preceding section~~ G.S. 1-111 is not necessary if an attorney practicing in the court where the action is pending certifies to the court in writing that he has examined the case of the defendant and is of the opinion that the plaintiff is not entitled to recover; and if the defendant also files an affidavit stating that he is unable to give and is not worth the amount of the undertaking in any property whatsoever.

(b) An undertaking shall not be required in any summary ejectment action brought pursuant to Articles 3 or 7 of Chapter 42 of the General Statutes."

Section 3. This act becomes effective October 1, 1997, and applies to acts committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 826*
Second Edition Engrossed 4/30/97
House Committee Substitute Favorable 7/24/97
House Committee Substitute #2 Favorable 8/13/97
Proposed House Committee Substitute S826-PCS2811

Short Title: School Board and Local Changes. (Public)

Sponsors:

Referred to:

April 14, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE "QUICK TAKE" PROCEDURES IN EMINENT DOMAIN PROCEEDINGS BY SCHOOL BOARDS; TO CHANGE THE TERM OF OFFICE OF THE CHARLOTTE-MECKLENBURG BOARD OF EDUCATION FROM FOUR YEARS TO TWO YEARS, SUBJECT TO A REFERENDUM; TO PROVIDE STAGGERED TERMS FOR THE TOWN OF BROADWAY; TO PROVIDE THAT THE BOARD OF COMMISSIONERS OF LEE COUNTY SHALL CONSIST OF SEVEN MEMBERS ELECTED AT LARGE FOR FOUR-YEAR STAGGERED TERMS ON A NONPARTISAN BASIS AT THE TIME OF THE GENERAL ELECTION; TO CHANGE THE TIME OF ELECTION OF THE SURRY COUNTY BOARD OF EDUCATION FROM THE PRIMARY TO NONPARTISAN AT THE TIME OF THE GENERAL ELECTION; TO ALLOW THE HENDERSON COUNTY BOARD OF COMMISSIONERS TO REDISTRICT THEIR RESIDENCY DISTRICTS; AND TO GRANT AUTHORITY TO THE MUNICIPALITIES LOCATED IN LEE COUNTY TO ADDRESS ABANDONED STRUCTURES IN THE SAME MANNER AS MUNICIPALITIES IN COUNTIES WITH A POPULATION OF OVER ONE HUNDRED SIXTY-THREE THOUSAND.

The General Assembly of North Carolina enacts:

PART I. SCHOOL BOARD QUICK TAKE

Section 1. G.S. 40A-42(a) reads as rewritten:

"(a) When a local public condemnor is acquiring property by condemnation for a purpose set out in G.S. 40A-3(b)(1), (4) or (7), or when a city is acquiring property for a purpose set out in G.S. 160A-311(1), (2), (3), (4), (6), or (7), or when a county is acquiring property for a purpose set out in G.S. 153A-274(1), (2) or (3), or when a municipal or county board of education or any combination of those boards is acquiring property for any purpose set forth in G.S. 115C-517, or when a condemnor is acquiring property by condemnation as authorized by G.S. 40A-3(c)(8), (9), (10) or (12), title to the property and the right to immediate possession shall vest pursuant to this subsection. Unless an action for injunctive relief has been initiated, title to the property specified in the complaint, together with the right to immediate possession thereof, shall vest in the condemnor upon the filing of the complaint and the making of the deposit in accordance with G.S. 40A-41."

Section 2. G.S. 115C-517 reads as rewritten:

"**§ 115C-517. Acquisition of sites.**

Local boards of education may acquire suitable sites for schoolhouses or other school facilities either within or without the local school administrative unit; but no school may be operated by a local school administrative unit outside its own boundaries, although other school facilities such as repair shops, may be operated outside the boundaries of the local school administrative unit. Whenever any such board is unable to acquire or enlarge a suitable site or right-of-way for a school, school building, school bus garage or for a parking area or access road suitable for school buses or for other school facilities by gift or purchase, condemnation proceedings to acquire same may be instituted by such board under the provisions of Chapter 40A of the General Statutes, including the rights and procedures pursuant to G.S. 40A-42, et seq., and the determination of the local board of education of the land necessary for such purposes shall be conclusive. A local board shall not initiate a proceeding under G.S. 40A-42(a) unless the action is approved by a resolution adopted by the board of county commissioners."

PART II. CHARLOTTE-MECKLENBURG BOARD OF EDUCATION

Section 3. Section 2(a) of Chapter 167 of the 1993 Session Laws reads as rewritten:

"(a) In ~~1995~~ 1995, ~~and quadrennially thereafter,~~ three members of the Charlotte-Mecklenburg Board of Education shall be elected for four-year terms by all the qualified voters of Mecklenburg County. In 1999 and biennially thereafter, three members of the Charlotte-Mecklenburg Board of Education shall be elected for two-year terms by all the qualified voters of Mecklenburg County."

Section 4. Section 2(c) of Chapter 167 of the 1993 Session Laws reads as rewritten:

"(c) In 1995, one member of the Charlotte-Mecklenburg Board of Education shall be elected from each district for a two-year term by all the qualified voters of the

district. In 1997 and ~~quadrennially~~ biennially thereafter, one member of the Charlotte-Mecklenburg Board of Education shall be elected from each district for a ~~four-year~~ two-year term by all the qualified voters of the district."

Section 5. Sections 3 and 4 of this act are effective only if approved by the qualified voters of Mecklenburg County in a referendum to be held on Tuesday after the first Monday in November of 1997. The referendum shall be conducted by the Mecklenburg County Board of Elections.

The question on the ballot shall be:

"[ ] FOR [ ] AGAINST

changing the manner of election of the Charlotte-Mecklenburg Board of Education to provide for two-year terms of office."

PART III. BROADWAY ELECTIONS

Section 6. Section 3 of the Charter of the Town of Broadway, being Chapter 548 of the Session Laws of 1947 as amended by Chapter 789 of the Session Laws of 1949, reads as rewritten:

"Sec. 3. At the time of the holding of the next general election following ratification of this Act, and ~~biennially~~ thereafter, there shall be elected in the Town of Broadway in accordance with the provisions of Article 3 of Chapter 160 of the General Statutes of North Carolina, as amended, the following officers: ~~A mayor, five town commissioners, and a town constable.~~ A mayor and five town commissioners. The mayor shall be elected for a four-year term. In 1997, the three persons receiving the highest numbers of votes for town commissioner are elected to four-year terms, and the two persons receiving the next highest numbers of votes for town commissioner are elected to two-year terms. In 1999 and quadrennially thereafter, two town commissioners are elected to four-year terms. In 2001 and quadrennially thereafter, three town commissioners are elected to four-year terms. The mayor and the five town commissioners so elected shall constitute the governing body of the Town of Broadway, and such governing body may appoint such other officers and employ such assistants as the governing body of the town may deem necessary for the better governance of the town."

PART IV. LEE COUNTY COMMISSIONERS

Section 7. (a) Effective with the 1998 election, the Board of Commissioners of Lee County consists of seven members elected at large for four-year terms. In 1998 and quadrennially thereafter, four commissioners shall be elected. In 2000 and quadrennially thereafter, three commissioners shall be elected.

(b) Notwithstanding the provisions of Chapter 163 of the General Statutes, the Board of Commissioners of Lee County shall be elected on a nonpartisan basis at the time set by G.S. 163-1 for the general election in each even-numbered year as terms expire. The election shall be conducted on a nonpartisan plurality basis, with the results determined in accordance with G.S. 163-292.

Candidates shall file notices of candidacy not earlier than noon on the third Monday in June and not later than noon on the third Friday in July. The names of the candidates shall be printed on the ballot without reference to any party affiliations. Except as provided by this act, the election shall be conducted in accordance with the applicable provisions of Chapter 163 of the General Statutes.

(c) This section does not affect the terms of office of current members of the Board of Commissioners of Lee County.

PART V. SURRY SCHOOL ELECTIONS

Section 8. The Board of Education of Surry County shall be elected in a nonpartisan election held on the date of the county general election, with the results determined on a plurality basis in accordance with G.S. 163-292. The election shall be consistent with the provisions of Chapters 115C and 163 of the General Statutes, except as otherwise provided herein.

Section 9. Candidates shall file notice of candidacy not earlier than 12:00 noon on the first Friday in July (except that if that day is a holiday, then not earlier than 12:00 noon on the next Monday) and not later than 12:00 noon on the first Friday in August of the year of election.

Section 10. (a) The terms of members of the Surry County Board of Education which expire on or before June 30, 1998, are extended until the first regularly scheduled Surry County Board of Education meeting in December of 1998 at which time their successors shall qualify.

(b) The terms of members of the Surry County Board of Education which expire on June 30, 2000, are extended until the first regularly scheduled Surry County Board of Education meeting in December of 2000 at which time their successors shall qualify.

Section 11. Chapter 308 of the 1991 Session Laws is repealed.

PART VI. HENDERSON COMMISSIONER DISTRICTS

Section 12. G.S. 153A-22.1(f), as enacted by Chapter 215 of the 1995 Session Laws, reads as rewritten:

"(f) This section applies to ~~Moore County~~ Henderson and Moore Counties only."

PART VII. LEE MUNICIPAL STRUCTURES

Section 13. Section 2 of Chapter 733 of the 1995 Session Laws, as amended by S.L. 1997-101 and House Bill 699, 1997 Session, reads as rewritten:

"Sec. 2. This act applies to the Cities of Greenville, Lumberton, and Roanoke ~~Rapids~~ Rapids, the municipalities in Lee County, and the Towns of Bethel, Farmville, and Newport only."

PART VIII. EFFECTIVE DATE

Section 14. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 826*
Second Edition Engrossed 4/30/97
House Committee Substitute Favorable 7/24/97
House Committee Substitute #2 Favorable 8/13/97

PROPOSED HOUSE COMMITTEE SUBSTITUTE
S862-CSRN-002B

Short Title: School Board and Local Changes. (Public)

Sponsors:

Referred to:

April 14, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE "QUICK TAKE" PROCEDURES IN EMINENT DOMAIN PROCEEDINGS BY SCHOOL BOARDS; TO CHANGE THE TERM OF OFFICE OF THE CHARLOTTE-MECKLENBURG BOARD OF EDUCATION FROM FOUR YEARS TO TWO YEARS, SUBJECT TO A REFERENDUM; TO PROVIDE STAGGERED TERMS FOR THE TOWN OF BROADWAY; TO PROVIDE THAT THE BOARD OF COMMISSIONERS OF LEE COUNTY SHALL CONSIST OF SEVEN MEMBERS ELECTED AT LARGE FOR FOUR-YEAR STAGGERED TERMS ON A NONPARTISAN BASIS AT THE TIME OF THE GENERAL ELECTION; TO CHANGE THE TIME OF ELECTION OF THE SURRY COUNTY BOARD OF EDUCATION FROM THE PRIMARY TO NONPARTISAN AT THE TIME OF THE GENERAL ELECTION; TO ALLOW THE HENDERSON COUNTY BOARD OF COMMISSIONERS TO REDISTRICT THEIR RESIDENCY DISTRICTS; AND TO GRANT AUTHORITY TO THE MUNICIPALITIES LOCATED IN LEE COUNTY TO ADDRESS ABANDONED STRUCTURES IN THE SAME MANNER AS MUNICIPALITIES IN COUNTIES WITH A POPULATION OF OVER ONE HUNDRED SIXTY-THREE THOUSAND.

The General Assembly of North Carolina enacts:

PART I. SCHOOL BOARD QUICK TAKE

Section 1. G.S. 40A-42(a) reads as rewritten:

"(a) When a local public condemnor is acquiring property by condemnation for a purpose set out in G.S. 40A-3(b)(1), (4) or (7), or when a city is acquiring property for a purpose set out in G.S. 160A-311(1), (2), (3), (4), (6), or (7), or when a county is acquiring property for a purpose set out in G.S. 153A-274(1), (2) or (3), or when a municipal or county board of education or any combination of those boards is acquiring property for any purpose set forth in G.S. 115C-517, or when a condemnor is acquiring property by condemnation as authorized by G.S. 40A-3(c)(8), (9), (10) or (12), title to the property and the right to immediate possession shall vest pursuant to this subsection. Unless an action for injunctive relief has been initiated, title to the property specified in the complaint, together with the right to immediate possession thereof, shall vest in the condemnor upon the filing of the complaint and the making of the deposit in accordance with G.S. 40A-41."

Section 2. G.S. 115C-517 reads as rewritten:

"**§ 115C-517. Acquisition of sites.**

Local boards of education may acquire suitable sites for schoolhouses or other school facilities either within or without the local school administrative unit; but no school may be operated by a local school administrative unit outside its own boundaries, although other school facilities such as repair shops, may be operated outside the boundaries of the local school administrative unit. Whenever any such board is unable to acquire or enlarge a suitable site or right-of-way for a school, school building, school bus garage or for a parking area or access road suitable for school buses or for other school facilities by gift or purchase, condemnation proceedings to acquire same may be instituted by such board under the provisions of Chapter 40A of the General Statutes, including the rights and procedures pursuant to G.S. 40A-42, et seq., and the determination of the local board of education of the land necessary for such purposes shall be conclusive. A local board shall not initiate a proceeding under G.S. 40A-42(a) unless the action is approved by a resolution adopted by the board of county commissioners."

PART II. CHARLOTTE-MECKLENBURG BOARD OF EDUCATION

Section 3. Section 2(a) of Chapter 167 of the 1993 Session Laws reads as rewritten:

"(a) In ~~1995~~ 1995, ~~and quadrennially thereafter,~~ three members of the Charlotte-Mecklenburg Board of Education shall be elected for four-year terms by all the qualified voters of Mecklenburg

County. In 1999 and biennially thereafter, three members of the Charlotte-Mecklenburg Board of Education shall be elected for two-year terms by all the qualified voters of Mecklenburg County."

Section 4. Section 2(c) of Chapter 167 of the 1993 Session Laws reads as rewritten:

"(c) In 1995, one member of the Charlotte-Mecklenburg Board of Education shall be elected from each district for a two-year term by all the qualified voters of the district. In 1997 and ~~quadrennially~~ biennially thereafter, one member of the Charlotte-Mecklenburg Board of Education shall be elected from each district for a ~~four-year~~ two-year term by all the qualified voters of the district."

Section 5. Sections 3 and 4 of this act are effective only if approved by the qualified voters of Mecklenburg County in a referendum to be held on Tuesday after the first Monday in November of 1997. The referendum shall be conducted by the Mecklenburg County Board of Elections.

The question on the ballot shall be:

"[ ] FOR [ ] AGAINST

changing the manner of election of the Charlotte-Mecklenburg Board of Education to provide for two-year terms of office."

PART III. BROADWAY ELECTIONS

Section 6. Section 3 of the Charter of the Town of Broadway, being Chapter 548 of the Session Laws of 1947 as amended by Chapter 789 of the Session Laws of 1949, reads as rewritten:

"Sec. 3. At the time of the holding of the next general election following ratification of this Act, and ~~biennially~~ thereafter, there shall be elected in the Town of Broadway in accordance with the provisions of Article 3 of Chapter 160 of the General Statutes of North Carolina, as amended, the following officers: ~~A mayor, five town commissioners, and a town constable.~~ A mayor and five town commissioners. The mayor shall be elected for a four-year term. In 1997, the three persons receiving the highest numbers of votes for town commissioner are elected to four-year terms, and the two persons receiving the next highest numbers of votes for town commissioner are elected to two-year terms. In 1999 and quadrennially thereafter, two town commissioners are elected to four-year terms. In 2001 and quadrennially thereafter, three town commissioners are elected to four-year terms. The mayor and the five town commissioners so

elected shall constitute the governing body of the Town of Broadway, and such governing body may appoint such other officers and employ such assistants as the governing body of the town may deem necessary for the better governance of the town."

PART IV. LEE COUNTY COMMISSIONERS

Section 7. (a) Effective with the 1998 election, the Board of Commissioners of Lee County consists of seven members elected at large for four-year terms. In 1998 and quadrennially thereafter, four commissioners shall be elected. In 2000 and quadrennially thereafter, three commissioners shall be elected.

(b) Notwithstanding the provisions of Chapter 163 of the General Statutes, the Board of Commissioners of Lee County shall be elected on a nonpartisan basis at the time set by G.S. 163-1 for the general election in each even-numbered year as terms expire. The election shall be conducted on a nonpartisan plurality basis, with the results determined in accordance with G.S. 163-292. Candidates shall file notices of candidacy not earlier than noon on the third Monday in June and not later than noon on the third Friday in July. The names of the candidates shall be printed on the ballot without reference to any party affiliations. Except as provided by this act, the election shall be conducted in accordance with the applicable provisions of Chapter 163 of the General Statutes.

(c) This section does not affect the terms of office of current members of the Board of Commissioners of Lee County.

PART V. SURRY SCHOOL ELECTIONS

Section 8. The Board of Education of Surry County shall be elected in a nonpartisan election held on the date of the county general election, with the results determined on a plurality basis in accordance with G.S. 163-292. The election shall be consistent with the provisions of Chapters 115C and 163 of the General Statutes, except as otherwise provided herein.

Section 9. Candidates shall file notice of candidacy not earlier than 12:00 noon on the first Friday in July (except that if that day is a holiday, then not earlier than 12:00 noon on the next Monday) and not later than 12:00 noon on the first Friday in August of the year of election.

Section 10. (a) The terms of members of the Surry County Board of Education which expire on or before June 30, 1998, are extended until the first regularly scheduled Surry

County Board of Education meeting in December of 1998 at which time their successors shall qualify.

(b) The terms of members of the Surry County Board of Education which expire on June 30, 2000, are extended until the first regularly scheduled Surry County Board of Education meeting in December of 2000 at which time their successors shall qualify.

Section 11. Chapter 308 of the 1991 Session Laws is repealed.

PART VI. HENDERSON COMMISSIONER DISTRICTS

Section 12. G.S. 153A-22.1(f), as enacted by Chapter 215 of the 1995 Session Laws, reads as rewritten:

"(f) This section applies to ~~Moore County~~ Henderson and Moore Counties only."

PART VII. LEE MUNICIPAL STRUCTURES

Section 13. Section 2 of Chapter 733 of the 1995 Session Laws, as amended by S.L. 1997-101 and House Bill 699, 1997 Session, reads as rewritten:

"Sec. 2. This act applies to the Cities of Greenville, Lumberton, and Roanoke ~~Rapids~~ Rapids, the municipalities in Lee County, and the Towns of Bethel, Farmville, and Newport only."

PART VIII. EFFECTIVE DATE

Section 14. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 4

SENATE BILL 826*
Second Edition Engrossed 4/30/97
House Committee Substitute Favorable 7/24/97
House Committee Substitute #2 Favorable 8/13/97

Short Title: School Board Changes. (Public)

Sponsors:

Referred to:

April 14, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE "QUICK TAKE" PROCEDURES IN EMINENT DOMAIN PROCEEDINGS BY SCHOOL BOARDS; AND TO CHANGE THE TERM OF OFFICE OF THE CHARLOTTE-MECKLENBURG BOARD OF EDUCATION FROM FOUR YEARS TO TWO YEARS, SUBJECT TO A REFERENDUM.

The General Assembly of North Carolina enacts:

PART I. SCHOOL BOARD QUICK TAKE

Section 1. G.S. 40A-42(a) reads as rewritten:

"(a) When a local public condemnor is acquiring property by condemnation for a purpose set out in G.S. 40A-3(b)(1), (4) or (7), or when a city is acquiring property for a purpose set out in G.S. 160A-311(1), (2), (3), (4), (6), or (7), or when a county is acquiring property for a purpose set out in G.S. 153A-274(1), (2) or (3), or when a municipal or county board of education or any combination of those boards is acquiring property for any purpose set forth in G.S. 115C-517, or when a condemnor is acquiring property by condemnation as authorized by G.S. 40A-3(c)(8), (9), (10) or (12), title to the property and the right to immediate possession shall vest pursuant to this subsection. Unless an action for injunctive relief has been initiated, title to the property specified in the complaint, together with the right to immediate possession thereof, shall vest in the condemnor upon the filing of the complaint and the making of the deposit in accordance with G.S. 40A-41."

Section 2. G.S. 115C-517 reads as rewritten:

"**§ 115C-517. Acquisition of sites.**

Local boards of education may acquire suitable sites for schoolhouses or other school facilities either within or without the local school administrative unit; but no school may be operated by a local school administrative unit outside its own boundaries, although other school facilities such as repair shops, may be operated outside the boundaries of the local school administrative unit. Whenever any such board is unable to acquire or enlarge a suitable site or right-of-way for a school, school building, school bus garage or for a parking area or access road suitable for school buses or for other school facilities by gift or purchase, condemnation proceedings to acquire same may be instituted by such board under the provisions of Chapter 40A of the General Statutes, including the rights and procedures pursuant to G.S. 40A-42, et seq., and the determination of the local board of education of the land necessary for such purposes shall be conclusive. A local board shall not initiate a proceeding under G.S. 40A-42(a) unless the action is approved by a resolution adopted by the board of county commissioners."

PART II. CHARLOTTE-MECKLENBURG BOARD OF EDUCATION

Section 3. Section 2(a) of Chapter 167 of the 1993 Session Laws reads as rewritten:

"(a) In ~~1995~~ 1995, ~~and quadrennially thereafter,~~ three members of the Charlotte-Mecklenburg Board of Education shall be elected for four-year terms by all the qualified voters of Mecklenburg County. In 1999 and biennially thereafter, three members of the Charlotte-Mecklenburg Board of Education shall be elected for two-year terms by all the qualified voters of Mecklenburg County."

Section 4. Section 2(c) of Chapter 167 of the 1993 Session Laws reads as rewritten:

"(c) In 1995, one member of the Charlotte-Mecklenburg Board of Education shall be elected from each district for a two-year term by all the qualified voters of the district. In 1997 and ~~quadrennially~~ biennially thereafter, one member of the Charlotte-Mecklenburg Board of Education shall be elected from each district for a ~~four-year~~ two-year term by all the qualified voters of the district."

Section 5. Sections 3 and 4 of this act are effective only if approved by the qualified voters of Mecklenburg County in a referendum to be held on Tuesday after the first Monday in November of 1997. The referendum shall be conducted by the Mecklenburg County Board of Elections.

The question on the ballot shall be:

"[ ] FOR [ ] AGAINST

changing the manner of election of the Charlotte-Mecklenburg Board of Education to provide for two-year terms of office."

Section 6. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 725

State Government, Local Government, and Personnel Committee Substitute Adopted 4/30/97

Proposed House Committee Substitute S725-PCS6730

Short Title: State Employee Incentive Bonus. (Public)

Sponsors:

Referred to:

April 7, 1997

A BILL TO BE ENTITLED

AN ACT AMENDING CHAPTER 143 OF THE GENERAL STATUTES TO PROVIDE FOR AN INCENTIVE BONUS PROGRAM TO RECOGNIZE AND REWARD THE COST-SAVING AND REVENUE-INCREASING INITIATIVES AND INNOVATIONS OF STATE EMPLOYEES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 143 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 36A.

"State Employee Incentive Bonus Program.

"**§ 143-345.10. Definitions.**

The following definitions apply in this Article:

(1) Baseline reversion. -- The two-year historical average of reversions by a State department, agency, or institution.

(2) Employing unit. -- Any of the following:

a. The principal Council of State office or department enumerated in G.S. 143A-11 for which a State employee works.

b. The principal State department enumerated in G.S. 143B-6 for which a State employee works.

c. The constituent institution of The University of North Carolina or the General Administration of The University of North Carolina for which a State employee works.

d. The local school administrative unit for which a State employee works.

e. The board, commission, or agency and its staff for which a State employee works, if that agency is not organizationally housed in any of the other offices, departments, or institutions listed in this subdivision.

(3) State employee. -- Any of the following:

a. A person who is a contributing member of the Teachers' and State Employees' Retirement System of North Carolina, the Consolidated Judicial Retirement System of North Carolina, or the Optional Program.

b. A person who receives wages from the State as a part-time or temporary worker, but is not otherwise a contributing member of one of the retirement programs listed in sub-subdivision a. of this subdivision.

"**§ 143-345.11. State employee incentive bonus.**

(a) A State employee or team of State employees may receive an incentive bonus or bonuses in reward for suggestions or innovations resulting in monetary savings to the State, increased revenues to the State, or improved quality of services delivered to the public.

(b) In addition to any bonuses paid directly to individual State employees, a portion of the cost-savings associated with any savings realized from permanent efficiencies implemented pursuant to this Article may be contributed to a reserve fund for State employee performance bonuses. Funds for State employee incentive bonuses shall only come from savings including reversions above the baseline reversion of the employing State department, agency, or institution.

(c) Savings generated by suggestions and innovations shall be determined at the end of the fiscal year in which the suggestion or innovation is implemented. Any savings are to be calculated using the actual expenditures for a program, activity, or service compared to the budgeted amount for the same, if an amount has been budgeted for the program, activity, or service. The savings calculation shall include the amount of any reversions in excess of the baseline reversion. The savings or revenue increases realized from any suggestion or innovation implemented for less than one full fiscal year shall be annualized. Any savings realized through the State Employee Incentive Bonus Program shall be weighed against continued service to the public.

(d) If a suggestion or innovation affects a program, activity, or service for which no separate budgeted amount has been made, the State Coordinator, in conjunction with the agency evaluator for that suggestion or innovation, shall determine the budgetary impact of the suggestion or innovation.

"**§ 143-345.12. Allocation of incentive bonus funds; nonmonetary recognition.**

(a) If a State employee's suggestion or innovation results in a monetary savings or increased revenue to the State, the funds saved or increased shall be distributed according to the following scale:

(1) Twenty percent (20%) of the annualized savings or increased revenues, up to a maximum of twenty thousand dollars ($20,000) for any one State employee, to constitute gainsharing. If a team of State employees is the suggester, the bonus provided in this subdivision shall be divided equally among the team members, except that no team member may receive in excess of twenty thousand dollars ($20,000), nor may the team receive an aggregate amount in excess of one hundred thousand dollars ($100,000).

(2) Thirty percent (30%) to a performance bonus reserve for all current employees of the employing unit of the suggester, to be distributed according to G.S. 126-7, the Comprehensive Compensation System for State employees, or according to the performance bonus compensation system in which the suggester's employing unit participates.

(3) The remainder to the General Fund for nonrecurring budget items.

(b) The budget of a State agency shall not be reduced in the following fiscal year by an amount similar to the monetary savings or increased revenues realized by the State Employee Incentive Bonus Program. The agency budget shall be reduced in subsequent years only if structural or organizational changes are made that warrant the reductions, including the transfer of responsibility for an activity or service to another agency or the elimination of some function of State government.

(c) If a suggestion or innovation results in improved quality of services to the public or to other State agencies, departments, and institutions, but not in monetary savings to the State, the suggester shall receive a nonmonetary award in the form of a certificate, leave with pay, or other similar recognition.

"§ 143-345.13. Suggestion and review process; role of agency coordinator and agency evaluator.

(a) The process for a State employee or team of State employees to submit a cost-saving or revenue-increasing proposal shall begin by the employee or team of employees submitting the suggestion or innovation to an agency coordinator designated by the State department, agency, or institution impacted by the suggestion or innovation. The agency coordinator, in conjunction with an agency evaluator, shall review the suggestion or innovation for submission to the Review Committee established in G.S. 143-345.14.

(b) The duties of the agency coordinator shall include:

(1) Serving as an information source and maintaining sufficient forms necessary to submit suggestions.

(2) Responsibility for presenting, in conjunction with the agency evaluator, the plan of implementation for a suggestion or innovation to the Review Committee.

(3) Working in conjunction with the agency evaluator designated by the State Coordinator for a particular suggestion or innovation.

An agency may have more than one coordinator if required to provide sufficient services to State employees.

(c) The duties of an agency evaluator shall include:

(1) Reviewing the feasibility and effectiveness of cost-saving or revenue-increasing measures suggested by State employees.

(2) Being knowledgeable of the subject program, activity, or service.

(3) Determining, in conjunction with the agency fiscal officer, the budgetary impact of a suggestion or innovation.

(4) Judging impartially both the positive and negative effects of a suggestion or innovation on the current functions of the subject program, activity, or service.

The specific assignments of the agency evaluator shall be determined by the agency coordinator.

(d) The State Coordinator shall be responsible for general oversight and coordination of the State Employee Incentive Bonus Program. The State Coordinator shall be a State employee working in the Department of Administration.

"**§ 143-345.14. Incentive Bonus Review Committee.**

(a) The Incentive Bonus Review Committee, hereinafter 'Review Committee', shall consist of nine members, as follows:

(1) The State Coordinator.

(2) A representative of the Office of State Budget and Management.

(3) A representative of the Office of State Personnel.

(4) A representative of The University of North Carolina.

(5) A representative of the Department of Justice.

(6) A representative of the Department of Labor.

(7) One State employee appointed by the Speaker of the House of Representatives.

(8) One State employee appointed by the President Pro Tempore of the Senate.

(9) One State employee appointed by the Governor upon the recommendation of the State Employees Association of North Carolina, Inc.

(b) The duties of the Review Committee shall include:

(1) Responsibility for receiving from the various agency coordinators recommendations on suggestion and innovation implementation plans.

(2) Determining the impact of a suggestion or innovation on State government services by judging the monetary savings, increased revenues, or improved quality of services generated by a suggestion or innovation.

(3) Ensuring that the State employee incentive bonus process does not result in a negative impact on services provided to taxpayers by State government.

(c) All administrative, management, clerical, and other functions and services required by the Review Committee shall be supplied by the Department of Administration. The Department of Administration and the Review Committee shall report annually to the Joint Legislative Commission on Governmental Operations on the administration of the State Employee Incentive Bonus Program.

"§ 143-345.15. Effect of decisions regarding bonuses.

All suggestions or innovations submitted by State employees pursuant to this Article are the property of the State. Decisions regarding the award of bonuses by the agency coordinator and the Review Committee are final and are not subject to review under the contested case procedures of Chapter 150B of the General Statutes."

Section 2. G.S. 143-340(1) reads as rewritten:

"(1) To establish ~~a meritorious service award system for State employee suggestions which may include cash awards to be paid from savings resulting from the adoption of employee suggestions, but in no case shall the cash award exceed twenty-five percent (25%) of the savings resulting during the first year following adoption or a maximum of five thousand dollars ($5,000).~~ the State Employee Incentive Bonus Program pursuant to Article 36A of this Chapter, with the authority to adopt all rules necessary to implement the program."

Section 3. This act shall not be construed to obligate the General Assembly to make any appropriation to implement the provisions of this act. Each State agency to which this act applies shall implement the provisions of this act from funds otherwise appropriated to that State agency.

Section 4. This act becomes effective July 1, 1997, and applies to all suggestions and innovations pending on that date that were submitted under the former State Employee Suggestion Program as authorized by G.S. 143-340(1) on or before June 30, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 725
State Government, Local Government, and Personnel Committee
Substitute Adopted 4/30/97
Proposed House Committee Substitute S725-CSLR-1
WARNING: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: State Employee Incentive Bonus. (Public)

Sponsors:

Referred to:

April 7, 1997

A BILL TO BE ENTITLED

AN ACT AMENDING CHAPTER 143 OF THE GENERAL STATUTES TO PROVIDE FOR AN INCENTIVE BONUS PROGRAM TO RECOGNIZE AND REWARD THE COST-SAVING AND REVENUE-INCREASING INITIATIVES AND INNOVATIONS OF STATE EMPLOYEES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 143 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 36A.

"State Employee Incentive Bonus Program.

"§ 143-345.10. Definitions.

The following definitions apply in this Article:

(1) Baseline reversion. -- The two-year historical average of reversions by a State department, agency, or institution.

(2) Employing unit. -- Any of the following:

a. The principal Council of State office or department enumerated in G.S. 143A-11 for which a State employee works.

b. The principal State department enumerated in G.S. 143B-6 for which a State employee works.

c. The constituent institution of The University of North Carolina or the General Administration of The University of North Carolina for which a State employee works.

d. The local school administrative unit for which a State employee works.

e. The board, commission, or agency and its staff for which a State employee works, if that agency is not organizationally housed in any of the other offices, departments, or institutions listed in this subdivision.

(3) State employee. -- Any of the following:

a. A person who is a contributing member of the Teachers' and State Employees' Retirement System of North Carolina, the Consolidated Judicial Retirement System of North Carolina, or the Optional Program.

b. A person who receives wages from the State as a part-time or temporary worker, but is not otherwise a contributing member of one of the retirement programs listed in sub-subdivision a. of this subdivision.

"§ 143-345.11. State employee incentive bonus.

(a) A State employee or team of State employees may receive an incentive bonus or bonuses in reward for suggestions or innovations resulting in monetary savings to the State, increased revenues to the State, or improved quality of services delivered to the public.

(b) In addition to any bonuses paid directly to individual State employees, a portion of the cost-savings associated with any savings realized from permanent efficiencies implemented pursuant to this Article may be contributed to a reserve fund for State employee performance bonuses. Funds for State employee incentive bonuses shall only come from savings including reversions above the baseline reversion of the employing State department, agency, or institution.

(c) Savings generated by suggestions and innovations shall be determined at the end of the fiscal year in which the suggestion or innovation is implemented. Any savings are to be calculated using the actual expenditures for a program, activity, or service compared to the budgeted amount for the same, if an amount has been budgeted for the program, activity, or service. The savings

calculation shall include the amount of any reversions in excess of the baseline reversion. The savings or revenue increases realized from any suggestion or innovation implemented for less than one full fiscal year shall be annualized. Any savings realized through the State Employee Incentive Bonus Program shall be weighed against continued service to the public.

(d) If a suggestion or innovation affects a program, activity, or service for which no separate budgeted amount has been made, the State Coordinator, in conjunction with the agency evaluator for that suggestion or innovation, shall determine the budgetary impact of the suggestion or innovation.

"§ 143-345.12. Allocation of incentive bonus funds; nonmonetary recognition.

(a) If a State employee's suggestion or innovation results in a monetary savings or increased revenue to the State, the funds saved or increased shall be distributed according to the following scale:

(1) Twenty percent (20%) of the annualized savings or increased revenues, up to a maximum of twenty thousand dollars ($20,000) for any one State employee, to constitute gainsharing. If a team of State employees is the suggester, the bonus provided in this subdivision shall be divided equally among the team members, except that no team member may receive in excess of twenty thousand dollars ($20,000), nor may the team receive an aggregate amount in excess of one hundred thousand dollars ($100,000).

(2) Thirty percent (30%) to a performance bonus reserve for all current employees of the employing unit of the suggester, to be distributed according to G.S. 126-7, the Comprehensive Compensation System for State employees or according to the performance bonus compensation system in which the suggester's employing unit participates.

(3) The remainder to the General Fund for nonrecurring budget items.

(b) The budget of a State agency shall not be reduced in the following fiscal year by an amount similar to the monetary savings or increased revenues realized by the State Employee Incentive Bonus Program. The agency budget shall be reduced in subsequent years only if structural or organizational changes are made that warrant the reductions, including the transfer of

responsibility for an activity or service to another agency or the elimination of some function of State government.

(c) If a suggestion or innovation results in improved quality of services to the public or to other State agencies, departments, and institutions, but not in monetary savings to the State, the suggester shall receive a nonmonetary award in the form of a certificate, leave with pay, or other similar recognition.

"§ 143-345.13. Suggestion and review process; role of agency coordinator and agency evaluator.

(a) The process for a State employee or team of State employees to submit a cost-saving or revenue-increasing proposal shall begin by the employee or team of employees submitting the suggestion or innovation to an agency coordinator designated by the State department, agency, or institution impacted by the suggestion or innovation. The agency coordinator, in conjunction with an agency evaluator, shall review the suggestion or innovation for submission to the Review Committee established in G.S. 143-345.14.

(b) The duties of the agency coordinator shall include:

(1) Serving as an information source and maintaining sufficient forms necessary to submit suggestions.

(2) Responsibility for presenting, in conjunction with the agency evaluator, the plan of implementation for a suggestion or innovation to the Review Committee.

(3) Working in conjunction with the agency evaluator designated by the State Coordinator for a particular suggestion or innovation.

An agency may have more than one coordinator if required to provide sufficient services to State employees.

(c) The duties of an agency evaluator shall include:

(1) Reviewing the feasibility and effectiveness of cost-saving or revenue-increasing measures suggested by State employees.

(2) Being knowledgeable of the subject program, activity, or service.

(3) Determining, in conjunction with the agency fiscal officer, the budgetary impact of a suggestion or innovation.

(4) Judging impartially both the positive and negative effects of a suggestion or innovation on the current functions of the subject program, activity, or service.

The specific assignments of the agency evaluator shall be determined by the agency coordinator.

(d) The State Coordinator shall be responsible for general oversight and coordination of the State Employee Incentive Bonus Program. The State Coordinator shall be a State employee working in the Department of Administration.

"§ 143-345.14. Incentive Bonus Review Committee.

(a) The Incentive Bonus Review Committee, hereinafter 'Review Committee', shall consist of nine members, as follows:

(1) The State Coordinator.

(2) A representative of the Office of State Budget and Management.

(3) A representative of the Office of State Personnel.

(4) A representative of The University of North Carolina.

(5) A representative of the Department of Justice.

(6) A representative of the Department of Labor.

(7) One State employee appointed by the Speaker of the House of Representatives.

(8) One State employee appointed by the President Pro Tempore of the Senate.

(9) One State employee appointed by the Governor upon the recommendation of the State Employees Association of North Carolina, Inc.

(b) The duties of the Review Committee shall include:

(1) Responsibility for receiving from the various agency coordinators recommendations on suggestion and innovation implementation plans.

(2) Determining the impact of a suggestion or innovation on State government services by judging the monetary savings, increased revenues, or improved quality of services generated by a suggestion or innovation.

(3) Ensuring that the State employee incentive bonus process does not result in a negative impact on services provided to taxpayers by State government.

(c) All administrative, management, clerical, and other functions and services required by the Review Committee shall be supplied by the Department of Administration. The Department of Administration and the Review Committee shall report annually to the Joint Legislative Commission on Governmental Operations on the administration of the State Employee Incentive Bonus Program.

"§ 143-345.15. Effect of decisions regarding bonuses.

All suggestions or innovations submitted by State employees pursuant to this Article are the property of the State. Decisions regarding the award of bonuses by the agency coordinator and the Review Committee are final and are not subject to review under the contested case procedures of Chapter 150B of the General Statutes."

Section 2. G.S. 143-340(1) reads as rewritten:

"(1) To establish ~~a meritorious service award system for State employee suggestions which may include cash awards to be paid from savings resulting from the adoption of employee suggestions, but in no case shall the cash award exceed twenty-five percent (25%) of the savings resulting during the first year following adoption or a maximum of five thousand dollars ($5,000).~~ the State Employee Incentive Bonus Program pursuant to Article 36A of this Chapter, with the authority to adopt all rules necessary to implement the program."

Section 3. This act shall not be construed to obligate the General Assembly to make any appropriation to implement the provisions of this act. Each State agency to which this act applies shall implement the provisions of this act from funds otherwise appropriated to that State agency.

Section 4. This act becomes effective July 1, 1997, and applies to all suggestions and innovations pending on that date that were submitted under the former State Employee Suggestion Program as authorized by G.S. 143-340(1) on or before June 30, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 725
State Government, Local Government, and Personnel Committee Substitute Adopted 4/30/97

Short Title: EEOC Deferral Agency/Proceedings. (Public)

Sponsors:

Referred to:

April 7, 1997

A BILL TO BE ENTITLED

AN ACT PERTAINING TO THE FILING OF A DEFERRED CHARGE WITH EEOC OR THE OFFICE OF ADMINISTRATIVE HEARINGS BY STATE OR LOCAL GOVERNMENT EMPLOYEES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-759 reads as rewritten:

"**§ 7A-759. Role as deferral agency.**

(a) The Office of Administrative Hearings is designated to serve as the State's deferral agency for cases deferred by the Equal Employment Opportunity Commission to the Office of Administrative Hearings as provided in Section 706 of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5, the Age Discrimination in Employment Act, 29 U.S.C. § 621 et seq., and the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq. for charges filed by State or local government employees covered under Chapter 126 of the General Statutes and shall have all of the powers and authority necessary to function as a deferral agency.

(b) The Chief Administrative Law Judge is authorized and directed to contract with the Equal Employment Opportunity Commission for the Office of Administrative Hearings to serve as a deferral agency and to establish and maintain a Civil Rights Division in the Office of Administrative Hearings to carry out the functions of a deferral agency.

(b1) As provided in the contract between the Office of Administrative Hearings and the Equal Employment Opportunity Commission, a deferred charge for purposes

of 42 U.S.C. § 2000e-5(c) or (d) is a charge that is filed by a State or local government employee covered under Chapter 126 of the General Statutes and alleges an unlawful employment practice prohibited under that Chapter or any other State law. A deferred charge may be filed with either agency.

The date a deferred charge is filed with either agency is considered to be a commencement of proceedings under State law for purposes of 42 U.S.C. § 2000e-5(c) or (d). The filing of a deferred charge automatically tolls the time limit under G.S. 126-7.2, 126-35, 126-38, and 150B-23(f) and any other State law that sets a time limit for filing a contested case under Article 3 of Chapter 150B of the General Statutes alleging an unlawful employment practice. These time limits are tolled until the completion of the investigation and of any informal methods of resolution pursued pursuant to subsection (d) of this section.

(c) In investigating charges an employee of the Civil Rights Division of the Office of Administrative Hearings specifically designated by an order of the Chief Administrative Law Judge filed in the pending case may administer oaths and affirmations.

(c1) In investigating charges, an employee of the Civil Rights Division shall have access at reasonable times to State premises, records, and documents relevant to the charge and shall have the right to examine, photograph, and copy evidence. Any challenge to the Civil Rights Division to investigate the deferred charge shall not constitute grounds for denial or refusal to produce or allow access to the investigative evidence.

(d) Any charge not resolved by informal methods of conference, conciliation or persuasion shall be heard as a contested case as provided in Article 3 of Chapter 150B of the General Statutes.

(e) Notwithstanding G.S. 150B-34 and G.S. 150B-36, an order entered by an administrative law judge after a contested case hearing on the merits of a deferred charge is a final agency decision and is binding on the parties. The administrative law judge may order whatever remedial action is appropriate to give full relief consistent with the requirements of federal statutes or ~~regulations.~~ regulations or State statutes or rules.

(f) In addition to the authority vested in G.S. 7A-756 and G.S. 150B-33, an administrative law judge may monitor compliance with any negotiated settlement, conciliation agreement or order entered in a deferred case.

(g) The standards of confidentiality established by federal statute or regulation for discrimination charges shall apply to deferred cases investigated or heard by the Office of Administrative Hearings.

(h) Nothing in this section shall be construed as limiting the authority or right of any federal agency to act under any federal statute or regulation.

(i) This section shall be broadly construed to further the general purposes stated in this section and the specific purposes of the particular provisions involved."

Section 2. This act is effective when it becomes law and applies to charges pending or filed on and after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 4

HOUSE BILL 568
Committee Substitute Favorable 6/26/97
Committee Substitute #2 Favorable 7/16/97
Senate Finance Committee Substitute Adopted 7/28/97

Short Title: Wake Forest/Beaufort Annexation. (Local)

Sponsors:

Referred to:

March 20, 1997

A BILL TO BE ENTITLED

AN ACT CONCERNING SATELLITE ANNEXATIONS BY THE TOWN OF WAKE FOREST AND CONCERNING A SATELLITE ANNEXATION BY THE TOWN OF BEAUFORT.

The General Assembly of North Carolina enacts:

Section 1. (a) G.S. 160A-58.1(b) is amended by adding a new subdivision to read:

"(2a) If any territory proposed for annexation under this Part is an area that another city has agreed not to annex under an agreement with the annexing city under Part 6 of this Article, then the proximity to that other city shall not be considered in applying subdivision (2) of this subsection. This subdivision applies only where the annexing city is the Town of Wake Forest."

(b) Section 2(b) of Chapter 882 of the 1989 Session Laws reads as rewritten:

"(b) Except as provided by G.S. 160A-58.1(b)(2a) or subsection (a) of this section, the provisions of Part 4 of Article 4A of Chapter 160A of the General Statutes shall continue to apply to the Town of Wake Forest."

Section 1.1. The provisions of G.S. 160A-58.1(b)(5) do not apply to the annexation of the Harry Taylor Farms property by the Town of Beaufort.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 488

Short Title: Voc. Rehab. Council Chair Selection. (Public)

Sponsors: Senator Kinnaird.

Referred to: Children & Human Resources.

March 25, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PROCESS OF SELECTING THE CHAIR OF THE VOCATIONAL REHABILITATION ADVISORY COUNCIL TO CONFORM WITH FEDERAL LAW AND TO PROVIDE THAT THE CHAIR'S TERM SHALL NOT EXCEED THREE YEARS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-548(c) reads as rewritten:

"(c) ~~The Governor shall designate as Chair of the Council one of the members of the Council.~~ The Council shall elect one of the voting members of the Council as Chair of the Council. The Chair's term ~~is~~ shall not exceed a single three-year term."

Section 2. This act becomes effective July 1, 1997.

North Carolina General Assembly
Legislative Services Agency

George R. Hall, Legislative Services Officer
(919) 733-7044

Elaine W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones St.
Raleigh, NC 27603-5925
(919) 733-7500

Gerry F. Cohen, Director
Bill Drafting Division
Suite 100, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

August 19, 1997

MEMORANDUM

To: Senator Kinnaird

From: Tom Covington, Director
Fiscal Research Division

Mary Ellen Sylvester MES
Fiscal Research Division

Subject: Federal Certification for Senate Bill 488

In compliance with G.S. 120-36.8 (Certification of legislation required by federal law), the purpose of this memo is to certify that Senate Bill 488, Vocational Rehabilitation Council Chair Selection, is necessary to conform with federal law.

Currently, North Carolina state law authorizes the Governor to designate the chairperson of the Vocational Rehabilitation Advisory Council. However, federal law (29 U.S.C. 725(b)(5)) requires that, if the Governor has veto power pursuant to state law, then the Council shall select a chairperson from among the membership of the Council. Therefore, Senate Bill 488 is complying with the federal law cited above by rewriting G.S. 143-548(c) to enable North Carolina's Vocational Rehabilitation Advisory Council to elect a Chair from among its members.

A copy of federal law 29 U.S.C. 725(b)(5) is attached. This memorandum has been prepared in consultation with the Research Division.

Atch

North Carolina General Assembly
Legislative Services Office

George R. Hall, Legislative Services Officer
(919) 733-7044

Elaine W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones Street
Raleigh, NC 27603-5925
(919) 733-7500

Gerry F. Cohen, Director
Bill Drafting Division
Suite 401, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

August 15, 1997

MEMORANDUM

TO: Tom Covington

FROM: Linwood Jones

RE: Senate Bill 488 - Federal Certification

This memorandum is intended for the preparation of a federal certification note pursuant to G.S. 120-36.8.

Federal law requires that the chairperson of a state's vocational rehabilitation council be selected *by the Council* from among their members *if the Governor has veto power pursuant to state law (*29 U.S.C. §725(b)(5)).

Our current State law provides that the Governor selects the chairperson of the Vocational Rehabilitation Advisory Council. Because the Governor now has veto power, the federal law cited above requires that the Council appoint the chairperson.

A paper copy of the federal law is being provided. If you have any questions, please feel free to contact me at 733-2578.

90LLJ-0299

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

however, the substitution was made for "construction or establishment of such facility" in order to effectuate the probable intent of Congress.

RESEARCH GUIDE

Americans with Disabilities:
1 Am Disab. Programs, Services and Accommodations §§ 1:34, 48, 84; 2:58, 71.
4 Am Disab. Housing §§ 14:42, 187, 195.

§ 725. State Rehabilitation Advisory Council

(a) **Establishment.** (1) In general. Except as provided in subparagraph (B) or (C) of section 101(a)(36) [29 USCS § 721(a)(36)(B) or (C)], to be eligible to receive financial assistance under this title [29 USCS §§ 720 et seq.] a State shall establish a State Rehabilitation Advisory Council (referred to in this section as the "Council") in accordance with this section.

(2) Separate agency for individuals who are blind. A State that designates a State agency to administer the part of the State plan under which vocational rehabilitation services are provided for individuals who are blind under section 101(a)(1)(A)(i) [29 USCS § 721(a)(1)(A)(i)] may establish a separate Council in accordance with this section to perform the duties of such a Council with respect to such State agency.

(b) **Composition and appointment.** (1) Composition. (A) In general. Except in the case of a separate Council established under subsection (a)(2), the Council shall be composed of—

(i) at least one representative of the Statewide Independent Living Council established under section 705 [29 USCS § 796d], which representative may be the chairperson or other designee of the Council;

(ii) at least one representative of a parent training and information center established pursuant to section 631(e)(1) of the Individuals with Disabilities Education Act (20 U.S.C. 1431(e)(1));

(iii) at least one representative of the client assistance program established under section 112 [29 USCS § 732];

(iv) at least one vocational rehabilitation counselor, with knowledge of and experience with vocational rehabilitation programs, who shall serve as an ex officio, nonvoting member of the Council if the counselor is an employee of the designated State agency;

(v) at least one representative of community rehabilitation program service providers;

(vi) four representatives of business, industry, and labor;

(vii) representatives of disability advocacy groups representing a cross section of—

(I) individuals with physical, cognitive, sensory, and mental disabilities; and

(II) parents, family members, guardians, advocates, or authorized representatives, of individuals with disabilities who have difficulty in representing themselves or are unable due to their disabilities to represent themselves; and

(viii) current or former applicants for, or recipients of, vocational rehabilitation services.

(B) Separate council. In the case of a separate Council established under subsection (a)(2), the Council shall be composed of—

(i) at least one representative described in subparagraph (A)(i);

(ii) at least one representative described in subparagraph (A)(ii);

(iii) at least one representative described in subparagraph (A)(iii);

(iv) at least one vocational rehabilitation counselor described in subparagraph (A)(iv), who shall serve as described in such subparagraph;

(v) at least one representative described in subparagraph (A)(v);

(vi) four representatives described in subparagraph (A)(vi);

(vii) at least one representative of a disability advocacy group representing individuals who are blind;

(viii) at least one parent, family member, guardian, advocate, or authorized representative, of an individual who—

(I) is an individual who is blind and has multiple disabilities; and

(II) has difficulty in representing himself or herself or is unable due to disabilities to represent himself or herself; and

(ix) applicants or recipients described in subparagraph (A)(viii).

(C) Exception. In the case of a separate Council established under subsection (a)(2), any Council that is required by State law, as in effect on the date of enactment of the Rehabilitation Act Amendments of 1992 [enacted Oct. 29, 1992], to have fewer than 13 members shall be deemed to be in compliance with subparagraph (B) if the Council—

(i) meets the requirements of subparagraph (B), other than the requirements of clauses (vi) and (ix) of such subparagraph; and

(ii) includes at least—

(I) one representative described in subparagraph (B)(vi); and

(II) one applicant or recipient described in subparagraph (B)(ix).

(2) Ex officio member. The Director of the designated State unit shall be an ex officio member of the Council.

(3) Appointment. Members of the Council shall be appointed by the Governor. In the case of a State that, under State law, vests appointment authority in an entity in lieu of, or in conjunction with, the Governor, such as one or more houses of the State legislature, or an independent board that has general appointment authority, that entity shall make the appointments. The appointing authority shall select members after soliciting recommendations from representatives of organizations representing a broad range of individuals with disabilities and organizations interested in individuals with disabilities.

(4) Qualifications. A majority of Council members shall be persons who are—

(A) individuals with disabilities described in section 7(8)(B) [29 USCS § 706(8)(B)]; and

(B) not employed by the designated State unit.

(5) Chairperson. (A) In general. Except as provided in subparagraph (B), the Council shall select a chairperson from among the membership of the Council.

(B) Designation by Governor. In States in which the Governor does not have veto power pursuant to State law, the Governor shall designate a member of the Council to serve as the chairperson of the Council or shall require the Council to so designate such a member.

(6) Terms of appointment. (A) Length of term. Each member of the Council shall serve for a term of not more than 3 years, except that—

(i) a member appointed to fill a vacancy occurring prior to the expiration of the term for which a predecessor was appointed, shall be appointed for the remainder of such term; and

(ii) the terms of service of the members initially appointed shall be (as specified by the appointing authority) for such fewer number of years as will provide for the expiration of terms on a staggered basis.

(B) Number of terms. No member of the Council may serve more than two consecutive full terms.

(7) Vacancies. Any vacancy occurring in the membership of the Council shall be filled in the same manner as the original appointment. The vacancy shall not affect the power of the remaining members to execute the duties of the Council.

(c) **Functions of Council.** The Council shall—

(1) review, analyze, and advise the designated State unit regarding the performance of the responsibilities of the unit under this title [29 USCS §§ 720 et seq.], particularly responsibilities relating to—

(A) eligibility (including order of selection);

(B) the extent, scope, and effectiveness of services provided; and

(C) functions performed by State agencies that affect or that potentially affect the ability of individuals with disabilities in achieving rehabilitation goals and objectives under this title [29 USCS §§ 720 et seq.];

(2) advise the designated State agency and the designated State unit, and, at the discretion of the designated State agency, assist in the preparation of applications, the State plan, the strategic plan and amendments to the plans, reports, needs assessments, and evaluations required by this title [29 USCS §§ 720 et seq.];

(3) to the extent feasible, conduct a review and analysis of the effectiveness of, and consumer satisfaction with—

(A) the functions performed by State agencies and other public and private entities responsible for performing functions for individuals with disabilities; and

(B) vocational rehabilitation services—

(i) provided, or paid for from funds made available, under this Act [29 USCS §§ 701 et seq.] or through other public or private sources; and

(ii) provided by State agencies and other public and private entities responsible for providing vocational rehabilitation services to individuals with disabilities;

(4) prepare and submit an annual report to the Governor or appropriate State entity and the Commissioner on the status of vocational rehabilitation programs operated within the State, and make the report available to the public;

(5) coordinate with other councils within the State, including the Statewide Independent

Living Council established under section 705 [29 USCS § 796d], the advisory panel established under section 613(a)(12) of the Individuals with Disabilities Education Act (20 U.S.C. 1413(a)(12)), the State Planning Council described in section 124 of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6024), and the State mental health planning council established under section 1916(e) of the Public Health Service Act (42 U.S.C. 300x-4(e));

(6) advise the State agency designated under section 101(a)(1) [29 USCS § 721(a)(1)] and provide for coordination and the establishment of working relationships between the State agency and the Statewide Independent Living Council and centers for independent living within the State; and

(7) perform such other functions, consistent with the purpose of this title [29 USCS §§ 720 et seq.], as the State Rehabilitation Advisory Council determines to be appropriate, that are comparable to the other functions performed by the Council.

(d) **Resources.** (1) Plan. The Council shall prepare, in conjunction with the designated State unit, a plan for the provision of such resources, including such staff and other personnel, as may be necessary to carry out the functions of the Council under this section. The resource plan shall, to the maximum extent possible, rely on the use of resources in existence during the period of implementation of the plan.

(2) Resolution of disagreements. To the extent that there is a disagreement between the Council and the designated State unit in regard to the resources necessary to carry out the functions of the Council as set forth in this section, the disagreement shall be resolved by the Governor or appointing agency consistent with paragraph (1).

(3) Supervision and evaluation. Each Council shall, consistent with State law, supervise and evaluate such staff and other personnel as may be necessary to carry out its functions under this section.

(4) Personnel conflict of interest. While assisting the Council in carrying out its duties, staff and other personnel shall not be assigned duties by the designated State unit or any other agency or office of the State, that would create a conflict of interest.

(e) **Conflict of interest.** No member of the Council shall cast a vote on any matter that would provide direct financial benefit to the member or otherwise give the appearance of a conflict of interest under State law.

(f) **Meetings.** The Council shall convene at least 4 meetings a year in such places as it determines to be necessary to conduct Council business and conduct such forums or hearings as the Council considers appropriate. The meetings, hearings, and forums shall be publicly announced. The meetings shall be open and accessible to the general public unless there is a valid reason for an executive session.

(g) **Compensation and expenses.** The Council may use funds appropriated under this title [29 USCS §§ 720 et seq.] (except for funds appropriated to carry out the client assistance program under section 112 [29 USCS § 732] and funds reserved pursuant to section 110(d) [29 USCS § 730(d)] to carry out part D of this title [29 USCS §§ 750 et seq.]) to reimburse members of the Council for reasonable and necessary expenses of attending Council meetings and performing Council duties (including child care and personal assistance services), and to pay compensation to a member of the Council, if such member is not employed or must forfeit wages from other employment, for each day the member is engaged in performing the duties of the Council.

(h) **Hearings and forums.** The Council is authorized to hold such hearings and forums as the Council may determine to be necessary to carry out the duties of the Council.

(i) **Use of existing Councils.** To the extent that a State has established a Council before September 30, 1992, that is comparable to the Council described in this section, such established Council shall be considered to be in compliance with this section. Within 1 year after the date of enactment of the Rehabilitation Act Amendments of 1992 [enacted October 29, 1992], such State shall establish a Council that complies in full with this section.

(Sept. 26, 1973, P. L. 93-112, Title I, Part A, § 105, as added Oct. 29, 1992, P. L. 102-569, Title I, Subtitle B, § 126(a), 106 Stat. 4381; Aug. 11, 1993, P. L. 103-73, Title I, § 107(d)(1), 107 Stat. 722.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Effective date of section:

This section is effective on enactment as provided by § 138(a) of Act Oct. 29, 1992, P. L. 102-569, which appears as 29 USCS § 701 note.

Amendments:

1993. Act Aug. 11, 1993, in subsec. (b), substituted para. (1) for one which read:

"(1) Composition. The Council shall be composed of—

"(A) at least one representative of the Statewide Independent Living Council

VISITOR REGISTRATION SHEET

RULES, CALENDAR, AND OPERATIONS OF THE HOUSE **AUGUST 19, 1997**

Name of Committee Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
DAVID RICE	W-S JOURNAL
Jim Brown	N.C. State Ports
BILL SCOGGIN	NCBA
Joyce Ramquist	NCSOS
[illegible]	NCFB
Robert PASchal	Young, Moore & Henderson, P.A.
Mari Smith	NESA
Amy Jo Bain	Smith Anderson
Willie R. Riddick	DOR
Kit Mundt	Conservation Council of NC
Rick Liddle	DOR
Tom Dixon	DOR
Leanne Winner	E & H & S
Ruth Sabbie	DOT
Susan Valauri	Nationwide
[illegible]	Bob Call & Stamper
Michelle Cook	Weyerhaeuser
Starla U. McKinney	DOT
Stan Hannen	SEANC
Brenda Dougherty	Sprint
Andy Romanet	N.C.L.M.
[illegible] Rogers	DEHNR
[illegible] Allen	Secy. of State
Ed Rego	NRECC
Jim Blackburn	NCACC
[illegible]	NCSL
Sandra L Long	NCAPP

VISITOR REGISTRATION SHEET

RULES, CALENDAR, AND OPERATIONS OF THE HOUSE **AUGUST 19, 1997**

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tom BEAN	NC Wildlife Federation
Molly Diggins	NC Sierra Club
F M Ramsey	NCRPA
Wade Rawlins	News & Observer
Ken Eudy	Capital Strategies
Martha Glass	DOA
Henry Jones	Attorney Raleigh
David Ferrell	Hofu McNamara, Golden et al
Laura Hartsell	MCIC
Jerry Harbestay	NC P.C.
Ron Aikins	CNANC
Ann Cade	DENR
Suzanne Ables	Boyle & Assoc.
Mike Carpenter	NCMSA
Alan Mills	Brooks & Dorsett LLP

MINUTES
COMMITTEE ON RULES, CALENDAR AND OPERATIONS OF THE HOUSE
August 21, 1997

The Committee on Rules, Calendar, and Operations of the House met on Thursday, August 21, 1997 at 11:30 a.m. in Room 421 in the Legislative Office Building. Representative Morgan, Committee Chair, called the meeting to order and asked the clerk to call the roll. The following members were present: Representative Bowie, Vice Chair; and Representatives Crawford, Culp, Dockham, Esposito, Gulley, Hill, McMahan, Miner, Mitchell, Neely, Thompson, C. Wilson and Wood.

Senate Bill 490 CONTINUED BUDGET AUTHORITY was brought before the Committee.. Representative Thompson moved for adoption of a committee substitute for the purpose of discussion and the motion carried. Representative Thompson then moved for a favorable report for the committee substitute and the motion carried.

Representative Thompson moved to reconsider the vote for which committee substitute for SB 490 received a favorable report. The vote was unanimous for reconsideration.

House Bill 404 CONTINUING BUDGET AUTHORITY was brought before the Committee. Representative McMahan moved for adoption of a committee substitute for discussion and the vote carried. Committee Counsel Linwood Jones explained that the bill is similar to the continuing budget resolution that came from the Senate except there is no Section 5.1, no per diem provision and the title has been changed but it does the same thing without the per diem. Representative Mitchell moved for a favorable report to the committee substitute and the motion carried.

Senate Bill 490 CONTINUED BUDGET AUTHORITY was brought before the Committee again. Representative McMahan moved for adoption of a committee substitute for the purpose of discussion and the motion carried. Representative Mitchell moved for a favorable report to the committee substitute, unfavorable to the original bill. Motion carried.

Committee Substitute for Senate Bill 550 IRRIGATION SYSTEM DESIGN NOT ENGINEERING was brought before the committee. Representative Dockham moved for adoption of a committee substitute for discussion and the motion carried. Committee Staff Council Linwood Jones explained that the substitute had language added on pages 4 and 5 to clarify that the Environmental Management Commission could require individual as well as general permits for animal waste management systems. Dewey Botts of the Environmental Commission addressed the group. Representative Dockham moved for a favorable report to the committee

substitute, and an unfavorable to the previous committee substitute. The motion carried. There was a title change.

The meeting adjourned at 11:50.

Representative Richard T. Morgan
Committee Chair

Dixie Epps
Committee Clerk

Attachments:
Committee Reports
Bills
Visitor's Sheet

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **MORGAN** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE.**

☒ Committee Substitute for
S.B. 490 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE DIRECTOR OF THE BUDGET TO CONTINUE EXPENDITURES FOR THE OPERATION OF GOVERNMENT AT THE LEVEL IN EFFECT ON JUNE 30, 1997, AND TO EXTEND EXPIRING PROVISIONS OF LAW.

☐ 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~~ House substitute bill ~~(#_____)~~, ☑ which changes the title, unfavorable as to ~~original bill~~ (Committee Substitute Bill ~~#_____~~ Senate), ~~(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)

4/24/97

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE**.

☐ Committee Substitute for
H.B. 404 A BILL TO BE ENTITLED AN ACT TO APPROPRIATE FUNDS FOR CURRENT OPERATIONS OF STATE DEPARTMENTS, INSTITUTIONS, AND AGENCIES, AND FOR OTHER PURPOSES.

☐ 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)

4/24/97

FOR JOURNAL USE ONLY

____ Pursuant to Rule 36(a), the bill is placed on the Calendar of _____.

____ The (committee substitute) bill/resolution (, as amended,) is (ordered engrossed and) re-referred to the Committee on _____.

____ The (committee substitute) bill/resolution (, as amended,) is placed on the Consent Calendar of _____. The original bill/resolution is placed on the Unfavorable Calendar.

____ The bill/resolution is re-referred to the Committee on _____.

____ On motion of (Rep. _____,) (the Chair,) the (committee substitute) bill/resolution is (ordered engrossed and) re-referred to the Committee on _____.

____ Pursuant to Rule 36(a), the (House)committee substitute bill (No. ____)/resolution is placed on the Calendar of _____. (The original bill) (House Committee Substitute Bill No. ____)/resolution is placed on the Unfavorable Calendar.

____ On motion of Rep. _____, (the rules are suspended) (Rule ____ is suspended) and the bill/resolution is placed on today's calendar. (for immediate consideration.)

____ On motion of Rep. _____, Committee Amendment No.(s) _____ is/are adopted (by EV____ ____).

____ On motion of Rep. _____, Committee Amendment No.(s) _____ is/are adopted (by EV____ ____).

____ Rep. _____ offers Amendment No. _____ which (is adopted.) (fails of adoption.) (by EV ____ ____.) ( ) This amendment changes the title.

____ The bill/resolution (, as amended,) passes its second reading (by following vote, ____ ____ RC) (, by EV ____ ____,) and (remains on the Calendar,) (and there being no objection is read a third time).

____ The bill/resolution (, as amended,) passes its third reading (by the following vote, ____ ____ RC) (, by EV ____ ____,) and is ordered
____ sent to the Senate.
____ without engrossment. ____ by Special message.
____ sent to the Senate for concurrence in
_____ House amendment (s).
_____ House committee substitute.
____ enrolled.

____ On motion of Rep. _____, the House concurs in the (material) Senate _____ (by the following vote, ____ ____ RC) (, by EV ____ ____,) and the bill is ordered enrolled.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE.**

☐ Committee Substitute for
S.B. 550 A BILL TO BE ENTITLED AN ACT TO AMEND CHAPTER 89C OF THE GENERAL STATUTES TO PROVIDE THAT THE DESIGN OF LAND APPLICATION IRRIGATION SYSTEMS FOR ANIMAL WASTE MANAGEMENT SYSTEMS MAY BE PERFORMED BY IRRIGATION DESIGN TECHNICAL SPECIALISTS AND CONCERNING AGRICULTURAL BEST MANAGEMENT PRACTICES.

☐ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 490
Appropriations Committee Substitute Adopted 8/20/97
Third Edition Engrossed 8/20/97
Proposed House Committee Substitute S490-PCS1885

Short Title: Continuing Budget Authority. (Public)

Sponsors:

Referred to:

March 25, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DIRECTOR OF THE BUDGET TO CONTINUE EXPENDITURES FOR THE OPERATION OF GOVERNMENT AT THE LEVEL IN EFFECT ON JUNE 30, 1997, AND TO EXTEND EXPIRING PROVISIONS OF LAW ON THE SENTENCING COMMISSION, FICTITIOUS LICENSES AND REGISTRATION PLATES ON PUBLICLY OWNED MOTOR VEHICLES, LOWER NEUSE RIVER BASIN ASSOCIATION FUNDS, AND BEAVER DAMAGE CONTROL FUNDS.

The General Assembly of North Carolina enacts:

FUNDS SHALL NOT REVERT

Section 1. Section 5 of S.L. 1997-256, as rewritten by Section 1 of S.L. 1997-347 and Section 1 of S.L. 1997-401, reads as rewritten:

"Section 5. If the provisions of Senate Bill 352, 3rd edition, Senate Bill 352, 5th edition, or both, direct that funds shall not revert, the funds shall not revert on June 30, 1997. Unless these funds are encumbered on or before June 30, 1997, these funds shall not be expended after June 30, 1997, except as provided by a statute that becomes effective after June 30, 1997. If no such statute is enacted prior to ~~August 22, 1997,~~ August 29, 1997, these funds shall revert to the appropriate fund on that date."

EXTEND SENTENCING COMMISSION

Section 2. Section 8 of Chapter 1076 of the 1989 Session Laws, as amended by Chapters 812 and 816 of the 1991 Session Laws, Chapters 253, 321, and 591 of the 1993 Session Laws, Chapter 236 of the 1995 Session Laws, Section 6 of S.L. 1997-256, Section 2 of S.L. 1997-347, and Section 2 of S.L. 1997-401, reads as rewritten:

"Sec. 6. This act is effective upon ratification, and shall expire ~~August 22, 1997.~~ August 29, 1997."

AUTHORIZATION OF FICTITIOUS LICENSES AND REGISTRATION PLATES ON PUBLICLY OWNED MOTOR VEHICLES

Section 3. Section 23(c) of Chapter 18 of the Session Laws of the 1996 Second Extra Session, as rewritten by Section 8 of S.L. 1997-256, Section 4 of S.L. 1997-347, and Section 4 of S.L. 1997-401, reads as rewritten:

"(c) Subsection (a) of this section expires ~~August 22, 1997.~~ August 29, 1997."

LOWER NEUSE RIVER BASIN ASSOCIATION FUNDS

Section 4. Section 27.8(a) of Chapter 18 of the Session Laws of the 1996 Second Extra Session, as rewritten by Section 9 of S.L. 1997-256, Section 5 of S.L. 1997-347, and Section 5 of S.L. 1997-401, reads as rewritten:

"(a) Of the funds appropriated by this act to the Lower Neuse River Basin Association for the 1996-97 fiscal year, the sum of two million dollars ($2,000,000) shall be allocated as grants to local government units in the Neuse River Basin to assist those local government units in fulfilling their obligations under the Neuse River Nutrient Sensitive Waters Management Strategy plan adopted by the Environmental Management Commission. The funds are contingent upon the adoption of the plan by the Environmental Management Commission. If the Environmental Management Commission fails to adopt the plan by ~~August 22, 1997,~~ August 29, 1997, then the funds shall revert to the General Fund."

BEAVER DAMAGE CONTROL FUNDS

Section 5. Subsection (h) of Section 69 of Chapter 1044 of the 1991 Session Laws, as amended by Section 111 of Chapter 561 of the 1993 Session Laws, Section 27.3 of Chapter 769 of the 1993 Session Laws, Section 26.6 of Chapter 507 of the 1995 Session Laws, Section 27.15(c) of Chapter 18 of the Session Laws of the 1996 Second Extra Session, Section 10 of S.L. 1997-256, Section 6 of S.L. 1997-347, and Section 6 of S.L. 1997-401, reads as rewritten:

"(h) Subsections (a) through (d) of this section expire ~~August 22, 1997.~~ August 29, 1997."

CHANGES IN THE EXECUTION OF THE BUDGET

Section 6. Section 11 of S.L. 1997-256, as rewritten by Section 7 of S.L. 1997-347 and Section 7 of S.L. 1997-401, reads as rewritten:

"Section 11. The amendments to G.S. 143-27 that were enacted in Section 7.4(h)(2) of Chapter 18 of the Session Laws of the 1996 Second Extra Session shall become effective ~~August 22, 1997.~~ August 29, 1997."

EFFECTIVE DATE

Section 7. (a) Section 13 of S.L. 1997-256, as rewritten by Section 9 of S.L. 1997-347 and Section 10 of S.L. 1997-401, reads as rewritten:

"Section 13. This act becomes effective July 1, 1997, except that Sections 5 through 10 of this act become effective June 30, 1997. This act expires ~~August 22, 1997.~~ August 29, 1997."

(b) Except as otherwise provided, this act becomes effective August 22, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 404
Proposed Committee Substitute H404-PCS1456

Short Title: Continuing Budget Authority. (Public)

Sponsors:

Referred to:

March 5, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DIRECTOR OF THE BUDGET TO CONTINUE EXPENDITURES FOR THE OPERATION OF GOVERNMENT AT THE LEVEL IN EFFECT ON JUNE 30, 1997, AND TO EXTEND EXPIRING PROVISIONS OF LAW ON THE SENTENCING COMMISSION, FICTITIOUS LICENSES AND REGISTRATION PLATES ON PUBLICLY OWNED MOTOR VEHICLES, LOWER NEUSE RIVER BASIN ASSOCIATION FUNDS, AND BEAVER DAMAGE CONTROL FUNDS.

The General Assembly of North Carolina enacts:

FUNDS SHALL NOT REVERT

Section 1. Section 5 of S.L. 1997-256, as rewritten by Section 1 of S.L. 1997-347 and Section 1 of S.L. 1997-401, reads as rewritten:

"Section 5. If the provisions of Senate Bill 352, 3rd edition, Senate Bill 352, 5th edition, or both, direct that funds shall not revert, the funds shall not revert on June 30, 1997. Unless these funds are encumbered on or before June 30, 1997, these funds shall not be expended after June 30, 1997, except as provided by a statute that becomes effective after June 30, 1997. If no such statute is enacted prior to ~~August 22, 1997,~~ August 29, 1997, these funds shall revert to the appropriate fund on that date."

EXTEND SENTENCING COMMISSION

Section 2. Section 8 of Chapter 1076 of the 1989 Session Laws, as amended by Chapters 812 and 816 of the 1991 Session Laws, Chapters 253, 321, and 591 of the 1993 Session Laws, Chapter 236 of the 1995 Session Laws, Section 6 of S.L. 1997-256, Section 2 of S.L. 1997-347, and Section 2 of S.L. 1997-401, reads as rewritten:

"Sec. 6. This act is effective upon ratification, and shall expire ~~August 22, 1997.~~ August 29, 1997."

AUTHORIZATION OF FICTITIOUS LICENSES AND REGISTRATION PLATES ON PUBLICLY OWNED MOTOR VEHICLES

Section 3. Section 23(c) of Chapter 18 of the Session Laws of the 1996 Second Extra Session, as rewritten by Section 8 of S.L. 1997-256, Section 4 of S.L. 1997-347, and Section 4 of S.L. 1997-401, reads as rewritten:

"(c) Subsection (a) of this section expires ~~August 22, 1997.~~ August 29, 1997."

LOWER NEUSE RIVER BASIN ASSOCIATION FUNDS

Section 4. Section 27.8(a) of Chapter 18 of the Session Laws of the 1996 Second Extra Session, as rewritten by Section 9 of S.L. 1997-256, Section 5 of S.L. 1997-347, and Section 5 of S.L. 1997-401, reads as rewritten:

"(a) Of the funds appropriated by this act to the Lower Neuse River Basin Association for the 1996-97 fiscal year, the sum of two million dollars ($2,000,000) shall be allocated as grants to local government units in the Neuse River Basin to assist those local government units in fulfilling their obligations under the Neuse River Nutrient Sensitive Waters Management Strategy plan adopted by the Environmental Management Commission. The funds are contingent upon the adoption of the plan by the Environmental Management Commission. If the Environmental Management Commission fails to adopt the plan by ~~August 22, 1997,~~ August 29, 1997, then the funds shall revert to the General Fund."

BEAVER DAMAGE CONTROL FUNDS

Section 5. Subsection (h) of Section 69 of Chapter 1044 of the 1991 Session Laws, as amended by Section 111 of Chapter 561 of the 1993 Session Laws, Section 27.3 of Chapter 769 of the 1993 Session Laws, Section 26.6 of Chapter 507 of the 1995 Session Laws, Section 27.15(c) of Chapter 18 of the Session Laws of the 1996 Second Extra Session, Section 10 of S.L. 1997-256, Section 6 of S.L. 1997-347, and Section 6 of S.L. 1997-401, reads as rewritten:

"(h) Subsections (a) through (d) of this section expire ~~August 22, 1997.~~ August 29, 1997."

CHANGES IN THE EXECUTION OF THE BUDGET

Section 6. Section 11 of S.L. 1997-256, as rewritten by Section 7 of S.L. 1997-347 and Section 7 of S.L. 1997-401, reads as rewritten:

"Section 11. The amendments to G.S. 143-27 that were enacted in Section 7.4(h)(2) of Chapter 18 of the Session Laws of the 1996 Second Extra Session shall become effective ~~August 22, 1997.~~ August 29, 1997."

EFFECTIVE DATE

Section 7. (a) Section 13 of S.L. 1997-256, as rewritten by Section 9 of S.L. 1997-347 and Section 10 of S.L. 1997-401, reads as rewritten:

"Section 13. This act becomes effective July 1, 1997, except that Sections 5 through 10 of this act become effective June 30, 1997. This act expires ~~August 22, 1997.~~ August 29, 1997."

(b) Except as otherwise provided, this act becomes effective August 22, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 404
Proposed Committee Substitute H404-PCS1456

Short Title: Continuing Budget Authority. (Public)

Sponsors:

Referred to:

March 5, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DIRECTOR OF THE BUDGET TO CONTINUE EXPENDITURES FOR THE OPERATION OF GOVERNMENT AT THE LEVEL IN EFFECT ON JUNE 30, 1997, AND TO EXTEND EXPIRING PROVISIONS OF LAW ON THE SENTENCING COMMISSION, FICTITIOUS LICENSES AND REGISTRATION PLATES ON PUBLICLY OWNED MOTOR VEHICLES, LOWER NEUSE RIVER BASIN ASSOCIATION FUNDS, AND BEAVER DAMAGE CONTROL FUNDS.

The General Assembly of North Carolina enacts:

FUNDS SHALL NOT REVERT

Section 1. Section 5 of S.L. 1997-256, as rewritten by Section 1 of S.L. 1997-347 and Section 1 of S.L. 1997-401, reads as rewritten:

"Section 5. If the provisions of Senate Bill 352, 3rd edition, Senate Bill 352, 5th edition, or both, direct that funds shall not revert, the funds shall not revert on June 30, 1997. Unless these funds are encumbered on or before June 30, 1997, these funds shall not be expended after June 30, 1997, except as provided by a statute that becomes effective after June 30, 1997. If no such statute is enacted prior to ~~August 22, 1997,~~ August 29, 1997, these funds shall revert to the appropriate fund on that date."

EXTEND SENTENCING COMMISSION

Section 2. Section 8 of Chapter 1076 of the 1989 Session Laws, as amended by Chapters 812 and 816 of the 1991 Session Laws, Chapters 253, 321, and 591 of the 1993 Session Laws, Chapter 236 of the 1995 Session Laws, Section 6 of S.L. 1997-256, Section 2 of S.L. 1997-347, and Section 2 of S.L. 1997-401, reads as rewritten:

"Sec. 6. This act is effective upon ratification, and shall expire ~~August 22, 1997.~~ August 29, 1997."

AUTHORIZATION OF FICTITIOUS LICENSES AND REGISTRATION PLATES ON PUBLICLY OWNED MOTOR VEHICLES

Section 3. Section 23(c) of Chapter 18 of the Session Laws of the 1996 Second Extra Session, as rewritten by Section 8 of S.L. 1997-256, Section 4 of S.L. 1997-347, and Section 4 of S.L. 1997-401, reads as rewritten:

"(c) Subsection (a) of this section expires ~~August 22, 1997.~~ August 29, 1997."

LOWER NEUSE RIVER BASIN ASSOCIATION FUNDS

Section 4. Section 27.8(a) of Chapter 18 of the Session Laws of the 1996 Second Extra Session, as rewritten by Section 9 of S.L. 1997-256, Section 5 of S.L. 1997-347, and Section 5 of S.L. 1997-401, reads as rewritten:

"(a) Of the funds appropriated by this act to the Lower Neuse River Basin Association for the 1996-97 fiscal year, the sum of two million dollars ($2,000,000) shall be allocated as grants to local government units in the Neuse River Basin to assist those local government units in fulfilling their obligations under the Neuse River Nutrient Sensitive Waters Management Strategy plan adopted by the Environmental Management Commission. The funds are contingent upon the adoption of the plan by the Environmental Management Commission. If the Environmental Management Commission fails to adopt the plan by ~~August 22, 1997,~~ August 29, 1997, then the funds shall revert to the General Fund."

BEAVER DAMAGE CONTROL FUNDS

Section 5. Subsection (h) of Section 69 of Chapter 1044 of the 1991 Session Laws, as amended by Section 111 of Chapter 561 of the 1993 Session Laws, Section 27.3 of Chapter 769 of the 1993 Session Laws, Section 26.6 of Chapter 507 of the 1995 Session Laws, Section 27.15(c) of Chapter 18 of the Session Laws of the 1996 Second Extra Session, Section 10 of S.L. 1997-256, Section 6 of S.L. 1997-347, and Section 6 of S.L. 1997-401, reads as rewritten:

"(h) Subsections (a) through (d) of this section expire ~~August 22, 1997.~~ August 29, 1997."

CHANGES IN THE EXECUTION OF THE BUDGET

Section 6. Section 11 of S.L. 1997-256, as rewritten by Section 7 of S.L. 1997-347 and Section 7 of S.L. 1997-401, reads as rewritten:

"Section 11. The amendments to G.S. 143-27 that were enacted in Section 7.4(h)(2) of Chapter 18 of the Session Laws of the 1996 Second Extra Session shall become effective ~~August 22, 1997.~~ August 29, 1997."

EFFECTIVE DATE

Section 7. (a) Section 13 of S.L. 1997-256, as rewritten by Section 9 of S.L. 1997-347 and Section 10 of S.L. 1997-401, reads as rewritten:

"Section 13. This act becomes effective July 1, 1997, except that Sections 5 through 10 of this act become effective June 30, 1997. This act expires ~~August 22, 1997.~~ August 29, 1997."

(b) Except as otherwise provided, this act becomes effective August 22, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 550*
Second Edition Engrossed 4/17/97
Proposed House Committee Substitute S550-PCS1886

Short Title: Irrigation Syst. Design Not Engineering. (Public)

Sponsors:

Referred to:

March 27, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND CHAPTER 89C OF THE GENERAL STATUTES TO PROVIDE THAT THE DESIGN OF LAND APPLICATION IRRIGATION SYSTEMS FOR ANIMAL WASTE MANAGEMENT SYSTEMS MAY BE PERFORMED BY IRRIGATION DESIGN TECHNICAL SPECIALISTS AND CONCERNING AGRICULTURAL BEST MANAGEMENT PRACTICES, AND CLARIFYING THAT THE ENVIRONMENTAL MANAGEMENT COMMISSION MAY REQUIRE INDIVIDUAL AS WELL AS GENERAL PERMITS FOR ANIMAL WASTE MANAGEMENT SYSTEMS

The General Assembly of North Carolina enacts:

Section 1. G.S. 89C-25 reads as rewritten:

"**§ 89C-25. Limitations on application of Chapter.**

This Chapter shall not be construed to prevent or affect:

(1) The practice of architecture, landscape architecture, or contracting or any other legally recognized profession or ~~trade; or~~ trade.

(2) The practice of professional engineering or land surveying in this State or by any person not a resident of this State and having no established place of business in this State when this practice does not aggregate more than 90 days in any calendar year, whether performed in this State or elsewhere, or involve more than one specific project; provided, however, that such person is legally qualified by registration to practice the said profession in his own

state or country, in which the requirements and qualifications for obtaining a certificate of registration are satisfactory to the Board; in which case the person shall apply for and the Board will issue a temporary ~~permit; or~~ permit.

(3) The practice of professional engineering or land surveying in this State not to aggregate more than 90 days by any person residing in this State, but whose residence has not been of sufficient duration for the Board to grant or deny registration; provided, however, such person shall have filed an application for registration as a professional engineer or registered land surveyor and shall have paid the fee provided for in G.S. 89C-14, and provided that such a person is legally qualified by registration to practice professional engineering or land surveying in his own state or country in which the requirements and qualifications for obtaining a certificate of registration are satisfactory to the Board, in which case the person shall apply for and the Board will issue a temporary ~~permit; or~~ permit.

(4) Engaging in engineering or land surveying as an employee or assistant under the responsible charge of a professional engineer or registered land surveyor or as an employee or assistant of a nonresident professional engineer or a nonresident registered land surveyor provided for in subdivisions (2) and (3) of this section, provided that said work as an employee may not include responsible charge of design or ~~supervision; or~~ supervision.

(5) The practice of professional engineering or land surveying by any person not a resident of, and having no established place of business in this State, as a consulting associate of a professional engineer or registered land surveyor registered under the provisions of this Chapter; provided, the nonresident is qualified for such professional service in his own state or ~~country; or~~ country.

(6) Practice by members of the armed forces or employees of the government of the United States while engaged in the practice of engineering or land surveying solely for said government on government-owned works and projects; or practice by those employees of the Natural Resources Conservation Service having federal engineering job approval authority that involves the planning, designing, or implementation of best management practices on agricultural lands.

(7) The internal engineering or surveying activities of a person, firm or corporation engaged in manufacturing, processing, or producing a product, including the activities of public service corporations, public utility companies, authorities, State agencies, railroads, or membership cooperatives, or the installation and servicing of their

product in the field; or research and development in connection with the manufacture of that product or their service; or of their research affiliates; or their employees in the course of their employment in connection with the manufacture, installation, or servicing of their product or service in the field, or on-the-premises maintenance of machinery, equipment, or apparatus incidental to the manufacture or installation of the product or service of a firm by the employees of the firm upon property owned, leased or used by the firm; inspection, maintenance and service work done by employees of the State of North Carolina, any political subdivision thereof, or any municipality therein including construction, installation, servicing, maintenance by regular full-time employees of streets, street lighting, traffic-control signals, police and fire alarm systems, waterworks, steam, electric and sewage treatment and disposal plants; the services of superintendents, inspectors or foremen regularly employed by the State of North Carolina or any political subdivision thereof, or municipal corporation therein; provided, however, that the internal engineering or surveying activity is not a holding out to or an offer to the public of engineering or any service thereof as prohibited by this Chapter. Engineering work, not related to the foregoing exemptions, where the safety of the public is directly involved shall be under the responsible charge of a registered professional engineer, or in accordance with standards prepared or approved by a registered professional engineer.

(8) The (i) preparation of fire sprinkler planning and design drawings by a fire sprinkler contractor licensed under Article 2 of Chapter 87 of the General Statutes, or (ii) the performance of internal engineering or survey work by a manufacturing or communications common carrier company, or by a research and development company, or by employees of such corporations provided that such work is in connection with, or incidental to products of, or nonengineering services rendered by such corporations or their affiliates.

(9) The routine maintenance or servicing of machinery, equipment, facilities or structures, the work of mechanics in the performance of their established functions, or the inspection or supervision of construction by a foreman, superintendent, or agent of the architect or professional engineer, or services of an operational nature performed by an employee of a laboratory, a manufacturing plant, a public service corporation, or governmental operation.

(10) The design of land application irrigation systems for an animal waste management plan, required by G.S. 143-215.10C, by a designer who exhibits, by at least three years of relevant

experience, proficiency in soil science and basic hydraulics, and who is thereby listed as an Irrigation Design Technical Specialist by the North Carolina Soil and Water Conservation Commission."

Section 2. (a) G.S. 143-215.1(a)(12) reads as rewritten:

"(12) Construct or operate an animal waste management system, as defined in G.S. 143-215.10B, without obtaining a permit under either this Part or Part 1A of this Article."

(b) G.S. 143-215.10C(a) reads as rewritten:

"(a) No person shall construct or operate an animal waste management system for an animal operation without first obtaining an individual permit under Part 1 of this Article or a general permit under this Part. The Commission shall develop a system of individual and general permits for animal operations based on species, number of animals, and other relevant factors."

Section 3. Section 1 of this act is retroactively effective March 1, 1997. Section 2 of this act is retroactively effective January 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 550*
Second Edition Engrossed 4/17/97
Proposed House Committee Substitute S550-CSLB-1

Short Title: Irrigation Syst. Design Not Engineering. (Public)

Sponsors:

Referred to: Commerce.

March 27, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND CHAPTER 89C OF THE GENERAL STATUTES TO PROVIDE THAT THE DESIGN OF LAND APPLICATION IRRIGATION SYSTEMS FOR ANIMAL WASTE MANAGEMENT SYSTEMS MAY BE PERFORMED BY IRRIGATION DESIGN TECHNICAL SPECIALISTS AND CONCERNING AGRICULTURAL BEST MANAGEMENT PRACTICES, AND CLARIFYING THAT THE ENVIRONMENTAL MANAGEMENT COMMISSION MAY REQUIRE INDIVIDUAL AS WELL AS GENERAL PERMITS FOR ANIMAL WASTE MANAGEMENT SYSTEMS

The General Assembly of North Carolina enacts:

Section 1. G.S. 89C-25 reads as rewritten:

"**§ 89C-25. Limitations on application of Chapter.**

This Chapter shall not be construed to prevent or affect:

(1) The practice of architecture, landscape architecture, or contracting or any other legally recognized profession or ~~trade; or~~ trade.

(2) The practice of professional engineering or land surveying in this State or by any person not a resident of this State and having no established place of business in this State when this practice does not aggregate more than 90 days in any calendar year, whether performed in this State or

elsewhere, or involve more than one specific project; provided, however, that such person is legally qualified by registration to practice the said profession in his own state or country, in which the requirements and qualifications for obtaining a certificate of registration are satisfactory to the Board; in which case the person shall apply for and the Board will issue a temporary ~~permit; or~~ permit.

(3) The practice of professional engineering or land surveying in this State not to aggregate more than 90 days by any person residing in this State, but whose residence has not been of sufficient duration for the Board to grant or deny registration; provided, however, such person shall have filed an application for registration as a professional engineer or registered land surveyor and shall have paid the fee provided for in G.S. 89C-14, and provided that such a person is legally qualified by registration to practice professional engineering or land surveying in his own state or country in which the requirements and qualifications for obtaining a certificate of registration are satisfactory to the Board, in which case the person shall apply for and the Board will issue a temporary ~~permit; or~~ permit.

(4) Engaging in engineering or land surveying as an employee or assistant under the responsible charge of a professional engineer or registered land surveyor or as an employee or assistant of a nonresident professional engineer or a nonresident registered land surveyor provided for in subdivisions (2) and (3) of this section, provided that said work as an employee may not include responsible charge of design or ~~supervision; or~~ supervision.

(5) The practice of professional engineering or land surveying by any person not a resident of, and having no established place of business in this State, as a consulting associate of a professional engineer or registered land surveyor registered under the provisions of this Chapter; provided, the nonresident is qualified for such professional service in his own state or ~~country; or~~ country.

(6) Practice by members of the armed forces or employees of the government of the United States while engaged in the practice of engineering or land surveying solely for said government on government-owned works and projects; or practice by those employees of the Natural Resources Conservation Service having federal engineering job approval authority that involves the planning, designing or implementation of best management practices on agricultural lands.

(7) The internal engineering or surveying activities of a person, firm or corporation engaged in manufacturing, processing, or producing a product, including the activities of public service corporations, public utility companies, authorities, State agencies, railroads, or membership cooperatives, or the installation and servicing of their product in the field; or research and development in connection with the manufacture of that product or their service; or of their research affiliates; or their employees in the course of their employment in connection with the manufacture, installation, or servicing of their product or service in the field, or on-the-premises maintenance of machinery, equipment, or apparatus incidental to the manufacture or installation of the product or service of a firm by the employees of the firm upon property owned, leased or used by the firm; inspection, maintenance and service work done by employees of the State of North Carolina, any political subdivision thereof, or any municipality therein including construction, installation, servicing, maintenance by regular full-time employees of streets, street lighting, traffic-control signals, police and fire alarm systems, waterworks, steam, electric and sewage treatment and disposal plants; the services of superintendents, inspectors or foremen regularly employed by the State of North Carolina or any political subdivision thereof, or municipal corporation therein; provided, however, that the internal engineering or surveying activity is not a holding out to or an offer to the public of engineering or any service thereof as prohibited by

this Chapter. Engineering work, not related to the foregoing exemptions, where the safety of the public is directly involved shall be under the responsible charge of a registered professional engineer, or in accordance with standards prepared or approved by a registered professional engineer.

(8) The (i) preparation of fire sprinkler planning and design drawings by a fire sprinkler contractor licensed under Article 2 of Chapter 87 of the General Statutes, or (ii) the performance of internal engineering or survey work by a manufacturing or communications common carrier company, or by a research and development company, or by employees of such corporations provided that such work is in connection with, or incidental to products of, or nonengineering services rendered by such corporations or their affiliates.

(9) The routine maintenance or servicing of machinery, equipment, facilities or structures, the work of mechanics in the performance of their established functions, or the inspection or supervision of construction by a foreman, superintendent, or agent of the architect or professional engineer, or services of an operational nature performed by an employee of a laboratory, a manufacturing plant, a public service corporation, or governmental operation.

(10) The design of land application irrigation systems for an animal waste management plan, required by G.S. 143-215.10C, by a designer who exhibits, by at least three years of relevant experience, proficiency in soil science and basic hydraulics, and who is thereby listed as an Irrigation Design Technical Specialist by the North Carolina Soil and Water Conservation Commission."

Section 2. (a) G.S. 143-215.1(a)(12) reads as rewritten:

"(12) Construct or operate an animal waste management system, as defined in G.S. 143-215.10B, without obtaining a permit under either this Part or Part 1A of this Article."

(b) G.S. 143-215.10C(a) reads as rewritten:

"(a) No person shall construct or operate an animal waste management system for an animal operation without first obtaining

an individual permit under Part 1 of this Article or a general permit under this Part. The Commission shall develop a system of individual and general permits for animal operations based on species, number of animals, and other relevant factors."

Section 3. Section 1 of this act is retroactively effective March 1, 1997. Section 2 of this act is retroactively effective January 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 550*
Second Edition Engrossed 4/17/97
Proposed House Committee Substitute S550-CSLB-1

Short Title: Irrigation Syst. Design Not Engineering. (Public)

Sponsors:

Referred to: Commerce.

March 27, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND CHAPTER 89C OF THE GENERAL STATUTES TO PROVIDE THAT THE DESIGN OF LAND APPLICATION IRRIGATION SYSTEMS FOR ANIMAL WASTE MANAGEMENT SYSTEMS MAY BE PERFORMED BY IRRIGATION DESIGN TECHNICAL SPECIALISTS AND CONCERNING AGRICULTURAL BEST MANAGEMENT PRACTICES, AND CLARIFYING THAT THE ENVIRONMENTAL MANAGEMENT COMMISSION MAY REQUIRE INDIVIDUAL AS WELL AS GENERAL PERMITS FOR ANIMAL WASTE MANAGEMENT SYSTEMS

The General Assembly of North Carolina enacts:

Section 1. G.S. 89C-25 reads as rewritten:

"**§ 89C-25. Limitations on application of Chapter.**

This Chapter shall not be construed to prevent or affect:

(1) The practice of architecture, landscape architecture, or contracting or any other legally recognized profession or ~~trade; or~~ trade.

(2) The practice of professional engineering or land surveying in this State or by any person not a resident of this State and having no established place of business in this State when this practice does not aggregate more than 90 days in any calendar year, whether performed in this State or

elsewhere, or involve more than one specific project; provided, however, that such person is legally qualified by registration to practice the said profession in his own state or country, in which the requirements and qualifications for obtaining a certificate of registration are satisfactory to the Board; in which case the person shall apply for and the Board will issue a temporary ~~permit; or~~ permit.

(3) The practice of professional engineering or land surveying in this State not to aggregate more than 90 days by any person residing in this State, but whose residence has not been of sufficient duration for the Board to grant or deny registration; provided, however, such person shall have filed an application for registration as a professional engineer or registered land surveyor and shall have paid the fee provided for in G.S. 89C-14, and provided that such a person is legally qualified by registration to practice professional engineering or land surveying in his own state or country in which the requirements and qualifications for obtaining a certificate of registration are satisfactory to the Board, in which case the person shall apply for and the Board will issue a temporary ~~permit; or~~ permit.

(4) Engaging in engineering or land surveying as an employee or assistant under the responsible charge of a professional engineer or registered land surveyor or as an employee or assistant of a nonresident professional engineer or a nonresident registered land surveyor provided for in subdivisions (2) and (3) of this section, provided that said work as an employee may not include responsible charge of design or ~~supervision; or~~ supervision.

(5) The practice of professional engineering or land surveying by any person not a resident of, and having no established place of business in this State, as a consulting associate of a professional engineer or registered land surveyor registered under the provisions of this Chapter; provided, the nonresident is qualified for such professional service in his own state or ~~country; or~~ country.

(6) Practice by members of the armed forces or employees of the government of the United States while engaged in the practice of engineering or land surveying solely for said government on government-owned works and projects; or practice by those employees of the Natural Resources Conservation Service having federal engineering job approval authority that involves the planning, designing or implementation of best management practices on agricultural lands.

(7) The internal engineering or surveying activities of a person, firm or corporation engaged in manufacturing, processing, or producing a product, including the activities of public service corporations, public utility companies, authorities, State agencies, railroads, or membership cooperatives, or the installation and servicing of their product in the field; or research and development in connection with the manufacture of that product or their service; or of their research affiliates; or their employees in the course of their employment in connection with the manufacture, installation, or servicing of their product or service in the field, or on-the-premises maintenance of machinery, equipment, or apparatus incidental to the manufacture or installation of the product or service of a firm by the employees of the firm upon property owned, leased or used by the firm; inspection, maintenance and service work done by employees of the State of North Carolina, any political subdivision thereof, or any municipality therein including construction, installation, servicing, maintenance by regular full-time employees of streets, street lighting, traffic-control signals, police and fire alarm systems, waterworks, steam, electric and sewage treatment and disposal plants; the services of superintendents, inspectors or foremen regularly employed by the State of North Carolina or any political subdivision thereof, or municipal corporation therein; provided, however, that the internal engineering or surveying activity is not a holding out to or an offer to the public of engineering or any service thereof as prohibited by

this Chapter. Engineering work, not related to the foregoing exemptions, where the safety of the public is directly involved shall be under the responsible charge of a registered professional engineer, or in accordance with standards prepared or approved by a registered professional engineer.

(8) The (i) preparation of fire sprinkler planning and design drawings by a fire sprinkler contractor licensed under Article 2 of Chapter 87 of the General Statutes, or (ii) the performance of internal engineering or survey work by a manufacturing or communications common carrier company, or by a research and development company, or by employees of such corporations provided that such work is in connection with, or incidental to products of, or nonengineering services rendered by such corporations or their affiliates.

(9) The routine maintenance or servicing of machinery, equipment, facilities or structures, the work of mechanics in the performance of their established functions, or the inspection or supervision of construction by a foreman, superintendent, or agent of the architect or professional engineer, or services of an operational nature performed by an employee of a laboratory, a manufacturing plant, a public service corporation, or governmental operation.

(10) The design of land application irrigation systems for an animal waste management plan, required by G.S. 143-215.10C, by a designer who exhibits, by at least three years of relevant experience, proficiency in soil science and basic hydraulics, and who is thereby listed as an Irrigation Design Technical Specialist by the North Carolina Soil and Water Conservation Commission."

Section 2. (a) G.S. 143-215.1(a)(12) reads as rewritten:

"(12) Construct or operate an animal waste management system, as defined in G.S. 143-215.10B, without obtaining a permit under either this Part or Part 1A of this Article."

(b) G.S. 143-215.10C(a) reads as rewritten:

"(a) No person shall construct or operate an animal waste management system for an animal operation without first obtaining

an individual permit under Part 1 of this Article or a general permit under this Part. The Commission shall develop a system of individual and general permits for animal operations based on species, number of animals, and other relevant factors."

Section 3. Section 1 of this act is retroactively effective March 1, 1997. Section 2 of this act is retroactively effective January 1, 1997.

Visitor Registration 8/21/97

Kim Smith	NCLM
Chris Fitzsimon	Common Sense Foundation
Tricia Forbes	Common Sense Foundation
L. ROGERS	ENVR
A. Case	DEHNR
Deanne Minnich	EG&PA
Bonnie Allen	SOS
John Cochran	News & Record
Nat Mund	Conservation Council of NC
Marsha Glenn	DOA
Jill Holmes	CCNC/SC
Randolph E. Church	NCPA

Box 20

1. 1997 House Rules, Calendar, & Operations (begin Aug. 25, 1997)
2. 1998 House Rules, Calendar, & Operations
3. 1997-98 House Technology
4. 1997 House Transportation
5. 1997 House UNC Board of Governors
6. 1997-98 House Welfare Reform

MINUTES
COMMITTEE ON RULES, CALENDAR, AND OPERATIONS OF THE HOUSE
August 25, 1997

The Committee on Rules, Calendar, and Operations of the House met Monday, August 25, 1997, at 5:30 p.m. in Room 2305 in the Legislative Building. Representative Morgan, Committee Chair, called the meeting to order and asked the clerk to call the roll. The following members were present: Representative Bowie, Vice Chair; and Representatives Crawford, Culp, Dockham, Esposito, Gulley, Hill, McMahan, Miner, Mitchell, Neely, and Thompson

The first bill before the Committee was Senate committee substitute for House Bill 87 -AN ACT TO EXEMPT THE CENTENNIAL CAMPUS OF NORTH CAROLINA STATE UNIVERSITY AT RALEIGH FROM THE UMSTEAD ACT, WHICH PROHIBITS STATE GOVERNMENT FROM ENGAGING IN THE SALE OF GOODS IN COMPETITION WITH CITIZENS OF THE STATE. Representative Neely explained the bill and stated that it was requested by the University with regard to the Centennial campus and moved that the Rules Committee recommend that the House do concur with the Senate committee substitute. Motion carried.

The second bill before the Rules Committee was Senate committee substitute for House Bill 1087 - A BILL TO BE ENTITLED AN ACT TO MAKE TRESPASSING WITH A MOTORIZED ALL TERRAIN VEHICLE A MISDEMEANOR. Representative Baker was recognized to explain the three changes in the Senate committee substitute. The first change was to lower the penalty from a class one to a class two misdemeanor; the second was to strike the section of the bill that made it a misdemeanor to ride a MTV within 25 ft. of the edge of a stream or lake; and, the third change added a section to make it consistent with the current law regarding trespassing on utility easements. Representative Mitchell moved that the Rules Committee recommend that the House do concur with the Senate committee substitute. Motion carried.

House Bill 1156 was temporarily displaced.

Senate Bill 719 - AN ACT TO MODIFY THE PURPOSES FOR WHICH THE GOLDSBORO ROOM OCCUPANCY TAX MAY BE USED AND TO MAKE TECHNICAL AND CONFORMING CHANGES was next before the Committee. Senator Kerr, bill sponsor, was recognized for an explanation of the bill. He stated that he understood there was a proposed technical House committee substitute to Senate Bill 719. Representative Dockham moved for the adoption of the proposed House committee substitute for the purpose of Committee discussion. Motion carried. Senator Kerr explained that the bill allowed the City of Goldsboro to use up to 20% of the occupancy tax fund to develop and support tourism. He said the entire Wayne County delegation supported the bill and that it did not create a tax but was using funds accumulated from a tax collection. Representative Neely moved for a favorable report to the House

committee substitute bill, an unfavorable report to the original bill, and that the bill be referred to the Committee on Finance. Motion carried.

House Bill 1156 - AN ACT TO AUTHORIZE THE DEVELOPMENT OF SPECIAL REGISTRATION PLATES FOR SUPPORTERS OF THE MARCH OF DIMES SCHOOL TECHNOLOGY, AND SCENIC RIVERS AND TO AUTHORIZE THE DEVELOPMENT OF A REGISTRATION PLACE FOR WAR VETERANS was back before the Committee. Representative Morris was recognized to explain the changes in the Senate committee substitute and noted the Senate added School Technology Plates, Scenic Rivers Plate and War Veterans Plates to the bill. All plates must have 300 or more applications made to the Division before the plates can be developed. Representative Bowie spoke in opposition to the bill citing that there was a cost to the Department of Transportation and that the police did not favor this bill. Representative Culp made the motion that the House Rules Committee recommend to the House that it do concur with the Senate committee substitute for House Bill 1156. Motion carried with one no vote voiced by Representative Bowie.

Senate Joint Resolution 1087 - A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF CHARLES KURALT was before the Committee. Representative McMahan moved for a favorable report. Motion carried.

Senate Bill 841 -AN ACT TO ALLOW FOREIGN CORPORATIONS TO DEDUCT EXPENSES RELATED TO DEDUCTIBLE SUBSIDIARY DIVIDENDS TO THE SAME EXTEND AS NORTH CAROLINA CORPORATIONS AND TO CLARIFY THE TREATMENT OF DIVIDENDS AS BUSINESS OR NONBUSINESS INCOME - was the final bill before the Committee. Senator Kerr, bill sponsor, was recognized to explain the bill and told the Committee that the bill treats our-of-state corporations the same as in-state corporations; it clarifies the unconstitutional problem and is retroactive back to January of 1997. He further stated that there are cases now pending against the State that are going through the administrative process and there will be more litigation without this bill. The Chair told the Committee that there was a proposed House committee substitute and Representative Thompson moved for its adoption for Committee discussion. Motion carried with one no vote. Representative Shubert was recognized to explain the committee substitute and told the Committee that the committee substitute would stop public schools from paying sales tax. She further commented that the House had passed a similar bill by the vote of 112-2 and that it had not been considered by the Senate. Representative Neely spoke in opposition to the committee substitute. Representative Dockham made a motion to give a favorable report to the House committee substitute bill and an unfavorable vote to the original bill. The Chair ruled that the motion carried on voice vote, division was called. The motion carried on the division vote of six voting in favor and five voting against the motion.

There being no further business, the meeting adjourned at 5:45 p.m.

Representative Richard T. .Morgan
Committee Chair

Anne M. Cole
Acting Committee Clerk

Attachments:
Committee Reports
Bills
Visitor's Sheet

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE.**

☒ Senate Committee Substitute for
H.B. 87 A BILL TO BE ENTITLED AN ACT T0 EXEMPT THE CENTENNIAL CAMPUS OF NORTH CAROLINA STATE UNIVERSITY AT RALEIGH FROM THE UMSTEAD ACT, WHICH PROHIBITS STATE GOVERNMENT FROM ENGAGING IN THE SALE OF GOODS IN COMPETITION WITH CITIZENS OF THE STATE.

☐ 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)

4/24/97

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative(s) **Morgan** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE**.

Senate

☒ Committee Substitute for

H.B. 1087 A BILL TO BE ENTITLED AN ACT TO MAKE TRESPASSING WITH A MOTORIZED ALL TERRAIN VEHICLE A MISDEMEANOR.

☐ 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)

4/24/97

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative(s) **Morgan** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE.**

Senate

☒ Committee Substitute for

H.B. 1156 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE DEVELOPMENT OF SPECIAL REGISTRATION PLATES FOR SUPPORTERS OF THE MARCH OF DIMES, SCHOOL TECHNOLOGY, AND SCENIC RIVERS AND TO AUTHORIZE THE DEVELOPMENT OF A REGISTRATION PLATE FOR WAR VETERANS.

☐ 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)

4/24/97

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE**.

☐ Committee Substitute for
S.B. 719 A BILL TO BE ENTITLED AN ACT TO MODIFY THE PURPOSES FOR WHICH THE GOLDSBORO ROOM OCCUPANCY TAX MAY BE USED AND TO MAKE TECHNICAL AND CONFORMING CHANGES.

☐ 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 House committee substitute bill ~~(#), ☐ which changes the title~~, unfavorable as to original bill ~~(Committee Substitute Bill #)~~, (and recommendation that the House committee substitute bill ~~#~~) be re-referred to the Committee on Finance)

☐ 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)

4/24/97

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE**.

☐ Committee Substitute for
S.J.R. 1087 A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF CHARLES KURALT.

☒ 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)

4/24/97

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE.**

☒ Committee Substitute for
S.B. 841 A BILL TO BE ENTITLED AN ACT TO ALLOW FOREIGN CORPORATIONS TO DEDUCT EXPENSES RELATED TO DEDUCTIBLE SUBSIDIARY DIVIDENDS TO THE SAME EXTENT AS NORTH CAROLINA CORPORATIONS AND TO CLARIFY THE TREATMENT OF DIVIDENDS AS BUSINESS OR NONBUSINESS INCOME.

☐ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 87
Second Edition Engrossed 3/10/97
Senate Education/Higher Education Committee Substitute Adopted 8/11/97

Short Title: Centennial Campus/Umstead Act Exemption. (Public)

Sponsors:

Referred to:

February 10, 1997

A BILL TO BE ENTITLED

AN ACT TO EXEMPT THE CENTENNIAL CAMPUS OF NORTH CAROLINA STATE UNIVERSITY AT RALEIGH FROM THE UMSTEAD ACT, WHICH PROHIBITS STATE GOVERNMENT FROM ENGAGING IN THE SALE OF GOODS IN COMPETITION WITH CITIZENS OF THE STATE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 66-58(b)(8) reads as rewritten:

"(8) The Greater University of North Carolina with regard to its utilities and other services now operated by it nor to the sale of articles produced incident to the operation of instructional departments, articles incident to educational research, articles of merchandise incident to classroom work, meals, books, or to articles of merchandise not exceeding twenty-five cents (25¢) in value when sold to members of the educational staff or staff auxiliary to education or to duly enrolled students or occasionally to immediate members of the families of members of the educational staff or of duly enrolled students nor to the sale of meals or merchandise to persons attending meetings or conventions as invited guests nor to the operation by the University of North Carolina of an inn or hotel and dining and other facilities usually connected with a hotel or inn, nor to the hospital and Medical School of the University of North Carolina, nor to the Coliseum of North Carolina State ~~College,~~ University at Raleigh, nor to the

Centennial Campus of North Carolina State University at Raleigh, and the other schools and colleges for higher education maintained or supported by the State, nor to the comprehensive student health services or the comprehensive student infirmaries maintained by the constituent institutions of the University of North Carolina."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 4

HOUSE BILL 1087
Committee Substitute Favorable 4/29/97
Senate Judiciary Committee Substitute Adopted 8/11/97
Fourth Edition Engrossed 8/18/97

Short Title: Motorized Vehicle Trespass. (Public)

Sponsors:

Referred to: Appropriations.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO MAKE TRESPASSING WITH A MOTORIZED ALL TERRAIN VEHICLE A MISDEMEANOR.

The General Assembly of North Carolina enacts:

Section 1. Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-159.3. Trespass to land on motorized all terrain vehicle.**

(a) No person shall operate any motorized all terrain vehicle:

(1) On any private property not owned by the operator, without the consent of the owner; or

(2) Within the banks of any stream or waterway, the adjacent lands of which are not owned by the operator, without the consent of the owner or outside the restrictions imposed by the owner.

(b) A 'motorized all terrain vehicle', as used in this section, is a two or more wheeled vehicle designed for recreational off-road use.

(c) A violation of this section shall be a Class 2 misdemeanor."

Section 2. G.S. 14-134.2 reads as rewritten:

"**§ 14-134.2. Operating motor vehicle upon utility easements after being forbidden to do so.**

If any person, without permission, shall ride, drive or operate a minibike, motorbike, motorcycle, jeep, dune buggy, automobile, truck or any other motor

~~vehicle~~ vehicle, other than a motorized all terrain vehicle as defined in G.S. 14-159.3, upon a utility easement upon which the owner or holder of the easement or agent of the owner or holder of the easement has posted on the easement a "no trespassing" sign or has otherwise given oral or written notice to the person not to so ride, drive or operate such a vehicle upon the said easement, he shall be guilty of a Class 3 misdemeanor, provided, however, neither the owner of the property nor the holder of the easement or their agents, employees, guests, invitees or permittees shall be guilty of a violation under this section."

Section 3. This act becomes effective December 1, 1997, and applies to acts committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 4

HOUSE BILL 1156
Committee Substitute Favorable 5/21/97
Senate Finance Committee Substitute Adopted 8/4/97
Fourth Edition Engrossed 8/14/97

Short Title: March of Dimes/School Tech. Plates. (Public)

Sponsors:

Referred to:

April 24, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DEVELOPMENT OF SPECIAL REGISTRATION PLATES FOR SUPPORTERS OF THE MARCH OF DIMES, SCHOOL TECHNOLOGY, AND SCENIC RIVERS AND TO AUTHORIZE THE DEVELOPMENT OF A REGISTRATION PLATE FOR WAR VETERANS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-79.4(b) is amended by adding a new subdivision to read:

"(14a) March of Dimes. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase or an insignia representing the March of Dimes Foundation."

Section 2. G.S. 20-79.4(b) is amended by adding a new subdivision, to be inserted by the Revisor of Statutes in the appropriate alphabetical place, to read:

"(__) School Technology. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase or an insignia representing the public school system in North Carolina."

Section 2.1. G.S. 20-79.4(b) is amended by adding a new subdivision, to be inserted by the Revisor of Statutes in the appropriate alphabetical place to read:

"( ) Scenic Rivers. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the words 'Scenic Rivers' and a picture representing the unique beauty of the scenic rivers of North Carolina."

Section 3. G.S. 20-79.4(b) is amended by adding a new subdivision to read:

"(28a) War Veteran. -- Issuable to a veteran of the armed forces of the United States who served in active federal service during a period of war and who was separated from the armed forces under conditions other than dishonorable. The Division may not issue the plate authorized by this subdivision for a period of war unless it receives at least 300 applications for a plate for that period. A 'period of war' is any of the following:

a. World War I, which began April 16, 1917, and ended November 11, 1918.
b. World War II, which began December 7, 1941, and ended December 31, 1946.
c. The Korean Conflict, which began June 27, 1950, and ended January 31, 1955.
d. The Vietnam Era, which began August 5, 1964, and ended May 7, 1975.
e. The Persian Gulf War.
f. Any other campaign, expedition, or engagement for which the United States Department of Defense authorizes a campaign badge or medal."

Section 4. G.S. 20-79.7(a) reads as rewritten:

"(a) Fees. -- Upon request, the Division shall provide and issue free of charge one registration plate to a recipient of the Congressional Medal of Honor, a 100% disabled veteran, and an ex-prisoner of war. All other special registration plates are subject to the regular motor vehicle registration fee in G.S. 20-87 or G.S. 20-88 plus an additional fee in the following amount:

Special Plate	Additional Fee Amount
Historical Attraction	$30.00
State Attraction	$30.00
Collegiate Insignia	$25.00
Olympic Games	$25.00
Special Olympics	$25.00
March of Dimes	$20.00
Scenic Rivers	$20.00
School Technology	$20.00
Wildlife Resources	$20.00
Personalized	$20.00
Active Member of the National Guard	None
All Other Special Plates	$10.00."

Section 5. G.S. 20-79.7(b) reads as rewritten:

"(b) Distribution of Fees. -- The Special Registration Plate Account and the Collegiate and Cultural Attraction Plate Account are established within the Highway Fund. The Division must credit the additional fee imposed for the special registration plates listed in subsection (a) among the Special Registration Plate Account (SRPA), the Collegiate and Cultural Attraction Plate Account (CCAPA), and the Natural Heritage Trust Fund (NHTF), which is established under G.S. 113-77.7, as follows:

Special Plate	SRPA	CCAPA	NHTF
Historical Attraction	$10	$20	0
In-State Collegiate Insignia	$10	$15	0
Out-of-state Collegiate Insignia	$10	0	$15
Personalized	$10	0	$10
Special Olympics	$10	$15	0
Olympic Games	$10	$15	0
State Attraction	$10	$20	0
March of Dimes	$10	$10	0
Scenic Rivers	$10	$10	0
School Technology	$10	$10	0
Wildlife Resources	$10	$10	0
All other Special Plates	$10	0	0."

Section 6. G.S. 20-81.12 is amended by adding three new subsections to read:

"(b5) March of Dimes Plates. -- The Division must receive 300 or more applications for a March of Dimes plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of March of Dimes plates to the Eastern Carolina Chapter of the March of Dimes Birth Defects Foundation. The Eastern Carolina Chapter shall disperse the revenue proportionately among the Eastern Carolina Chapter, the Western Carolina Chapter, the Greater Triad Chapter, and the Greater Piedmont Chapter of the March of Dimes Birth Defects Foundation based upon the population of the area each Chapter represents. The money must be used for the prevention of birth defects through local community services and educational programs and through research and development.

(b6) School Technology Plates. -- The Division must receive 300 or more applications for a School Technology plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of School Technology plates to the State School Technology Fund, which is established under G.S. 115C-102.6D.

(b7) Scenic Rivers Plates. -- The Division must receive 300 or more applications for a Scenic Rivers plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Scenic Rivers plates to the Clean Water Management Trust Fund established in G.S. 113-45.3."

Section 7. G.S. 115C-102.6D(a) reads as rewritten:

"(a) There is established under the control and direction of the State Board of Education the State School Technology Fund. This fund shall be a nonreverting special revenue fund consisting of any monies appropriated to it by the General ~~Assembly.~~ Assembly and any monies credited to it under G.S. 20-81.12 from the sale of School Technology special license plates."

Section 8. S.L. 1997-339 is repealed.

Section 9. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 719
Proposed House Committee Substitute S719-PCS6738

Short Title: Goldsboro Room Tax Use. (Local)

Sponsors:

Referred to:

April 7, 1997

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE PURPOSES FOR WHICH THE GOLDSBORO ROOM OCCUPANCY TAX MAY BE USED AND TO MAKE TECHNICAL AND CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

Section 1. Sections 2 through 9 of Chapter 555 of the 1991 Session Laws read as rewritten:

"Sec. 2. Levy of Tax. The City of Goldsboro may ~~by resolution, after not less than 10 days public notice and after a public hearing held pursuant thereto,~~ levy a room occupancy and tourism development tax. ~~Collection of the tax, and liability, therefore, shall begin and continue only on and after the first day of a calendar month set in the resolution levying the tax, which in no case may be earlier than the first day of the second succeeding calendar month after the date of adoption of the resolution.~~

~~Sec. 3. Rate; Scope.~~ The room occupancy and tourism development tax that may be levied under this act shall not be less than three percent (3%) nor more than five percent (5%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by any hotel, motel, inn, tourist camp, or other similar place within the levying unit now subject to the three percent (3%) sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax.

Sec. 4. Exemptions. The tax authorized by this act does not apply to gross receipts derived by the following entities from accommodations furnished by them:

(1) Religious organizations;
(2) A business that offers to rent fewer than five units;
(3) Educational organizations;
(4) Summer camps; and
(5) Charitable, benevolent, and other nonprofit organizations.

Sec. 5. Administration of Tax. A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section. ~~(a) A tax levied under this act is due and payable to the city in monthly installments on or before the twenty-fifth day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the twenty-fifth day of each month, prepare and render a return on a form prescribed by the city. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A return filed under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~

~~(b) Any person, firm, corporation, or association who fails or refuses to file the return required by this act shall pay a penalty of fifty dollars ($50.00) for each day's omission as provided under G.S. 160A-175.~~

~~(c) Any person who willfully attempts in any manner to evade the occupancy tax imposed by this act or to make a return or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars ($1,000), imprisonment not to exceed six months, or both.~~

~~Sec. 6. Collection of Tax. Every operator of a business subject to the tax levied by this act shall, on and after the effective date of the tax, collect the tax. The tax shall be collected as part of the charge for the furnishing of any taxable accommodations. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the governing bodies. The room occupancy tax levied pursuant to this act shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The city shall design, print, and furnish to all appropriate businesses in the city the necessary forms for filing returns and instructions to ensure the full collection of the tax.~~

Sec. 7. Disposition of Taxes Collected. (a) Feasibility Study. After levying a tax under this act, the City of Goldsboro shall place the net proceeds of the tax in a special fund. 'Net proceeds' means gross proceeds less the cost to the city of collecting and administering the tax. When sufficient proceeds have been accumulated in the special fund, the city council shall create a citizens' advisory committee to conduct a study of the feasibility of the construction of a civic center in Goldsboro. The citizens' advisory committee shall be composed of either five or seven members, as determined by the city council. If the committee is composed of five members, three shall be appointed by the city council and two shall be appointed by the Chamber of Commerce of Wayne County. If the committee is composed of

seven members, four shall be appointed by the city council and three shall be appointed by the Chamber of Commerce of Wayne County. The city shall remit no more than twenty percent (20%) of the net proceeds of the tax levied under this act to the Goldsboro Tourism Council created in Section 8 of this act. The Council shall use the proceeds to develop tourism, support services, and tourist-related events, and for any other appropriate activities to provide tourism-related facilities and attractions. The citizens' advisory committee shall use the remainder of the net proceeds of the tax levied under this act for a study of the feasibility of the construction of a civic center in Goldsboro.

(b) If Civic Center Feasible. If the Goldsboro City Council determines that the results of the feasibility study indicate that a civic center would be a viable alternative for the city, the proceeds of the tax levied under this act shall thereafter be used as provided in this subsection. The citizens' advisory committee created pursuant to subsection (a) of this section shall continue to serve in an advisory capacity to the Goldsboro City Council. The city shall ~~use~~ remit no more than twenty percent (20%) of the net proceeds of the tax levied under this act to the Goldsboro Tourism Council created in Section 8 of this act. The Council shall use the proceeds to develop tourism, support services, and tourist-related events, and for any other appropriate activities to provide tourism-related facilities and attractions. ~~for development of tourism, support services, and tourist-related events and attractions.~~ The city shall use the remainder of the net proceeds for improving, leasing, constructing, financing, operating, or acquiring facilities and properties as needed to provide for a civic center facility for Goldsboro. The city may contract with any person, firm, or agency to assist it in carrying out the purposes provided in this subsection.

(c) If Civic Center Not Feasible at Present. If the Goldsboro City Council determines that the results of the feasibility study indicate that a civic center would not be a viable alternative for the city at present or without the participation of other governmental, educational, or nonprofit entities, then the city may, on a monthly basis, remit up to fifty percent (50%) of the net proceeds of the tax to the Goldsboro Tourism Council created in Section 8 of this act. The Council shall use the proceeds to develop tourism, support services, and tourist-related events, and for any other appropriate activities to provide tourism-related facilities and attractions. The remaining net proceeds of the tax shall be invested in a special interest bearing fund and held by the city for improving, leasing, constructing, financing, operating, or acquiring facilities and properties, either by the city or in conjunction with other governmental, educational, or nonprofit entities. Thereafter, if the Goldsboro City Council determines that a civic center would be a viable alternative for the city, then a citizens' advisory committee shall be again created, if it has been disbanded, pursuant to subsection (a) of this section, and the provisions of subsection (b) of this section shall apply. Further, the citizens' advisory committee may conduct additional feasibility studies as it deems necessary. If the Goldsboro City Council later determines that a civic center would not be a viable alternative for the city, then the provisions of subsection (d) of this section shall apply.

(d) If Civic Center Not Feasible. If the Goldsboro City Council determines that the results of the feasibility study indicate that a civic center would not be a viable alternative for the city, the proceeds of the tax levied under this act shall thereafter be used as provided in this subsection. The citizens' advisory committee created pursuant to subsection (a) of this section shall be disbanded. The city shall, on a monthly basis, remit the net proceeds of the tax to the Goldsboro Tourism Council created in Section 8 of this act. The Council shall use the proceeds to develop tourism, support services, and tourist-related events, and for any other appropriate activities to provide tourism-related facilities and attractions.

Sec. 8. Goldsboro Tourism Council. (a) ~~If the~~ The Goldsboro City Council ~~determines that the results of the feasibility study indicate that a civic center would not be a viable alternative for the city, as provided in Section 7, it~~ shall adopt a resolution creating a Goldsboro Tourism Council. The membership of the Goldsboro Tourism Council shall be appointed by the Goldsboro City Council as follows:

(1) Three owners or operators of hotels, motels, or other taxable accommodations in the City of Goldsboro.

(2) Three individuals who have demonstrated an interest in conventions and tourism development in the Goldsboro area, and who do not own or operate hotels, motels, or other taxable tourism accommodations.

(3) Three ex officio members: the city manager, the executive vice-president of the Chamber of Commerce of Wayne County, and the mayor of the City of Goldsboro.

(b) All members of the Council shall serve without compensation. Travel expenses, as approved in the annual budget, may be provided by the Goldsboro Tourism Council. Vacancies in the Council shall be filled in the same manner as the original appointments. Members appointed to fill vacancies shall serve for the remainder of the unexpired term for which they are appointed to fill. Members shall serve three-year terms which will be staggered as provided by the city council; members may serve no more than two consecutive three-year terms. The members shall elect a chairperson and treasurer, who shall serve for a term of two years. The Council shall meet at the call of the chairperson and shall adopt rules of procedure to govern its meeting as provided by Robert's Rules of Order.

(c) The Goldsboro Tourism Council may contract with any person, firm, or agency to assist it in carrying out the purposes provided in this act. The Council shall prepare an annual budget and shall report quarterly and at the close of the fiscal year to the Goldsboro City Council on its receipts and expenditures for the preceding quarter and year in such detail as the city may require. An audit will be conducted as part of the city's audit contract.

~~Sec. 9. Repeal. A tax levied under this section may be repealed by a resolution adopted by the Goldsboro City Council. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was attached before~~

~~the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.~~"

Section 2. Municipal Administrative Provisions. Section 3 of S.L. 1997-410 reads as rewritten:

"Section 3. Municipal Administrative Provisions. G.S. 160A-215, as enacted by ~~ratified House Bill 859 and ratified Senate Bill 585, 1997 General Assembly,~~ S.L. 1997-361 and S.L. 1997-364, applies to the ~~City of~~ Cities of Goldsboro, Lumberton, Mount ~~Airy.~~ Airy, and Shelby, and to the municipalities in Brunswick County."

Section 3. This act is effective when it becomes law. Notwithstanding the provisions of G.S. 160A-215, a Goldsboro occupancy tax return for taxes that accrue before October 1, 1997, is due on the 25th day rather than the 15th day of the month following the month in which the tax accrues.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 719
Proposed House Committee Substitute S719-CSLC-8/25
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Goldsboro Room Tax Use. (Local)

Sponsors:

Referred to:

April 7, 1997

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE PURPOSES FOR WHICH THE GOLDSBORO ROOM OCCUPANCY TAX MAY BE USED AND TO MAKE TECHNICAL AND CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

Section 1. Sections 2 through 9 of Chapter 555 of the 1991 Session Laws read as rewritten:

"Sec. 2. Levy of Tax. The City of Goldsboro may ~~by resolution, after not less than 10 days public notice and after a public hearing held pursuant thereto,~~ levy a room occupancy and tourism development tax. ~~Collection of the tax, and liability, therefore, shall begin and continue only on and after the first day of a calendar month set in the resolution levying the tax, which in no case may be earlier than the first day of the second succeeding calendar month after the date of adoption of the resolution.~~

~~Sec. 3. Rate; Scope.~~ The room occupancy and tourism development tax that may be levied under this act shall not be less than three percent (3%) nor more than five percent (5%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by any hotel, motel, inn, tourist camp, or other similar place within the levying unit now

subject to the three percent (3%) sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax.

Sec. 4. Exemptions. The tax authorized by this act does not apply to gross receipts derived by the following entities from accommodations furnished by them:

(1) Religious organizations;
(2) A business that offers to rent fewer than five units;
(3) Educational organizations;
(4) Summer camps; and
(5) Charitable, benevolent, and other nonprofit organizations.

Sec. 5. Administration of Tax. A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section. ~~(a) A tax levied under this act is due and payable to the city in monthly installments on or before the twenty-fifth day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the twenty-fifth day of each month, prepare and render a return on a form prescribed by the city. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A return filed under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~

~~(b) Any person, firm, corporation, or association who fails or refuses to file the return required by this act shall pay a penalty of fifty dollars ($50.00) for each day's omission as provided under G.S. 160A-175.~~

~~(c) Any person who willfully attempts in any manner to evade the occupancy tax imposed by this act or to make a return or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars ($1,000), imprisonment not to exceed six months, or both.~~

~~Sec. 6. Collection of Tax. Every operator of a business subject to the tax levied by this act shall, on and after the effective date of the tax, collect the tax. The tax shall be collected as part of the charge for the furnishing of any taxable accommodations. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the~~

~~operator of the business as trustee for and on account of the governing bodies. The room occupancy tax levied pursuant to this act shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The city shall design, print, and furnish to all appropriate businesses in the city the necessary forms for filing returns and instructions to ensure the full collection of the tax.~~

Sec. 7. Disposition of Taxes Collected. (a) Feasibility Study. After levying a tax under this act, the City of Goldsboro shall place the net proceeds of the tax in a special fund. 'Net proceeds' means gross proceeds less the cost to the city of collecting and administering the tax. When sufficient proceeds have been accumulated in the special fund, the city council shall create a citizens' advisory committee to conduct a study of the feasibility of the construction of a civic center in Goldsboro. The citizens' advisory committee shall be composed of either five or seven members, as determined by the city council. If the committee is composed of five members, three shall be appointed by the city council and two shall be appointed by the Chamber of Commerce of Wayne County. If the committee is composed of seven members, four shall be appointed by the city council and three shall be appointed by the Chamber of Commerce of Wayne County. The city shall remit no more than twenty percent (20%) of the net proceeds of the tax levied under this act to the Goldsboro Tourism Council created in Section 8 of this act. The Council shall use the proceeds to develop tourism, support services, and tourist-related events, and for any other appropriate activities to provide tourism-related facilities and attractions. The citizens' advisory committee shall use the remainder of the net proceeds of the tax levied under this act for a study of the feasibility of the construction of a civic center in Goldsboro.

(b) If Civic Center Feasible. If the Goldsboro City Council determines that the results of the feasibility study indicate that a civic center would be a viable alternative for the city, the proceeds of the tax levied under this act shall thereafter be used as provided in this subsection. The citizens' advisory committee created pursuant to subsection (a) of this section shall continue to serve in an advisory capacity to the Goldsboro City Council. The city shall ~~use~~ remit no more than twenty percent (20%) of the net proceeds of the tax levied under this act to the Goldsboro Tourism Council created in Section 8 of this act. The Council shall use the proceeds to develop tourism, support services, and tourist-related events, and for any other

appropriate activities to provide tourism-related facilities and attractions. ~~for development of tourism, support services, and tourist-related events and attractions.~~ The city shall use the remainder of the net proceeds for improving, leasing, constructing, financing, operating, or acquiring facilities and properties as needed to provide for a civic center facility for Goldsboro. The city may contract with any person, firm, or agency to assist it in carrying out the purposes provided in this subsection.

(c) If Civic Center Not Feasible at Present. If the Goldsboro City Council determines that the results of the feasibility study indicate that a civic center would not be a viable alternative for the city at present or without the participation of other governmental, educational, or nonprofit entities, then the city may, on a monthly basis, remit up to fifty percent (50%) of the net proceeds of the tax to the Goldsboro Tourism Council created in Section 8 of this act. The Council shall use the proceeds to develop tourism, support services, and tourist-related events, and for any other appropriate activities to provide tourism-related facilities and attractions. The remaining net proceeds of the tax shall be invested in a special interest bearing fund and held by the city for improving, leasing, constructing, financing, operating, or acquiring facilities and properties, either by the city or in conjunction with other governmental, educational, or nonprofit entities. Thereafter, if the Goldsboro City Council determines that a civic center would be a viable alternative for the city, then a citizens' advisory committee shall be again created, if it has been disbanded, pursuant to subsection (a) of this section, and the provisions of subsection (b) of this section shall apply. Further, the citizens' advisory committee may conduct additional feasibility studies as it deems necessary. If the Goldsboro City Council later determines that a civic center would not be a viable alternative for the city, then the provisions of subsection (d) of this section shall apply.

(d) If Civic Center Not Feasible. If the Goldsboro City Council determines that the results of the feasibility study indicate that a civic center would not be a viable alternative for the city, the proceeds of the tax levied under this act shall thereafter be used as provided in this subsection. The citizens' advisory committee created pursuant to subsection (a) of this section shall be disbanded. The city shall, on a monthly basis, remit the net proceeds of the tax to the Goldsboro Tourism Council created in Section 8 of this act. The Council shall use the proceeds to develop tourism, support services, and

tourist-related events, and for any other appropriate activities to provide tourism-related facilities and attractions.

Sec. 8. Goldsboro Tourism Council. (a) ~~If the~~ The Goldsboro City Council ~~determines that the results of the feasibility study indicate that a civic center would not be a viable alternative for the city, as provided in Section 7, it~~ shall adopt a resolution creating a Goldsboro Tourism Council. The membership of the Goldsboro Tourism Council shall be appointed by the Goldsboro City Council as follows:

(1) Three owners or operators of hotels, motels, or other taxable accommodations in the City of Goldsboro.

(2) Three individuals who have demonstrated an interest in conventions and tourism development in the Goldsboro area, and who do not own or operate hotels, motels, or other taxable tourism accommodations.

(3) Three ex officio members: the city manager, the executive vice-president of the Chamber of Commerce of Wayne County, and the mayor of the City of Goldsboro.

(b) All members of the Council shall serve without compensation. Travel expenses, as approved in the annual budget, may be provided by the Goldsboro Tourism Council. Vacancies in the Council shall be filled in the same manner as the original appointments. Members appointed to fill vacancies shall serve for the remainder of the unexpired term for which they are appointed to fill. Members shall serve three-year terms which will be staggered as provided by the city council; members may serve no more than two consecutive three-year terms. The members shall elect a chairperson and treasurer, who shall serve for a term of two years. The Council shall meet at the call of the chairperson and shall adopt rules of procedure to govern its meeting as provided by Robert's Rules of Order.

(c) The Goldsboro Tourism Council may contract with any person, firm, or agency to assist it in carrying out the purposes provided in this act. The Council shall prepare an annual budget and shall report quarterly and at the close of the fiscal year to the Goldsboro City Council on its receipts and expenditures for the preceding quarter and year in such detail as the city may require. An audit will be conducted as part of the city's audit contract.

~~Sec. 9. Repeal. A tax levied under this section may be repealed by a resolution adopted by the Goldsboro City Council.~~

~~Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.~~"

Section 2. Municipal Administrative Provisions. Section 3 of S.L. 1997-410 reads as rewritten:

"Section 3. Municipal Administrative Provisions. G.S. 160A-215, as enacted by ~~ratified House Bill 859 and ratified Senate Bill 585, 1997 General Assembly,~~ S.L. 1997-361 and S.L. 1997-364, applies to the ~~City of~~ Cities of Goldsboro, Lumberton, Mount ~~Airy.~~ Airy, and Shelby, and to the municipalities in Brunswick County."

Section 3. This act is effective when it becomes law. Notwithstanding the provisions of G.S. 160A-215, a Goldsboro occupancy tax return for taxes that accrue before October 1, 1997, is due on the 25th day rather than the 15th day of the month following the month in which the tax accrues.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 719

Short Title: Goldsboro Room Tax Use. (Local)

Sponsors: Senator Kerr.

Referred to: Finance.

April 7, 1997

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE PURPOSES FOR WHICH THE GOLDSBORO ROOM OCCUPANCY TAX MAY BE USED AND TO MAKE TECHNICAL AND CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

Section 1. Sections 2 through 9 of Chapter 555 of the 1991 Session Laws read as rewritten:

"Sec. 2. Levy of Tax. The City of Goldsboro may ~~by resolution, after not less than 10 days public notice and after a public hearing held pursuant thereto,~~ levy a room occupancy and tourism development tax. ~~Collection of the tax, and liability, therefore, shall begin and continue only on and after the first day of a calendar month set in the resolution levying the tax, which in no case may be earlier than the first day of the second succeeding calendar month after the date of adoption of the resolution.~~

~~"Sec. 3. Rate; Scope.~~ The room occupancy and tourism development tax that may be levied under this act shall not be less than three percent (3%) nor more than five percent (5%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by any hotel, motel, inn, tourist camp, or other similar place within the levying unit now subject to the three percent (3%) sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax.

"Sec. 4. Exemptions. The tax authorized by this act does not apply to gross receipts derived by the following entities from accommodations furnished by them:

(1) Religious organizations;

(2) A business that offers to rent fewer than five units;
(3) Educational organizations;
(4) Summer camps; and
(5) Charitable, benevolent, and other nonprofit organizations.

"Sec. 5. Administration of Tax. A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215, except that the return is due on the 25th day of the month rather than the 15th day of the month. The penalties provided in G.S. 160A-215 apply to a tax levied under this section. ~~(a) A tax levied under this act is due and payable to the city in monthly installments on or before the twenty-fifth day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the twenty-fifth day of each month, prepare and render a return on a form prescribed by the city. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A return filed under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~

~~(b) Any person, firm, corporation, or association who fails or refuses to file the return required by this act shall pay a penalty of fifty dollars ($50.00) for each day's omission as provided under G.S. 160A-175.~~

~~(c) Any person who willfully attempts in any manner to evade the occupancy tax imposed by this act or to make a return or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars ($1,000), imprisonment not to exceed six months, or both.~~

~~"Sec. 6. Collection of Tax. Every operator of a business subject to the tax levied by this act shall, on and after the effective date of the tax, collect the tax. The tax shall be collected as part of the charge for the furnishing of any taxable accommodations. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the governing bodies. The room occupancy tax levied pursuant to this act shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The city shall design, print, and furnish to all appropriate businesses in the city the necessary forms for filing returns and instructions to ensure the full collection of the tax.~~

"Sec. 7. Disposition of Taxes Collected. (a) Feasibility Study. After levying a tax under this act, the City of Goldsboro shall place the net proceeds of the tax in a special fund. 'Net proceeds' means gross proceeds less the cost to the city of collecting and administering the tax. When sufficient proceeds have been accumulated in the special fund, the city council shall create a citizens' advisory committee to conduct a study of the feasibility of the construction of a civic center in Goldsboro. The citizens' advisory committee shall be composed of either five or seven members, as determined by the city council. If the committee is composed of five members, three shall be appointed by the city council and two shall be appointed by the Chamber of Commerce of Wayne County. If the committee is composed of

seven members, four shall be appointed by the city council and three shall be appointed by the Chamber of Commerce of Wayne County. The city shall remit no more than twenty percent (20%) of the net proceeds of the tax levied under this act to the Goldsboro Tourism Council created in Section 8 of this act. The Council shall use the proceeds to develop tourism, support services, and tourist-related events, and for any other appropriate activities to provide tourism-related facilities and attractions. The citizens' advisory committee shall use the remainder of the net proceeds of the tax levied under this act for a study of the feasibility of the construction of a civic center in Goldsboro.

(b) If Civic Center Feasible. If the Goldsboro City Council determines that the results of the feasibility study indicate that a civic center would be a viable alternative for the city, the proceeds of the tax levied under this act shall thereafter be used as provided in this subsection. The citizens' advisory committee created pursuant to subsection (a) of this section shall continue to serve in an advisory capacity to the Goldsboro City Council. The city shall ~~use~~ remit no more than twenty percent (20%) of the net proceeds of the tax levied under this act to the Goldsboro Tourism Council created in Section 8 of this act. The Council shall use the proceeds to develop tourism, support services, and tourist-related events, and for any other appropriate activities to provide tourism-related facilities and attractions. ~~for development of tourism, support services, and tourist-related events and attractions.~~ The city shall use the remainder of the net proceeds for improving, leasing, constructing, financing, operating, or acquiring facilities and properties as needed to provide for a civic center facility for Goldsboro. The city may contract with any person, firm, or agency to assist it in carrying out the purposes provided in this subsection.

(c) If Civic Center Not Feasible at Present. If the Goldsboro City Council determines that the results of the feasibility study indicate that a civic center would not be a viable alternative for the city at present or without the participation of other governmental, educational, or nonprofit entities, then the city may, on a monthly basis, remit up to fifty percent (50%) of the net proceeds of the tax to the Goldsboro Tourism Council created in Section 8 of this act. The Council shall use the proceeds to develop tourism, support services, and tourist-related events, and for any other appropriate activities to provide tourism-related facilities and attractions. The remaining net proceeds of the tax shall be invested in a special interest bearing fund and held by the city for improving, leasing, constructing, financing, operating, or acquiring facilities and properties, either by the city or in conjunction with other governmental, educational, or nonprofit entities. Thereafter, if the Goldsboro City Council determines that a civic center would be a viable alternative for the city, then a citizens' advisory committee shall be again created, if it has been disbanded, pursuant to subsection (a) of this section, and the provisions of subsection (b) of this section shall apply. Further, the citizens' advisory committee may conduct additional feasibility studies as it deems necessary. If the Goldsboro City Council later determines that a civic center would not be a viable alternative for the city, then the provisions of subsection (d) of this section shall apply.

(d) If Civic Center Not Feasible. If the Goldsboro City Council determines that the results of the feasibility study indicate that a civic center would not be a viable alternative for the city, the proceeds of the tax levied under this act shall thereafter be used as provided in this subsection. The citizens' advisory committee created pursuant to subsection (a) of this section shall be disbanded. The city shall, on a monthly basis, remit the net proceeds of the tax to the Goldsboro Tourism Council created in Section 8 of this act. The Council shall use the proceeds to develop tourism, support services, and tourist-related events, and for any other appropriate activities to provide tourism-related facilities and attractions.

"Sec. 8. Goldsboro Tourism Council. (a) ~~If the~~ The Goldsboro City Council ~~determines that the results of the feasibility study indicate that a civic center would not be a viable alternative for the city, as provided in Section 7, it~~ shall adopt a resolution creating a Goldsboro Tourism Council. The membership of the Goldsboro Tourism Council shall be appointed by the Goldsboro City Council as follows:

(1) Three owners or operators of hotels, motels, or other taxable accommodations in the City of Goldsboro.

(2) Three individuals who have demonstrated an interest in conventions and tourism development in the Goldsboro area, and who do not own or operate hotels, motels, or other taxable tourism accommodations.

(3) Three ex officio members: the city manager, the executive vice-president of the Chamber of Commerce of Wayne County, and the mayor of the City of Goldsboro.

(b) All members of the Council shall serve without compensation. Travel expenses, as approved in the annual budget, may be provided by the Goldsboro Tourism Council. Vacancies in the Council shall be filled in the same manner as the original appointments. Members appointed to fill vacancies shall serve for the remainder of the unexpired term for which they are appointed to fill. Members shall serve three-year terms which will be staggered as provided by the city council; members may serve no more than two consecutive three-year terms. The members shall elect a chairperson and treasurer, who shall serve for a term of two years. The Council shall meet at the call of the chairperson and shall adopt rules of procedure to govern its meeting as provided by Robert's Rules of Order.

(c) The Goldsboro Tourism Council may contract with any person, firm, or agency to assist it in carrying out the purposes provided in this act. The Council shall prepare an annual budget and shall report quarterly and at the close of the fiscal year to the Goldsboro City Council on its receipts and expenditures for the preceding quarter and year in such detail as the city may require. An audit will be conducted as part of the city's audit contract.

~~"Sec. 9. Repeal. A tax levied under this section may be repealed by a resolution adopted by the Goldsboro City Council. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was attached before~~

~~the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.~~"

Section 2. (a) Article 9 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-215. Uniform provisions for room occupancy taxes.**

(a) Scope. -- This section applies only to municipalities the General Assembly has authorized to levy room occupancy taxes. For the purpose of this section, the term 'city' means a municipality.

(b) Levy. -- A room occupancy tax may be levied only by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto. A room occupancy tax shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(c) Collection. -- Every operator of a business subject to a room occupancy tax shall, on and after the effective date of the levy of the tax, collect the tax. The tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records and shall be paid by the purchaser to the operator of the business as trustee for and on account of the taxing city. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The taxing city shall design, print, and furnish to all appropriate businesses and persons in the city the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects a room occupancy tax may deduct from the amount remitted to the taxing city a discount equal to the discount the State allows the operator for State sales and use tax.

(d) Administration. -- The taxing city shall administer a room occupancy tax it levies. A room occupancy tax is due and payable to the city finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the taxing city. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A room occupancy tax return filed with the city finance officer is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1.

(e) Penalties. -- A person, firm, corporation, or association who fails or refuses to file a room occupancy tax return or pay a room occupancy tax as required by law is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The governing board of the taxing city has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.

(f) Repeal or Reduction. -- A room occupancy tax levied by a city may be repealed or reduced by a resolution adopted by the governing body of the city. Repeal or reduction of a room occupancy tax shall become effective on the first day

of a month and may not become effective until the end of the fiscal year in which the resolution was adopted. Repeal or reduction of a room occupancy tax does not affect a liability for a tax that was attached before the effective date of the repeal or reduction, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal or reduction."

(b) This section applies only to the City of Goldsboro.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE JOINT RESOLUTION 1087

Sponsors: Senators Jordan, Ballantine, Soles, Lee, Kinnaird, Dannelly, Odom, Rucho, Winner; Albertson, Allran, Ballance, Basnight, Blust, Carpenter, Carrington, Clark, Cochrane, Cooper, Dalton, East, Forrester, Foxx, Garwood, Gulley, Horton, Hoyle, Jenkins, Kerr, Lebetter, Martin of Pitt, Martin of Guilford, McDaniel, Page, Perdue, Purcell, Plyer, Rand, Shaw of Cumberland, Shaw of Guilford, Warren, Webster, Weinstein, and Wellons.

Referred to: Rules and Operations of the Senate.

July 24, 1997

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF CHARLES KURALT.

Whereas, Charles Bishop Kuralt was born in Wilmington, North Carolina, on September 10, 1934, to Wallace Hamilton Kuralt and Ina Bishop Kuralt; and

Whereas, Charles Kuralt spent his childhood years in the City of Charlotte where his mother was a schoolteacher and his father, a social worker, served for 28 years as director of Mecklenburg County's public welfare; and

Whereas, Charles Kuralt excelled as a student at the University of North Carolina at Chapel Hill, serving as editor of The Daily Tar Heel and graduating with a bachelors degree in 1955; and

Whereas, following graduation from college, Charles Kuralt worked for the Charlotte News and in 1956, received the Ernie Pyle Memorial Award for his well-crafted and stylish writing; and

Whereas, in 1957, Charles Kuralt joined Columbia Broadcasting System (CBS) as a writer and in 1959, at the age of 24, became the youngest person to be named a news correspondent at CBS; and

Whereas, for the next several years, Charles Kuralt completed various assignments for CBS, including covering the Vietnam War and other news stories from various locations throughout the world, and serving as the first host of the CBS prime time series, "Eyewitness", as the CBS Latin American Correspondent, and as the Chief West Coast Correspondent; and

Whereas, after many years of masterful news reporting, Charles Kuralt began his acclaimed "On the Road" series, as part of "The CBS Evening News" in 1967; and

Whereas, for the next 12 years, Charles Kuralt traveled the highways and byways of the United States searching for stories that represented the ordinary American; and

Whereas, on January 28, 1979, Charles Kuralt began his "Sunday Morning" series, and for the next 15 years, warmed the hearts of millions of viewers across the nation each Sunday morning with 90 minutes of wonderful stories and scenes from all over the United States; and

Whereas, after a 37-year career at CBS, Charles Kuralt retired on April 3, 1994; and

Whereas, Charles Kuralt was the author of six books; and

Whereas, Charles Kuralt received numerous awards and recognitions, including 12 Emmy Awards and three Peabody Awards and was inducted into the North Carolina Journalism Hall of Fame in 1981; and

Whereas, despite his fame, Charles Kuralt never forgot his beloved home state nor his alma mater, which he often assisted with fund-raising projects; and

Whereas, in 1995, Charles Kuralt served as the speaker for the dedication of the Tate-Turner-Kuralt Building, which is named for him and houses the School of Social Work, on the campus of the University of North Carolina at Chapel Hill; and

Whereas, Charles Kuralt died on July 4, 1997; and

Whereas, Charles Kuralt is survived by his wife, Suzanna "Petie" Kuralt; his daughters, Lisa White and Susan Bowers; a brother, Wallace Kuralt, Jr., a sister, Catherine Harris; and two grandchildren; and

Whereas, Charles Kuralt possessed a peculiar insight that enabled him to contribute substantially and effectively to the improvement and betterment of the world around him, enriching the lives of those with whom he was associated and came in contact; and

Whereas, in the passing of Charles Kuralt, North Carolina has lost one of its most beloved, admired, and respected native sons;

Now, therefore, be it resolved by the Senate, the House of Representatives concurring:

Section 1. The General Assembly honors the life and memory of Charles Bishop Kuralt and expresses its gratitude and appreciation of this State and its citizens for his life and service.

Section 2. The General Assembly expresses its deep sorrow to the family and friends of Charles Bishop Kuralt for the loss of a beloved husband, father, and a true friend.

Section 3. The Secretary of State shall transmit a certified copy of this resolution to the family of Charles Kuralt.

Section 4. This resolution is effective upon ratification.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 841
Finance Committee Substitute Adopted 8/4/97
Third Edition Engrossed 8/18/97
Proposed House Committee Substitute S841-PCS1887

Short Title: Modify Corporate Dividend Taxation. (Public)

Sponsors:

Referred to:

April 15, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW FOREIGN CORPORATIONS TO DEDUCT EXPENSES RELATED TO DEDUCTIBLE SUBSIDIARY DIVIDENDS TO THE SAME EXTENT AS NORTH CAROLINA CORPORATIONS, TO CLARIFY THE TREATMENT OF DIVIDENDS AS BUSINESS OR NONBUSINESS INCOME, AND TO ALLOW LOCAL BOARDS OF EDUCATION TO OBTAIN REFUNDS OF SALES AND USE TAXES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-130.7(b), as amended by House Bill 1157, 1997 General Assembly, reads as rewritten:

"(b) Subsidiary Dividends. -- A corporation ~~that, at the close of its taxable year, has its commercial domicile within North Carolina~~ may deduct all dividends received from corporations in which it owns more than fifty percent (50%) of the outstanding voting stock."

Section 2. G.S. 105-130.4(a)(1) reads as rewritten:

"(1) 'Business income' means income arising from transactions and activity in the regular course of the corporation's trade or business and includes income from tangible and intangible property if the acquisition, management, ~~and/or~~ or disposition of the property ~~constitute integral parts~~ constitutes an integral part of the corporation's regular trade or business operations. Dividend

income, like other income from intangible property, is business income if it meets the requirements of this definition."

Section 3. G.S. 105-164.14(c) reads as rewritten:

"(c) Certain Governmental Entities. -- A governmental entity listed in this subsection is allowed an annual refund of sales and use ~~tax~~ taxes paid by it under this Article, except under G.S. 105-164.4(a)(4a) and G.S. 105-164.4(a)(4c), on direct purchases of tangible personal property. Sales and use tax liability indirectly incurred by a governmental entity on building materials, supplies, fixtures, and equipment that become a part of or annexed to any building or structure that is owned or leased by the governmental entity and is being erected, altered, or repaired for use by the governmental entity is considered a sales or use tax liability incurred on direct purchases by the governmental entity for the purpose of this subsection. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the governmental entity's fiscal year.

This subsection applies only to the following governmental entities:

(1) A county.
(2) A city as defined in G.S. 160A-1.
(2a) A consolidated city-county as defined in G.S. 160B-2.
(2b) A local school administrative unit.
(3) A metropolitan sewerage district or a metropolitan water district in this State.
(4) A water and sewer authority created under Chapter 162A of the General Statutes.
(5) A lake authority created by a board of county commissioners pursuant to an act of the General Assembly.
(6) A sanitary district.
(7) A regional solid waste management authority created pursuant to G.S. 153A-421.
(8) An area mental health, developmental disabilities, and substance abuse authority, other than a single-county area authority, established pursuant to Article 4 of Chapter 122C of the General Statutes.
(9) A district health department.
(10) A regional council of governments created pursuant to G.S. 160A-470.
(11) A regional planning and economic development commission or a regional economic development commission created pursuant to Chapter 158 of the General Statutes.
(12) A regional planning commission created pursuant to G.S. 153A-391.
(13) A regional sports authority created pursuant to G.S. 160A-479.
(14) A public transportation authority created pursuant to Article 25 of Chapter 160A of the General Statutes.

(14a) A facility authority created pursuant to Part 4 of Article 20 of Chapter 160A of the General Statutes.

(15) A regional public transportation authority created pursuant to Article 26 of Chapter 160A of the General Statutes.

(16) A local airport authority that was created pursuant to a local act of the General Assembly and has at least one of the following characteristics:

a. It has all of the rights of a municipality.

b. A local act of the General Assembly declares it to be a municipality.

c. A local act of the General Assembly specifically authorizes it to receive a refund under this section.

(17) A joint agency created by interlocal agreement pursuant to G.S. 160A-462 to operate a public broadcasting television station.

(18) The North Carolina Low-Level Radioactive Waste Management Authority created pursuant to Chapter 104G of the General Statutes.

(19) The North Carolina Hazardous Waste Management Commission created pursuant to Chapter 130B of the General Statutes.

(20) A constituent institution of The University of North Carolina, but only with respect to sales and use tax paid by it for tangible personal property acquired by it through the expenditure of contract and grant funds.

(21) The University of North Carolina Hospitals at Chapel Hill."

Section 4. Sections 1 and 2 of this act are effective for taxable years beginning on or after January 1, 1997. Sections 3 and 4 of this act are effective when they become law and Section 3 of this act applies to taxes paid on or after July 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 841
Finance Committee Substitute Adopted 8/4/97
Third Edition Engrossed 8/18/97
PROPOSED HOUSE COMMITTEE SUBSTITUTE
S841-CSRB-8/22

Short Title: Modify Corporate Dividend Taxation. (Public)

Sponsors:

Referred to:

April 15, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW FOREIGN CORPORATIONS TO DEDUCT EXPENSES RELATED TO DEDUCTIBLE SUBSIDIARY DIVIDENDS TO THE SAME EXTENT AS NORTH CAROLINA CORPORATIONS, TO CLARIFY THE TREATMENT OF DIVIDENDS AS BUSINESS OR NONBUSINESS INCOME, AND TO ALLOW LOCAL BOARDS OF EDUCATION TO OBTAIN REFUNDS OF SALES AND USE TAXES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-130.7(b), as amended by House Bill 1157, 1997 General Assembly, reads as rewritten:

"(b) Subsidiary Dividends. -- A corporation ~~that, at the close of its taxable year, has its commercial domicile within North Carolina~~ may deduct all dividends received from corporations in which it owns more than fifty percent (50%) of the outstanding voting stock."

Section 2. G.S. 105-130.4(a)(1) reads as rewritten:

"(1) 'Business income' means income arising from transactions and activity in the regular course of the corporation's trade or business and includes income from tangible and intangible property if the acquisition, management, ~~and/or~~ or disposition of

the property ~~constitute integral parts~~ constitutes an integral part of the corporation's regular trade or business operations. Dividend income, like other income from intangible property, is business income if it meets the requirements of this definition."

Section 3. G.S. 105-164.14(c) reads as rewritten:

"(c) Certain Governmental Entities. -- A governmental entity listed in this subsection is allowed an annual refund of sales and use ~~tax~~ taxes paid by it under this Article, except under G.S. 105-164.4(a)(4a) and G.S. 105-164.4(a)(4c), on direct purchases of tangible personal property. Sales and use tax liability indirectly incurred by a governmental entity on building materials, supplies, fixtures, and equipment that become a part of or annexed to any building or structure that is owned or leased by the governmental entity and is being erected, altered, or repaired for use by the governmental entity is considered a sales or use tax liability incurred on direct purchases by the governmental entity for the purpose of this subsection. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the governmental entity's fiscal year.

This subsection applies only to the following governmental entities:

(1) A county.
(2) A city as defined in G.S. 160A-1.
(2a) A consolidated city-county as defined in G.S. 160B-2.
(2b) A local school administrative unit.
(3) A metropolitan sewerage district or a metropolitan water district in this State.
(4) A water and sewer authority created under Chapter 162A of the General Statutes.
(5) A lake authority created by a board of county commissioners pursuant to an act of the General Assembly.
(6) A sanitary district.
(7) A regional solid waste management authority created pursuant to G.S. 153A-421.
(8) An area mental health, developmental disabilities, and substance abuse authority, other than a single-county area authority, established pursuant to Article 4 of Chapter 122C of the General Statutes.

(9) A district health department.
(10) A regional council of governments created pursuant to G.S. 160A-470.
(11) A regional planning and economic development commission or a regional economic development commission created pursuant to Chapter 158 of the General Statutes.
(12) A regional planning commission created pursuant to G.S. 153A-391.
(13) A regional sports authority created pursuant to G.S. 160A-479.
(14) A public transportation authority created pursuant to Article 25 of Chapter 160A of the General Statutes.
(14a) A facility authority created pursuant to Part 4 of Article 20 of Chapter 160A of the General Statutes.
(15) A regional public transportation authority created pursuant to Article 26 of Chapter 160A of the General Statutes.
(16) A local airport authority that was created pursuant to a local act of the General Assembly and has at least one of the following characteristics:
a. It has all of the rights of a municipality.
b. A local act of the General Assembly declares it to be a municipality.
c. A local act of the General Assembly specifically authorizes it to receive a refund under this section.
(17) A joint agency created by interlocal agreement pursuant to G.S. 160A-462 to operate a public broadcasting television station.
(18) The North Carolina Low-Level Radioactive Waste Management Authority created pursuant to Chapter 104G of the General Statutes.
(19) The North Carolina Hazardous Waste Management Commission created pursuant to Chapter 130B of the General Statutes.
(20) A constituent institution of The University of North Carolina, but only with respect to sales and use tax paid by it for tangible personal property acquired by it through the expenditure of contract and grant funds.

(21) The University of North Carolina Hospitals at Chapel Hill."

Section 4. Sections 1 and 2 of this act are effective for taxable years beginning on or after January 1, 1997. Sections 3 and 4 of this act are effective when they become law and Section 3 of this act applies to taxes paid on or after July 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 3

SENATE BILL 841
Finance Committee Substitute Adopted 8/4/97
Third Edition Engrossed 8/18/97

Short Title: Modify Corporate Dividend Taxation. (Public)

Sponsors:

Referred to:

April 15, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW FOREIGN CORPORATIONS TO DEDUCT EXPENSES RELATED TO DEDUCTIBLE SUBSIDIARY DIVIDENDS TO THE SAME EXTENT AS NORTH CAROLINA CORPORATIONS AND TO CLARIFY THE TREATMENT OF DIVIDENDS AS BUSINESS OR NONBUSINESS INCOME.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-130.7(b), as amended by House Bill 1157, 1997 General Assembly, reads as rewritten:

"(b) Subsidiary Dividends. -- A corporation ~~that, at the close of its taxable year, has its commercial domicile within North Carolina~~ may deduct all dividends received from corporations in which it owns more than fifty percent (50%) of the outstanding voting stock."

Section 2. G.S. 105-130.4(a)(1) reads as rewritten:

"(1) 'Business income' means income arising from transactions and activity in the regular course of the corporation's trade or business and includes income from tangible and intangible property if the acquisition, management, ~~and/or~~ or disposition of the property ~~constitute integral parts~~ constitutes an integral part of the corporation's regular trade or business operations. Dividend income, like other income from intangible property, is business income if it meets the requirements of this definition."

Section 3. This act is effective for taxable years beginning on or after January 1, 1997.

VISITOR REGISTRATION SHEET

RULES — 8-25-97

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Cam Cowen	BPMHL
Suzanne Williams	Bode & Assoc
Michelle Cook	Weyerhaeuser
Mac Mumbert	Poyner & Spruill
Tom Dixon	DOA
Martha Glass	DOA
Jane Brotherton	NCSU-UNC-General Adm
George Worley	NCSU
Clifton B. Metcalf	UNC GA
[illegible] Holmes	CCNC / Senior Clubs, Etc
R. Rogers	FHNR
Lucius Pullen	ATTORNEY
Leslie Swaggon	NCCBI
Denny Batts	Soil & Water
Rick Eddleman	DOR
Deborah Ross	ACLU

VISITOR REGISTRATION SHEET

RULES
Name of Committee

8-25-97
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
F M James	NCRRA
Amy Jo BAIN	Smith Anderson
[signature]	[illegible]
Mike Carpenter	NCHSA
Paul Wilms	NCHSA
Bernard Allen	SOS

MINUTES
COMMITTEE ON RULES, CALENDAR AND OPERATIONS OF THE HOUSE
August 27, 1997

The Committee on Rules, Calendar, and Operations of the House met August 27, 1997, at 9:10 a.m. in Room 421 in the Legislative Office Building. Representative Morgan, Committee Chair, called the meeting to order and asked the clerk to call the roll. The following members were present: Representative Bowie, Vice-Chair; and Representatives Crawford, Culp, Dockham, Esposito, Gulley, Hill, Mitchell, Neely, Thompson, and C. Wilson.

The following bills were considered at this meeting:

Committee substitute for House Bill 211 - TO AMEND VARIOUS ENVIRONMENTAL LAWS TO: (1) PROVIDE FOR CONTINUING EDUCATION REQUIREMENTS FOR, AND THE EXPIRATION AND RENEWAL OF, CERTIFICATES ISSUED BY THE WATER POLLUTION CONTROL SYSTEM OPERATORS CERTIFICATION COMMISSION; (2) INCLUDE CONSIDERATION OF THE COMPLIANCE HISTORY IN OTHER STATES OF AN APPLICANT FOR A PERMIT UNDER THE COASTAL AREA MANAGEMENT ACT; (3) CLARIFY THE DISTINCTION BETWEEN A PUBLIC HEARING AND A PUBLIC MEETING IN CONNECTION WITH AN APPLICATION FOR A WATER QUALITY PERMIT; (4) ALLOW THE ENVIRONMENTAL MANAGEMENT COMMISSION TO DELEGATE ITS POWERS BY RESOLUTION RATHER THAN BY RULE; (5) CLARIFY THE ASSESSMENT OF CIVIL PENALTIES FOR CONTINUING VIOLATIONS OF AIR QUALITY STANDARDS; (6) REESTABLISH A SCHEDULE OF SIX-YEAR STAGGERED TERMS FOR THE MINING COMMISSION; (7) REESTABLISH A SCHEDULE OF TWO-YEAR STAGGERED TERMS FOR THE NORTH CAROLINA PARKS AND RECREATION AUTHORITY; AND (8) MAKE CLARIFYING, CONFORMING, AND TECHNICAL CHANGES TO VARIOUS LAWS RELATING TO ENVIRONMENT, HEALTH, AND NATURAL RESOURCES, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION. Representative Culp, bill sponsor, was recognized to explain Senate changes which added provisions making clarifying, conforming, and technical changes to various laws relating to environment, health, and natural resources as recommended by the Environmental Review Commission. Representative Dockham made a motion to recommend that the House do concur with the Senate committee substitute to HB 211 Motion carried.

House Bill 496 - TO GRANT AUTHORITY TO THE MUNICIPALITIES LOCATED IN LEE COUNTY TO ADDRESS ABANDONED STRUCTURES IN THE SAME MANNER AS MUNICIPALITIES IN COUNTIES WITH A POPULATION OF OVER ONE HUNDRED SIXTY-THREE THOUSAND. Without objection, the Chair temporarily displaced this bill.

House Bill 566 - AN ACT EXEMPTING THE WAKE COUNTY PUBLIC SCHOOL SYSTEM AND QUALIFIED NONPUBLIC SCHOOLS OF WAKE COUNTY FROM DEVELOPMENT CHARGES RELATED TO THE CONSTRUCTION, RENOVATION, AND REPAIR OF SCHOOL

INFRASTRUCTURE FACILITIES IN WAKE COUNTY AND THE MUNICIPALITIES THEREIN, AND TO CHANGE SEVERAL OTHER LAWS AFFECTING WAKE COUNTY. Representative Ellis, sponsor, was recognized to explain the Senate committee substitute. It authorizes private service of process in Wake County. He stated that, while the Wake delegation is not particularly happy with this change, it is a good bill. Representative Neely moved that the Committee recommend that the House do concur with the Senate committee substitute for House Bill 566. Motion carried.

House Resolution 1244 - COMMEMORATING THE FIFTIETH ANNIVERSARY OF INDIA'S INDEPENDENCE FROM BRITISH RULE, introduced by Representative Daughtry. Staff Counsel, Linwood Jones, explained a technical amendment offered by Representative Bowie on page 1, line 3, which changed the date to August 15, 1997 Representative Bowie moved that the amendment be adopted; motion carried. Representative Bowie further moved that the amendment be incorporated into a committee substitute and the committee substitute for House Resolution 1244 be given a favorable report; unfavorable report to original resolution. Motion carried.

House committee substitute for Senate Bill 841 - TO ALLOW FOREIGN CORPORATIONS TO DEDUCT EXPENSES RELATED TO DEDUCTIBLE SUBSIDIARY DIVIDENDS TO THE SAME EXTENT AS NORTH CAROLINA CORPORATIONS, TO CLARIFY THE TREATMENT OF DIVIDENDS AS BUSINESS OR NONBUSINESS INCOME, AND TO ALLOW LOCAL BOARDS OF EDUCATION TO OBTAIN REFUNDS OF SALES AND USE TAXES, introduced by Senator Kerr. Representative Neely moved that the Committee give a favorable report to the House committee substitute for Senate Bill 841. Motion carried.

Proposed committee substitute for Senate Bill 232 - TO AUTHORIZE THE ISSUANCE OF GENERAL OBLIGATION BONDS OF THE STATE, SUBJECT TO A VOTE OF THE QUALIFIED VOTERS OF THE STATE, TO PROVIDE FUNDS FOR GRANTS, LOANS, AND REVOLVING LOANS TO LOCAL GOVERNMENT UNITS FOR WATER SUPPLY SYSTEMS, WASTEWATER COLLECTION SYSTEMS, WASTEWATER TREATMENT WORKS, AND WATER CONSERVATION PROJECTS AND TO REDUCE INHERITANCE TAXES. Senator Kerr, bill sponsor, was recognized to explain the bill which he said should help solve the major problem of clean water, an issue which has been neglected by the General Assembly. Representative Wilson moved for the adoption of proposed committee substitute for Senate Bill 232. Motion carried. Representative Cansler was recognized to explain changes in the House committee substitute. He said that the committee substitute does not change anything concerning the Clean Water Bonds bill but it adds to the legislation an attempt at getting a reasonable start towards reform of our inheritance tax laws and urged support of the committee substitute. Representative Wilson moved for a favorable report to the House committee substitute for Senate Bill 232, unfavorable report

to the original bill. Representative Kerr expressed concern with the inheritance tax issue being co-mingled with the bill on Clean Water Bonds. The motion by Representative Wilson carried.

Senate Bill 550 - TO AMEND CHAPTER 89c OF THE GENERAL STATUTES TO PROVIDE THAT THE DESIGN OF LAND APPLICATION IRRIGATION SYSTEMS FOR ANIMAL WASTE MANAGEMENT SYSTEMS MAY BE PERFORMED BY IRRIGATION DESIGN TECHNICAL SPECIALISTS AND CONCERNING AGRICULTURAL BEST MANAGEMENT PRACTICES. Senator Albertson introduced this bill which was re-referred to the Rules Committee. Representative Culp moved to reconsider the vote by which the House committee substitute had received a favorable report. Motion carried. Therefore, before the committee at this point for reconsideration was Senate Bill 550, second edition. Representative Culp moved to give Senate Bill 550 a favorable report. Motion carried. Representative Bowie moved that the vote by which Senate Bill 550 passed be reconsidered; motion carried. The bill was displaced for a clarifying amendment.

Senate Bill 774 - TO CLARIFY THE LAW REGARDING GRANDPARENTS' LIABILITY FOR CERTAIN CHILD SUPPORT. In the absence of Senator Rand, bill sponsor, Counsel explained the bill. Representative Thompson moved for a favorable report to Senate Bill 774. Motion carried.

Senate Bill 886 - AMENDING CHAPTER 126 OF THE GENERAL STATUTES TO PROVIDE FOR THE OPEN, FAIR, AND NONPOLITICAL SELECTION OF THE MOST QUALIFIED PERSONS FOR STATE GOVERNMENT EMPLOYMENT BY LIMITING POLITICAL HIRINGS; RELATING TO THE DESIGNATION OF EXEMPT POSITIONS BY THE GOVERNOR AND OTHER MEMBERS OF THE COUNSEL OF STATE; LIMITING THE POLITICAL INVOLVEMENT OF MEMBERS OF THE GENERAL ASSEMBLY IN STATE GOVERNMENT PERSONNEL DECISIONS; EXTENDING BROADER PROTECTIONS TO STATE EMPLOYEES WHO REPORT GROSS MISMANAGEMENT AND IMPROPER GOVERNMENT ACTIVITIES; AND REQUIRING THE REPORTING OF MONETARY SETTLEMENTS OF STATE GOVERNMENT PERSONNEL MATTERS AND CERTAIN PERSONNEL PRACTICES TO THE STATE PERSONNEL COMMISSION AND TO THE JOINT LEGISLATIVE COMMISSION ON GOVERNMENTAL OPERATIONS. Representative Thompson moved for the adoption of proposed House committee substitute for Senate Bill 886 for the purpose of discussion. Motion carried. Representative Russell was recognized to explain the committee substitute. She stated that the subject matter of this bill had passed the House in House Bill 315. She spoke on the points of the bill that are underlined in the attached copy of proposed House committee substitute S886-PCS1891. Representative Thompson moved that committee substitute for Senate Bill 886 be given a favorable report; unfavorable report to original bill. Motion carried.

The Chair announced that the committee would stand in recess until 11:30 a.m.

The meeting was again called to order at 11:30 a.m. to consider Senate committee substitute for House Bill 452 - TO AMEND THE BEACH PLAN PARTICIPATION FORMULA, PROVIDE FOR WINDSTORM AND HAIL INSURANCE IN COASTAL COUNTIES, AUTHORIZE THE LEGISLATIVE RESEARCH COMMISSION TO STUDY THE AVAILABILITY OF PROPERTY INSURANCE IN THE STATE, AND REVISE OTHER STATUTES RELATED TO THE INSURANCE UNDERWRITING ASSOCIATION. Mr. Bob Bird, Independent Insurance Agents of North Carolina; Mr. Bill Hale, N.C. Department of Insurance; and a spokesperson with the Professional Insurance Agents of North Carolina spoke in support of the bill. Counsel explained the committee substitute saying the main change is in the beach plan participation formula that provides essential property insurance through the N.C. Insurance Underwriting Association to coastal areas (eighteen counties as well as beach area). Mr. Alan Miles, American Insurance Association, spoke in opposition. Representative Dockham discussed the importance of this bill to the people who live on the coast, and moved that the House do concur with the Senate committee substitute for House Bill 452. Motion carried.

Senate Bill 696 - TO INCORPORATE THE TOWN OF GRANTSBORO AND CONCERNING A SATELLITE ANNEXATION BY THE TOWN OF BEAUFORT. The Chair recognized Counsel to explain the bill and the need to delete provisions regarding a satellite annexation by the town of Beaufort. Representative Crawford sent forth an amendment and moved for its adoption. Motion carried. Representative Crawford further moved that the amendment be incorporated into a committee substitute for Senate Bill 696 and be given a favorable report; unfavorable as to the original bill. Motion carried.

Senate committee substitute for House Bill 496 was again before the committee. Representative Hall, bill sponsor, was recognized and explained that the committee substitute adds the towns of Bethel, Farmville and Newport. Representative Mitchell moved that the House do concur with the Senate committee substitute. Motion carried.

Senate Bill 853 - AUTHORIZING THE SECRETARY OF THE DEPARTMENT OF REVENUE TO APPOINT EMPLOYEES OF THE DEPARTMENT AS REVENUE LAW ENFORCEMENT AGENTS TO ENFORCE THE EXCISE TAX ON CONTROLLED SUBSTANCES AND THE CRIMINAL PROVISIONS OF THE REVENUE LAWS AND DIRECTING THE SECRETARY OF REVENUE TO NOTIFY AFFECTED INTANGIBLES TAXPAYERS BY MAIL AS SOON AS POSSIBLE OF THE COURT NOTICE IN THE CLASS ACTION LAWSUIT REGARDING REFUNDS. Senator Hoyle represented the bill in the absence of Senator Condor, bill sponsor. A proposed committee substitute was offered.

Representative Wilson moved that the committee substitute for Senate Bill 853 be adopted for committee discussion. Motion carried. The bill allows certain agents of the Department of Revenue to hold law enforcement responsibilities. Representative Culp moved that the House committee substitute for Senate Bill 853 be given a favorable report and be referred to the Committee on Appropriations. Motion carried.

There being no further business at that time, the meeting adjourned.

Representative Richard T. Morgan
Committee Chair

Anne M. Cole
Acting Committee Clerk

Attachments:
Committee Reports
Bills
Visitor's Sheet

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE**.

☒ Senate Committee Substitute for
H.B. 211 A BILL TO BE ENTITLED AN ACT TO AMEND VARIOUS ENVIRONMENTAL LAWS TO: (1) PROVIDE FOR CONTINUING EDUCATION REQUIREMENTS FOR, AND THE EXPIRATION AND RENEWAL OF, CERTIFICATES ISSUED BY THE WATER POLLUTION CONTROL SYSTEM OPERATORS CERTIFICATION COMMISSION; (2) INCLUDE CONSIDERATION OF THE COMPLIANCE HISTORY IN OTHER STATES OF AN APPLICANT FOR A PERMIT UNDER THE COASTAL AREA MANAGEMENT ACT; (3) CLARIFY THE DISTINCTION BETWEEN A PUBLIC HEARING AND A PUBLIC MEETING IN CONNECTION WITH AN APPLICATION FOR A WATER QUALITY PERMIT; (4) ALLOW THE ENVIRONMENTAL MANAGEMENT COMMISSION TO DELEGATE ITS POWERS BY RESOLUTION RATHER THAN BY RULE; (5) CLARIFY THE ASSSESSMENT OF CIVIL PENALTIES FOR CONTINUING VIOLATIONS OF AIR QUALITY STANDARDS; (6) REESTABLISH A SCHEDULE OF SIX-YEAR STAGGERED TERMS FOR THE MINING COMMISSION; (7) REESTABLISH A SCHEDULE OF TWO-YEAR STAGGERED TERMS FOR THE NORTH CAROLINA PARKS AND RECREATION AUTHORITY; AND (8) MAKE CLARIFYING, CONFORMING, AND TECHNICAL CHANGES TO VARIOUS LAWS RELATING TO ENVIRONMENT, HEALTH, AND NATURAL RESOURCES, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW 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 .)

☐ 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.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE**.

☒ Senate Committee Substitute for
H.B. 566 A BILL TO BE ENTITLED AN ACT EXEMPTING THE WAKE COUNTY PUBLIC SCHOOL SYSTEM AND QUALIFIED NONPUBLIC SCHOOLS OF WAKE COUNTY FROM DEVELOPMENT CHARGES RELATED TO THE CONSTRUCTION, RENOVATION, AND REPAIR OF SCHOOL INFRASTRUCTURE FACILITIES IN WAKE COUNTY AND THE MUNICIPALITIES THEREIN, AND TO CHANGE SEVERAL OTHER LAWS AFFECTING WAKE COUNTY.

☐ 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)

4/24/97

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE.**

☐ Committee Substitute for
H.R. 1244 A HOUSE RESOLUTION COMMEMORATING THE FIFTIETH ANNIVERSARY OF INDIA'S INDEPENDENCE FROM BRITISH RULE.

☐ 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)~~ the Committee Substitute Resolution be adopted, unfavorable as to original resolution.

4/24/97

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE.**

☒ House Committee Substitute for
S.B. 841 A BILL TO BE ENTITLED AN ACT TO ALLOW FOREIGN CORPORATIONS TO DEDUCT EXPENSES RELATED TO DEDUCTIBLE SUBSIDIARY DIVIDENDS TO THE SAME EXTEND AS NORTH CAROLINA CORPORATIONS, TO CLARIFY THE TREATMENT OF DIVIDENDS AS BUSINESS OR NONBUSINESS INCOME, AND TO ALLOW LOCAL BOARDS OF EDUCATION TO OBTAIN REFUNDS OF SALES AND USE TAXES.

☒ 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)

4/24/97

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE**.

☒ House Committee Substitute for
S.B. 232 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE ISSUANCE OF GENERAL OBLIGATION BONDS OF THE STATE, SUBJECT TO A VOTE OF THE QUALIFIED VOTERS OF THE STATE, TO PROVIDE FUNDS FOR GRANTS, LOANS, AND REVOLVING LOANS TO LOCAL GOVERNMENT UNITS FOR WATER SUPPLY SYSTEMS, WASTEWATER COLLECTION SYSTEMS, WASTEWATER TREATMENT WORKS, AND WATER CONSERVATION PROJECTS.

☐ 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 House committee substitute bill (# 2), ☒ which changes the title, unfavorable as to ~~original bill~~ (House Committee Substitute Bill # 1), ~~(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)

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE**.

☐ Committee Substitute for
S.B. 744 A BILL TO BE ENTITLED AN ACT TO CLARIFY THE LAW REGARDING GRANDPARENTS' LIABILITY FOR CERTAIN CHILD SUPPORT.

☒ 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)

4/24/97

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative(s) **Morgan** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE**.

☒ Committee Substitute for

S.B. 886 A BILL TO BE ENTITLED AN ACT TO ADJUST CERTAIN STATUTES AFFECTING THE TRUCKING INDUSTRY TO ENCOURAGE THE GROWTH OF THAT INDUSTRY THROUGH INCREASED TRUCK REGISTRATIONS IN THIS STATE; TO PROVIDE CONSUMER PROTECTION PROVISIONS; AND TO PROVIDE FOR A STUDY OF CERTAIN TRUCKING-RELATED PROVISIONS BY THE JOINT LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE.

☐ 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~~ House substitute bill (~~#_____~~), ☒ which changes the title, unfavorable as to ~~original bill~~ (Committee Substitute Bill # 2 Senate), ~~(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)

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE**.

☐ Committee Substitute for
H.B. 452 A BILL TO BE ENTITLED AN ACT TO AMEND THE BEACH PLAN PARTICIPATION FORMULA, PROVIDE FOR WINDSTORM AND HAIL INSURANCE IN COASTAL COUNTIES, AUTHORIZE THE LEGISLATIVE RESEARCH COMMISSION TO STUDY THE AVAILABILITY OF PROPERTY INSURANCE IN THE STATE, AND REVISE OTHER STATUTES RELATED TO THE INSURANCE UNDERWRITING ASSOCIATION.

☐ 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)

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE.**

☒ Committee Substitute for
S.B. 696 A BILL TO BE ENTITLED AN ACT TO INCORPORATE THE TOWN OF GRANTSBORO AND CONCERNING A SATELLITE ANNEXATION BY THE TOWN OF BEAUFORT.

☐ 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 House 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)

4/24/97

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative(s) **Morgan** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE**.

SENATE

☒ Committee Substitute for

H.B. 496 A BILL TO BE ENTITLED AN ACT TO GRANT AUTHORITY TO THE MUNICIPALITIES LOCATED IN LEE COUNTY TO ADDRESS ABANDONED STRUCTURES IN THE SAME MANNER AS MUNICIPALITIES IN COUNTIES WITH A POPULATION OF OVER ONE HUNDRED SIXTY-THREE THOUSAND.

☐ 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)

4/24/97

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE**.

☒ Committee Substitute for
S.B. 853 A BILL TO BE ENTITLED AN ACT AUTHORIZING THE SECRETARY OF THE DEPARTMENT OF REVENUE TO APPOINT EMPLOYEES OF THE DEPARTMENT AS REVENUE LAW ENFORCEMENT AGENTS TO ENFORCE THE EXCISE TAX ON CONTROLLED SUBSTANCES AND THE CRIMINAL PROVISIONS OF THE REVENUE LAWS AND DIRECTING THE SECRETARY OF REVENUE TO NOTIFY AFFECTED INTANGIBLES TAXPAYERS BY MAIL AS SOON AS POSSIBLE OF THE COURT NOTICE IN THE CLASS ACTION LAWSUIT REGARDING REFUNDS.

☐ 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 House committee substitute bill (#), ☒ which changes the title, unfavorable as to ~~original bill~~ Senate Committee Substitute Bill ~~#~~; (and recommendation that the ~~House 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.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 211*
Committee Substitute Favorable 4/16/97
Senate Agriculture, Environment and Natural Resources Committee Substitute Adopted 7/29/97

Short Title: Amend Env. Laws/Env. Tech. Corr. (Public)

Sponsors:

Referred to:

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND VARIOUS ENVIRONMENTAL LAWS TO: (1) PROVIDE FOR CONTINUING EDUCATION REQUIREMENTS FOR, AND THE EXPIRATION AND RENEWAL OF, CERTIFICATES ISSUED BY THE WATER POLLUTION CONTROL SYSTEM OPERATORS CERTIFICATION COMMISSION; (2) INCLUDE CONSIDERATION OF THE COMPLIANCE HISTORY IN OTHER STATES OF AN APPLICANT FOR A PERMIT UNDER THE COASTAL AREA MANAGEMENT ACT; (3) CLARIFY THE DISTINCTION BETWEEN A PUBLIC HEARING AND A PUBLIC MEETING IN CONNECTION WITH AN APPLICATION FOR A WATER QUALITY PERMIT; (4) ALLOW THE ENVIRONMENTAL MANAGEMENT COMMISSION TO DELEGATE ITS POWERS BY RESOLUTION RATHER THAN BY RULE; (5) CLARIFY THE ASSESSMENT OF CIVIL PENALTIES FOR CONTINUING VIOLATIONS OF AIR QUALITY STANDARDS; (6) REESTABLISH A SCHEDULE OF SIX-YEAR STAGGERED TERMS FOR THE MINING COMMISSION; (7) REESTABLISH A SCHEDULE OF TWO-YEAR STAGGERED TERMS FOR THE NORTH CAROLINA PARKS AND RECREATION AUTHORITY; AND (8) MAKE CLARIFYING, CONFORMING, AND TECHNICAL CHANGES TO VARIOUS LAWS RELATING TO ENVIRONMENT, HEALTH, AND NATURAL RESOURCES, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Part 1 of Article 3 of Chapter 90A is amended by adding a new section to read:

"**§ 90A-46.1. Expiration and renewal of certificates; continuing education requirements.**

A certificate issued under this Part expires on 31 December of the year in which it is issued or renewed. The Commission may establish minimum continuing education requirements that an applicant must meet to renew a certificate. The Commission shall renew a certificate if the applicant meets the continuing education requirement and pays the required renewal fee, any renewal fee in arrears, and any late application penalty."

Section 2. G.S. 113A-120(b1), as amended by Section 2 of S.L. 1997-337, reads as rewritten:

"(b1) In addition to those factors set out in subsection (a) of this section or of G.S. 113A-120.2, and notwithstanding the provisions of subsection (b) of this section, the responsible official or body may deny an application for a permit upon finding that an applicant, or any parent or subsidiary corporation if the applicant is a corporation:

(1) Is conducting or has conducted any activity causing significant environmental damage for which a major development permit is required under this Article without having previously obtained such permit or has received a notice of violation with respect to any activity governed by this Article and has not complied with the notice within the time specified in the notice;

(2) Has failed to pay a civil penalty assessed pursuant to this Article, a local ordinance adopted pursuant to this Article, or Article 17 of Chapter 113 of the General Statutes which is due and for which no appeal is pending;

(3) Has been convicted of a misdemeanor pursuant to G.S. 113A-126, G.S. 113-229(k), or any criminal provision of a local ordinance adopted pursuant to this Article; or

(4) Has failed to substantially comply with ~~State~~ state rules or local ordinances and regulations adopted pursuant to this Article or with other federal and ~~State~~ state laws, regulations, and rules for the protection of the environment."

Section 3. G.S. 143-215.1(c) reads as rewritten:

"(c) Applications for Permits and Renewals for Facilities Discharging to the Surface Waters. --

(1) All applications for permits and for renewal of existing permits for outlets and point sources and for treatment works and disposal systems discharging to the surface waters of the State shall be in writing, and the Commission may prescribe the form of such applications. All applications shall be filed with the Commission at least 180 days in advance of the date on which it is desired to commence the discharge of wastes or the date on which an existing

permit expires, as the case may be. The Commission shall act on a permit application as quickly as possible. The Commission may conduct any inquiry or investigation it considers necessary before acting on an application and may require an applicant to submit plans, specifications, and other information the Commission considers necessary to evaluate the application.

(2) a. The Department shall refer each application for permit, or renewal of an existing permit, for outlets and point sources and treatment works and disposal systems discharging to the surface waters of the State to its staff for written evaluation and proposed determination with regard to issuance or denial of the permit. If the Commission concurs in the proposed determination, it shall give notice of intent to issue or deny the permit, along with any other data that the Commission may determine appropriate, to be given to the appropriate State, interstate and federal agencies, to interested persons, and to the public.

a1. The Commission shall prescribe the form and content of the notice. ~~The notice required herein~~ Public notice shall be given at least 45 days prior to any proposed final action granting or denying the permit. Public notice shall be given by publication of the notice one time in a newspaper having general circulation within the county.

b. Repealed by Session Laws 1987, c. 734.

(3) If any person desires a public ~~meeting~~ hearing on any application for permit or renewal of an existing permit provided for in this subsection, he shall so request in writing to the Commission within 30 days following date of the notice of intent. The Commission shall consider all such requests for ~~meeting,~~ hearing, and if the Commission determines that there is a significant public interest in holding such ~~meeting,~~ hearing, at least 30 days' notice of such ~~meeting~~ hearing shall be given to all persons to whom notice of intent was sent and to any other person requesting notice. At least 30 days prior to the date of ~~meeting,~~ hearing, the Commission shall also cause a copy of the notice thereof to be published at least one time in a newspaper having general circulation in such county. In any county in which there is more than one newspaper having general circulation in that county, the Commission shall cause a copy of such notice to be published in as many newspapers having general circulation in the county as the Commission in its discretion determines may be necessary to assure that such notice is generally available throughout the county. The Commission shall prescribe the form and content of the notices.

The Commission shall prescribe the procedures to be followed in ~~such meetings.~~ hearings. If the ~~meeting~~ hearing is not conducted by the Commission, detailed minutes of the ~~meeting~~ hearing shall be kept and shall be submitted, along with any other written comments, exhibits or documents presented at the ~~meeting,~~ hearing, to the Commission for its consideration prior to final action granting or denying the permit.

(4) Not later than 60 days following notice of intent or, if a public hearing is held, within 90 days following consideration of the matters and things presented at such hearing, the Commission shall grant or deny any application for issuance of a new permit or for renewal of an existing permit. All permits or renewals issued by the Commission and all decisions denying application for permit or renewal shall be in writing.

(5) No permit issued pursuant to this subsection (c) shall be issued or renewed for a term exceeding five years.

(6) The Commission shall not act upon an application for a new nonmunicipal domestic wastewater discharge facility until it has received a written statement from each city and county government having jurisdiction over any part of the lands on which the proposed facility and its appurtenances are to be located which states whether the city or county has in effect a zoning or subdivision ordinance and, if such an ordinance is in effect, whether the proposed facility is consistent with the ordinance. The Commission shall not approve a permit application for any facility which a city or county has determined to be inconsistent with its zoning or subdivision ordinance unless it determines that the approval of such application has statewide significance and is in the best interest of the State. An applicant for a permit shall request that each city and county government having jurisdiction issue the statement required by this subdivision by mailing by certified mail, return receipt requested, a written request for such statement and a copy of the draft permit application to the clerk of the city or county. If a local government fails to mail the statement required by this subdivision, as evidenced by a postmark, within 15 days after receiving and signing for the certified mail, the Commission may proceed to consider the permit application notwithstanding this subdivision."

Section 4. G.S. 143-215.3(a)(4) reads as rewritten:

"(4) To delegate such of the powers of the Commission as the Commission deems necessary to one or more of its members, to the Secretary or any other qualified employee of the Department. ~~Department; provided, that the provisions of any such delegation of power shall be set forth in the rules of the Commission; and~~

~~provided further that the~~ The Commission shall not delegate to persons other than its own members and the designated employees of the Department the power to conduct hearings with respect to the classification of waters, the assignment of classifications, air quality standards, air contaminant source classifications, emission control standards, or the issuance of any special order except in the case of an emergency under subdivision (12) of this subsection for the abatement of existing water or air pollution. Any employee of the Department to whom a delegation of power is made to conduct a hearing shall report the hearing with its evidence and record to the Commission."

Section 5. G.S. 143-215.4(b) reads as rewritten:

"(b) Procedures for Public Input. --

(1) The Commission may, on its own motion or when required by federal law, request public comments on or hold public hearings on matters within the scope of its authority under this Article or Articles 21A or 21B of this Chapter. To request public comments on a matter, the Commission shall notify appropriate agencies of the opportunity to submit written comments to the Commission on the matter and shall publish a notice in a newspaper having general circulation in the affected area, stating the matter under consideration by the Commission and informing the public of its opportunity to submit written comments to the Commission on the matter. A public comment period shall extend for at least 30 days after the notice is published.

(2) To hold a public hearing on a matter, the Commission shall notify, by personal service or certified mail, persons directly affected by the matter under consideration and shall publish a notice in a newspaper having general circulation in the affected area, stating the matter under consideration by the Commission and the time, date, and place of a public hearing to be held on the matter. A public hearing shall be held no sooner than 20 days after the notice is published. The proceedings at a public hearing held under this subsection shall be recorded. Upon payment of a fee established by the Commission, any person may obtain a copy of the record of the public hearing. After a public hearing, the Commission shall accept written comments for the time period prescribed by the Commission.

(3) This subsection does not apply to rule-making proceedings, contested case hearings, or the issuance of permits required under Title V. The Commission shall establish procedures for public hearings, public notice, and public comment respecting permits required by Title V as provided by G.S. 143-215.111(4).

(4) The Commission may hold a public meeting on any matter within its scope of authority. The Commission may hold a public meeting in addition to any public hearing that is required under any provision of law, but a public meeting may not be substituted for any required public hearing. Except as may be otherwise provided by law, the Commission may determine the procedures for any public meeting it holds."

Section 6. G.S. 143-215.112(d)(1a) reads as rewritten:

"(1a) Each governing body, or its authorized agent, shall have the power to assess civil penalties under G.S. 143-215.114A. Any person assessed shall be notified of the assessment by registered or certified mail, and the notice shall specify the reasons for the assessment. If the person assessed fails to pay the amount of the assessment to the governing body or its authorized agent within 30 days after receipt of notice, or such longer period not to exceed 180 days as the governing body or its authorized agent may specify, the governing body may institute a civil action in the superior court of the county in which the violation occurred, to recover the amount of the assessment. ~~Each day of continuing violation after written notification from the governing body or its authorized agent shall be considered a separate offense.~~ If any action or failure to act for which a penalty may be assessed under this section is continuous, the governing body or its authorized agent may assess a penalty not to exceed ten thousand dollars ($10,000) per day for so long as the violation continues. In determining the amount of the penalty, the governing body or its authorized agent shall consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, and the amount of money the violator saved by not having made the necessary expenditures to comply with the appropriate pollution control requirements."

Section 7. G.S. 143-215.114A(b) reads as rewritten:

"(b) ~~Each day of continuing violation after written notification from the Secretary shall be considered a separate offense.~~ If any action or failure to act for which a penalty may be assessed under this section is continuous, the Secretary may assess a penalty not to exceed ten thousand dollars ($10,000) per day for so long as the violation continues."

Section 8. G.S. 143B-291 reads as rewritten:

"§ 143B-291. North Carolina Mining Commission -- members; selection; removal; compensation; quorum; services.

(a) Members, Selection. -- The North Carolina Mining Commission shall consist of nine members appointed by the ~~Governor. The Commission shall be composed of the following: one~~ Governor under a specified subdivision of this subsection as follows:

(1) One member who is the chairman of the North Carolina State University Minerals Research Laboratory Advisory Committee, ex officio. ~~Committee; three representatives of mining industries; three representatives of nongovernmental conservation interests and two who shall represent the Environmental Management Commission and be knowledgeable in the principles of water and air resources management.~~

(2) One member who is a representative of the mining industry.

(3) One member who is a representative of the mining industry.

(4) One member who is a representative of the mining industry.

(5) One member who is a representative of nongovernmental conservation interests.

(6) One member who is a representative of nongovernmental conservation interests.

(7) One member who is a representative of nongovernmental conservation interests.

(8) One who, at the time of the appointment to the Mining Commission, is a member of the Environmental Management Commission and knowledgeable in the principles of water and air resources management.

(9) One who, at the time of the appointment to the Mining Commission, is a member of the Environmental Management Commission and knowledgeable in the principles of water and air resources management.

~~The initial members of the North Carolina Mining Commission shall be those members of the present North Carolina Mining Council who shall meet the above requirements for membership on the North Carolina Mining Commission and who shall serve on the North Carolina Mining Commission for a period equal to the remainder of their current terms on the North Carolina Mining Council. The remaining initial members shall be appointed by the Governor to staggered terms of six years.~~

(b) Terms. -- The term of office of a member of the Commission is six years. ~~Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.~~ At the expiration of each member's term, the Governor shall replace the member with a new member of like qualifications for a term of six years. The term of members appointed under subdivisions (2), (5), and (8) of subsection (a) of this section shall expire on 30 June of years that precede by one year those years that are evenly divisible by six. The term of members appointed under subdivisions (3) and (6) of subsection (a) of this section shall expire on 30 June of years that follow by one year those years that are evenly divisible by six. The term of members appointed under subdivisions (4), (7), and (9) of subsection (a) of this section shall expire on 30 June of years that follow by three years those years that are evenly divisible by six.

Upon the expiration of a six-year term, a member may continue to serve until a successor is appointed and duly qualified as provided by G.S. 128-7.

(c) Vacancies. -- An appointment to fill a vacancy shall be for the unexpired balance of the term.

(d) Removal. -- The Governor ~~shall have the power to~~ may remove any member of the Commission from office for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of ~~G.S. 143B-13 of the Executive Organization Act of 1973.~~ G.S. 143B-13.

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

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

(g) Staff. -- All clerical and other services required by the Commission shall be supplied by the Secretary of the Department."

Section 9. In order to reestablish a schedule of six-year staggered terms for the Mining Commission as required by G.S. 143B-291, as amended by Section 8 of this act, the Governor, in making appointments to replace the two members of the Mining Commission who represent the mining industry and whose terms both expire on 30 June 1997, shall appoint one member under G.S. 143B-291(a)(2) to a full six-year term expiring on 30 June 2003 and shall appoint one member under G.S. 143B-291(a)(4), to a four-year term expiring 30 June 2001.

Section 10. G.S. 143B-313.2 reads as rewritten:

"**§ 143B-313.2. North Carolina Parks and Recreation Authority; members; selection; compensation; meetings.**

(a) Membership. -- The North Carolina Parks and Recreation Authority shall consist of 11 members. The members shall include persons who are knowledgeable about park and recreation issues in North Carolina or with expertise in finance. ~~Three members shall be appointed by the Governor, four members shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, and four members shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121. The members shall serve at the pleasure of the appointing authority. The Governor shall appoint one of the members to be Chair of the North Carolina Parks and Recreation Authority. Vacancies shall be appointed by the original appointing authority, and the term shall be for the balance of the unexpired term. The North Carolina Parks and Recreation Authority shall meet at a time and place as designated by the Chair, but no less frequently than quarterly.~~ In making appointments, each appointing authority shall specify under which subdivision of this subsection the person is appointed. Members shall be appointed as follows:

(1) One member appointed by the Governor.

(2) One member appointed by the Governor.

(3) One member appointed by the Governor.

(4) One member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, as provided in G.S. 120-121.

(5) One member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, as provided in G.S. 120-121.

(6) One member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, as provided in G.S. 120-121.

(7) One member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, as provided in G.S. 120-121.

(8) One member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, as provided in G.S. 120-121.

(9) One member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, as provided in G.S. 120-121.

(10) One member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, as provided in G.S. 120-121.

(11) One member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, as provided in G.S. 120-121.

(b) Terms. -- Members shall serve two-year terms. Members shall serve no more than two full two-year terms. Upon the expiration of a two-year term, a member may continue to serve until a successor is appointed and duly qualified as provided by G.S. 128-7. The term of members appointed under odd-numbered subdivisions of subsection (a) of this section shall expire on 30 June of odd-numbered years. The term of members appointed under even-numbered subdivisions of subsection (a) of this section shall expire on 30 June of even-numbered years.

(c) Chair. -- The Governor shall appoint one member of the North Carolina Parks and Recreation Authority to serve as Chair.

(d) Vacancies. -- A vacancy on the North Carolina Parks and Recreation Authority shall be filled by the appointing authority responsible for making the appointment to that position as provided in subsection (a) of this section. An appointment to fill a vacancy shall be for the unexpired balance of the term.

(e) Removal. -- The Governor may remove, as provided in G.S. 143-13, any member of the North Carolina Parks and Recreation Authority appointed by the Governor for misfeasance, malfeasance, or nonfeasance. The General Assembly may remove any member of the North Carolina Parks and Recreation Authority appointed by the General Assembly for misfeasance, malfeasance, or nonfeasance.

~~(e)~~ (f) Compensation. -- The members of the North Carolina Parks and Recreation Authority shall receive per diem and necessary travel and subsistence expenses according to the provisions of G.S. 138-5.

(g) Meetings. -- The North Carolina Parks and Recreation Authority shall meet at least quarterly at a time and place designated by the Chair.

~~(d)~~ (h) Quorum. -- A majority of the North Carolina Parks and Recreation Authority shall constitute a quorum for the transaction of business.

~~(e)~~ (i) Staff. -- All clerical and other services required by the North Carolina Parks and Recreation Authority shall be provided by the Secretary of Environment, Health, and Natural Resources."

Section 11. In order to reestablish a schedule of two-year staggered terms for the North Carolina Parks and Recreation Authority as required by G.S. 143B-313.2, as amended by Section 10 of this act:

(1) The Governor, in making appointments to replace the one member of the North Carolina Parks and Recreation Authority appointed by the Governor whose term expires on 30 June 1997, shall appoint a member under G.S. 143B-313.2(a)(1) to a full two-year term expiring on 30 June 1999.

(2) The Governor, in making appointments to replace the two members of the North Carolina Parks and Recreation Authority appointed by the Governor whose terms expire on 30 June 1998, shall appoint one member under G.S. 143B-313.2(a)(2) to a full two-year term expiring on 30 June 2000 and shall appoint one member under G.S. 143B-313.2(a)(3) to a one-year term expiring 30 June 1999.

(3) The General Assembly, in making appointments to replace the four members of the North Carolina Parks and Recreation Authority appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives whose terms expire on 30 June 1998, shall appoint two members under G.S. 143B-313.2(a)(4) and G.S 143B-313.2(a)(6) to full two-year terms expiring on 30 June 2000 and shall appoint two members under G.S. 143B-313.2(a)(5) and G.S. 143B-313.2(a)(7) to one-year terms expiring 30 June 1999.

(4) The General Assembly, in making appointments to replace the four members of the North Carolina Parks and Recreation Authority appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate whose terms expire on 30 June 1998, shall appoint two members under G.S. 143B-313.2(a)(8) and G.S 143B-313.2(a)(10) to full two-year terms expiring on 30 June 2000 and shall appoint two members under G.S. 143B-313.2(a)(9) and G.S. 143B-313.2(a)(11) to one-year terms expiring 30 June 1999.

Section 12. G.S. 106-802(4) reads as rewritten:

"(4) 'Site evaluation' means an investigation to determine if a site meets all federal and State standards as evidenced by the Waste Management Facility Site Evaluation Report on file with the Soil and Water Conservation District office or a comparable report certified by a professional engineer or a comparable report certified by a technical specialist approved by the North Carolina Soil and Water Conservation Commission.

~~Department of Environment, Health and Natural Resources~~".

Section 13. G.S. 143-214.12(a) reads as rewritten:

"(a) Wetlands Restoration Fund. -- The Wetlands Restoration Fund is established as a nonreverting fund within the Department. The Fund shall be treated as a special trust fund and shall be credited with interest by the State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-69.3. The Wetlands Restoration Fund shall provide a repository for monetary contributions and donations or dedications of interests in real property to promote projects for the restoration, enhancement, preservation, or creation of wetlands and riparian areas and for payments made in lieu of compensatory mitigation as described in subsection (b) of this section. No funds shall be expended from this Fund for any purpose other than those directly contributing to the acquisition, perpetual maintenance, enhancement, restoration, or creation of wetlands and riparian areas in accordance with the basinwide plan as described in ~~subsection (a) of this section.~~ G.S. 143-214.10."

Section 14. G.S. 143-215.10G(3) reads as rewritten:

"(3) For a system with a design capacity of 800,000 pounds or more steady state live weight, two hundred dollars ($200.00)."

Section 15. G.S. 143-215.74(b)(3) reads as rewritten:

"(3) Subject to subdivision (7) of this subsection, priority designations for inclusions in the program shall be under the authority of the Soil and Water Conservation ~~Commission and the~~ Commission. The Soil and Water Conservation Commission shall retain the authority to allocate the cost share funds."

Section 16. G.S. 143B-282(a) reads as rewritten:

"(a) There is hereby created the Environmental Management Commission of the Department of Environment, Health, and Natural Resources with the power and duty to promulgate rules to be followed in the protection, preservation, and enhancement of the water and air resources of the State.

(1) Within the limitations of G.S. 143-215.9 concerning industrial health and safety, the Environmental Management Commission shall have all of the following powers and duties:

a. To grant a permit or temporary permit, to modify or revoke a permit, and to refuse to grant permits pursuant to G.S. 143-215.1 and G.S. 143-215.108 with regard to controlling sources of air and water ~~pollution;~~ pollution.

b. To issue a special order pursuant to G.S. 143-215.2(b) and G.S. 143-215.110 to any person whom the Commission finds

responsible for causing or contributing to any pollution of water within such watershed or pollution of the air within the area for which standards have been ~~established;~~ established.

c. To conduct and direct that investigations be conducted pursuant to G.S. 143-215.3 and G.S. ~~143-215.108(b)(5);~~ 143-215.108(b)(5).

d. To conduct public hearings, institute actions in superior court, and agree upon or enter into settlements, all pursuant to G.S. ~~143-215.3;~~ 143-215.3.

e. To direct the investigation of any killing of fish and wildlife pursuant to G.S. ~~143-215.3;~~ 143-215.3.

f. To consult with any person proposing to construct, install, or acquire an air or water pollution source pursuant to G.S. 143-215.3 and G.S. ~~143-215.111;~~ 143-215.111.

g. To encourage local government units to handle air pollution problems and to provide technical and consultative assistance pursuant to G.S. 143-215.3 and G.S. ~~143-215.112;~~ 143-215.112.

h. To review and have general oversight and supervision over local air pollution control programs pursuant to G.S. 143-215.3 and G.S. ~~143-215.112;~~ 143-215.112.

i. To declare an emergency when it finds a generalized dangerous condition of water or air pollution pursuant to G.S. ~~143-215.3;~~ 143-215.3.

j. To render advice and assistance to local government regarding floodways pursuant to G.S. ~~143-215.56;~~ 143-215.56.

k. To declare and delineate and modify capacity use areas pursuant to G.S. ~~143-215.13;~~ 143-215.13.

l. To grant permits for water use within capacity use areas pursuant to G.S. ~~143-215.15;~~ 143-215.15.

m. To direct that investigations be conducted when necessary to carry out duties regarding capacity use areas pursuant to G.S. ~~143-215.19;~~ 143-215.19.

n. To approve, disapprove and approve subject to conditions all applications for dam construction pursuant to G.S. 143-215.28; to require construction progress reports pursuant to G.S. ~~143-215.29;~~ 143-215.29.

o. To halt dam construction pursuant to G.S. ~~143-215.29;~~ 143-215.29.

p. To grant final approval of dam construction work pursuant to G.S. ~~143-215.30;~~ 143-215.30.

q. To have jurisdiction and supervision over the maintenance and operation of dams pursuant to G.S. ~~143-215.31;~~ 143-215.31.

r. To direct the inspection of dams pursuant to G.S. ~~143-215.32;~~ 143-215.32.

s. To modify or revoke any final action previously taken by the Commission pursuant to G.S. 143-214.1 and G.S. ~~143-215.107;~~ 143-215.107. ~~and~~

t. To have jurisdiction and supervision over oil pollution pursuant to Article 21A of Chapter ~~143;~~ 143. ~~[and]~~

u. To administer the State's authority under 33 ~~USC~~ U.S.C. § 1341 of the federal Clean Water Act."

Section 17. Section 17 of Chapter 626 of the 1995 Session Laws (1996 Regular Session) reads as rewritten:

"Sec. 17. No later than October 1, 1996, the Environmental Management Commission and the Soil and Water Conservation Commission, with technical assistance from the Cooperative Extension Service, shall establish the record-keeping requirements under G.S. ~~143-215.1C(e)(8),~~ 143-215.10C(e)(8), as enacted by Section 2 of this act. The Natural Resources Conservation Service is encouraged to cooperate fully with establishing these requirements."

Section 18. Section 2 of Chapter 627 of the 1995 Session Laws (1996 Regular Session) reads as rewritten:

"Sec. 2. G.S. ~~113-133(e)~~ 113-133.1(e) is amended by deleting the words 'Currituck: Session Laws 1959, Chapter 545.'"

Section 19. This act is effective when it becomes law.

H 211. AMEND ENVIRONMENTAL LAWS. *TO AMEND VARIOUS ENVIRONMENTAL LAWS, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.* Makes four substantive changes. (1) Amends GS 90A-46.1 to provide that water pollution control system operator certificates expire on Dec. 31 of the year in which they are issued and that the Environmental Management Comm'n (EMC) may set and enforce continuing education requirements for certification renewal, including payment of a fee. (2) Amends GS 143-215.1(c) to change the title of proceedings before the EMC on the question of issuance of a permit for discharging into surface waters from "meeting" to "hearing." (3) Adds new GS 143-215.4(b)(4) providing that EMC may hold a public meeting, in addition to but not in lieu of a public hearing, on any issue within its scope of authority. (4) Amends 143-215.114A(b) (which now provides a civil penalty of $10,000 for violations of environmental laws specified in the section and specifies that each day of a continuing violation under that section is to be considered a separate offense) to provide that if any action or failure to act in violation of the section is continuous, a penalty of up to $10,000 per day may be assessed.
Intro. by Culp.
Ref. to Environment GS 90A, 113A, 143

Daily Bulletin 04/16/97

H 211. AMEND ENVIRONMENTAL LAWS. Intro. 2/17/97. House committee substitute replaces 1st edition. Amends GS 143-215.3(a)(4) to allow Environmental Management Comm'n to delegate its powers to one or more of its members without setting forth the provisions of the delegation in its rules. Amends GS 143B-291 to stagger terms of members of the Mining Comm'n. Amends GS 143B-313.2 to stagger terms of members of the Parks and Recreation Authority; and provides that Governor and General Assembly may remove their appointees for misconduct and that appointments for vacancies are for the unexpired balance of the term. Changes title to reflect these additions and to specify changes made by original bill.

Daily Bulletin 07/29/97

H 211. AMEND ENVIRONMENTAL LAWS-2. Intro. 2/17/97. Senate committee substitute makes the following changes to 2nd edition. Adds provisions making clarifying, conforming, and technical changes to various laws relating to environment, health, and natural resources as recommended by the Environmental Review Comm'n.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 4

HOUSE BILL 566
Committee Substitute Favorable 7/3/97
Senate Finance Committee Substitute Adopted 8/14/97
Fourth Edition Engrossed 8/21/97

Short Title: Wake Schools Development Charges. (Local)

Sponsors:

Referred to:

March 20, 1997

A BILL TO BE ENTITLED

AN ACT EXEMPTING THE WAKE COUNTY PUBLIC SCHOOL SYSTEM AND QUALIFIED NONPUBLIC SCHOOLS OF WAKE COUNTY FROM DEVELOPMENT CHARGES RELATED TO THE CONSTRUCTION, RENOVATION, AND REPAIR OF SCHOOL INFRASTRUCTURE FACILITIES IN WAKE COUNTY AND THE MUNICIPALITIES THEREIN, AND TO CHANGE SEVERAL OTHER LAWS AFFECTING WAKE COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding any other provision of law, the Wake County Public School System and qualified nonpublic schools of Wake County shall be exempt from development charges assessed by Wake County or any municipality having territory within Wake County where the development charge is assessed against the construction, renovation, or repair of school infrastructure facilities.

Section 2. For the purposes of this act:

(a) "Development charge" means any:

(1) Impact fee, facility fee, development fee, project fee, regulatory fee, or other similar fee assessed in connection with the construction, renovation, or repair of a school infrastructure facility where the fee is based on the student seating capacity of the facility.

(2) Water and sewer acreage fee when the Wake County Public School System or a qualified nonpublic school has installed water and sewer improvements.
(3) Transportation development fee when the Wake County Public School System or a qualified nonpublic school has installed transportation improvements.
(4) Utility tap fee.
(5) Plan review fee.
(6) Building permit fee.
(7) Fee to place a mobile classroom unit on property owned by the Wake County Public School System or qualified nonpublic school.

(b) "School infrastructure facility" means any building, structure, or other facility used or to be used by the Wake County Public School System or qualified nonpublic school for instructional, administrative, or maintenance purposes. The term includes mobile classroom units.

(c) "Qualified nonpublic school" means a school having an enrollment of 20 or more students, and that has one or more of the characteristics set out in G.S. 115C-555.

Section 3. Chapter 279 of the 1989 Session Laws of North Carolina is repealed.

Section 4. Section 4 of Chapter 441 of the 1995 Session Laws reads as rewritten:

"Sec. 4. This act is effective upon ratification. ~~This act shall sunset July 1, 1997.~~ This act expires September 1, 1997, but any summons issued before that date and served under the provisions of this act shall be valid."

Section 5. G.S. 90-95.3(b) reads as rewritten:

"(b) When any person is convicted of an offense under this Article, the court may order him to make restitution in the sum of one hundred dollars ($100.00) to the State of North Carolina or to a unit of local government for the expense of analyzing any controlled substance possessed by him or his agent as part of an investigation leading to his conviction. Any funds received under this subsection shall be deposited in the General ~~Fund.~~ Fund, or with a unit of local government if it provided the controlled substance analysis."

Section 6. Sections 1 and 2 of this act become effective when they become law and apply to Wake County Public School System or Wake County qualified nonpublic school construction, renovation, and repair projects for which a building permit is issued on or after that date. Any valid development charge that accrued prior to the effective date of this act on a project for which a building permit was issued prior to the effective date of this act shall remain valid and payable by the school system or school.

Section 7. Sections 3, 4, 5, and 7 of this act apply only to Wake County. Section 4 of this act is effective retroactively from July 1, 1997. Sections 3, 5, and 7 of this act become effective when they become law. Any process served pursuant to

Chapter 441 of the 1995 Session Laws from July 1, 1997, until the date this act becomes law is validated by this act.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE RESOLUTION 1244
Proposed Committee Substitute H1244-PCS7372

Sponsors:

Referred to:

August 14, 1997

A HOUSE RESOLUTION COMMEMORATING THE FIFTIETH ANNIVERSARY OF INDIA'S INDEPENDENCE FROM BRITISH RULE.

Whereas, August 15, 1997, marks the fiftieth anniversary of India's independence from British rule; and

Whereas, despite wars, natural disasters, and political turmoil during the last 50 years, India has remained a democracy; and

Whereas, various activities throughout the world have been planned to celebrate the anniversary of India's independence; and

Whereas, approximately 10,000 Indian Americans live in North Carolina; and

Whereas, Indian Americans have contributed to the well-being of the State of North Carolina in the fields of health care, technology, science, and business; Now, therefore, be it resolved by the House of Representatives:

Section 1. The House of Representatives urges the citizens of the State of North Carolina to commemorate the 50th anniversary of India's independence from Great Britain and to remember the freedoms and rights enjoyed due to the principles of a democratic form of government.

Section 2. The Principal Clerk shall transmit a certified copy of this resolution to the Indian American Forum for Political Education.

Section 3. This resolution is effective upon adoption.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE RESOLUTION 1244

Sponsors: Representative Daughtry.

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

August 14, 1997

A HOUSE RESOLUTION COMMEMORATING THE FIFTIETH ANNIVERSARY OF INDIA'S INDEPENDENCE FROM BRITISH RULE.

Whereas, August 14, 1997, marks the fiftieth anniversary of India's independence from British rule; and

Whereas, despite wars, natural disasters, and political turmoil during the last 50 years, India has remained a democracy; and

Whereas, various activities throughout the world have been planned to celebrate the anniversary of India's independence; and

Whereas, approximately 10,000 Indian Americans live in North Carolina; and

Whereas, Indian Americans have contributed to the well-being of the State of North Carolina in the fields of health care, technology, science, and business; Now, therefore, be it resolved by the House of Representatives:

Section 1. The House of Representatives urges the citizens of the State of North Carolina to commemorate the 50th anniversary of India's independence from Great Britain and to remember the freedoms and rights enjoyed due to the principles of a democratic form of government.

Section 2. The Principal Clerk shall transmit a certified copy of this resolution to the Indian American Forum for Political Education.

Section 3. This resolution is effective upon ratification.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 4

SENATE BILL 841
Finance Committee Substitute Adopted 8/4/97
Third Edition Engrossed 8/18/97
House Committee Substitute Favorable 8/25/97

Short Title: Modify Corporate Dividend Taxation. (Public)

Sponsors:

Referred to:

April 15, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW FOREIGN CORPORATIONS TO DEDUCT EXPENSES RELATED TO DEDUCTIBLE SUBSIDIARY DIVIDENDS TO THE SAME EXTENT AS NORTH CAROLINA CORPORATIONS, TO CLARIFY THE TREATMENT OF DIVIDENDS AS BUSINESS OR NONBUSINESS INCOME, AND TO ALLOW LOCAL BOARDS OF EDUCATION TO OBTAIN REFUNDS OF SALES AND USE TAXES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-130.7(b), as amended by House Bill 1157, 1997 General Assembly, reads as rewritten:

"(b) Subsidiary Dividends. -- A corporation ~~that, at the close of its taxable year, has its commercial domicile within North Carolina~~ may deduct all dividends received from corporations in which it owns more than fifty percent (50%) of the outstanding voting stock."

Section 2. G.S. 105-130.4(a)(1) reads as rewritten:

"(1) 'Business income' means income arising from transactions and activity in the regular course of the corporation's trade or business and includes income from tangible and intangible property if the acquisition, management, ~~and/or~~ or disposition of the property ~~constitute integral parts~~ constitutes an integral part of the corporation's regular trade or business operations. Dividend

income, like other income from intangible property, is business income if it meets the requirements of this definition."

Section 3. G.S. 105-164.14(c) reads as rewritten:

"(c) Certain Governmental Entities. -- A governmental entity listed in this subsection is allowed an annual refund of sales and use ~~tax~~ taxes paid by it under this Article, except under G.S. 105-164.4(a)(4a) and G.S. 105-164.4(a)(4c), on direct purchases of tangible personal property. Sales and use tax liability indirectly incurred by a governmental entity on building materials, supplies, fixtures, and equipment that become a part of or annexed to any building or structure that is owned or leased by the governmental entity and is being erected, altered, or repaired for use by the governmental entity is considered a sales or use tax liability incurred on direct purchases by the governmental entity for the purpose of this subsection. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the governmental entity's fiscal year.

This subsection applies only to the following governmental entities:

(1) A county.
(2) A city as defined in G.S. 160A-1.
(2a) A consolidated city-county as defined in G.S. 160B-2.
(2b) A local school administrative unit.
(3) A metropolitan sewerage district or a metropolitan water district in this State.
(4) A water and sewer authority created under Chapter 162A of the General Statutes.
(5) A lake authority created by a board of county commissioners pursuant to an act of the General Assembly.
(6) A sanitary district.
(7) A regional solid waste management authority created pursuant to G.S. 153A-421.
(8) An area mental health, developmental disabilities, and substance abuse authority, other than a single-county area authority, established pursuant to Article 4 of Chapter 122C of the General Statutes.
(9) A district health department.
(10) A regional council of governments created pursuant to G.S. 160A-470.
(11) A regional planning and economic development commission or a regional economic development commission created pursuant to Chapter 158 of the General Statutes.
(12) A regional planning commission created pursuant to G.S. 153A-391.
(13) A regional sports authority created pursuant to G.S. 160A-479.
(14) A public transportation authority created pursuant to Article 25 of Chapter 160A of the General Statutes.

(14a) A facility authority created pursuant to Part 4 of Article 20 of Chapter 160A of the General Statutes.

(15) A regional public transportation authority created pursuant to Article 26 of Chapter 160A of the General Statutes.

(16) A local airport authority that was created pursuant to a local act of the General Assembly and has at least one of the following characteristics:

a. It has all of the rights of a municipality.

b. A local act of the General Assembly declares it to be a municipality.

c. A local act of the General Assembly specifically authorizes it to receive a refund under this section.

(17) A joint agency created by interlocal agreement pursuant to G.S. 160A-462 to operate a public broadcasting television station.

(18) The North Carolina Low-Level Radioactive Waste Management Authority created pursuant to Chapter 104G of the General Statutes.

(19) The North Carolina Hazardous Waste Management Commission created pursuant to Chapter 130B of the General Statutes.

(20) A constituent institution of The University of North Carolina, but only with respect to sales and use tax paid by it for tangible personal property acquired by it through the expenditure of contract and grant funds.

(21) The University of North Carolina Hospitals at Chapel Hill."

Section 4. Sections 1 and 2 of this act are effective for taxable years beginning on or after January 1, 1997. Sections 3 and 4 of this act are effective when they become law and Section 3 of this act applies to taxes paid on or after July 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 232
Finance Committee Substitute Adopted 4/17/97
Appropriations Committee Substitute #2 Adopted 6/4/97
Fourth Edition Engrossed 6/19/97
House Committee Substitute Favorable 8/14/97
Proposed Committee Substitute S232-PCS6740

Short Title: Clean Water Bonds. (Public)

Sponsors:

Referred to:

February 24, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE ISSUANCE OF GENERAL OBLIGATION BONDS OF THE STATE, SUBJECT TO A VOTE OF THE QUALIFIED VOTERS OF THE STATE, TO PROVIDE FUNDS FOR GRANTS, LOANS, AND REVOLVING LOANS TO LOCAL GOVERNMENT UNITS FOR WATER SUPPLY SYSTEMS, WASTEWATER COLLECTION SYSTEMS, WASTEWATER TREATMENT WORKS, AND WATER CONSERVATION PROJECTS AND TO REDUCE INHERITANCE TAXES.

The General Assembly of North Carolina enacts:

Section 1. Short title. This act shall be known as the "Clean Water Bond Act of 1997".

Section 2. Purpose. It is the intent of the General Assembly by this act to provide for the issuance of general obligation bonds of the State and to provide that the proceeds realized from the sale of the bonds shall be allocated as follows:

(1) $200,000,000 to provide State matching funds required to receive federal wastewater or water supply assistance funds and to provide additional funding for the Clean Water Revolving Loan and Grant Fund established in Chapter 159G of the General Statutes or to provide funding by grants and loans to local government units; and

(2) $800,000,000 to provide loans to local government units to finance all or a portion of the cost of construction, improvements, enlargements, extensions, and reconstruction of water supply systems, wastewater collection systems, wastewater treatment works, and water conservation projects.

The funds to be derived from the sale of the Clean Water Bonds authorized by this act are sufficient to meet no more than a fraction of the needs that now exist and will arise in the immediate future. For this reason, although public necessity and the criteria established by Chapter 159G of the General Statutes shall be the primary consideration in granting and loaning funds, great emphasis shall also be placed on achieving stringent reductions in the levels of nutrients and other pollutants discharged into the State's waters, particularly in nutrient sensitive river basins, in reducing the overall volume of effluent discharged to the State's waters by using alternative methods of wastewater treatment when feasible, on the creation of efficient systems of regional wastewater disposal and regional water supply, and on the willingness and ability of local government units to meet their responsibilities through sound fiscal policies, creative planning, and efficient operation and management.

Section 3. Definitions. As used in this act, unless the context otherwise requires:

(1) "Bonds" means bonds issued under this act.

(2) "Clean Water Revolving Loan and Grant Act" means Chapter 796 of the 1987 Session Laws, as amended from time to time, codified as Chapter 159G of the General Statutes.

(3) "Clean Water Revolving Loan and Grant Fund" means the Clean Water Revolving Loan and Grant Fund as defined in the Clean Water Revolving Loan and Grant Act.

(4) "Cost" means, without intending thereby to limit or restrict any proper definition of this term in financing the cost of facilities or purposes authorized by this act:

a. The cost of constructing, reconstructing, enlarging, acquiring, and improving facilities, and acquiring equipment and land therefor,

b. The cost of engineering, architectural, and other consulting services as may be required,

c. Administrative expenses and charges,

d. Finance charges and interest prior to and during construction and, if deemed advisable by the State Treasurer, for a period not exceeding two years after the estimated date of completion of construction,

e. The cost of bond insurance, investment contracts, credit enhancement and liquidity facilities, interest-rate swap agreements or other derivative products, financial and legal consultants, and related costs of bond and note issuance, to the extent and as determined by the State Treasurer,

f. The cost of reimbursing the State for any payments made for any cost described above, and

g. Any other costs and expenses necessary or incidental to the purposes of this act.

Allocations in this act of proceeds of bonds to the costs of a project or undertaking in each case may include allocations to pay the costs set forth in items c., d., e., f., and g. in connection with the issuance of bonds for the project or undertaking.

(5) "Credit facility" means an agreement entered into by the State Treasurer on behalf of the State with a bank, savings and loan association, or other banking institution, an insurance company, reinsurance company, surety company, or other insurance institution, a corporation, investment banking firm, or other investment institution, or any financial institution or other similar provider of a credit facility, which provider may be located within or without the United States of America, such agreement providing for prompt payment of all or any part of the principal or purchase price (whether at maturity, presentment or tender for purchase, redemption or acceleration), redemption premium, if any, and interest on any bonds or notes payable on demand or tender by the owner, in consideration of the State agreeing to repay the provider of the credit facility in accordance with the terms and provisions of such agreement.

(6) "Local government units" means local government units as defined in the Clean Water Revolving Loan and Grant Act.

(7) "Notes" means notes issued under this act.

(8) "Par formula" means any provision or formula adopted by the State to provide for the adjustment, from time to time, of the interest rate or rates borne by any bonds or notes, including:

a. A provision providing for such adjustment so that the purchase price of such bonds or notes in the open market would be as close to par as possible,

b. A provision providing for such adjustment based upon a percentage or percentages of a prime rate or base rate, which percentage or percentages may vary or be applied for different periods of time, or

c. Such other provision as the State Treasurer may determine to be consistent with this act and will not materially and adversely affect the financial position of the State and the

marketing of bonds or notes at a reasonable interest cost to the State.

(9) "State" means the State of North Carolina.

(10) "Wastewater collection systems" means wastewater collection systems as defined in the Clean Water Revolving Loan and Grant Act.

(11) "Wastewater treatment works" means wastewater treatment works as defined in the Clean Water Revolving Loan and Grant Act.

(12) "Water conservation projects" include, but are not limited to, any construction, repair, renovation, expansion, replacement of components, or other capital improvement, including related equipment and land acquisition, designed to:

a. Eliminate the wasteful or unnecessary use or loss of water in the operations of a wastewater collection system, wastewater treatment works, or water supply system; or

b. Enhance the operation of a wastewater collection system, wastewater treatment works, or water supply system to provide a more efficient use of water.

(13) "Water Pollution Control Revolving Fund" means the fund described by G.S. 159G-4(a) and G.S. 159G-5(c).

(14) "Water supply systems" means water supply systems as defined in the Clean Water Revolving Loan and Grant Act.

Section 4. Authorization of bonds and notes. Subject to a favorable vote of a majority of the qualified voters of the State who vote on the question of issuing Clean Water Bonds in the election called and held as provided in this act, the State Treasurer is hereby authorized, by and with the consent of the Council of State, to issue and sell, at one time or from time to time, general obligation bonds of the State to be designated "State of North Carolina Clean Water Bonds", with any additional designations as may be determined to indicate the issuance of bonds from time to time, or notes of the State as provided in this act, in an aggregate principal amount not exceeding one billion dollars ($1,000,000,000) for the purpose of providing funds, with any other available funds, for the purposes authorized in this act.

Section 5. Uses of bond and note proceeds. The proceeds of Clean Water Bonds and notes shall be used for the purpose of making loans and grants to local governments as follows:

(1) The proceeds of two hundred million dollars ($200,000,000) of Clean Water Bonds shall be used and allocated for the same purposes for which funds in the Clean Water Revolving Loan and Grant Fund may be used including, without limitation, to provide funds to be used to make revolving loans and grants to local government units. The revolving loans and grants shall be made for the purpose of paying the cost of water supply systems, wastewater collection systems, and wastewater treatment works.

The first priority for use of these proceeds shall be to provide State funds necessary for the 1998-99 and 1999-2000 fiscal years to match the federal wastewater or water supply assistance funds deposited in the Water Pollution Control Revolving Fund or another fund that is used to pay the cost of water supply systems, wastewater collection systems, or wastewater treatment works and is eligible to receive federal matching funds, unless the General Assembly has provided the required match through other revenue, in which event this priority shall cease to exist to the extent of the availability of the other revenue. For the purpose of implementing this priority, the Department of Environment, Health, and Natural Resources shall certify to the State Treasurer the amount of funds required for the State match for each of the fiscal years ending June 30, 1999, and June 30, 2000, and the extent to which the General Assembly has provided other funds for this purpose. Upon certification to the State Treasurer of the amount of funds required for the State match for the fiscal year ending June 30, 1999, the State may issue up to one hundred million dollars ($100,000,000) of Clean Water Bonds authorized by this subdivision for the purpose of funding the State match for that fiscal year and for any other purposes authorized by this subdivision. Upon certification to the State Treasurer of the amount of funds required for the State match for the fiscal year ending June 30, 2000, the State may issue the remaining balance of Clean Water Bonds authorized by this subdivision for the purpose of funding the State match for that fiscal year and for any other purposes authorized by this subdivision. The proceeds of the bonds necessary for the State match for each fiscal year shall be deposited in the Water Pollution Control Revolving Fund or another appropriate fund or account determined by the State Treasurer.

The proceeds may be (i) transferred directly to the Clean Water Revolving Loan and Grant Fund to make revolving loans or grants, (ii) used to make revolving loans or grants directly to the appropriate local government qualifying for a revolving loan or grant from the Clean Water Revolving Loan and Grant Fund, (iii) used for any combination of (i) and (ii), or (iv) used in such other manner as shall effectuate the purposes of this act. Although public necessity and the criteria established by Chapter 159G of the General Statutes shall be the primary consideration in granting and loaning funds, great emphasis shall also be placed on achieving stringent reductions in the levels of nutrients and other pollutants discharged into the State's waters, particularly in nutrient sensitive river basins, in reducing the overall volume of effluent discharged

to the State's waters by using alternative methods of wastewater treatment when feasible, on the creation of efficient systems of regional wastewater disposal and regional water supply, and on the willingness and ability of local government units to meet their responsibilities through sound fiscal policies, creative planning, and efficient operation and management. Loans and grants made from bond proceeds transferred from the Clean Water Bonds Fund to the Clean Water Revolving Loan and Grant Fund shall be made and administered in accordance with the provisions of the Clean Water Revolving Loan and Grant Act. Loans and grants made from bond proceeds directly to local government units and any loan repayments shall, to the extent applicable, be made, administered, and applied in accordance with the provisions of the Clean Water Revolving Loan and Grant Act. Repayments of any direct loans may be initially placed into any fund or account as may be determined by the State Treasurer for the purpose of determining compliance with the applicable requirements of the federal tax law and shall be expended and disbursed therefrom under the direction and supervision of the Director of the Budget.

(2) The proceeds of eight hundred million dollars ($800,000,000) of Clean Water Bonds shall be used for the purpose of making loans to local government units to pay the cost of water supply systems, water conservation projects, wastewater collection systems, and wastewater treatment works. Sixty-nine percent (69%) of the proceeds of the bonds and notes shall be allocated for loans to local government units for wastewater collection systems and wastewater treatment works. Thirty-one percent (31%) of the proceeds of the bonds and notes shall be allocated for loans to local government units for water supply systems and water conservation projects.

The proceeds shall be used to make loans directly to local government units qualifying for a loan from the Clean Water Revolving Loan and Grant Fund or loaned in such other manner as shall effectuate the purposes of this act. To qualify for a loan from the Clean Water Bonds Fund for the purpose of paying the cost of water supply systems, a local government unit must have a water supply facility plan approved by the Department of Environment, Health, and Natural Resources. A water supply facility plan submitted by a local government unit to the Department under G.S. 143-355(l) will be sufficient to meet this requirement. To qualify for a loan from the Clean Water Bonds Fund for the purpose of paying the cost of wastewater collection systems or wastewater treatment works, a local government unit must have a wastewater facility plan approved by the Department

of Environment, Health, and Natural Resources. A wastewater facility plan must project future wastewater treatment needs, must present a long-range plan to meet those needs, and must include plans for system operations and maintenance of the facilities being built with the bond proceeds.

The Department of Environment, Health, and Natural Resources shall set the priorities and determine the eligibility of local government units for these loans in accordance with Section 10 of this act. The form of the loans and the details thereof including, without limitation, the maturity, interest rate, and amortization schedule shall be determined, from time to time, by the State Treasurer. In making these determinations, the State Treasurer shall consider the purpose of the loans, the ability of local government units to repay the loans, and the security for the loans. The interest rates on these loans shall reflect the self-supporting nature of the loan program and shall be sufficient to cover substantially all payments of debt service on the eight hundred million dollars ($800,000,000) of Clean Water Bonds and the issuance costs and administrative expenses associated with the issuance of these bonds and the making of these loans, subject to any applicable requirements of the federal tax law.

Repayments of the loans shall be credited to the General Fund and may be used to pay, directly or indirectly, debt service on the bonds and notes issued. Repayments may be initially placed into such fund or account as may be determined by the State Treasurer for the purpose of determining compliance with applicable requirements of the federal tax law and shall be expended and disbursed therefrom under the direction and supervision of the Director of the Budget.

Any additional moneys which may be received by means of a grant or grants from the United States of America or any agency or department thereof or from any other source for deposit to the Clean Water Bonds Fund may be placed in the Clean Water Bonds Fund or in a separate account or fund and shall be disbursed, to the extent permitted by the terms of the grant or grants, without regard to any limitations imposed by this act.

Moneys in the Clean Water Bonds Fund, the Clean Water Bonds Loan Fund, or any separate fund or account established under this act may be invested from time to time by the State Treasurer in the same manner permitted for investment of moneys belonging to the State or held in the State treasury, except with respect to grant money to the extent otherwise directed by the terms of the grant. Investment earnings, except investment earnings with respect to grant moneys to the extent otherwise directed or restricted by the terms of the grant, may be (i) credited to the Clean Water Bonds Fund, the Clean Water Bonds Loan Fund, or any separate fund or account established under this act, (ii) used to pay debt service on the bonds

authorized by this act, (iii) used to satisfy compliance with applicable requirements of the federal tax law, or (iv) transferred to the General Fund of the State.

The proceeds of bonds and notes may be used with any other moneys made available by the General Assembly for making grants and loans authorized by this act, including the proceeds of any other State bond issues, whether heretofore made available or which may be made available at the session of the General Assembly at which this act is ratified or any subsequent sessions. The proceeds of bonds and notes shall be expended and disbursed under the direction and supervision of the Director of the Budget. The funds provided by this act shall be disbursed for the purposes provided in this act upon warrants drawn on the State Treasurer by the State Controller, which warrants shall not be drawn until requisition has been approved by the Director of the Budget and which requisition shall be approved only after full compliance with the Executive Budget Act, Article 1 of Chapter 143 of the General Statutes.

Section 6. Allocation of proceeds. The proceeds of Clean Water Bonds and notes, including premium thereon, if any, except the proceeds of bonds the issuance of which has been anticipated by bond anticipation notes or the proceeds of refunding bonds or notes, shall be placed by the State Treasurer in a special fund to be designated "Clean Water Bonds Fund", which may include such appropriate special accounts therein as may be determined by the State Treasurer and shall be disbursed as provided in this act. Moneys in the Clean Water Bonds Fund shall be allocated and expended as provided in this act.

Allocations to the costs of a capital improvement or undertaking in each case may include allocations to pay the costs set forth in Section 3(4)c., d., e., f., and g. of this act in connection with the issuance of bonds for that capital improvement or undertaking.

Section 7. Election. The question of the issuance of the bonds authorized by this act shall be submitted to the qualified voters of the State at the next statewide election or statewide primary election, whichever comes first. Any other primary, election, or referendum validly called or scheduled by law at the time the election on the bond question provided for in this section is held, may be held as called or scheduled. Notice of the election shall be given in the manner and at the times required by G.S. 163-33(8). The election and the registration of voters therefor shall be held under and in accordance with the general laws of the State. Absentee ballots shall be authorized in the election.

The State Board of Elections shall reimburse the counties of the State for all necessary expenses incurred in holding the election that are in addition to those that would have otherwise been incurred, the same to be paid out of the Contingency and Emergency Fund or other funds available to the State Board of Elections.

Ballots, voting systems authorized by Article 14 of Chapter 163 of the General Statutes, or both may be used in accordance with rules prescribed by the State Board of Elections. The bond question to be used in the ballots or voting systems shall be in substantially the following form:

"[ ] FOR the issuance of one billion dollars ($1,000,000,000) State of North Carolina Clean Water Bonds constituting general obligation bonds of the State secured by a pledge of the faith and credit and taxing power of the State for the purpose of providing funds, with any other available funds, to make loans, revolving loans, and grants to local government units to pay all or a portion of the cost of clean water projects.

[ ] AGAINST the issuance of one billion dollars ($1,000,000,000) State of North Carolina Clean Water Bonds constituting general obligation bonds of the State secured by a pledge of the faith and credit and taxing power of the State for the purpose of providing funds, with any other available funds, to make loans, revolving loans, and grants to local government units to pay all or a portion of the cost of clean water projects."

If a majority of those voting on the Clean Water Bond question in the election vote in favor of the issuance of the bonds, the bonds may be issued as provided in this act. If a majority of those voting on the Clean Water Bond question in the election vote against the issuance of the bonds, the bonds shall not be issued.

The results of the election shall be canvassed and declared as provided by law for elections for State officers; the results of the election shall be certified by the State Board of Elections to the Secretary of State, in the manner and at the time provided by the general election laws of the State.

Section 8. Issuance of bonds and notes. (a) Terms and Conditions. Bonds or notes may bear such date or dates, may be serial or term bonds or notes, or any combination thereof, may mature in such amounts and at such time or times, not exceeding 40 years from their date or dates, may be payable at such place or places, either within or without the United States of America, in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts, may bear interest at such rate or rates, which may vary from time to time, and may be made redeemable before maturity, at the option of the State or otherwise as may be provided by the State, at such price or prices, including a price less than the face amount of the bonds or notes, and under such terms and conditions, all as may be determined by the State Treasurer, by and with the consent of the Council of State.

(b) Signatures; Form and Denomination; Registration. Bonds or notes may be issued as certificated or uncertificated obligations. If issued as certificated obligations, bonds or notes shall be signed on behalf of the State by the Governor or shall bear his facsimile signature, shall be signed by the State Treasurer or shall bear his facsimile signature, and shall bear the Great Seal of the State or a facsimile thereof shall be impressed or imprinted thereon. If bonds or notes bear the facsimile signatures of the Governor and the State Treasurer, the bonds or notes shall also bear a manual signature which may be that of a bond registrar, trustee, paying agent, or designated assistant of the State Treasurer. Should any officer whose signature or facsimile signature appears on bonds or notes cease to be such officer before the

delivery of the bonds or notes, the signature or facsimile signature shall nevertheless have the same validity for all purposes as if the officer had remained in office until delivery and bonds or notes may bear the facsimile signatures of persons who at the actual time of the execution of the bonds or notes shall be the proper officers to sign any bond or note although at the date of the bond or note such persons may not have been such officers. The form and denomination of bonds or notes, including the provisions with respect to registration of the bonds or notes and any system for their registration, shall be as the State Treasurer may determine in conformity with this act; provided, however, that nothing in this act shall prohibit the State Treasurer from proceeding, with respect to the issuance and form of the bonds or notes, under the provisions of Chapter 159E of the General Statutes, the Registered Public Obligations Act, as well as under this act.

(c) Manner of Sale; Expenses. Subject to determination by the Council of State as to the manner in which bonds or notes shall be offered for sale, whether at public or private sale, whether within or without the United States of America, and whether by publishing notices in certain newspapers and financial journals, mailing notices, inviting bids by correspondence, negotiating contracts of purchase or otherwise, the State Treasurer is authorized to sell bonds or notes at one time or from time to time at such rate or rates of interest, which may vary from time to time, and at such price or prices, including a price less than the face amount of the bonds or the notes, as the State Treasurer may determine. All expenses incurred in preparation, sale, and issuance of bonds or notes shall be paid by the State Treasurer from the proceeds of bonds or notes or other available moneys.

(d) Notes; Repayment.

(1) By and with the consent of the Council of State, the State Treasurer is hereby authorized to borrow money and to execute and issue notes of the State for the same, but only in the following circumstances and under the following conditions:

a. For anticipating the sale of bonds to the issuance of which the Council of State shall have given consent, if the State Treasurer shall deem it advisable to postpone the issuance of the bonds;

b. For the payment of interest on or any installment of principal of any bonds then outstanding, if there shall not be sufficient funds in the State treasury with which to pay the interest or installment of principal as they respectively become due;

c. For the renewal of any loan evidenced by notes herein authorized;

d. For the purposes authorized in this act; and

e. For refunding bonds or notes as herein authorized.

(2) Funds derived from the sale of bonds or notes may be used in the payment of any bond anticipation notes issued under this act. Funds provided by the General Assembly for the payment of

interest on or principal of bonds shall be used in paying the interest on or principal of any notes and any renewals thereof, the proceeds of which shall have been used in paying interest on or principal of the bonds.

(e) Refunding Bonds and Notes. By and with the consent of the Council of State, the State Treasurer is authorized to issue and sell refunding bonds and notes pursuant to the provisions of the State Refunding Bond Act for the purpose of refunding bonds or notes issued pursuant to this act. The refunding bonds and notes may be combined with any other issues of State bonds and notes similarly secured.

(f) Tax Exemption. Bonds and notes shall be exempt from all State, county, and municipal taxation or assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, excluding inheritance and gift taxes, income taxes on the gain from the transfer of bonds and notes, and franchise taxes. The interest on bonds and notes shall not be subject to taxation as to income.

(g) Investment Eligibility. Bonds and notes are hereby made securities in which all public officers, agencies, and public bodies of the State and its political subdivisions, all insurance companies, trust companies, investment companies, banks, savings banks, savings and loan associations, credit unions, pension or retirement funds, other financial institutions engaged in business in the State, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Bonds and notes are hereby made securities which may properly and legally be deposited with and received by any officer or agency of the State or political subdivision of the State for any purpose for which the deposit of bonds, notes, or obligations of the State or any political subdivision is now or may hereafter be authorized by law.

(h) Faith and Credit. The faith and credit and taxing power of the State are hereby pledged for the payment of the principal of and the interest on bonds and notes. In addition to the State's right to amend any provision of this act to the extent it does not impair any contractual right of a bond owner, the State expressly reserves the right to amend any provision of this act with respect to the making and repayment of loans, the disposition of any repayments of loans, and any intercept provisions relating to the failure of a local government unit to repay a loan, the bonds not being secured in any respect by loans, any repayments thereof, or any intercept provisions with respect thereto.

Section 9. Variable interest rates. In fixing the details of bonds and notes, the State Treasurer may provide that any of the bonds or notes may:

(1) Be made payable from time to time on demand or tender for purchase by the owner thereof provided a credit facility supports the bonds or notes, unless the State Treasurer specifically determines that a credit facility is not required upon a finding and determination by the State Treasurer that the absence of a credit facility will not materially or adversely affect the financial position

of the State and the marketing of the bonds or notes at a reasonable interest cost to the State;

(2) Be additionally supported by a credit facility;

(3) Be made subject to redemption or a mandatory tender for purchase prior to maturity;

(4) Bear interest at a rate or rates that may vary for such period or periods of time, all as may be provided in the proceedings providing for the issuance of the bonds or notes, including, without limitation, such variations as may be permitted pursuant to a par formula; and

(5) Be made the subject of a remarketing agreement whereby an attempt is made to remarket bonds or notes to new purchasers prior to their presentment for payment to the provider of the credit facility or to the State.

If the aggregate principal amount repayable by the State under a credit facility is in excess of the aggregate principal amount of bonds or notes secured by the credit facility, whether as a result of the inclusion in the credit facility of a provision for the payment of interest for a limited period of time or the payment of a redemption premium or for any other reason, then the amount of authorized but unissued bonds or notes during the term of such credit facility shall not be less than the amount of such excess, unless the payment of such excess is otherwise provided for by agreement of the State executed by the State Treasurer.

Section 10. Special provisions governing clean water loans. (a) Scope. The provisions of this section shall apply to loans being made from the proceeds of bonds authorized by this act for clean water projects, other than from funds deposited in the Clean Water Revolving Loan and Grant Fund.

(b) Clean Water Bonds Loan Fund. There is established in the Department of State Treasurer a fund to be known as the Clean Water Bonds Loan Fund, which may include any special or segregated accounts the State Treasurer considers appropriate. There shall be deposited in the Clean Water Bonds Loan Fund proceeds of the Clean Water Bonds and notes to be used to make loans, other than loans to be made through the Clean Water Revolving Loan and Grant Fund, to local government units for clean water projects as provided in this act.

Except as otherwise permitted by Section 5 of this act with respect to the use of investment earnings, all moneys accruing to the credit of the Clean Water Bonds Loan Fund, other than funds set aside for administrative expenses, including expenses related to determining compliance with applicable requirements of the federal tax law and costs of issuance, shall be used to make loans for the purposes provided in this act. The State Treasurer shall be responsible for making and administering all loans pursuant to the provisions of this section.

(c) Application for Loans; Hearings.

(1) Eligibility/Initial Hearing.

a. Prior to filing an application for a loan, a local government unit shall hold a public hearing. A notice of the public

hearing shall be published once at least 10 days before the date fixed for the hearing.

b. All applications for loans shall be filed with the Department of Environment, Health, and Natural Resources. The form of the application shall be prescribed by the Department and shall require any information necessary to determine the eligibility for a loan under the provisions of this section. All applications approved by the Department of Environment, Health, and Natural Resources shall be filed with the Local Government Commission. Each applicant shall furnish to the Department of Environment, Health, and Natural Resources and the Local Government Commission information in addition or supplemental to the information contained in its application, upon request.

c. A local government unit shall not be eligible for a loan unless it demonstrates to the satisfaction of the Department of Environment, Health, and Natural Resources and the Local Government Commission that:

1. The applicant is a local government unit;
2. The applicant has the financial capacity to pay the principal of and interest on its proposed loan as evidenced by the approval of the Local Government Commission;
3. The applicant has substantially complied or will substantially comply with all applicable laws, rules, regulations, and ordinances, whether federal, State, or local; and
4. The applicant has agreed by official resolution to adopt and place into effect a schedule of fees and charges or the application of other sources of revenue which will provide adequate funds for proper operation, maintenance, and administration of the project and repayment of all principal and interest on the loan.

(2) Assessment. The Department of Environment, Health, and Natural Resources may require any applicant to file with its application an assessment of the impact the project for which the funds are sought will have upon meeting the facility needs of the area within which the project is to be located.

(3) Hearing by the Department of Environment, Health, and Natural Resources or the Local Government Commission. A public hearing may be held by the Department of Environment, Health, and Natural Resources or the Local Government Commission at any time on any application. Public hearings may also be held by

the Department of Environment, Health, and Natural Resources in its discretion upon written request from any citizen or taxpayer who is a resident of the county or counties in which the project is to be located or a resident of the local government unit that proposes to borrow moneys under this act, if it appears that the public interest will be served by the hearing. The written request shall set forth each objection to the proposed project or other reason for requesting a hearing on the application and shall contain the name and address of the persons submitting it. In deciding whether to grant a request for a hearing on an application, the Department of Environment, Health, and Natural Resources may consider the application, the written objections to the proposed project, and the facility needs and shall determine if the public interest will be served by a hearing. The determination by the Department of Environment, Health, and Natural Resources shall be conclusive, and all written requests for a hearing shall be retained as a permanent part of the records pertaining to the application.

(4) Petition for Vote. A petition, demanding that the question of whether to enter into a loan agreement with the State under this act be submitted to voters, may be filed with the clerk of the local government unit applying for the loan within 15 days after the public hearing required by this section. The petition's sufficiency shall be determined and a referendum, if any, shall be conducted according to the standards, procedures, and limitations set out in G.S. 159-60 through G.S. 159-62.

(d) Priorities.

(1) Determination. Determination of priorities to be assigned each eligible project shall be made semiannually by the Department of Environment, Health, and Natural Resources during each fiscal year. Every eligible project shall be considered by the Department of Environment, Health, and Natural Resources with every other project eligible during this same priority period.

(2) Priority Factors. All applications for loans under this act shall be assigned a priority by the Department of Environment, Health, and Natural Resources. Having a comprehensive land-use plan that meets the requirements of G.S. 159G-10(e) shall be a priority factor, and having a plan that meets the requirements of that subsection and exceeds the minimum State standards for protection of the State's water resources shall receive greater priority than having a plan that does not exceed those standards. The Department of Environment, Health, and Natural Resources shall establish other priority factors criteria by rule.

(3) Assignment of Priority. A written statement relative to each priority assigned shall be prepared by the Department of Environment, Health, and Natural Resources and shall be attached to the application. The priority assigned shall be conclusive.

(4) Failure to Qualify. If an application does not qualify for a loan as of the prior period in which the application was eligible for consideration by reason of the priority assigned, the application shall be considered during the next succeeding priority period upon request of the applicant. If the application again fails to qualify for a loan during the second priority period by reason of the priority assigned, the application shall receive no further consideration. An applicant may file a new application at any time and may amend any pending application to include additional data or information.

(5) Withdrawal of Commitment. Failure of an applicant within one year after the date of acceptance of the loan to arrange for necessary financing of the proposed project or award of the contract of the construction of the proposed project shall constitute sufficient cause for withdrawal of the commitment. Prior to withdrawal of a commitment, the Department of Environment, Health, and Natural Resources shall give due consideration to any extenuating circumstances presented by the applicant as reasons for failure to arrange necessary financing or to award a contract, and the commitment may be extended for an additional period of time if, in the judgment of the Department of Environment, Health, and Natural Resources, the extension is justified.

(e) Disbursement. To be eligible to receive the loans provided for in this section, a local government unit must arrange to borrow the amounts necessary pursuant to rules adopted by the Local Government Commission. No funds shall be disbursed until the Department of Environment, Health, and Natural Resources gives a certificate of eligibility to the effect that the applicant meets all eligibility criteria and that all procedural requirements of this act have been met. The maximum principal amount of a loan shall be one hundred percent (100%) of the cost of any eligible project.

(f) Intercept. The governing body of a local government unit shall by resolution authorize to be included in its loan agreement a provision authorizing the State Treasurer, upon failure of the local government unit to make a scheduled repayment of the loan, to withhold from the local government unit any State funds that would otherwise be distributed to the local government unit in an amount sufficient to pay all sums then due and payable to the State as a repayment of the loan. In such event, notwithstanding any other provision of law, the State Treasurer is authorized to withhold and apply such funds to the repayment of the loan, except that such funds shall not be withheld if (i) before the execution of the loan agreement, such funds have been legally pledged to secure special obligation bonds or

other obligations of the local government unit, or (ii) after the execution of the loan agreement, such funds are legally pledged to secure special obligation bonds or other obligations of the local government unit as authorized in this subsection. After the execution of a loan agreement, all or any portion of the State funds specified in the loan agreement to be so withheld may be pledged to secure special obligation bonds or other obligations of the local government unit only with the prior written consent of the State Treasurer.

The State Treasurer shall notify the Secretary of Revenue and the State Controller of the amount to be withheld from the local government unit, and the Secretary of Revenue and the State Controller shall transfer to the State Treasurer the amount so requested to be applied by the State Treasurer to the repayment of the loan.

(g) Inspection. Inspection of a project for which a loan has been made under this act may be performed by qualified personnel of the Department of Environment, Health, and Natural Resources or may be performed by qualified engineers registered in this State approved by the Department of Environment, Health, and Natural Resources. No person shall be approved to perform inspections who is an officer employed by the local government unit to which the loan was made or who is an owner, officer, employer, or agent of a contractor or subcontractor engaged in the construction of the project for which the loan was made. For the purpose of payment of inspection fees, inspection services shall be included in the term "cost" as used in this act.

(h) Rules. The State Treasurer, the Local Government Commission, and the Department of Environment, Health, and Natural Resources may adopt, modify, and repeal rules necessary for the administration of their respective duties under this act. Uniform rules may be jointly adopted where feasible and desirable, and no rule, jointly adopted, may be modified or revoked except upon concurrence of all agencies involved.

(i) Federal Grants and Loans. In order to carry out the purposes of this act to secure the greatest possible benefits to the citizens of this State of the funds appropriated, the State Treasurer, the Local Government Commission, and the Department of Environment, Health, and Natural Resources shall adopt rules and criteria, not inconsistent with provisions of this act, as are necessary and appropriate to conform to regulations for federal grants and loans for any of the purposes set forth in this act.

(j) Reports. The Department of Environment, Health, and Natural Resources shall prepare and file each year on or before July 31 with the Joint Legislative Commission on Governmental Operations a report for the preceding fiscal year concerning the allocation and making of loans authorized by this act. The report shall set forth for the preceding fiscal year:

(1) Itemized and total allocations of loans authorized and unallocated funds for the loan program as of the end of the preceding fiscal year;

(2) Identification of each loan agreement entered into by the State during the preceding fiscal year and the total amount of loans authorized by such loan agreements;

(3) The amount disbursed to each local government unit pursuant to such loan agreements during the preceding fiscal year and the total amount of such disbursements;

(4) The loan repayments made by each local government unit pursuant to such loan agreements and the total amount of such loan repayments during the preceding fiscal year; and

(5) A summary for the five preceding years of the information required by subdivisions (1) through (4) of this subsection.

The report shall be signed by the Secretary of Environment, Health, and Natural Resources.

(k) Local Government Commission.

(1) Local government units may execute debt instruments payable to the State in order to obtain loans provided for in this act. Local government units shall pledge or agree to apply as security for such obligations:

a. Any available source of revenues of the local government unit, including revenues from benefitted facilities or systems, provided that (i) the local government unit has not otherwise pledged the revenues as security for, or contractually agreed to apply the revenues to, the payment of any other obligations of the local government unit, (ii) the use of the revenues is not otherwise restricted by law, or (iii) the revenues are not derived from the exercise of the local government unit's taxing power; or

b. Their faith and credit; or

c. Any combination of a. or b. above.

The faith and credit of a local government unit shall not be pledged or be deemed to have been pledged unless the requirements of Article 4 of Chapter 159 of the General Statutes have been met. The State Treasurer, with the assistance of the Local Government Commission, shall develop and adopt appropriate debt instruments for use under this act.

(2) Nothing contained in this act shall prohibit any local government unit from applying any funds of the local government unit not otherwise restricted as to use by law to the payment of any debt instrument payable to the State incurred pursuant to the provisions of this act.

(3) The Local Government Commission shall review and approve proposed loans to local government units under this act under the provisions of Articles 4 and 5 of Chapter 159 of the General Statutes. The Local Government Commission in considering the

ability of a local government unit to repay a loan may regard as a source of revenue for repayment of a loan revenue sources that may not be available other than on an annual discretionary basis and that may not be subject to a pledge or agreement to apply. Loans under this act shall be outstanding debts for the purposes of Article 10 of Chapter 159 of the General Statutes.

(4) The State Treasurer shall annually certify to the General Assembly the financial condition of the loan program and identify existing delinquencies.

Section 11. Minority business participation. The goals set by G.S. 143-128 for participation in projects by minority businesses apply to projects funded by the proceeds of bonds or notes issued under this act. The Department of Environment, Health, and Natural Resources shall monitor compliance with this requirement and shall report to the General Assembly by January 1 of each year on the participation by minority businesses in these projects.

Section 12. Interpretation of act. (a) Additional Method. The foregoing sections of this act shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing.

(b) Statutory References. References in this act to specific sections or Chapters of the General Statutes or to specific acts are intended to be references to these sections, Chapters, or acts as they may be amended from time to time by the General Assembly.

(c) Broad Construction. This act, being necessary for the health and welfare of the people of the State, shall be broadly construed to effect the purposes thereof.

(d) Inconsistent Provisions. Insofar as the provisions of this act are inconsistent with the provisions of any general laws, or parts thereof, the provisions of this act shall be controlling.

(e) Severability. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Section 13. Authorize regional planning loans and grants. G.S. 159G-3(4) reads as rewritten:

"(4) 'Construction costs' means the actual costs of planning, designing and constructing any project for which a revolving loan or grant is made under this Chapter including planning; environmental assessment; wastewater system analysis, evaluation and rehabilitation; engineering; legal, fiscal, administrative and contingency costs for water supply systems, wastewater collection systems, wastewater treatment works and any extensions,

improvements, remodeling, additions, or alterations to existing systems. Construction costs may include excess or reserve capacity costs, attributable to no more than 20-year projected domestic growth, plus ten percent (10%) unspecified industrial growth. In addition, construction costs shall include any fees payable to the Environmental Management Commission or the Division of Environmental Health for review of applications and grant of permits, and fees for inspections under G.S. 159G-14. Construction costs may also include the costs for purchase or acquisition of real property. The term may also include the costs for planning and designing a regional project or small town project. Funds for planning and designing a regional project or small town project may be advanced prior to construction of the project and may be paid even though the project is never actually constructed. However the recipient of any funds advanced as a loan prior to the construction of a project that is never actually constructed is still obligated to repay the loan in accordance with this Chapter. A small town is defined as a municipality with a population of 1,000 or less, based on the most recent annual estimate of population certified by the State Planning Officer."

Section 14. G.S. 159G-4(b) reads as rewritten:

"(b) Of the appropriations made from the General Fund to the Clean Water Revolving Loan and Grant Fund for use of the Department of Environment, Health, and Natural Resources as provided in this Chapter, allocations are made as follows after first subtracting the amounts allocated under subsection (a) of this section, to the extent that there are any excess funds available:

Wastewater Accounts		
General Wastewater Revolving Loan Account	~~39.00%~~	38.00%
Emergency Wastewater Revolving Loan Account	~~10.00%~~	9.00%
High-Unit Cost Wastewater Account	~~20.00%~~	22.00%
Water Supply Accounts		
General Water Supply Revolving Loan Account	~~21.00%~~	20.00%
High-Unit Cost Water Supply Account	~~5.00%~~	7.00%
Emergency Water Supply Revolving Loan Account	~~5.00%~~	4.00%".

Section 15. G.S. 159G-6 reads as rewritten:

"**§ 159G-6. Distribution of funds.**

(a) Revolving loans and grants.

(1) All funds appropriated or accruing to the Clean Water Revolving Loan and Grant Fund, other than funds set aside for administrative expenses, shall be used for revolving loans and grants to local government units for construction costs of wastewater treatment works, wastewater collection systems and water supply systems and other assistance as provided in this Chapter.

(2) The maximum principal amount of a revolving loan or a grant may be one hundred percent (100%) of the nonfederal share of the construction costs of any eligible project. ~~The maximum principal amount of revolving loans made to any one local government unit during any fiscal year shall be three million dollars ($3,000,000). The maximum principal amount of grants made to any one local government unit during any fiscal year shall be one million dollars ($1,000,000).~~ The Department of Environment, Health, and Natural Resources may establish maximum principal amounts for revolving loans and for grants made to the same local government unit in a fiscal year.

(3) The State Treasurer shall be responsible for investing and distributing all funds appropriated or accruing to the Clean Water Revolving Loan and Grant Fund for revolving loans and grants under this Chapter. In fulfilling his responsibilities under this section, the State Treasurer shall make a written request to the Department of Environment, Health, and Natural Resources to arrange for the appropriated funds to be (i) transferred from the appropriate accounts to a local government unit to provide funds for one or more revolving loans or grants or (ii) invested as authorized by this Chapter with the interest on and the principal of such investments to be transferred to the local government unit to provide funds for one or more revolving loans or grants.

(b) Wastewater Accounts. -- The sums allocated in G.S. 159G-4 and accruing to the various Wastewater Accounts in each fiscal year shall be used to make revolving loans and grants to local government units as provided below. The Department of Environment, Health, and Natural Resources shall disburse no funds from the Wastewater Accounts except upon receipt of written approval of the disbursement from the Environmental Management Commission.

(1) General Wastewater Revolving Loan and Grant Account. -- The funds in the General Wastewater Revolving Loan and Grant Account shall be used exclusively for the purpose of providing for revolving construction loans or grants in connection with approved wastewater treatment work or wastewater collection system projects.

(2) High-Unit Cost Wastewater Account. -- The funds in the High-Unit Cost Wastewater Account shall be available for grants to applicants for high-unit cost wastewater projects. Eligibility of an applicant for

such a grant shall be determined by comparing estimated average household user fees for water and sewer service, for debt service and operation and maintenance costs, to one and one-half percent (1.5%) of the median household income in the ~~county~~ local government unit in which the project is located. The projects which would require estimated average household water and sewer user fees greater than one and one-half percent (1.5%) of the median household income are defined as high-unit cost wastewater projects and will be eligible for a grant equal to the excess cost, subject to the limitations in ~~subsection~~ subdivision (a)(2) of this section.

(3) Emergency Wastewater Revolving Loan Account. -- The funds in the Emergency Wastewater Revolving Loan Account shall be available for revolving emergency loans to applicants in the event the Environmental Management Commission certifies that a serious public health hazard, related to the inadequacy of existing wastewater facilities, is present or imminent in a community.

(c) Water Supply Accounts. -- The sums allocated in G.S. 159G-4 and accruing to the various Water Supply Accounts in each fiscal year shall be used to provide revolving loans and grants to local government units as provided below. The Department of Environment, Health, and Natural Resources shall disburse no funds from the Water Supply Accounts except upon receipt of written approval of the disbursement from the Division of Environmental Health.

(1) General Water Supply Revolving Loan and Grant Account. -- The funds in the General Water Supply Revolving Loan and Grant Account shall be used exclusively for the purpose of providing for revolving construction loans and grants in connection with water supply systems generally and not upon a county allotment basis.

(2) High-Unit Cost Water Supply Account. -- The funds in the High-Unit Cost Water Supply Account shall be available for grants to applicants for high-unit cost water supply systems, on the same basis as provided in G.S. 159G-6(b)(2) for high-unit cost wastewater projects.

(3) Emergency Water Supply Revolving Loan Account. -- The funds in the Emergency Water Supply Revolving Loan Account shall be available for revolving emergency loans to applicants in the event the Division of Environmental Health certifies that a serious public health hazard, related to the water supply system, is present or imminent in a community.

(d) Repealed by Session Laws 1991, c. 186, s. 4.

(e) Notwithstanding any other provision of this Chapter, funds in the Water Pollution Control Revolving Fund shall not be available as grants except to the extent permitted by Title VI of the Federal Water Quality Act of 1987 and the regulations thereunder."

Section 16. Article 1 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-6.1. Reduction of inheritance tax.**

When this Article imposes an inheritance tax on property transferred by a decedent but no state death tax credit is allowed under section 2011 of the Code against federal estate tax due on the transfer of the decedent's estate, the amount of inheritance tax is reduced by the appropriate percentage in the table below. When this Article imposes an inheritance tax on property transferred by a decedent and a state death tax credit is allowed under section 2011 of the Code against federal estate tax due on the transfer of the decedent's estate, the amount of inheritance tax that exceeds the maximum credit for state death taxes is reduced by the appropriate percentage in the following table:

Calendar Year of Decedent's Death	Percentage Reduction
1998	10%
1999 and thereafter	20%."

Section 17. Section 16 of this act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by Section 16 of this act before the effective date of its amendment or repeal; nor does it affect the right to any refund or credit of a tax that accrued under the amended or repealed statute before the effective date of its amendment or repeal.

Section 18. Effective date. Sections 13 through 15 of this act become effective only if the voters approve the issuance of the Clean Water Bonds authorized by this act in the election required by Section 7 of this act. Sections 16 and 17 of this act become effective January 1, 1998, and apply to the estates of decedents dying on or after that date. The remaining sections of this act are effective when the act becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 5

SENATE BILL 232
Finance Committee Substitute Adopted 4/17/97
Appropriations Committee Substitute #2 Adopted 6/4/97
Fourth Edition Engrossed 6/19/97
House Committee Substitute Favorable 8/14/97

Short Title: Clean Water Bonds. (Public)

Sponsors:

Referred to:

February 24, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE ISSUANCE OF GENERAL OBLIGATION BONDS OF THE STATE, SUBJECT TO A VOTE OF THE QUALIFIED VOTERS OF THE STATE, TO PROVIDE FUNDS FOR GRANTS, LOANS, AND REVOLVING LOANS TO LOCAL GOVERNMENT UNITS FOR WATER SUPPLY SYSTEMS, WASTEWATER COLLECTION SYSTEMS, WASTEWATER TREATMENT WORKS, AND WATER CONSERVATION PROJECTS.

The General Assembly of North Carolina enacts:

Section 1. Short title. This act shall be known as the "Clean Water Bond Act of 1997".

Section 2. Purpose. It is the intent of the General Assembly by this act to provide for the issuance of general obligation bonds of the State and to provide that the proceeds realized from the sale of the bonds shall be allocated as follows:

(1) $200,000,000 to provide State matching funds required to receive federal wastewater or water supply assistance funds and to provide additional funding for the Clean Water Revolving Loan and Grant Fund established in Chapter 159G of the General Statutes or to provide funding by grants and loans to local government units; and

(2) $800,000,000 to provide loans to local government units to finance all or a portion of the cost of construction, improvements,

enlargements, extensions, and reconstruction of water supply systems, wastewater collection systems, wastewater treatment works, and water conservation projects.

The funds to be derived from the sale of the Clean Water Bonds authorized by this act are sufficient to meet no more than a fraction of the needs that now exist and will arise in the immediate future. For this reason, although public necessity and the criteria established by Chapter 159G of the General Statutes shall be the primary consideration in granting and loaning funds, great emphasis shall also be placed on achieving stringent reductions in the levels of nutrients and other pollutants discharged into the State's waters, particularly in nutrient sensitive river basins, in reducing the overall volume of effluent discharged to the State's waters by using alternative methods of wastewater treatment when feasible, on the creation of efficient systems of regional wastewater disposal and regional water supply, and on the willingness and ability of local government units to meet their responsibilities through sound fiscal policies, creative planning, and efficient operation and management.

Section 3. Definitions. As used in this act, unless the context otherwise requires:

(1) "Bonds" means bonds issued under this act.

(2) "Clean Water Revolving Loan and Grant Act" means Chapter 796 of the 1987 Session Laws, as amended from time to time, codified as Chapter 159G of the General Statutes.

(3) "Clean Water Revolving Loan and Grant Fund" means the Clean Water Revolving Loan and Grant Fund as defined in the Clean Water Revolving Loan and Grant Act.

(4) "Cost" means, without intending thereby to limit or restrict any proper definition of this term in financing the cost of facilities or purposes authorized by this act:

a. The cost of constructing, reconstructing, enlarging, acquiring, and improving facilities, and acquiring equipment and land therefor,

b. The cost of engineering, architectural, and other consulting services as may be required,

c. Administrative expenses and charges,

d. Finance charges and interest prior to and during construction and, if deemed advisable by the State Treasurer, for a period not exceeding two years after the estimated date of completion of construction,

e. The cost of bond insurance, investment contracts, credit enhancement and liquidity facilities, interest-rate swap agreements or other derivative products, financial and legal

consultants, and related costs of bond and note issuance, to the extent and as determined by the State Treasurer,

f. The cost of reimbursing the State for any payments made for any cost described above, and

g. Any other costs and expenses necessary or incidental to the purposes of this act.

Allocations in this act of proceeds of bonds to the costs of a project or undertaking in each case may include allocations to pay the costs set forth in items c., d., e., f., and g. in connection with the issuance of bonds for the project or undertaking.

(5) "Credit facility" means an agreement entered into by the State Treasurer on behalf of the State with a bank, savings and loan association, or other banking institution, an insurance company, reinsurance company, surety company, or other insurance institution, a corporation, investment banking firm, or other investment institution, or any financial institution or other similar provider of a credit facility, which provider may be located within or without the United States of America, such agreement providing for prompt payment of all or any part of the principal or purchase price (whether at maturity, presentment or tender for purchase, redemption or acceleration), redemption premium, if any, and interest on any bonds or notes payable on demand or tender by the owner, in consideration of the State agreeing to repay the provider of the credit facility in accordance with the terms and provisions of such agreement.

(6) "Local government units" means local government units as defined in the Clean Water Revolving Loan and Grant Act.

(7) "Notes" means notes issued under this act.

(8) "Par formula" means any provision or formula adopted by the State to provide for the adjustment, from time to time, of the interest rate or rates borne by any bonds or notes, including:

a. A provision providing for such adjustment so that the purchase price of such bonds or notes in the open market would be as close to par as possible,

b. A provision providing for such adjustment based upon a percentage or percentages of a prime rate or base rate, which percentage or percentages may vary or be applied for different periods of time, or

c. Such other provision as the State Treasurer may determine to be consistent with this act and will not materially and adversely affect the financial position of the State and the marketing of bonds or notes at a reasonable interest cost to the State.

(9) "State" means the State of North Carolina.

(10) "Wastewater collection systems" means wastewater collection systems as defined in the Clean Water Revolving Loan and Grant Act.

(11) "Wastewater treatment works" means wastewater treatment works as defined in the Clean Water Revolving Loan and Grant Act.

(12) "Water conservation projects" include, but are not limited to, any construction, repair, renovation, expansion, replacement of components, or other capital improvement, including related equipment and land acquisition, designed to:

a. Eliminate the wasteful or unnecessary use or loss of water in the operations of a wastewater collection system, wastewater treatment works, or water supply system; or

b. Enhance the operation of a wastewater collection system, wastewater treatment works, or water supply system to provide a more efficient use of water.

(13) "Water Pollution Control Revolving Fund" means the fund described by G.S. 159G-4(a) and G.S. 159G-5(c).

(14) "Water supply systems" means water supply systems as defined in the Clean Water Revolving Loan and Grant Act.

Section 4. Authorization of bonds and notes. Subject to a favorable vote of a majority of the qualified voters of the State who vote on the question of issuing Clean Water Bonds in the election called and held as provided in this act, the State Treasurer is hereby authorized, by and with the consent of the Council of State, to issue and sell, at one time or from time to time, general obligation bonds of the State to be designated "State of North Carolina Clean Water Bonds", with any additional designations as may be determined to indicate the issuance of bonds from time to time, or notes of the State as provided in this act, in an aggregate principal amount not exceeding one billion dollars ($1,000,000,000) for the purpose of providing funds, with any other available funds, for the purposes authorized in this act.

Section 5. Uses of bond and note proceeds. The proceeds of Clean Water Bonds and notes shall be used for the purpose of making loans and grants to local governments as follows:

(1) The proceeds of two hundred million dollars ($200,000,000) of Clean Water Bonds shall be used and allocated for the same purposes for which funds in the Clean Water Revolving Loan and Grant Fund may be used including, without limitation, to provide funds to be used to make revolving loans and grants to local government units. The revolving loans and grants shall be made for the purpose of paying the cost of water supply systems, wastewater collection systems, and wastewater treatment works.

The first priority for use of these proceeds shall be to provide State funds necessary for the 1998-99 and 1999-2000 fiscal years to match the federal wastewater or water supply assistance funds deposited in the Water Pollution Control Revolving Fund or

another fund that is used to pay the cost of water supply systems, wastewater collection systems, or wastewater treatment works and is eligible to receive federal matching funds, unless the General Assembly has provided the required match through other revenue, in which event this priority shall cease to exist to the extent of the availability of the other revenue. For the purpose of implementing this priority, the Department of Environment, Health, and Natural Resources shall certify to the State Treasurer the amount of funds required for the State match for each of the fiscal years ending June 30, 1999, and June 30, 2000, and the extent to which the General Assembly has provided other funds for this purpose. Upon certification to the State Treasurer of the amount of funds required for the State match for the fiscal year ending June 30, 1999, the State may issue up to one hundred million dollars ($100,000,000) of Clean Water Bonds authorized by this subdivision for the purpose of funding the State match for that fiscal year and for any other purposes authorized by this subdivision. Upon certification to the State Treasurer of the amount of funds required for the State match for the fiscal year ending June 30, 2000, the State may issue the remaining balance of Clean Water Bonds authorized by this subdivision for the purpose of funding the State match for that fiscal year and for any other purposes authorized by this subdivision. The proceeds of the bonds necessary for the State match for each fiscal year shall be deposited in the Water Pollution Control Revolving Fund or another appropriate fund or account determined by the State Treasurer.

The proceeds may be (i) transferred directly to the Clean Water Revolving Loan and Grant Fund to make revolving loans or grants, (ii) used to make revolving loans or grants directly to the appropriate local government qualifying for a revolving loan or grant from the Clean Water Revolving Loan and Grant Fund, (iii) used for any combination of (i) and (ii), or (iv) used in such other manner as shall effectuate the purposes of this act. Although public necessity and the criteria established by Chapter 159G of the General Statutes shall be the primary consideration in granting and loaning funds, great emphasis shall also be placed on achieving stringent reductions in the levels of nutrients and other pollutants discharged into the State's waters, particularly in nutrient sensitive river basins, in reducing the overall volume of effluent discharged to the State's waters by using alternative methods of wastewater treatment when feasible, on the creation of efficient systems of regional wastewater disposal and regional water supply, and on the willingness and ability of local government units to meet their

responsibilities through sound fiscal policies, creative planning, and efficient operation and management. Loans and grants made from bond proceeds transferred from the Clean Water Bonds Fund to the Clean Water Revolving Loan and Grant Fund shall be made and administered in accordance with the provisions of the Clean Water Revolving Loan and Grant Act. Loans and grants made from bond proceeds directly to local government units and any loan repayments shall, to the extent applicable, be made, administered, and applied in accordance with the provisions of the Clean Water Revolving Loan and Grant Act. Repayments of any direct loans may be initially placed into any fund or account as may be determined by the State Treasurer for the purpose of determining compliance with the applicable requirements of the federal tax law and shall be expended and disbursed therefrom under the direction and supervision of the Director of the Budget.

(2) The proceeds of eight hundred million dollars ($800,000,000) of Clean Water Bonds shall be used for the purpose of making loans to local government units to pay the cost of water supply systems, water conservation projects, wastewater collection systems, and wastewater treatment works. Sixty-nine percent (69%) of the proceeds of the bonds and notes shall be allocated for loans to local government units for wastewater collection systems and wastewater treatment works. Thirty-one percent (31%) of the proceeds of the bonds and notes shall be allocated for loans to local government units for water supply systems and water conservation projects.

The proceeds shall be used to make loans directly to local government units qualifying for a loan from the Clean Water Revolving Loan and Grant Fund or loaned in such other manner as shall effectuate the purposes of this act. To qualify for a loan from the Clean Water Bonds Fund for the purpose of paying the cost of water supply systems, a local government unit must have a water supply facility plan approved by the Department of Environment, Health, and Natural Resources. A water supply facility plan submitted by a local government unit to the Department under G.S. 143-355(l) will be sufficient to meet this requirement. To qualify for a loan from the Clean Water Bonds Fund for the purpose of paying the cost of wastewater collection systems or wastewater treatment works, a local government unit must have a wastewater facility plan approved by the Department of Environment, Health, and Natural Resources. A wastewater facility plan must project future wastewater treatment needs, must present a long-range plan to meet those needs, and must include

plans for system operations and maintenance of the facilities being built with the bond proceeds.

The Department of Environment, Health, and Natural Resources shall set the priorities and determine the eligibility of local government units for these loans in accordance with Section 10 of this act. The form of the loans and the details thereof including, without limitation, the maturity, interest rate, and amortization schedule shall be determined, from time to time, by the State Treasurer. In making these determinations, the State Treasurer shall consider the purpose of the loans, the ability of local government units to repay the loans, and the security for the loans. The interest rates on these loans shall reflect the self-supporting nature of the loan program and shall be sufficient to cover substantially all payments of debt service on the eight hundred million dollars ($800,000,000) of Clean Water Bonds and the issuance costs and administrative expenses associated with the issuance of these bonds and the making of these loans, subject to any applicable requirements of the federal tax law.

Repayments of the loans shall be credited to the General Fund and may be used to pay, directly or indirectly, debt service on the bonds and notes issued. Repayments may be initially placed into such fund or account as may be determined by the State Treasurer for the purpose of determining compliance with applicable requirements of the federal tax law and shall be expended and disbursed therefrom under the direction and supervision of the Director of the Budget.

Any additional moneys which may be received by means of a grant or grants from the United States of America or any agency or department thereof or from any other source for deposit to the Clean Water Bonds Fund may be placed in the Clean Water Bonds Fund or in a separate account or fund and shall be disbursed, to the extent permitted by the terms of the grant or grants, without regard to any limitations imposed by this act.

Moneys in the Clean Water Bonds Fund, the Clean Water Bonds Loan Fund, or any separate fund or account established under this act may be invested from time to time by the State Treasurer in the same manner permitted for investment of moneys belonging to the State or held in the State treasury, except with respect to grant money to the extent otherwise directed by the terms of the grant. Investment earnings, except investment earnings with respect to grant moneys to the extent otherwise directed or restricted by the terms of the grant, may be (i) credited to the Clean Water Bonds Fund, the Clean Water Bonds Loan Fund, or any separate fund or account established under this act, (ii) used to pay debt service on the bonds authorized by this act, (iii) used to satisfy compliance with applicable requirements of the federal tax law, or (iv) transferred to the General Fund of the State.

The proceeds of bonds and notes may be used with any other moneys made available by the General Assembly for making grants and loans authorized by this act, including the proceeds of any other State bond issues, whether heretofore made available or which may be made available at the session of the General Assembly at which this act is ratified or any subsequent sessions. The proceeds of bonds and notes shall be expended and disbursed under the direction and supervision of the Director of the Budget. The funds provided by this act shall be disbursed for the purposes provided in this act upon warrants drawn on the State Treasurer by the State Controller, which warrants shall not be drawn until requisition has been approved by the Director of the Budget and which requisition shall be approved only after full compliance with the Executive Budget Act, Article 1 of Chapter 143 of the General Statutes.

Section 6. Allocation of proceeds. The proceeds of Clean Water Bonds and notes, including premium thereon, if any, except the proceeds of bonds the issuance of which has been anticipated by bond anticipation notes or the proceeds of refunding bonds or notes, shall be placed by the State Treasurer in a special fund to be designated "Clean Water Bonds Fund", which may include such appropriate special accounts therein as may be determined by the State Treasurer and shall be disbursed as provided in this act. Moneys in the Clean Water Bonds Fund shall be allocated and expended as provided in this act.

Allocations to the costs of a capital improvement or undertaking in each case may include allocations to pay the costs set forth in Section 3(4)c., d., e., f., and g. of this act in connection with the issuance of bonds for that capital improvement or undertaking.

Section 7. Election. The question of the issuance of the bonds authorized by this act shall be submitted to the qualified voters of the State at the next statewide election or statewide primary election, whichever comes first. Any other primary, election, or referendum validly called or scheduled by law at the time the election on the bond question provided for in this section is held, may be held as called or scheduled. Notice of the election shall be given in the manner and at the times required by G.S. 163-33(8). The election and the registration of voters therefor shall be held under and in accordance with the general laws of the State. Absentee ballots shall be authorized in the election.

The State Board of Elections shall reimburse the counties of the State for all necessary expenses incurred in holding the election that are in addition to those that would have otherwise been incurred, the same to be paid out of the Contingency and Emergency Fund or other funds available to the State Board of Elections.

Ballots, voting systems authorized by Article 14 of Chapter 163 of the General Statutes, or both may be used in accordance with rules prescribed by the State Board of Elections. The bond question to be used in the ballots or voting systems shall be in substantially the following form:

"[ ] FOR the issuance of one billion dollars ($1,000,000,000) State of North Carolina Clean Water Bonds constituting general obligation bonds of the State secured by a pledge of the faith and credit and

taxing power of the State for the purpose of providing funds, with any other available funds, to make loans, revolving loans, and grants to local government units to pay all or a portion of the cost of clean water projects.

[ ] AGAINST the issuance of one billion dollars ($1,000,000,000) State of North Carolina Clean Water Bonds constituting general obligation bonds of the State secured by a pledge of the faith and credit and taxing power of the State for the purpose of providing funds, with any other available funds, to make loans, revolving loans, and grants to local government units to pay all or a portion of the cost of clean water projects."

If a majority of those voting on the Clean Water Bond question in the election vote in favor of the issuance of the bonds, the bonds may be issued as provided in this act. If a majority of those voting on the Clean Water Bond question in the election vote against the issuance of the bonds, the bonds shall not be issued.

The results of the election shall be canvassed and declared as provided by law for elections for State officers; the results of the election shall be certified by the State Board of Elections to the Secretary of State, in the manner and at the time provided by the general election laws of the State.

Section 8. Issuance of bonds and notes. (a) Terms and Conditions. Bonds or notes may bear such date or dates, may be serial or term bonds or notes, or any combination thereof, may mature in such amounts and at such time or times, not exceeding 40 years from their date or dates, may be payable at such place or places, either within or without the United States of America, in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts, may bear interest at such rate or rates, which may vary from time to time, and may be made redeemable before maturity, at the option of the State or otherwise as may be provided by the State, at such price or prices, including a price less than the face amount of the bonds or notes, and under such terms and conditions, all as may be determined by the State Treasurer, by and with the consent of the Council of State.

(b) Signatures; Form and Denomination; Registration. Bonds or notes may be issued as certificated or uncertificated obligations. If issued as certificated obligations, bonds or notes shall be signed on behalf of the State by the Governor or shall bear his facsimile signature, shall be signed by the State Treasurer or shall bear his facsimile signature, and shall bear the Great Seal of the State or a facsimile thereof shall be impressed or imprinted thereon. If bonds or notes bear the facsimile signatures of the Governor and the State Treasurer, the bonds or notes shall also bear a manual signature which may be that of a bond registrar, trustee, paying agent, or designated assistant of the State Treasurer. Should any officer whose signature or facsimile signature appears on bonds or notes cease to be such officer before the delivery of the bonds or notes, the signature or facsimile signature shall nevertheless have the same validity for all purposes as if the officer had remained in office until delivery and bonds or notes may bear the facsimile signatures of persons who at the

actual time of the execution of the bonds or notes shall be the proper officers to sign any bond or note although at the date of the bond or note such persons may not have been such officers. The form and denomination of bonds or notes, including the provisions with respect to registration of the bonds or notes and any system for their registration, shall be as the State Treasurer may determine in conformity with this act; provided, however, that nothing in this act shall prohibit the State Treasurer from proceeding, with respect to the issuance and form of the bonds or notes, under the provisions of Chapter 159E of the General Statutes, the Registered Public Obligations Act, as well as under this act.

(c) Manner of Sale; Expenses. Subject to determination by the Council of State as to the manner in which bonds or notes shall be offered for sale, whether at public or private sale, whether within or without the United States of America, and whether by publishing notices in certain newspapers and financial journals, mailing notices, inviting bids by correspondence, negotiating contracts of purchase or otherwise, the State Treasurer is authorized to sell bonds or notes at one time or from time to time at such rate or rates of interest, which may vary from time to time, and at such price or prices, including a price less than the face amount of the bonds or the notes, as the State Treasurer may determine. All expenses incurred in preparation, sale, and issuance of bonds or notes shall be paid by the State Treasurer from the proceeds of bonds or notes or other available moneys.

(d) Notes; Repayment.

(1) By and with the consent of the Council of State, the State Treasurer is hereby authorized to borrow money and to execute and issue notes of the State for the same, but only in the following circumstances and under the following conditions:

a. For anticipating the sale of bonds to the issuance of which the Council of State shall have given consent, if the State Treasurer shall deem it advisable to postpone the issuance of the bonds;

b. For the payment of interest on or any installment of principal of any bonds then outstanding, if there shall not be sufficient funds in the State treasury with which to pay the interest or installment of principal as they respectively become due;

c. For the renewal of any loan evidenced by notes herein authorized;

d. For the purposes authorized in this act; and

e. For refunding bonds or notes as herein authorized.

(2) Funds derived from the sale of bonds or notes may be used in the payment of any bond anticipation notes issued under this act. Funds provided by the General Assembly for the payment of interest on or principal of bonds shall be used in paying the interest on or principal of any notes and any renewals thereof, the

proceeds of which shall have been used in paying interest on or principal of the bonds.

(e) Refunding Bonds and Notes. By and with the consent of the Council of State, the State Treasurer is authorized to issue and sell refunding bonds and notes pursuant to the provisions of the State Refunding Bond Act for the purpose of refunding bonds or notes issued pursuant to this act. The refunding bonds and notes may be combined with any other issues of State bonds and notes similarly secured.

(f) Tax Exemption. Bonds and notes shall be exempt from all State, county, and municipal taxation or assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, excluding inheritance and gift taxes, income taxes on the gain from the transfer of bonds and notes, and franchise taxes. The interest on bonds and notes shall not be subject to taxation as to income.

(g) Investment Eligibility. Bonds and notes are hereby made securities in which all public officers, agencies, and public bodies of the State and its political subdivisions, all insurance companies, trust companies, investment companies, banks, savings banks, savings and loan associations, credit unions, pension or retirement funds, other financial institutions engaged in business in the State, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Bonds and notes are hereby made securities which may properly and legally be deposited with and received by any officer or agency of the State or political subdivision of the State for any purpose for which the deposit of bonds, notes, or obligations of the State or any political subdivision is now or may hereafter be authorized by law.

(h) Faith and Credit. The faith and credit and taxing power of the State are hereby pledged for the payment of the principal of and the interest on bonds and notes. In addition to the State's right to amend any provision of this act to the extent it does not impair any contractual right of a bond owner, the State expressly reserves the right to amend any provision of this act with respect to the making and repayment of loans, the disposition of any repayments of loans, and any intercept provisions relating to the failure of a local government unit to repay a loan, the bonds not being secured in any respect by loans, any repayments thereof, or any intercept provisions with respect thereto.

Section 9. Variable interest rates. In fixing the details of bonds and notes, the State Treasurer may provide that any of the bonds or notes may:

(1) Be made payable from time to time on demand or tender for purchase by the owner thereof provided a credit facility supports the bonds or notes, unless the State Treasurer specifically determines that a credit facility is not required upon a finding and determination by the State Treasurer that the absence of a credit facility will not materially or adversely affect the financial position of the State and the marketing of the bonds or notes at a reasonable interest cost to the State;

(2) Be additionally supported by a credit facility;

(3) Be made subject to redemption or a mandatory tender for purchase prior to maturity;

(4) Bear interest at a rate or rates that may vary for such period or periods of time, all as may be provided in the proceedings providing for the issuance of the bonds or notes, including, without limitation, such variations as may be permitted pursuant to a par formula; and

(5) Be made the subject of a remarketing agreement whereby an attempt is made to remarket bonds or notes to new purchasers prior to their presentment for payment to the provider of the credit facility or to the State.

If the aggregate principal amount repayable by the State under a credit facility is in excess of the aggregate principal amount of bonds or notes secured by the credit facility, whether as a result of the inclusion in the credit facility of a provision for the payment of interest for a limited period of time or the payment of a redemption premium or for any other reason, then the amount of authorized but unissued bonds or notes during the term of such credit facility shall not be less than the amount of such excess, unless the payment of such excess is otherwise provided for by agreement of the State executed by the State Treasurer.

Section 10. Special provisions governing clean water loans. (a) Scope. The provisions of this section shall apply to loans being made from the proceeds of bonds authorized by this act for clean water projects, other than from funds deposited in the Clean Water Revolving Loan and Grant Fund.

(b) Clean Water Bonds Loan Fund. There is established in the Department of State Treasurer a fund to be known as the Clean Water Bonds Loan Fund, which may include any special or segregated accounts the State Treasurer considers appropriate. There shall be deposited in the Clean Water Bonds Loan Fund proceeds of the Clean Water Bonds and notes to be used to make loans, other than loans to be made through the Clean Water Revolving Loan and Grant Fund, to local government units for clean water projects as provided in this act.

Except as otherwise permitted by Section 5 of this act with respect to the use of investment earnings, all moneys accruing to the credit of the Clean Water Bonds Loan Fund, other than funds set aside for administrative expenses, including expenses related to determining compliance with applicable requirements of the federal tax law and costs of issuance, shall be used to make loans for the purposes provided in this act. The State Treasurer shall be responsible for making and administering all loans pursuant to the provisions of this section.

(c) Application for Loans; Hearings.

(1) Eligibility/Initial Hearing.

a. Prior to filing an application for a loan, a local government unit shall hold a public hearing. A notice of the public hearing shall be published once at least 10 days before the date fixed for the hearing.

b. All applications for loans shall be filed with the Department of Environment, Health, and Natural Resources. The form of the application shall be prescribed by the Department and shall require any information necessary to determine the eligibility for a loan under the provisions of this section. All applications approved by the Department of Environment, Health, and Natural Resources shall be filed with the Local Government Commission. Each applicant shall furnish to the Department of Environment, Health, and Natural Resources and the Local Government Commission information in addition or supplemental to the information contained in its application, upon request.

c. A local government unit shall not be eligible for a loan unless it demonstrates to the satisfaction of the Department of Environment, Health, and Natural Resources and the Local Government Commission that:

1. The applicant is a local government unit;
2. The applicant has the financial capacity to pay the principal of and interest on its proposed loan as evidenced by the approval of the Local Government Commission;
3. The applicant has substantially complied or will substantially comply with all applicable laws, rules, regulations, and ordinances, whether federal, State, or local; and
4. The applicant has agreed by official resolution to adopt and place into effect a schedule of fees and charges or the application of other sources of revenue which will provide adequate funds for proper operation, maintenance, and administration of the project and repayment of all principal and interest on the loan.

(2) Assessment. The Department of Environment, Health, and Natural Resources may require any applicant to file with its application an assessment of the impact the project for which the funds are sought will have upon meeting the facility needs of the area within which the project is to be located.

(3) Hearing by the Department of Environment, Health, and Natural Resources or the Local Government Commission. A public hearing may be held by the Department of Environment, Health, and Natural Resources or the Local Government Commission at any time on any application. Public hearings may also be held by the Department of Environment, Health, and Natural Resources in its discretion upon written request from any citizen or taxpayer

who is a resident of the county or counties in which the project is to be located or a resident of the local government unit that proposes to borrow moneys under this act, if it appears that the public interest will be served by the hearing. The written request shall set forth each objection to the proposed project or other reason for requesting a hearing on the application and shall contain the name and address of the persons submitting it. In deciding whether to grant a request for a hearing on an application, the Department of Environment, Health, and Natural Resources may consider the application, the written objections to the proposed project, and the facility needs and shall determine if the public interest will be served by a hearing. The determination by the Department of Environment, Health, and Natural Resources shall be conclusive, and all written requests for a hearing shall be retained as a permanent part of the records pertaining to the application.

(4) Petition for Vote. A petition, demanding that the question of whether to enter into a loan agreement with the State under this act be submitted to voters, may be filed with the clerk of the local government unit applying for the loan within 15 days after the public hearing required by this section. The petition's sufficiency shall be determined and a referendum, if any, shall be conducted according to the standards, procedures, and limitations set out in G.S. 159-60 through G.S. 159-62.

(d) Priorities.

(1) Determination. Determination of priorities to be assigned each eligible project shall be made semiannually by the Department of Environment, Health, and Natural Resources during each fiscal year. Every eligible project shall be considered by the Department of Environment, Health, and Natural Resources with every other project eligible during this same priority period.

(2) Priority Factors. All applications for loans under this act shall be assigned a priority by the Department of Environment, Health, and Natural Resources. Having a comprehensive land-use plan that meets the requirements of G.S. 159G-10(e) shall be a priority factor, and having a plan that meets the requirements of that subsection and exceeds the minimum State standards for protection of the State's water resources shall receive greater priority than having a plan that does not exceed those standards. The Department of Environment, Health, and Natural Resources shall establish other priority factors criteria by rule.

(3) Assignment of Priority. A written statement relative to each priority assigned shall be prepared by the Department of

Environment, Health, and Natural Resources and shall be attached to the application. The priority assigned shall be conclusive.

(4) Failure to Qualify. If an application does not qualify for a loan as of the prior period in which the application was eligible for consideration by reason of the priority assigned, the application shall be considered during the next succeeding priority period upon request of the applicant. If the application again fails to qualify for a loan during the second priority period by reason of the priority assigned, the application shall receive no further consideration. An applicant may file a new application at any time and may amend any pending application to include additional data or information.

(5) Withdrawal of Commitment. Failure of an applicant within one year after the date of acceptance of the loan to arrange for necessary financing of the proposed project or award of the contract of the construction of the proposed project shall constitute sufficient cause for withdrawal of the commitment. Prior to withdrawal of a commitment, the Department of Environment, Health, and Natural Resources shall give due consideration to any extenuating circumstances presented by the applicant as reasons for failure to arrange necessary financing or to award a contract, and the commitment may be extended for an additional period of time if, in the judgment of the Department of Environment, Health, and Natural Resources, the extension is justified.

(e) Disbursement. To be eligible to receive the loans provided for in this section, a local government unit must arrange to borrow the amounts necessary pursuant to rules adopted by the Local Government Commission. No funds shall be disbursed until the Department of Environment, Health, and Natural Resources gives a certificate of eligibility to the effect that the applicant meets all eligibility criteria and that all procedural requirements of this act have been met. The maximum principal amount of a loan shall be one hundred percent (100%) of the cost of any eligible project.

(f) Intercept. The governing body of a local government unit shall by resolution authorize to be included in its loan agreement a provision authorizing the State Treasurer, upon failure of the local government unit to make a scheduled repayment of the loan, to withhold from the local government unit any State funds that would otherwise be distributed to the local government unit in an amount sufficient to pay all sums then due and payable to the State as a repayment of the loan. In such event, notwithstanding any other provision of law, the State Treasurer is authorized to withhold and apply such funds to the repayment of the loan, except that such funds shall not be withheld if (i) before the execution of the loan agreement, such funds have been legally pledged to secure special obligation bonds or other obligations of the local government unit, or (ii) after the execution of the loan agreement, such funds are legally pledged to secure special obligation bonds or other

obligations of the local government unit as authorized in this subsection. After the execution of a loan agreement, all or any portion of the State funds specified in the loan agreement to be so withheld may be pledged to secure special obligation bonds or other obligations of the local government unit only with the prior written consent of the State Treasurer.

The State Treasurer shall notify the Secretary of Revenue and the State Controller of the amount to be withheld from the local government unit, and the Secretary of Revenue and the State Controller shall transfer to the State Treasurer the amount so requested to be applied by the State Treasurer to the repayment of the loan.

(g) Inspection. Inspection of a project for which a loan has been made under this act may be performed by qualified personnel of the Department of Environment, Health, and Natural Resources or may be performed by qualified engineers registered in this State approved by the Department of Environment, Health, and Natural Resources. No person shall be approved to perform inspections who is an officer employed by the local government unit to which the loan was made or who is an owner, officer, employer, or agent of a contractor or subcontractor engaged in the construction of the project for which the loan was made. For the purpose of payment of inspection fees, inspection services shall be included in the term "cost" as used in this act.

(h) Rules. The State Treasurer, the Local Government Commission, and the Department of Environment, Health, and Natural Resources may adopt, modify, and repeal rules necessary for the administration of their respective duties under this act. Uniform rules may be jointly adopted where feasible and desirable, and no rule, jointly adopted, may be modified or revoked except upon concurrence of all agencies involved.

(i) Federal Grants and Loans. In order to carry out the purposes of this act to secure the greatest possible benefits to the citizens of this State of the funds appropriated, the State Treasurer, the Local Government Commission, and the Department of Environment, Health, and Natural Resources shall adopt rules and criteria, not inconsistent with provisions of this act, as are necessary and appropriate to conform to regulations for federal grants and loans for any of the purposes set forth in this act.

(j) Reports. The Department of Environment, Health, and Natural Resources shall prepare and file each year on or before July 31 with the Joint Legislative Commission on Governmental Operations a report for the preceding fiscal year concerning the allocation and making of loans authorized by this act. The report shall set forth for the preceding fiscal year:

(1) Itemized and total allocations of loans authorized and unallocated funds for the loan program as of the end of the preceding fiscal year;

(2) Identification of each loan agreement entered into by the State during the preceding fiscal year and the total amount of loans authorized by such loan agreements;

(3) The amount disbursed to each local government unit pursuant to such loan agreements during the preceding fiscal year and the total amount of such disbursements;

(4) The loan repayments made by each local government unit pursuant to such loan agreements and the total amount of such loan repayments during the preceding fiscal year; and

(5) A summary for the five preceding years of the information required by subdivisions (1) through (4) of this subsection.

The report shall be signed by the Secretary of Environment, Health, and Natural Resources.

(k) Local Government Commission.

(1) Local government units may execute debt instruments payable to the State in order to obtain loans provided for in this act. Local government units shall pledge or agree to apply as security for such obligations:

a. Any available source of revenues of the local government unit, including revenues from benefitted facilities or systems, provided that (i) the local government unit has not otherwise pledged the revenues as security for, or contractually agreed to apply the revenues to, the payment of any other obligations of the local government unit, (ii) the use of the revenues is not otherwise restricted by law, or (iii) the revenues are not derived from the exercise of the local government unit's taxing power; or

b. Their faith and credit; or

c. Any combination of a. or b. above.

The faith and credit of a local government unit shall not be pledged or be deemed to have been pledged unless the requirements of Article 4 of Chapter 159 of the General Statutes have been met. The State Treasurer, with the assistance of the Local Government Commission, shall develop and adopt appropriate debt instruments for use under this act.

(2) Nothing contained in this act shall prohibit any local government unit from applying any funds of the local government unit not otherwise restricted as to use by law to the payment of any debt instrument payable to the State incurred pursuant to the provisions of this act.

(3) The Local Government Commission shall review and approve proposed loans to local government units under this act under the provisions of Articles 4 and 5 of Chapter 159 of the General Statutes. The Local Government Commission in considering the ability of a local government unit to repay a loan may regard as a source of revenue for repayment of a loan revenue sources that may not be available other than on an annual discretionary basis

and that may not be subject to a pledge or agreement to apply. Loans under this act shall be outstanding debts for the purposes of Article 10 of Chapter 159 of the General Statutes.

(4) The State Treasurer shall annually certify to the General Assembly the financial condition of the loan program and identify existing delinquencies.

Section 11. Minority business participation. The goals set by G.S. 143-128 for participation in projects by minority businesses apply to projects funded by the proceeds of bonds or notes issued under this act. The Department of Environment, Health, and Natural Resources shall monitor compliance with this requirement and shall report to the General Assembly by January 1 of each year on the participation by minority businesses in these projects.

Section 12. Interpretation of act. (a) Additional Method. The foregoing sections of this act shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing.

(b) Statutory References. References in this act to specific sections or Chapters of the General Statutes or to specific acts are intended to be references to these sections, Chapters, or acts as they may be amended from time to time by the General Assembly.

(c) Broad Construction. This act, being necessary for the health and welfare of the people of the State, shall be broadly construed to effect the purposes thereof.

(d) Inconsistent Provisions. Insofar as the provisions of this act are inconsistent with the provisions of any general laws, or parts thereof, the provisions of this act shall be controlling.

(e) Severability. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Section 13. Authorize regional planning loans and grants. G.S. 159G-3(4) reads as rewritten:

"(4) 'Construction costs' means the actual costs of planning, designing and constructing any project for which a revolving loan or grant is made under this Chapter including planning; environmental assessment; wastewater system analysis, evaluation and rehabilitation; engineering; legal, fiscal, administrative and contingency costs for water supply systems, wastewater collection systems, wastewater treatment works and any extensions, improvements, remodeling, additions, or alterations to existing systems. Construction costs may include excess or reserve capacity costs, attributable to no more than 20-year projected domestic

growth, plus ten percent (10%) unspecified industrial growth. In addition, construction costs shall include any fees payable to the Environmental Management Commission or the Division of Environmental Health for review of applications and grant of permits, and fees for inspections under G.S. 159G-14. Construction costs may also include the costs for purchase or acquisition of real property. The term may also include the costs for planning and designing a regional project or small town project. Funds for planning and designing a regional project or small town project may be advanced prior to construction of the project and may be paid even though the project is never actually constructed. However the recipient of any funds advanced as a loan prior to the construction of a project that is never actually constructed is still obligated to repay the loan in accordance with this Chapter. A small town is defined as a municipality with a population of 1,000 or less, based on the most recent annual estimate of population certified by the State Planning Officer."

Section 14. G.S. 159G-4(b) reads as rewritten:

"(b) Of the appropriations made from the General Fund to the Clean Water Revolving Loan and Grant Fund for use of the Department of Environment, Health, and Natural Resources as provided in this Chapter, allocations are made as follows after first subtracting the amounts allocated under subsection (a) of this section, to the extent that there are any excess funds available:

Wastewater Accounts		
General Wastewater Revolving Loan Account	~~39.00%~~	38.00%
Emergency Wastewater Revolving Loan Account	~~10.00%~~	9.00%
High-Unit Cost Wastewater Account	~~20.00%~~	17.00%
Industrial Project Wastewater Account		5.00%
Water Supply Accounts		
General Water Supply Revolving Loan Account	~~21.00%~~	20.00%
High-Unit Cost Water Supply Account	~~5.00%~~	6.00%
Industrial Project Water Supply Account		1.00%
Emergency Water Supply Revolving Loan Account	~~5.00%~~	4.00%".

Section 15. G.S. 159G-6 reads as rewritten:

"**§ 159G-6. Distribution of funds.**

(a) Revolving loans and grants.

(1) All funds appropriated or accruing to the Clean Water Revolving Loan and Grant Fund, other than funds set aside for administrative expenses, shall be used for revolving loans and grants to local government units for construction costs of wastewater treatment works, wastewater collection systems and water supply systems and other assistance as provided in this Chapter.

(2) The maximum principal amount of a revolving loan or a grant may be one hundred percent (100%) of the nonfederal share of the construction costs of any eligible project. ~~The maximum principal amount of revolving loans made to any one local government unit during any fiscal year shall be three million dollars ($3,000,000). The maximum principal amount of grants made to any one local government unit during any fiscal year shall be one million dollars ($1,000,000).~~ The Department of Environment, Health, and Natural Resources may establish maximum principal amounts for revolving loans and for grants made to the same local government unit in a fiscal year.

(3) The State Treasurer shall be responsible for investing and distributing all funds appropriated or accruing to the Clean Water Revolving Loan and Grant Fund for revolving loans and grants under this Chapter. In fulfilling his responsibilities under this section, the State Treasurer shall make a written request to the Department of Environment, Health, and Natural Resources to arrange for the appropriated funds to be (i) transferred from the appropriate accounts to a local government unit to provide funds for one or more revolving loans or grants or (ii) invested as authorized by this Chapter with the interest on and the principal of such investments to be transferred to the local government unit to provide funds for one or more revolving loans or grants.

(b) Wastewater Accounts. -- The sums allocated in G.S. 159G-4 and accruing to the various Wastewater Accounts in each fiscal year shall be used to make revolving loans and grants to local government units as provided below. The Department of Environment, Health, and Natural Resources shall disburse no funds from the Wastewater Accounts except upon receipt of written approval of the disbursement from the Environmental Management Commission.

(1) General Wastewater Revolving Loan and Grant Account. -- The funds in the General Wastewater Revolving Loan and Grant Account shall be used exclusively for the purpose of providing for revolving construction loans or grants in connection with approved wastewater treatment work or wastewater collection system projects.

(2) High-Unit Cost Wastewater Account. -- The funds in the High-Unit Cost Wastewater Account shall be available for grants to applicants for high-unit cost wastewater projects. Eligibility of an applicant for

such a grant shall be determined by comparing estimated average household user fees for water and sewer service, for debt service and operation and maintenance costs, to one and one-half percent (1.5%) of the median household income in the ~~county~~ local government unit in which the project is located. The projects which would require estimated average household water and sewer user fees greater than one and one-half percent (1.5%) of the median household income are defined as high-unit cost wastewater projects and will be eligible for a grant equal to the excess cost, subject to the limitations in ~~subsection~~ subdivision (a)(2) of this section.

(3) Emergency Wastewater Revolving Loan Account. -- The funds in the Emergency Wastewater Revolving Loan Account shall be available for revolving emergency loans to applicants in the event the Environmental Management Commission certifies that a serious public health hazard, related to the inadequacy of existing wastewater facilities, is present or imminent in a community.

(4) Industrial Project Wastewater Account. -- The funds in the Industrial Project Wastewater Account shall be available for grants to applicants for the construction of new water and sewer lines for new or proposed industrial buildings to be used for manufacturing or processing operations in underserved areas.

To be eligible for such a grant: (i) the industrial project shall be recommended by the Department of Commerce to receive a grant, and (ii) the applicant shall be an economically distressed local government unit or if the industrial project for which the grant is being requested is a joint industrial project involving several units of local government, at least one of the applicants shall be an economically distressed local government unit. However, the industrial project for which the grant is requested may be inside or outside the jurisdiction of the applicant.

No county may receive more than one grant for an industrial project.

(c) Water Supply Accounts. -- The sums allocated in G.S. 159G-4 and accruing to the various Water Supply Accounts in each fiscal year shall be used to provide revolving loans and grants to local government units as provided below. The Department of Environment, Health, and Natural Resources shall disburse no funds from the Water Supply Accounts except upon receipt of written approval of the disbursement from the Division of Environmental Health.

(1) General Water Supply Revolving Loan and Grant Account. -- The funds in the General Water Supply Revolving Loan and Grant Account shall be used exclusively for the purpose of providing for revolving construction loans and grants in connection with water supply systems generally and not upon a county allotment basis.

(2) High-Unit Cost Water Supply Account. -- The funds in the High-Unit Cost Water Supply Account shall be available for grants to applicants for high-unit cost water supply systems, on the same basis as provided in G.S. 159G-6(b)(2) for high-unit cost wastewater projects.

(3) Emergency Water Supply Revolving Loan Account. -- The funds in the Emergency Water Supply Revolving Loan Account shall be available for revolving emergency loans to applicants in the event the Division of Environmental Health certifies that a serious public health hazard, related to the water supply system, is present or imminent in a community.

(4) Industrial Project Water Supply Account. -- The funds in the Industrial Project Water Supply Account shall be available for grants to applicants for the construction of new water and sewer lines for new or proposed industrial buildings to be used for manufacturing or processing operations in underserved areas on the same basis as provided in G.S. 159G-6(b)(4).

(d) Repealed by Session Laws 1991, c. 186, s. 4.

(e) Notwithstanding any other provision of this Chapter, funds in the Water Pollution Control Revolving Fund shall not be available as grants except to the extent permitted by Title VI of the Federal Water Quality Act of 1987 and the regulations thereunder."

Section 15.1. G.S. 159G-3 is amended by adding a new subdivision to read:

"(7a) 'Economically distressed local government unit' means a local government unit located, in whole or in part, in a county designated as economically distressed by the Secretary of Commerce under G.S. 143B-437A."

Section 16. Effective date. Sections 13 through 15.1 of this act become effective only if the voters approve the issuance of the Clean Water Bonds authorized by this act in the election required by Section 7 of this act. The remaining sections of this act are effective when the act becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 744*

Short Title: Grandparents' Child Support Clarification. (Public)

Sponsors: Senator Rand.

Referred to: Judiciary.

April 7, 1997

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE LAW REGARDING GRANDPARENTS' LIABILITY FOR CERTAIN CHILD SUPPORT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 50-13.4(b) reads as rewritten:

"(b) In the absence of pleading and proof that the circumstances otherwise warrant, the father and mother shall be primarily liable for the support of a minor child. In the absence of pleading and proof that the circumstances otherwise warrant, parents of a minor, unemancipated child who is the custodial or noncustodial parent of a child shall share this primary liability for their grandchild's support with the minor parent, the court determining the proper share, until the minor parent reaches the age of 18 or becomes emancipated. If both the parents of the child requiring support were unemancipated minors at the time of the child's conception, the parents of both minor parents share primary liability for their grandchild's support until both minor parents reach the age of 18 or become emancipated. If only one parent of the child requiring support was an unemancipated minor at the time of the child's conception, the parents of both parents are liable for any arrearages in child support owed by the adult or emancipated parent until the other parent reaches the age of 18 or becomes emancipated. In the absence of pleading and proof that the circumstances otherwise warrant, any other person, agency, organization or institution standing in loco parentis shall be secondarily liable for ~~such~~ this support. Such other circumstances may include, but shall not be limited to, the relative ability of all the above-mentioned parties to provide support or the inability of one or more of them to provide support, and the needs and estate of the child. The judge may enter an

order requiring any one or more of the above-mentioned parties to provide for the support of the child as may be appropriate in the particular case, and if appropriate the court may authorize the application of any separate estate of the child to his support. However, the judge ~~may~~ shall not order support to be paid by a person who is not the child's ~~parent~~ parent, grandparent, or an agency, organization or institution standing in loco parentis absent evidence and a finding that ~~such~~ the person, agency, organization or institution has voluntarily assumed the obligation of support in writing. The preceding sentence shall not be construed to prevent any court from ordering the support of a child by an agency of the State or county which agency may be responsible under law for ~~such~~ the support."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 886*
Transportation Committee Substitute Adopted 7/14/97
Finance Committee Substitute #2 Adopted 8/4/97
Fourth Edition Engrossed 8/7/97
Proposed House Committee Substitute S886-PCS1891

Short Title: Hire Among Most Qualified. (Public)

Sponsors:

Referred to:

April 16, 1997

A BILL TO BE ENTITLED

AN ACT AMENDING CHAPTER 126 OF THE GENERAL STATUTES TO PROVIDE FOR THE OPEN, FAIR, AND NONPOLITICAL SELECTION OF THE MOST QUALIFIED PERSONS FOR STATE GOVERNMENT EMPLOYMENT BY LIMITING POLITICAL HIRINGS; RELATING TO THE DESIGNATION OF EXEMPT POSITIONS BY THE GOVERNOR AND OTHER MEMBERS OF THE COUNCIL OF STATE; LIMITING THE POLITICAL INVOLVEMENT OF MEMBERS OF THE GENERAL ASSEMBLY IN STATE GOVERNMENT PERSONNEL DECISIONS; EXTENDING BROADER PROTECTIONS TO STATE EMPLOYEES WHO REPORT GROSS MISMANAGEMENT AND IMPROPER GOVERNMENT ACTIVITIES; AND REQUIRING THE REPORTING OF MONETARY SETTLEMENTS OF STATE GOVERNMENT PERSONNEL MATTERS AND CERTAIN PERSONNEL PRACTICES TO THE STATE PERSONNEL COMMISSION AND TO THE JOINT LEGISLATIVE COMMISSION ON GOVERNMENTAL OPERATIONS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 126 of the General Statutes is amended by adding the following new sections to read:

"**§ 126-14.2. Political hirings limited.**

(a) It is the policy of this State that State departments, agencies, and institutions select from the pool of the most qualified persons for State government employment

based upon job-related qualifications of applicants for employment using fair and valid selection criteria.

(b) All State departments, agencies, and institutions shall select from the pool of the most qualified persons for State government employment without regard to political affiliation or political influence. For the purposes of this section, the 'most qualified persons' shall mean each of the State employees or applicants for initial State employment who:

(1) Have timely applied for a position in State government;

(2) Have the essential qualifications for that position; and

(3) Are determined to be substantially more qualified as compared to other applicants for the position, after applying fair and valid job selection criteria, in accordance with G.S. 126-5(e), G.S. 126-7.1, Articles 6 and 13 of this Chapter, and State personnel policies approved by the State Personnel Commission.

(c) It is a violation of this section giving rise to the remedies set forth in G.S. 126-14.4 if:

(1) The complaining State employee or applicant for initial State employment timely applied for the State government position in question;

(2) The complaining State employee or applicant for initial State employment was not hired into the position;

(3) The complaining State employee or applicant for initial State employment was among the most qualified persons applying for the position as defined in this Chapter;

(4) The successful applicant for the position was not among the most qualified persons applying for the position; and

(5) The hiring decision was based upon political affiliation or political influence.

(d) The provisions of this section shall not apply to positions exempt from this Chapter, except that this section does apply to exempt managerial positions as defined by G.S. 126-5(b)(2).

"§ 126-14.3. Open and fair competition.

The State Personnel Commission shall adopt rules or policies to:

(1) Assure recruitment, selection, and hiring procedures that encourage open and fair competition for positions in State government employment and that encourage the hiring of a diverse State government workforce.

(2) Assure the proper and thorough advertisement of job openings in State government employment and lengthen, as appropriate, the period for submitting applications for State government employment.

(3) Require that a closing date shall be posted for each job opening, unless an exception for critical classifications has been approved by the State Personnel Commission.

(4) Require that timely written notice shall be provided to each unsuccessful applicant for State employment who is in the pool of the most qualified applicants for a position, as defined by G.S. 126-14.2(b).

(5) Assure that State departments, agencies, and institutions follow similar selection processes when hiring State employees in accordance with this Chapter.

(6) Assure that State supervisory and management personnel, and personnel professionals, receive adequate training and continuing education to carry out the State's policy of hiring from among the most qualified persons.

(7) Establish a monitoring system to measure the effectiveness of State agency personnel procedures to promote fairness and reduce adverse impact on all demographic groups in the State government workforce.

(8) Otherwise implement the State's policy of nonpolitical hiring practices in accordance with this Chapter."

Section 2. Chapter 126 of the General Statutes is amended by adding a new section to read:

"**§ 126-14.4. Remedies.**

(a) A State employee or applicant for initial State employment who has reason to believe that he or she was among the pool of the most qualified persons for a position in State government employment and was denied employment or promotion in violation of G.S. 126-14.2 because of political affiliation or political influence may complain directly through the Civil Rights Division of the Office of Administrative Hearings, which shall be responsible for making an initial determination of whether there is probable cause to believe that there has been a violation of G.S. 126-14.2.

The complaining State employee or applicant shall file a complaint with the Civil Rights Division of the Office of Administrative Hearings within 30 days after the complainant receives written notice that the position in question has been filled.

The Civil Rights Division of the Office of Administrative Hearings shall promptly make appropriate formal and informal inquiries in its investigatory, fact-finding role and may consider any matter, document, or statement deemed pertinent to the initial determination, including telephone conversations, in determining if there is probable cause to believe there has been a violation of G.S. 126-14.2. The Civil Rights Division may apply to an administrative law judge in the Office of Administrative Hearings for the issuance of oaths and subpoenas under G.S. 7A-756. The investigation and fact-finding phase of the complaint shall be completed by the Civil Rights Division within 30 days.

(b) The Civil Rights Division of the Office of Administrative Hearings shall notify the person alleged to have been hired in violation of G.S. 126-14.2 of the appeal, and the person may present any information to the Civil Rights Division that is pertinent to the initial determination of probable cause. The person alleged to have been hired in violation of G.S. 126-14.2 shall be notified of the results of the initial

determination and shall have a right to intervene in any administrative proceedings pursuant to G.S. 150B-23(d).

(c) Upon an initial determination that there is probable cause to believe there has been a violation of G.S. 126-14.2, the complainant may file within 15 days a petition for a contested case pursuant to G.S. 126-34.1 and Article 3 of Chapter 150B of the General Statutes.

(d) An initial determination by the Civil Rights Division that there is not probable cause to believe there has been a violation of G.S. 126-14.2 shall be conclusive of any rights under that section but shall not be admissible or binding in any separate or subsequent civil action or proceeding.

(e) Within 90 days after the filing of a contested case petition, the administrative law judge shall issue a recommended decision to the State Personnel Commission which shall include findings of fact and conclusions of law and, if the administrative law judge has found a violation of G.S. 126-14.2, an appropriate recommended remedy.

(f) Within 60 days of receipt of the official record by the Office of Administrative Hearings, the State Personnel Commission shall make a final written decision as to whether there has been a violation of G.S. 126-14.2. In any case where a violation is found, the State Personnel Commission shall take suitable action to correct the violation, which may include:

(1) Directing the State agency, department, or institution to declare the position vacant, and to hire from among the most qualified State employees or applicants for initial State employment who had applied for the position, or

(2) Requiring that the vacancy be posted pursuant to this Chapter.

(g) A career State employee with:

(1) Less than 10 years of service who was placed in an exempt managerial position, as defined by G.S. 126-5(b)(2), shall be given priority consideration for a position at the same salary grade equal to that held in the most recent position prior to the promotion if he or she has to vacate because of violation of G.S. 126-14.2.

(2) 10 or more years of service who was placed in an exempt managerial position, as defined by G.S. 126-5(b)(2), shall be placed in a comparable position at the same grade and salary equal to that held in the most recent position prior to the promotion if he or she had to vacate because of violation of G.S. 126-14.2.

Section 3. G.S. 126-5 reads as rewritten:

"**§ 126-5. Employees subject to Chapter; exemptions.**

(a) The provisions of this Chapter shall apply to:

(1) All State employees not herein exempt, and

(2) To all employees of the following local entities:

a. Area mental health, developmental disabilities, and substance abuse authorities.

b. Local social services departments.

c. Local public health departments.
d. Local emergency management agencies that receive federal grant-in-aid funds.

An employee of a consolidated county human services agency created pursuant to G.S. 153A-77(b) is not considered an employee of an entity listed in this subdivision.

(3) County employees not included under subdivision (2) of this subsection as the several boards of county commissioners may from time to time determine.

(b) As used in this ~~section, 'policymaking position'~~ section:

(1) 'Exempt position' means an exempt managerial position or an exempt policymaking position.

(2) 'Exempt managerial position' means a position delegated with significant managerial or programmatic responsibility that is essential to the successful operation of a State department, agency, or division, so that the application of G.S. 126-35 to an employee in the position would cause undue disruption to the operations of the agency, department, institution, or division.

(3) 'Exempt policymaking position' means a position delegated with the authority to impose the final decision as to a settled course of action to be followed within a department, agency, or ~~division.~~ division, so that a loyalty to the Governor or other elected department head in their respective offices is reasonably necessary to implement the policies of their offices. The term shall not include personnel professionals.

(4) 'Personnel professional' means any employee in a State department, agency, institution, or division whose primary job duties involve administrative personnel and human resources functions for that State department, agency, institution, or division.

(c) Except as to the policies, rules, and plans established by the Commission pursuant to G.S. 126-4(1), 126-4(2), 126-4(3), 126-4(4), 126-4(5), 126-4(6), and 126-7, and except as to the provisions of Articles 6 and 7 of this Chapter, the provisions of this Chapter shall not apply to:

(1) A State employee who is not a career State employee as defined by this Chapter.

(2) One confidential assistant and two confidential secretaries for each elected or appointed department head and one confidential secretary for each chief deputy or chief administrative assistant.

(3) Employees in exempt policymaking positions designated ~~as exempt~~ pursuant to G.S. 126-5(d).

(4) The chief deputy or chief administrative assistant to the head of each State department who is designated either by statute or by the department head to act for and perform all of the duties of such department head during his absence or incapacity.

(c1) Except as to the provisions of Articles 6 and 7 of this Chapter, the provisions of this Chapter shall not apply to:

(1) Constitutional officers of the State.

(2) Officers and employees of the Judicial Department.

(3) Officers and employees of the General Assembly.

(4) Members of boards, committees, commissions, councils, and advisory councils compensated on a per diem basis.

(5) Officials or employees whose salaries are fixed by the General Assembly, or by the Governor, or by the Governor and Council of State, or by the Governor subject to the approval of the Council of State.

(6) Employees of the Office of the Governor that the Governor, at any time, in his discretion, exempts from the application of the provisions of this Chapter by means of a letter to the State Personnel Director designating these employees.

(7) Employees of the Office of the Lieutenant Governor, that the Lieutenant Governor, at any time, in his discretion, exempts from the application of the provisions of this Chapter by means of a letter to the State Personnel Director designating these employees.

(8) Instructional and research staff, physicians, and dentists of The University of North Carolina.

(9) Employees whose salaries are fixed under the authority vested in the Board of Governors of The University of North Carolina by the provisions of G.S. 116-11(4), 116-11(5), and 116-14.

(10) Repealed by Session Laws 1991, c. 84, s. 1.

(11) North Carolina School of Science and Mathematics' employees whose salaries are fixed in accordance with the provisions of G.S. 116-235(c)(1) and G.S. 116-235(c)(2).

(12) Employees of the North Carolina Low-Level Radioactive Waste Management Authority whose salaries are fixed pursuant to G.S. 104G-5(g)(1) and G.S. 104G-5(g)(2).

(13) Employees of the North Carolina Hazardous Waste Management Commission whose salaries are fixed pursuant to G.S. 130B-6(g)(1) and G.S. 130B-6(g)(2).

(14) Employees of the North Carolina State Ports Authority.

(15) Employees of the North Carolina Global TransPark Authority.

(16) The executive director and one associate director of the North Carolina Center for Nursing established under Article 9F of Chapter 90 of the General Statutes.

(c2) The provisions of this Chapter shall not apply to:

(1) Public school superintendents, principals, teachers, and other public school employees.

(2) Recodified as G.S. 126-5(c)(4) by Session Laws 1985 (Regular Session, 1986), c. 1014, s. 41.

(3) Employees of community colleges whose salaries are fixed in accordance with the provisions of G.S. 115D-5 and G.S. 115D-20, and employees of the Department of Community Colleges whose salaries are fixed by the State Board of Community Colleges in accordance with the provisions of G.S. 115D-3.

(c3) Except as to the policies, rules, and plans established by the Commission pursuant to G.S. 126-4(5) and the provisions of Article 6 of this Chapter, the provisions of this Chapter shall not apply to: Teaching and related educational classes of employees of the Department of Correction, the Department of Human Resources, and any other State department, agency or institution, whose salaries shall be set in the same manner as set for corresponding public school employees in accordance with Chapter 115C of the General Statutes.

(c4) Repealed by Session Laws 1993, c. 321, s. 145(b).

(c5) Notwithstanding any other provision of this Chapter, Article 14 of this Chapter shall apply to all State employees, public school employees, and community college employees.

(c6) Except as to the policies, rules, and plans established by the Commission pursuant to G.S. 126-4(1), 126-4(2), 126-4(3), 126-4(4), 126-4(5), 126-4(6), 126-7, 126-14.3, and except as to the provisions of G.S. 126-14.2, G.S. 126-34.1(a)(2), and Articles 6 and 7 of this Chapter, the provisions of this Chapter shall not apply to exempt managerial positions.

(d) (1) ~~General.~~ Exempt Positions in Cabinet Department. -- The Governor may designate ~~as exempt policymaking positions, as provided below, in each of~~ a total of 100 exempt policymaking positions throughout the following departments:

a. Department of Administration;
b. Department of Commerce;
c. Department of Correction;
d. Department of Crime Control and Public Safety;
e. Department of Cultural Resources;
f. Department of Human Resources;
g. Department of Environment, Health, and Natural Resources;
h. Department of Revenue; and
i. Department of Transportation.

The Governor may designate exempt managerial positions in a number up to one percent (1%) of the total number of full-time positions in each cabinet department listed above in this sub-subdivision, not to exceed 30 positions in each department. ~~The Secretary of State, the Auditor, the Treasurer, the Attorney General, the Commissioner of Agriculture, the Commissioner of Insurance, and the Labor Commissioner may designate as exempt policymaking positions, as provided below, in their respective offices. The State Board of Education may designate as exempt~~

~~policymaking positions, as provided below, in the Department of Public Instruction.~~

~~(2) Number. -- The number of policymaking positions designated as exempt in each department or office listed in subsection (d)(1), except the Department of Commerce, shall be limited to one and two-tenths percent (1.2%) of the number of full-time positions in the department or office, or 30 positions, whichever is greater. The Governor may designate 85 policymaking positions as exempt in the Department of Economic and Community Development. Provided, however, that the~~

(2) Exempt Positions in Council of State Departments and Offices. -- The Secretary of State, the Auditor, the Treasurer, the Attorney General, the Commissioner of Agriculture, the Commissioner of Insurance, and the Labor Commissioner may designate exempt positions. The State Board of Education may designate exempt positions in the Department of Public Instruction. The number of exempt policymaking positions in each department headed by an elected department head listed above in this sub-subdivision shall be limited to 20 exempt policymaking positions or one percent (1%) of the total number of full-time positions in the department, whichever is greater. The number of exempt managerial positions shall be limited to 20 positions or one percent (1%) of the total number of full-time positions in the department, whichever is greater.

(2a) Designation of Additional Positions. -- The Governor, elected department head, or State Board of Education may request that additional ~~policymaking~~ positions be designated as exempt. The request shall be made by sending a list of ~~policymaking~~ exempt positions that exceed the limit imposed by this subsection to the Speaker of the North Carolina House of Representatives and the President of the North Carolina Senate. A copy of the list also shall be sent to the State Personnel Director. The General Assembly may authorize all, or part of, the additional ~~policymaking~~ positions to be designated as ~~exempt.~~ exempt positions. If the General Assembly is in session when the list is submitted and does not act within 30 days after the list is submitted, the list shall be deemed approved by the General Assembly, and the ~~policymaking~~ positions shall be designated as ~~exempt.~~ exempt positions. If the General Assembly is not in session when the list is submitted, the 30-day period shall not begin to run until the next date that the General Assembly convenes or reconvenes, other than for a special session called for a specific purpose not involving the approval of the list of additional positions to be designated as ~~exempt;~~ exempt positions; the

policymaking positions shall not be designated as exempt during the interim.

(3) Letter. -- These positions shall be designated in a letter to the State Personnel Director, the Speaker of the House of Representatives, and the President of the Senate by May 1 of the year in which the oath of office is administered to each Governor unless the provisions of subsection (d)(4) apply.

(4) Vacancies. -- In the event of a vacancy in the Office of Governor or in the office of a member of the Council of State, the person who succeeds to or is appointed or elected to fill the unexpired term shall make such designations in a letter to the State Personnel Director, the Speaker of the House of Representatives, and the President of the Senate within 120 days after the oath of office is administered to that person. In the event of a vacancy in the Office of Governor, the State Board of Education shall make these designations in a letter to the State Personnel Director, the Speaker of the House of Representatives, and the President of the Senate within 120 days after the oath of office is administered to the Governor.

(5) Creation, Transfer, or Reorganization. -- The Governor, elected department head, or State Board of Education may designate as exempt a policymaking position that is created or transferred to a different department, or is located in a department in which reorganization has occurred, after May 1 of the year in which the oath of office is administered to the Governor. The designation must be made in a letter to the State Personnel Director, the Speaker of the North Carolina House of Representatives, and the President of the North Carolina Senate within 120 days after such position is created, transferred, or in which reorganization has occurred.

(6) Reversal. -- Subsequent to the designation of a ~~policymaking~~ position as an exempt position as hereinabove provided, the status of the position may be reversed and made subject to the provisions of this Chapter by the Governor, by an elected department head, or by the State Board of Education in a letter to the State Personnel Director, the Speaker of the North Carolina House of Representatives, and the President of the North Carolina Senate.

(7) Hearing Officers. -- Except as otherwise specifically provided by this section, no employee, by whatever title, whose primary duties include the power to conduct hearings, take evidence, and enter a decision based on findings of fact and conclusions of law based on statutes and legal precedents shall be designated as exempt. This subdivision shall apply beginning July 1, 1985, and no list

submitted after that date shall designate as exempt any employee described in this subdivision.

(e) An exempt employee may be transferred, demoted, or separated from his or her position by the department head authorized to designate the exempt position except:

(1) When an employee who has the minimum service requirements described in subsection (c)(1) above but less than 10 years of cumulative service in subject positions prior to placement in an exempt position is removed from an exempt position, for reasons other than just cause, the employee shall have priority to any position that becomes available for which the employee is qualified, according to rules and regulations regulating and defining priority as promulgated by the State Personnel Commission; or

(2) When an employee who has 10 years or more cumulative service, including the immediately preceding 12 months, in subject positions prior to placement in an exempt position is removed from an exempt position, for reasons other than just cause, the employee shall be reassigned to a subject position within the same department or agency, or if necessary within another agency, and within a 35 mile radius of the exempt position, at the same grade and salary, including all across-the-board increases since placement in the position designated as exempt, as his most recent subject position.

(f) A department head is authorized to use existing budgeted positions within his department in order to carry out the provisions of subsection (e) of this section. If it is necessary to meet the requirements of subsection (e) of this section, a department head may use salary reserve funds authorized for his department.

(g) No employee shall be placed in an exempt position without 10 working days prior written notification that such position is so designated. A person applying for a position that is designated as exempt must be notified in writing at the time he makes the application that the position is designated as exempt.

(h) In case of dispute as to whether an employee is subject to the provisions of this Chapter, the dispute shall be resolved as provided in Article 3 of Chapter 150B."

Section 4. G.S. 126-34.1 reads as rewritten:

"**§ 126-34.1. Grounds for contested case under the State Personnel Act defined.**

(a) A State employee or former State employee may file in the Office of Administrative Hearings a contested case under Article 3 of Chapter 150B of the General Statutes only as to the following personnel actions or issues:

(1) Dismissal, demotion, or suspension without pay based upon an alleged violation of G.S. 126-35, if the employee is a career State employee.

(2) An alleged unlawful State employment practice constituting discrimination, as proscribed by G.S. 126-36, including:

a. Denial of promotion, transfer, or training, on account of the employee's age, sex, race, color, national origin, religion, creed, political affiliation, or handicapping condition as defined by Chapter 168A of the General Statutes.

b. Demotion, reduction in force, or termination of an employee in retaliation for the employee's opposition to alleged discrimination on account of the employee's age, sex, race, color, national origin, religion, creed, political affiliation, or handicapping condition as defined by Chapter 168A of the General Statutes.

(3) Retaliation against an employee, as proscribed by G.S 126-17, for protesting an alleged violation of G.S. 126-16.

(4) Denial of the veteran's preference granted in accordance with Article 13 of this Chapter in initial State employment or in connection with a reduction in force, for an eligible veteran as defined by G.S. 126-81.

(5) Denial of promotion for failure to post or failure to give priority consideration for promotion or reemployment, to a career State employee as required by G.S. 126-7.1 and G.S. 126-36.2.

(6) Denial of an employee's request for removal of allegedly inaccurate or misleading information from the employee's personnel file as provided by G.S. 126-25.

(7) Any retaliatory personnel action that violates G.S. 126-85.

(8) Denial of promotion in violation of G.S. 126-14.2, where an initial determination found probable cause to believe there has been a violation of G.S. 126-14.2.

(9) Denial of employment in violation of G.S. 126-14.2, where an initial determination found probable cause to believe that there has been a violation of G.S. 126-14.2.

(b) An applicant for initial State employment may file in the Office of Administrative Hearings a contested case under Article 3 of Chapter 150B of the General Statutes based upon:

(1) Alleged denial of employment in violation of G.S. 126-16.

(2) Denial of the applicant's request for removal of allegedly inaccurate or misleading information from the ~~employee's~~ personnel file as provided by G.S. 126-25.

(3) Denial of equal opportunity for employment and compensation on account of the employee's age, sex, race, color, national origin, religion, creed, political affiliation, or handicapping condition as defined by Chapter 168A of the General Statutes. This subsection with respect to equal opportunity as to age shall be limited to persons who are at least 40 years of age. An applicant may not, however, file a contested case where political affiliation was the reason for the person's nonselection for (i) an exempt

policymaking position as defined in G.S. 126-5(b)(3), (ii) a chief deputy or chief administrative assistant position under G.S. 126-5(c)(4), or (iii) a confidential assistant or confidential secretary position under G.S. 126-5(c)(2).

(4) Denial of the veteran's preference in initial State employment provided by Article 13 of this Chapter, for an eligible veteran as defined by G.S. 126-81.

(5) Denial of employment in violation of G.S. 126-14.2, where an initial determination found probable cause to believe that there has been a violation of G.S. 126-14.2.

(c) In the case of a dispute as to whether a State employee's position is properly exempted from the State Personnel Act under G.S. 126-5, the employee may file in the Office of Administrative Hearings a contested case under Article 3 of Chapter 150B of the General Statutes.

(d) A State employee or applicant for State employment may file in the Office of Administrative Hearings a contested case under Article 3 of Chapter 150B of the General Statutes based upon a false accusation regarding, or disciplinary action relating to, the employee's alleged violation of G.S. 126-14 or G.S. 126-14.1.

(e) Any issue for which appeal to the State Personnel Commission through the filing of a contested case under Article 3 of Chapter 150B of the General Statutes has not been specifically authorized by this section shall not be grounds for a contested case under Chapter 126."

Section 5. G.S. 126-84 reads as rewritten:

"**§ 126-84. Statement of policy.**

(a) It is the policy of this State that State employees shall be encouraged to report verbally or in writing, to their supervisor, department head, or other appropriate authority, evidence of activity by a State agency or State employee constituting:

(1) A violation of State or federal law, rule or regulation;

(2) Fraud;

(3) Misappropriation of State Resources; ~~or~~

(4) Substantial and specific danger to the public health and ~~safety.~~ safety; or

(5) Gross mismanagement, a gross waste of monies, or gross abuse of authority.

(b) Further, it is the policy of this State that State employees be free of intimidation or harassment when reporting to public bodies about matters of public concern, including offering testimony to or testifying before appropriate legislative panels."

Section 6. G.S. 126-85 reads as rewritten:

"**§ 126-85. Protection from retaliation.**

(a) No head of any State department, agency or institution or other State employee exercising supervisory authority shall discharge, threaten or otherwise discriminate against a State employee regarding the State employee's compensation, terms, conditions, location, or privileges of employment because the State employee,

or a person acting on behalf of the employee, reports or is about to report, verbally or in writing, any activity described in G.S. 126-84, unless the State employee knows or has reason to believe that the report is inaccurate.

(a1) No State employee shall retaliate against another State employee because the employee, or a person acting on behalf of the employee, reports or is about to report, verbally or in writing, any activity described in G.S. 126-84.

(b) No head of any State department, agency or institution or other State employee exercising supervisory authority shall discharge, threaten or otherwise discriminate against a State employee regarding the employee's compensation, terms, conditions, location or privileges of employment because the State employee has refused to carry out a directive which in fact constitutes a violation of State or federal law, rule or regulation or poses a substantial and specific danger to the public health and safety.

(b1) No State employee shall retaliate against another State employee because the employee has refused to carry out a directive which may constitute a violation of State or federal law, rule or regulation, or poses a substantial and specific danger to the public health and safety.

(c) The protections of this Article shall include State employees who report any activity described in G.S. 126-84 to the State Auditor as authorized by G.S. 147-64.6(c)(16)."

Section 7. Article 13B of Chapter 120 of the General Statutes is amended by adding a new section to read:

"**§ 120-86.1. Personnel-related action unethical.**

It shall be unethical for a legislator to take, promise, or threaten any legislative action, as defined in G.S. 120-47.1(4), for the purpose of influencing or in retaliation for any action regarding State employee hirings, promotions, grievances, or disciplinary actions subject to Chapter 126 of the General Statutes."

Section 8. (a) Beginning January 1, 1998, and quarterly thereafter, the head of each State agency, department, or institution employing State employees subject to the State Personnel Act shall report to the Office of State Personnel on the following:

(1) The costs associated with the defense or settlement of administrative grievances and lawsuits filed by current or former State employees and applicants for State employment, including the costs of settlements, attorneys' fees, litigation expenses, damages, or awards incurred by the respective State agencies, departments, and institutions. The report shall include an explanation of the fiscal impact of these costs upon the operations of the State agency, department, or institution.

(2) The modification of position descriptions resulting in changes in position qualifications to allow the use of educational, experience, or other equivalencies in the hiring or promotion of State employees where such equivalencies were not previously used in the position descriptions. The report shall include an explanation

of the reasons for the changes in the position descriptions and the bases for the use of the equivalencies.

(b) Beginning May 1, 1998, and annually thereafter, the State Personnel Commission shall report to the Joint Legislative Commission on Governmental Operations on the costs associated with the defense or settlement of lawsuits and on the use of position qualification equivalencies, as compiled in accordance with subsection (a) of this section.

(c) Beginning May 1, 1998, and then annually thereafter, the State Personnel Commission, through the Office of State Personnel, shall report to the Joint Legislative Commission on Governmental Operations on outcomes with respect to State employee hirings, promotions, disciplinary actions, and compensation, based upon demographics.

(d) By May 1, 1998, the State Personnel Commission shall report to the Joint Legislative Commission on Governmental Operations on its development of a systematized approach to State employee recruitment utilizing standards and measures of outcomes across agency lines.

(e) By May 1, 1998, the State Personnel Commission shall conduct a study and make a report to the Joint Legislative Commission on Governmental Operations on the salary administration of positions exempt from the State Personnel Act as it relates to the placement of exempt positions in the salary range.

Section 9. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 4

SENATE BILL 886*
Transportation Committee Substitute Adopted 7/14/97
Finance Committee Substitute #2 Adopted 8/4/97
Fourth Edition Engrossed 8/7/97

Short Title: Trucking Adjustment Act of 1997. (Public)

Sponsors:

Referred to:

April 16, 1997

A BILL TO BE ENTITLED

AN ACT TO ADJUST CERTAIN STATUTES AFFECTING THE TRUCKING INDUSTRY TO ENCOURAGE THE GROWTH OF THAT INDUSTRY THROUGH INCREASED TRUCK REGISTRATIONS IN THIS STATE; TO PROVIDE CONSUMER PROTECTION PROVISIONS; AND TO PROVIDE FOR A STUDY OF CERTAIN TRUCKING-RELATED PROVISIONS BY THE JOINT LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-88 is amended by adding a new subsection to read:

"(l) The Division shall issue permanent truck and truck-tractor plates to Class A and Class B Motor Vehicles and shall include the word 'permanent' on the plate. The permanent registration plates issued pursuant to this section shall be subject to annual registration fees set in this section. The Division shall adopt the necessary rules providing for the recall, transfer, exchange, or cancellation of permanent plates issued pursuant to this subsection."

Section 2. G.S. 20-118(c)(5) reads as rewritten:

"(5) The light-traffic road limitations provided for pursuant to subdivision (b)(4) of this section do not apply to a vehicle while that vehicle is transporting only the following from its point of origin on a light-traffic road to the nearest highway that is not a light-traffic road:

penalties for each axle-group and stacking those penalties for the same weight violations.

The Joint Legislative Transportation Oversight Committee may make an interim report of the study authorized by this section to the 1998 Session of the General Assembly and shall make a final report to the 1999 Session of the General Assembly.

Section 6. Sections 4, 5, and 6 of this act are effective when this act becomes law. Sections 2 and 3 of this act become effective October 1, 1997. Section 1 of this act becomes effective January 1, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

HOUSE BILL 452
Committee Substitute Favorable 4/22/97
Senate Pensions & Retirement/Insurance Committee Substitute Adopted 6/25/97

Short Title: Beach Plan Amendments/AB. (Public)

Sponsors:

Referred to:

March 10, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE BEACH PLAN PARTICIPATION FORMULA, PROVIDE FOR WINDSTORM AND HAIL INSURANCE IN COASTAL COUNTIES, AUTHORIZE THE LEGISLATIVE RESEARCH COMMISSION TO STUDY THE AVAILABILITY OF PROPERTY INSURANCE IN THE STATE, AND REVISE OTHER STATUTES RELATED TO THE INSURANCE UNDERWRITING ASSOCIATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-45-5 reads as rewritten:

"**§ 58-45-5. Definition of terms.**

~~In~~ As used in this Article, unless the context clearly otherwise ~~requires,~~ requires:

(1) 'Association' means the North Carolina Insurance Underwriting Association established ~~pursuant to the provisions of~~ under this Article;

(2) 'Beach area' means all of that area of the State of North Carolina south and east of the inland waterway from the South Carolina line to Fort Macon (Beaufort Inlet); thence south and east of Core, Pamlico, Roanoke and Currituck sounds to the Virginia line, being those portions of land generally known as the Outer Banks;

(2a) 'Coastal area' means all of that area of the State of North Carolina comprising the following counties: Beaufort, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Hyde, Jones, New

Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell, and Washington. 'Coastal area' does not include the portions of these counties that lie within the beach area.

(3) Repealed by Session Laws 1991, c. 720, s. 6.

(3a) 'Crime insurance' means insurance against losses resulting from robbery, burglary, larceny, and similar crimes, as more specifically defined and limited in the various crime insurance policies, or their successor forms of coverage, approved by the Commissioner and issued by the Association. Such policies shall not be more restrictive than those issued under the Federal Crime Insurance Program authorized by Public Law 91-609.

(3b) 'Directors' means the Board of Directors of the Association.

(4) 'Essential property insurance' means insurance against direct loss to property as defined in the standard statutory fire policy and extended coverage, vandalism and malicious mischief endorsements thereon, or their successor forms of coverage, as approved by the Commissioner;

(5) 'Insurable property' means real property at fixed locations in the ~~Beach area~~ beach and coastal area, including travel trailers when tied down at a fixed location, or the tangible personal property located therein, but shall not include insurance on motor ~~vehicles or farm risks;~~ vehicles; which property is determined by the Association, after inspection and under the criteria specified in the plan of operation, to be in an insurable condition. However, any one and two family dwellings built in substantial accordance with the Federal Manufactured Home Construction and Safety Standards, any predecessor or successor federal or State construction or safety standards, and any further construction or safety standards promulgated by the association and approved by the Commissioner, or the North Carolina Uniform Residential Building Code and any structure or building built in substantial compliance with the North Carolina State Building Code, including the design-wind requirements, which is not otherwise rendered uninsurable by reason of use or occupancy, shall be an insurable risk within the meaning of this Article. However, none of the following factors shall be considered in determining insurable condition: neighborhood, area, location, environmental hazards beyond the control of the applicant or owner of the property. Also, any structure begun on or after January 1, 1970, not built in substantial compliance with the Federal Manufactured Home Construction and Safety Standards, any predecessor or successor federal or State construction or safety standards, and any further construction or safety standards promulgated by the association and approved by the Commissioner, or the North

Carolina Uniform Residential Building Code or the North Carolina State Building Code, including the design-wind requirements therein, shall not be an insurable risk. The owner or applicant shall furnish with the application proof in the form of a certificate from a local building inspector, contractor, engineer or architect that the structure is built in substantial accordance with the Federal Manufactured Home Construction and Safety Standards, any predecessor or successor federal or State construction or safety standards, and any further construction or safety standards promulgated by the association and approved by the Commissioner, or the North Carolina Uniform Residential Building Code or the North Carolina State Building Code; however, an individual certificate shall not be necessary where the structure is located within a political subdivision which has certified to the Association on an annual basis that it is enforcing the North Carolina Uniform Residential Building Code or the North Carolina State Building Code and has no plans to discontinue enforcing these codes during that year.

(6) Repealed by Session Laws 1995 (Regular Session, 1996), c. 592, s. 2.

(6a) 'Net direct premiums' means gross direct premiums (excluding reinsurance assumed and ceded) written on property in this State for essential property insurance, farmowners insurance, homeowners insurance, and the property portion of commercial multiple peril insurance policies as computed by the Commissioner, less:

a. Return premiums on uncancelled contracts;

b. Dividends paid or credited to policyholders; and

c. The unused or unabsorbed portion of premium deposits.

(7) 'Plan of operation' or 'plan' means the plan of operation of the Association approved or promulgated by the ~~Commissioner, pursuant to the provisions of~~ Commissioner under this Article."

Section 2. G.S. 58-45-25 reads as rewritten:

"§ 58-45-25. Each member of Association to participate in its expenses, profits, and losses.

~~All members of the Association shall participate in its expenses, profits, and losses and shall receive credit annually for essential property insurance voluntarily written as determined by the directors of the Association, with the approval of the Commissioner. Participation of each member in the losses of the Association shall be reduced accordingly. Any insurer authorized to write and engage in writing any insurance, the writing of which requires the insurer to be a member of the Association, pursuant to G.S. 58-45-10, shall become a member of the Association on the January 1 immediately following authorization and the determination of the~~

~~insurer's participation in the Association shall be made as of the date of membership in the same manner as for all other members of the Association.~~

(a) Each member of the Association shall participate in the expenses, profits, and losses of the Association in the proportion that its net direct premium written in this State during the preceding calendar year for residential and commercial properties outside of the beach and coastal areas bears to the aggregate net direct premiums written in this State during the preceding calendar year for residential and commercial properties outside of the beach and coastal areas by all members of the Association, as certified to the Association by the Commissioner. The Commissioner shall certify each member's participation after review of annual statements and any other reports and data necessary to determine participation and may obtain any necessary information or data from any member of the Association for this purpose. Any insurer that is authorized to write and that is engaged in writing any insurance, the writing of which requires the insurer to be a member of the Association under G.S. 58-45-10, shall become a member of the Association on the first day of January after authorization. The determination of the insurer's participation in the Association shall be made as of the date of membership of the insurer in the same manner as for all other members of the Association.

(b) All member companies shall receive credit each year for essential property insurance, farmowners insurance, homeowners insurance, and the property portion of commercial multiple peril policies voluntarily written in the beach and coastal areas in accordance with guidelines and procedures to be submitted by the Directors to the Commissioner for approval. The participation of each member company in the expenses, profits, and losses of the Association shall be reduced accordingly; provided, no credit shall be given where coverage for the peril of wind has been excluded. The guidelines and procedures for granting credit shall encourage and assist each member company to voluntarily write these coverages in the beach and coastal areas for commercial and residential properties."

Section 3. G.S. 58-45-30(a) reads as rewritten:

"(a) ~~Within 90 days after April 17, 1969, the directors of the Association~~ The Directors shall submit to the Commissioner for his review and approval, a proposed plan of operation. ~~Such proposed~~ The plan shall set forth the number, qualifications, terms of office, and manner of election of the members of the board of directors, and shall grant proper credit annually to each member of the Association for essential property ~~insurance~~ insurance, farmowners, homeowners insurance, and the property portion of commercial multiple peril policies voluntarily written in the beach ~~area~~ and coastal areas and shall provide for the efficient, economical, fair and nondiscriminatory administration of the Association and for the prompt and efficient provision of essential property insurance in the beach and coastal areas of North Carolina ~~so as~~ to promote orderly community development in those areas and to provide means for the adequate maintenance and improvement of the property in ~~such~~ those areas. ~~Such proposed~~ The plan may include ~~a preliminary assessment of all members for initial expenses necessary to the commencement of operation;~~ the establishment of necessary facilities; management of the Association; ~~plan for~~ the

assessment of members to defray losses and expenses; underwriting standards; procedures for the acceptance and cession of reinsurance; procedures for determining the amounts of insurance to be provided to specific risks; time limits and procedures for processing applications for ~~insurance~~ insurance; and ~~for such~~ any other provisions ~~as may be deemed~~ that are considered necessary by the Commissioner to carry out the purposes of this Article."

Section 4. G.S. 58-33-100 reads as rewritten:

"**§ 58-33-100. Payment of premium to agent valid; obtaining by fraud a crime.**

(a) Any agent, broker or limited representative who acts for a person other than himself negotiating a contract of insurance is, for the purpose of receiving the premium therefor, the company's agent, whatever conditions or stipulations may be contained in the policy or contract. This subsection does not apply to the Insurance Underwriting Association established under Article 45 of this Chapter or the Joint Underwriting Association established under Article 46 of this Chapter.

(b) ~~Such~~ Any agent, broker or limited representative knowingly procuring by fraudulent representations payment, or the obligation for the payment, of a premium of insurance, shall be guilty of a Class 1 misdemeanor."

Section 5. G.S. 58-45-35(b) reads as rewritten:

"(b) If the Association determines that the property is insurable and that there is no unpaid premium due from the applicant for prior insurance on the property, the Association, upon receipt of the premium, or part of the premium, as is prescribed in the plan of operation, shall cause to be issued a policy of essential property insurance and shall offer additional extended coverage, optional perils endorsements, business income and extra expense coverage, crime insurance, separate policies of windstorm and hail insurance, or their successor forms of coverage, for a term of one year or three years. Short term policies may also be issued. Any policy issued under this section shall be renewed, upon application, as long as the property is insurable property."

Section 6. G.S. 58-45-35(e) reads as rewritten:

"(e) Policies of windstorm and hail insurance provided for in subsection (b) of this section are available only for risks in the beach and coastal areas for which essential property insurance has been written by licensed insurers. Whenever such other essential property insurance written by licensed insurers includes replacement cost coverage, the Association shall also offer replacement cost coverage. In order to be eligible for a policy of windstorm and hail insurance, the applicant shall provide the Association, along with the premium payment for the windstorm and hail insurance, a certificate that the essential property insurance is in force. The policy forms for windstorm and hail insurance shall be filed by the Association with the Commissioner for his approval before they may be used. Catastrophic losses, as determined by the Association and approved by the Commissioner, that are covered under the windstorm and hail coverage in the beach and coastal areas shall be adjusted by the licensed insurer that issued the essential property insurance and not by the Association. Expenses incurred by the licensed insurer in adjusting windstorm and hail losses shall be reimbursed by the Association."

Section 7. G.S. 58-45-45(b) reads as rewritten:

"(b) The rates, rating plans, and rating rules for the separate policies of windstorm and hail insurance described in G.S. 58-45-35(b) shall be filed by the Association with the Commissioner for the Commissioner's approval, disapproval, or modification. The provisions of Articles 40 and 41 of this Chapter shall govern the filings. For windstorm and hail policies issued or renewed in the coastal area, unless otherwise determined by the Commissioner, the Association shall charge ninety percent (90%) of the approved windstorm and hail rates for the coastal area. Policy deductible plans, consistent with G.S. 58-45-1(b), may be filed by the Association with the Commissioner for the Commissioner's approval, disapproval, or modification."

Section 8. Effective January 1, 2000, G.S. 58-45-45(b), as amended by Section 7 of this act, reads as rewritten:

"(b) The rates, rating plans, and rating rules for the separate policies of windstorm and hail insurance described in G.S. 58-45-35(b) shall be filed by the Association with the Commissioner for the Commissioner's approval, disapproval, or modification. The provisions of Articles 40 and 41 of this Chapter shall govern the filings. ~~For windstorm and hail policies issued or renewed in the coastal area, unless otherwise determined by the Commissioner, the Association shall charge ninety percent (90%) of the approved windstorm and hail rates for the coastal area.~~ Policy deductible plans, consistent with G.S. 58-45-1(b), may be filed by the Association with the Commissioner for the Commissioner's approval, disapproval, or modification."

Section 9. G.S. 58-45-1 reads as rewritten:

"**§ 58-45-1. Declarations and purpose of Article.**

(a) It is hereby declared by the General Assembly of North Carolina that an adequate market for essential property insurance is necessary to the economic welfare of the ~~beach area~~ beach and coastal areas of the State of North Carolina and that without such insurance the orderly growth and development of ~~the beach area of the State of North Carolina~~ those areas would be severely impeded; that furthermore, adequate insurance upon property in the ~~beach area~~ beach and coastal areas is necessary to enable homeowners and commercial owners to obtain financing for the purchase and improvement of their property; and that while the need for such insurance is increasing, the market for such insurance is not adequate and is likely to become less adequate in the future; and that the present plans to provide adequate insurance on property in the ~~beach area,~~ beach and coastal areas, while deserving praise, have not been sufficient to meet the needs of this area. It is further declared that the State has an obligation to provide an equitable method whereby every licensed insurer writing essential property insurance in North Carolina is required to meet its public responsibility instead of shifting the burden to a few willing and public-spirited insurers. It is the purpose of this Article to accept this obligation and to provide a mandatory program to assure an adequate market for essential property insurance in the beach ~~area~~ and coastal areas of North Carolina.

(b) The General Assembly further declares that it is its intent in creating and, from time to time, amending this Article that the market provided by this Article not be the first market of choice, but the market of last resort."

Section 10. G.S. 58-46-1(a) reads as rewritten:

"(a) It is the purpose of this Article to provide a program whereby adequate basic property insurance may be made available to property owners having insurable property in the State. It is further the purpose of this Article to encourage the improvement of properties located in the State and to arrest the decline of properties located in the State. It is the intent of the General Assembly in creating and, from time to time, amending this Article that the market provided by this Article not be the first market of choice, but the market of last resort."

Section 11. The Legislative Research Commission may study the provisions of Articles 45 and and 46 of Chapter 58 of the General Statutes, other relevant portions of the North Carolina General Statutes, and the plans and operations of the North Carolina Insurance Underwriting Association and the North Carolina Joint Underwriting Association. The Commission may consider all possible options to improve availability of property and homeowners insurance in the State. The Commission may report its findings and recommendations, along with legislation, to the 1998 Regular Session of the 1997 General Assembly and to the 1999 General Assembly.

Section 12. The North Carolina Insurance Underwriting Association and the Commissioner of Insurance shall consider any further revisions necessary for the participation formulas of the Association for the purpose of encouraging insurance companies to voluntarily write property insurance policies in the beach and coastal areas of the State.

Section 13. The North Carolina Insurance Underwriting Association shall use the "take out" program, as filed with and approved by the Commissioner, in the coastal area.

Section 14. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of the act as a whole or any part other than the part so declared to be unconstitutional or invalid.

Section 15. Section 4 of this act becomes effective October 1, 1997. Sections 2, 3, 6, 7, 8, 9, 10, and 13 of this act become effective January 1, 1998. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 696
Finance Committee Substitute Adopted 7/17/97
Third Edition Engrossed 8/13/97
Proposed House Committee Substitute S696-PCSA779

Short Title: Grantsboro Incorporated. (Local)

Sponsors:

Referred to:

April 7, 1997

A BILL TO BE ENTITLED

AN ACT TO INCORPORATE THE TOWN OF GRANTSBORO.

The General Assembly of North Carolina enacts:

Section 1. A Charter of the Town of Grantsboro is enacted as follows:

"THE CHARTER OF THE TOWN OF GRANTSBORO.

"CHAPTER I.

"INCORPORATION AND CORPORATE POWERS.

"Section 1-1. **Incorporation.** The inhabitants of the Town of Grantsboro are a body corporate and politic under the name 'Town of Grantsboro'. Under that name they have all the powers, duties, rights, privileges, and immunities conferred and imposed on cities by the general law of North Carolina.

"CHAPTER II.

"CORPORATE BOUNDARIES.

"Section 2-1. **Town Boundaries.** Until modified in accordance with the law, the boundaries of the Town of Grantsboro are as follows:

Beginning at the intersection of the centerline of the right-of-way of NC 55 and the western boundary of the corporate limits of the City of Alliance, and running thence in a southerly direction, contiguous with the corporate limits of Alliance, to a point on the South Prong of Bay River, south of Bay River Road (NCSR 1347);

Thence in a southwest direction along the South Prong of Bay River to the western boundary of Tax Parcel 14, Property of Jeffrey and Billy H. Holton as recorded on Tax Map F05 in DB 304, page 202;
Thence north along the western boundary of Tax Parcel 14 for 300 feet, more or less, to the northeast corner of Tax Parcel 34, Property of Rhoda Scott Dixon on Tax Map F051 in DB 170, page 181;
Thence westwardly along the northern boundary of Tax Parcel 34 to a point 1,000 feet east of the centerline of NC 306;
Thence in a southerly direction along a line parallel to and 1,000 feet east of the centerline of NC 306 to the southern boundary of Tax Parcel 52, Property of Geneva Parsons' Heirs on Tax Map F052, in DB 99, page 264;
Thence west along the southern boundary of Tax Parcel 52 to the centerline of NC 306;
Thence south 150 feet, more or less, along the centerline of NC 306 to the intersection of the centerlines of NC 306 and Scott's Store Road (NCSR 1108);
Thence west along the centerline of Scott's Store Road to Deep Run Branch;
Thence along the center of Deep Run Branch 1,250 feet, more or less, in a northwesterly direction to the northwest corner of Tax Parcel 19, Property of M.T. Whitford on Tax Map E05 in DB 124, page 271;
Thence in an easterly direction along the northern boundary of Tax Parcels 19, 15, 14, all on Tax Map E05, and Tax Parcels 33 and 37, both on Tax Map F052, to a point 1,000 feet west of NC 306;
Thence north along a line parallel to and 1,000 feet west of NC 306 to the southern edge of the Tideland EMC right-of-way which follows the old Bay River Road roadbed west of NC 306 to Keys Town Road (NCSR 1106);
Thence along the southern boundary of the Tideland EMC right-of-way to Keys Town Road;
Thence, 1,200 feet south, more or less, to a forest access road and the northwest corner of Tax Parcel 92, Property of Nora M. Lawson and Angelo B. Murrell on Tax Map E05 in DB 215, page 149;
Thence eastwardly along the northern boundary of Tax Parcels 92 and 93, both on Tax Map E05, to the northeast corner of 93;
Thence south along the eastern boundary of Tax Parcels 93, 89, 78, and 74, all on Tax Map E05, to the southeast corner of 74;
Thence westwardly along the southern boundary of Tax Parcels 74, 72 and 102, all on Tax Map E05, to Goose Creek;
Thence north along the center of Goose Creek to the centerline of NC 55;
Thence eastwardly 2,100 feet, more or less, along the centerline of NC 55 to the intersection of Tax Parcel 12, Property of Booker T. and Loretta Jones on Tax Map E05, DB 235, page 774 and the right-of-way of NC 55;
Thence in a northeast direction along the common boundary of Tax Parcels 12 and 14, both on Tax Map E04, and 65 on Tax Map E05 to Tax Parcel 13 on Tax Map E04;

Thence in a northwesterly and northeasterly direction around the perimeter of Tax Parcel 13 to a point on the southern boundary of Tax Parcel 31, Property of Weyerhaeuser Co. on Tax Map E04, DB 110, page 550;
Thence around the perimeter of Tax Parcel 31 in an easterly and northerly direction to Tax Parcel 3, Property of PCS Phosphate on Tax Map E03 in DB 305, page 831 at a point 950 feet west, more or less, from NC 306;
Thence across Tax Parcel 3 in a northerly direction to the southeast corner of Tax Parcel 33, Morris Logging Co. on Tax Map F041;
Thence along the common boundary of Tax Parcels 33 and 3 in a westwardly direction to the southwest corner of 33;
Thence along the eastern boundary of Tax Parcel 3 in a northerly direction to the northwest corner of Tax Parcel 42, Property of Bay Creek Trucking Inc. on Tax Map E031 in DB 275, page 795;
Thence east, 1000 feet, more or less, along the northern boundary of Tax Parcel 42 to the centerline of NC 306;
Thence southwardly 700 feet, more or less, along the centerline of NC 306 to a point which is the northern boundary of Tax Parcel 43 on Tax Map E031 extending to said road right-of-way;
Thence east along the northern boundary of Tax Parcels 43, 46, 47, 48, 48-1, all on Tax Map E031, to the northeast corner of 48-1;
Thence south along the eastern boundary of Tax Parcels 48-1, 49, 54, 57, 58, 61 and 62, all on Tax Map E031, to the southeast corner of 62;
Thence westwardly along the southern boundary of Tax Parcel 62 to the northeastern corner of Tax Parcel 68 on Tax Map E031;
Thence south along the eastern boundary of Tax Parcels 68, 77, 79, and 86, all on Tax Map E031, to the centerline of Paul's Farm Road (NCSR 1243);
Thence east along the centerline of NCSR 1243 to the eastern boundary of CP&L Transmission Lines right-of-way;
Thence south, southeast and east along the eastern and northern boundary of the CP&L Transmission Lines right-of-way to the corporate limits of the City of Alliance;
Thence south along the western boundary of the corporate limits of the City of Alliance to the centerline of NC 55 and the starting point.
All descriptions are based on maps in the Pamlico County Tax Office as of March 6, 1997.

In the event that any of the territory described above is, on the date this Charter becomes effective, within the corporate limits of another town, or is subject to an annexation ordinance of another town that has been adopted but is not yet effective, this Charter removes that territory from the corporate limits of that other town.

"CHAPTER III.

"GOVERNING BODY.

"Section 3-1. **Structure of the Governing Body; Number of Members.** The governing body of the Town of Grantsboro is the Town Council which has five members.

"Section 3-2. **Manner of Electing Council.** The qualified voters of the entire town nominate and elect the Council.

"Section 3-3. **Term of Office of Council Members.** Members of the Council are elected to two-year terms in 1997 and biennially thereafter.

"Section 3-4. **Mayor; Term of Office.** The Mayor shall be elected by the qualified voters of the Town in 1997 and biennially thereafter for a two-year term.

"CHAPTER IV.

"ELECTIONS.

"Section 4-1. **Elections.** Council members shall be elected on a plurality basis and the results determined in accordance with G.S. 163-292.

"Section 4-2. **Results.** Election results shall be determined by the Pamlico County Board of Elections according to Chapter 163 of the General Statutes.

"CHAPTER V.

"ADMINISTRATION.

"Section 5-1. **Mayor-Council Plan.** The Town of Grantsboro shall operate under the Mayor-Council Plan as provided in Part 3 of Article 7 of Chapter 160A of the General Statutes.

"Section 5-2. **Taxation and Funds.** The Town of Grantsboro is eligible to receive distributions of State funds during the fiscal year 1997-98."

Section 2. (a) From and after the effective date of this act, the citizens and property in the Town of Grantsboro shall be subject to municipal taxes levied for the year beginning July 1, 1997, and for that purpose the Town shall obtain from Pamlico County a record of property in the area herein incorporated which was listed for taxes as of January 1, 1997; and the businesses in the Town shall be liable for privilege license tax from the effective date of the privilege license tax ordinance.

(b) The Town may adopt a budget ordinance for fiscal year 1997-98 without following the timetable in the Local Government Budget and Fiscal Control Act but shall follow the sequence of actions in the spirit of the act insofar as is practical. For fiscal year 1997-98, ad valorem taxes may be paid at par or face amount within 90 days of adoption of the budget ordinance and thereafter in accordance with the schedule in G.S. 105-360 as if the taxes had been due and payable on September 1, 1997.

Section 3. Notwithstanding Sections 3-3 and 3-4 of the Charter of the Town of Grantsboro as set out in Section 1 of this act, the Pamlico County Board of Elections shall conduct the 1997 general election for Town Council and Mayor of Grantsboro at the same time as the incorporation referendum provided for by Section 4 of this act. In the election, if a majority of the votes are cast "FOR incorporation of the Town of Grantsboro", the persons elected shall serve terms ending at the organizational meeting after the 1999 municipal election. The Pamlico County Board of Elections shall adopt a special filing period for the election. As absentee balloting is allowed by law for the incorporation referendum under G.S. 163-302, it shall also be allowed for election of officers at that election. In the election, if a majority of the votes are not cast "FOR incorporation of the Town of Grantsboro", then the election of Town Council and Mayor is void.

Section 4. (a) The Pamlico County Board of Elections shall conduct an election on a date set by the Pamlico County Board of Elections for the purpose of submission to the qualified voters of the area described in Section 2-1 of the Charter of the Town of Grantsboro the question of whether or not such area shall be incorporated as the Town of Grantsboro. The date of the election shall be not less than 60 days nor more than 90 days after the date this act becomes law. Registration for the election shall be conducted in accordance with G.S. 163-288.2.

(b) In the election, the question on the ballot shall be:

"[ ] FOR [ ] AGAINST

Incorporation of the Town of Grantsboro".

Section 5. In the election, if a majority of the votes are cast "FOR incorporation of the Town of Grantsboro", Sections 1 and 2 of this act become effective on the date of the certification of the results of the election. Otherwise, Sections 1 and 2 of this act have no force and effect.

Section 6. This act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 696

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

S696-ARN-001 Page 1 of __

Date_____,1997

Comm. Sub. [X]
Amends Title [X]
Third Edition

Rep. _____

moves to amend the bill on page 1, lines 2-4, by rewriting those lines to read: "AN ACT TO INCORPORATE THE TOWN OF GRANTSBORO.";

and on page 5, lines 15-16, by deleting those lines.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 3

SENATE BILL 696
Finance Committee Substitute Adopted 7/17/97
Third Edition Engrossed 8/13/97

Short Title: Grantsboro Incorporated. (Local)

Sponsors:

Referred to:

April 7, 1997

A BILL TO BE ENTITLED

AN ACT TO INCORPORATE THE TOWN OF GRANTSBORO AND CONCERNING A SATELLITE ANNEXATION BY THE TOWN OF BEAUFORT.

The General Assembly of North Carolina enacts:

Section 1. A Charter of the Town of Grantsboro is enacted as follows:

"THE CHARTER OF THE TOWN OF GRANTSBORO.

"CHAPTER I.

"INCORPORATION AND CORPORATE POWERS.

"Section 1-1. **Incorporation.** The inhabitants of the Town of Grantsboro are a body corporate and politic under the name 'Town of Grantsboro'. Under that name they have all the powers, duties, rights, privileges, and immunities conferred and imposed on cities by the general law of North Carolina.

"CHAPTER II.

"CORPORATE BOUNDARIES.

"Section 2-1. **Town Boundaries.** Until modified in accordance with the law, the boundaries of the Town of Grantsboro are as follows:

Beginning at the intersection of the centerline of the right-of-way of NC 55 and the western boundary of the corporate limits of the City of Alliance, and running thence in a southerly direction, contiguous with the corporate limits of Alliance, to a point on the South Prong of Bay River, south of Bay River Road (NCSR 1347);

Thence in a southwest direction along the South Prong of Bay River to the western boundary of Tax Parcel 14, Property of Jeffrey and Billy H. Holton as recorded on Tax Map F05 in DB 304, page 202;
Thence north along the western boundary of Tax Parcel 14 for 300 feet, more or less, to the northeast corner of Tax Parcel 34, Property of Rhoda Scott Dixon on Tax Map F051 in DB 170, page 181;
Thence westwardly along the northern boundary of Tax Parcel 34 to a point 1,000 feet east of the centerline of NC 306;
Thence in a southerly direction along a line parallel to and 1,000 feet east of the centerline of NC 306 to the southern boundary of Tax Parcel 52, Property of Geneva Parsons' Heirs on Tax Map F052, in DB 99, page 264;
Thence west along the southern boundary of Tax Parcel 52 to the centerline of NC 306;
Thence south 150 feet, more or less, along the centerline of NC 306 to the intersection of the centerlines of NC 306 and Scott's Store Road (NCSR 1108);
Thence west along the centerline of Scott's Store Road to Deep Run Branch;
Thence along the center of Deep Run Branch 1,250 feet, more or less, in a northwesterly direction to the northwest corner of Tax Parcel 19, Property of M.T. Whitford on Tax Map E05 in DB 124, page 271;
Thence in an easterly direction along the northern boundary of Tax Parcels 19, 15, 14, all on Tax Map E05, and Tax Parcels 33 and 37, both on Tax Map F052, to a point 1,000 feet west of NC 306;
Thence north along a line parallel to and 1,000 feet west of NC 306 to the southern edge of the Tideland EMC right-of-way which follows the old Bay River Road roadbed west of NC 306 to Keys Town Road (NCSR 1106);
Thence along the southern boundary of the Tideland EMC right-of-way to Keys Town Road;
Thence, 1,200 feet south, more or less, to a forest access road and the northwest corner of Tax Parcel 92, Property of Nora M. Lawson and Angelo B. Murrell on Tax Map E05 in DB 215, page 149;
Thence eastwardly along the northern boundary of Tax Parcels 92 and 93, both on Tax Map E05, to the northeast corner of 93;
Thence south along the eastern boundary of Tax Parcels 93, 89, 78, and 74, all on Tax Map E05, to the southeast corner of 74;
Thence westwardly along the southern boundary of Tax Parcels 74, 72 and 102, all on Tax Map E05, to Goose Creek;
Thence north along the center of Goose Creek to the centerline of NC 55;
Thence eastwardly 2,100 feet, more or less, along the centerline of NC 55 to the intersection of Tax Parcel 12, Property of Booker T. and Loretta Jones on Tax Map E05, DB 235, page 774 and the right-of-way of NC 55;
Thence in a northeast direction along the common boundary of Tax Parcels 12 and 14, both on Tax Map E04, and 65 on Tax Map E05 to Tax Parcel 13 on Tax Map E04;

Thence in a northwesterly and northeasterly direction around the perimeter of Tax Parcel 13 to a point on the southern boundary of Tax Parcel 31, Property of Weyerhaeuser Co. on Tax Map E04, DB 110, page 550;
Thence around the perimeter of Tax Parcel 31 in an easterly and northerly direction to Tax Parcel 3, Property of PCS Phosphate on Tax Map E03 in DB 305, page 831 at a point 950 feet west, more or less, from NC 306;
Thence across Tax Parcel 3 in a northerly direction to the southeast corner of Tax Parcel 33, Morris Logging Co. on Tax Map F041;
Thence along the common boundary of Tax Parcels 33 and 3 in a westwardly direction to the southwest corner of 33;
Thence along the eastern boundary of Tax Parcel 3 in a northerly direction to the northwest corner of Tax Parcel 42, Property of Bay Creek Trucking Inc. on Tax Map E031 in DB 275, page 795;
Thence east, 1000 feet, more or less, along the northern boundary of Tax Parcel 42 to the centerline of NC 306;
Thence southwardly 700 feet, more or less, along the centerline of NC 306 to a point which is the northern boundary of Tax Parcel 43 on Tax Map E031 extending to said road right-of-way;
Thence east along the northern boundary of Tax Parcels 43, 46, 47, 48, 48-1, all on Tax Map E031, to the northeast corner of 48-1;
Thence south along the eastern boundary of Tax Parcels 48-1, 49, 54, 57, 58, 61 and 62, all on Tax Map E031, to the southeast corner of 62;
Thence westwardly along the southern boundary of Tax Parcel 62 to the northeastern corner of Tax Parcel 68 on Tax Map E031;
Thence south along the eastern boundary of Tax Parcels 68, 77, 79, and 86, all on Tax Map E031, to the centerline of Paul's Farm Road (NCSR 1243);
Thence east along the centerline of NCSR 1243 to the eastern boundary of CP&L Transmission Lines right-of-way;
Thence south, southeast and east along the eastern and northern boundary of the CP&L Transmission Lines right-of-way to the corporate limits of the City of Alliance;
Thence south along the western boundary of the corporate limits of the City of Alliance to the centerline of NC 55 and the starting point.
All descriptions are based on maps in the Pamlico County Tax Office as of March 6, 1997.

In the event that any of the territory described above is, on the date this Charter becomes effective, within the corporate limits of another town, or is subject to an annexation ordinance of another town that has been adopted but is not yet effective, this Charter removes that territory from the corporate limits of that other town.

"CHAPTER III.

"GOVERNING BODY.

"Section 3-1. **Structure of the Governing Body; Number of Members.** The governing body of the Town of Grantsboro is the Town Council which has five members.

"Section 3-2. **Manner of Electing Council.** The qualified voters of the entire town nominate and elect the Council.

"Section 3-3. **Term of Office of Council Members.** Members of the Council are elected to two-year terms in 1997 and biennially thereafter.

"Section 3-4. **Mayor; Term of Office.** The Mayor shall be elected by the qualified voters of the Town in 1997 and biennially thereafter for a two-year term.

"CHAPTER IV.

"ELECTIONS.

"Section 4-1. **Elections.** Council members shall be elected on a plurality basis and the results determined in accordance with G.S. 163-292.

"Section 4-2. **Results.** Election results shall be determined by the Pamlico County Board of Elections according to Chapter 163 of the General Statutes.

"CHAPTER V.

"ADMINISTRATION.

"Section 5-1. **Mayor-Council Plan.** The Town of Grantsboro shall operate under the Mayor-Council Plan as provided in Part 3 of Article 7 of Chapter 160A of the General Statutes.

"Section 5-2. **Taxation and Funds.** The Town of Grantsboro is eligible to receive distributions of State funds during the fiscal year 1997-98."

Section 2. (a) From and after the effective date of this act, the citizens and property in the Town of Grantsboro shall be subject to municipal taxes levied for the year beginning July 1, 1997, and for that purpose the Town shall obtain from Pamlico County a record of property in the area herein incorporated which was listed for taxes as of January 1, 1997; and the businesses in the Town shall be liable for privilege license tax from the effective date of the privilege license tax ordinance.

(b) The Town may adopt a budget ordinance for fiscal year 1997-98 without following the timetable in the Local Government Budget and Fiscal Control Act but shall follow the sequence of actions in the spirit of the act insofar as is practical. For fiscal year 1997-98, ad valorem taxes may be paid at par or face amount within 90 days of adoption of the budget ordinance and thereafter in accordance with the schedule in G.S. 105-360 as if the taxes had been due and payable on September 1, 1997.

Section 3. Notwithstanding Sections 3-3 and 3-4 of the Charter of the Town of Grantsboro as set out in Section 1 of this act, the Pamlico County Board of Elections shall conduct the 1997 general election for Town Council and Mayor of Grantsboro at the same time as the incorporation referendum provided for by Section 4 of this act. In the election, if a majority of the votes are cast "FOR incorporation of the Town of Grantsboro", the persons elected shall serve terms ending at the organizational meeting after the 1999 municipal election. The Pamlico County Board of Elections shall adopt a special filing period for the election. As absentee balloting is allowed by law for the incorporation referendum under G.S. 163-302, it shall also be allowed for election of officers at that election. In the election, if a majority of the votes are not cast "FOR incorporation of the Town of Grantsboro", then the election of Town Council and Mayor is void.

Section 4. (a) The Pamlico County Board of Elections shall conduct an election on a date set by the Pamlico County Board of Elections for the purpose of submission to the qualified voters of the area described in Section 2-1 of the Charter of the Town of Grantsboro the question of whether or not such area shall be incorporated as the Town of Grantsboro. The date of the election shall be not less than 60 days nor more than 90 days after the date this act becomes law. Registration for the election shall be conducted in accordance with G.S. 163-288.2.

(b) In the election, the question on the ballot shall be:

"[ ] FOR [ ] AGAINST

Incorporation of the Town of Grantsboro".

Section 5. In the election, if a majority of the votes are cast "FOR incorporation of the Town of Grantsboro", Sections 1 and 2 of this act become effective on the date of the certification of the results of the election. Otherwise, Sections 1 and 2 of this act have no force and effect.

Section 5.1. The provisions of G.S. 160A-58.1(b)(5) do not apply to the annexation of the Harry Taylor Farms property by the Town of Beaufort.

Section 6. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 496
Senate State Government, Local Government, and Personnel Committee Substitute Adopted 7/10/97
Third Edition Engrossed 8/21/97

Short Title: Lee/Municipal Structures. (Local)

Sponsors:

Referred to:

March 11, 1997

A BILL TO BE ENTITLED

AN ACT TO GRANT AUTHORITY TO THE MUNICIPALITIES LOCATED IN LEE COUNTY TO ADDRESS ABANDONED STRUCTURES IN THE SAME MANNER AS MUNICIPALITIES IN COUNTIES WITH A POPULATION OF OVER ONE HUNDRED SIXTY-THREE THOUSAND.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 733 of the 1995 Session Laws, as amended by S.L. 1997-101 and Ratified House Bill 699, 1997 Regular Session, reads as rewritten:

"Sec. 2. This act applies to the Cities of Greenville, Lumberton, and Roanoke ~~Rapids~~ Rapids, to the municipalities in Lee County, and the Towns of Bethel, Farmville, and Newport only."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 853
Appropriations Committee Substitute Adopted 7/3/97
Proposed Committee Substitute S853-PCSA770

Short Title: Revenue Officers' Police Powers. (Public)

Sponsors:

Referred to:

April 15, 1997

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE SECRETARY OF THE DEPARTMENT OF REVENUE TO APPOINT EMPLOYEES OF THE DEPARTMENT AS REVENUE LAW ENFORCEMENT AGENTS TO ENFORCE THE EXCISE TAXES ON UNAUTHORIZED SUBSTANCES AND THE CRIMINAL PROVISIONS OF THE REVENUE LAWS.

The General Assembly of North Carolina enacts:

Section 1. Article 9 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-236.1. Enforcement of revenue laws by revenue law enforcement agents.**

(a) General. -- The Secretary may appoint employees of the Criminal Investigations Division to serve as revenue law enforcement officers having the responsibility and subject-matter jurisdiction to enforce the felony tax violations in G.S. 105-236 and to enforce any of the following criminal offenses when they involve a tax imposed under Chapter 105 of the General Statutes: G.S. 14-91 (Embezzlement of State Property), G.S. 14-92 (Embezzlement of Funds), G.S. 14-100 (Obtaining Property By False Pretenses), G.S. 14-119 (Forgery), and G.S. 14-120 (Uttering Forged Paper).

The Secretary may appoint employees of the Unauthorized Substances Tax Division to serve as revenue law enforcement officers having the responsibility and subject-matter jurisdiction to enforce the excise tax on unauthorized substances imposed by Article 2D of this Chapter. To serve as a revenue law enforcement

officer, an employee must be certified as a criminal justice officer under Chapter 17C of the General Statutes.

(b) Authority. -- A revenue law enforcement officer is a State officer with jurisdiction throughout the State within the officer's subject-matter jurisdiction. A revenue law enforcement officer may serve and execute notices, orders, warrants, or demands issued by the Secretary or the General Court of Justice in connection with the enforcement of the officer's subject-matter jurisdiction. A revenue law enforcement officer has the full powers of arrest as provided by G.S. 15A-401 while executing the notices, orders, warrants, or demands."

Section 2. G.S. 17C-2 reads as rewritten:

"**§ 17C-2. Definitions.**

Unless the context clearly otherwise requires, the following definitions apply in this Chapter:

~~(a)~~ ~~"Commission" means the~~ (1) Commission. -- The North Carolina Criminal Justice Education and Training Standards ~~Commission;~~ Commission.

~~(b)~~ ~~"Criminal justice agencies" means the~~ (2) Criminal justice agencies. -- The State and local law-enforcement agencies, the State correctional agencies, other correctional agencies maintained by local governments, and the juvenile justice agencies, but shall not include deputy sheriffs, special deputy sheriffs, sheriffs' jailers, or other sheriffs' department personnel governed by the provisions of Chapter 17E of these General ~~Statutes;~~ Statutes.

~~(c)~~ ~~"Criminal justice officer(s)" means and incorporates the~~ (3) Criminal justice officers. -- The administrative and subordinate personnel of all the departments, agencies, units or entities comprising the ~~"criminal justice agencies," as defined in subsection (b),~~ criminal justice agencies who are sworn law-enforcement officers, both State and local, with the power of arrest; revenue law enforcement officers; State correctional officers; State probation/parole officers; officers, supervisory and administrative personnel of local confinement facilities; State youth services officers; State probation/parole intake officers; State probation/parole officers-surveillance; State probation/parole intensive officers; and State parole case analysts.

~~(d)~~ ~~"Entry level" means the~~ (4) Entry level. -- The initial appointment or employment of any person by a criminal justice agency, or any appointment or employment of a person previously employed by a criminal justice agency who has not been employed by a criminal justice agency for the 12-month period preceding this appointment or employment, or any appointment or employment of a previously certified criminal justice officer to a position which requires a different type of certification."

Section 3. G.S. 143-166.13(a) is amended by adding a new subdivision to read:

"(18) Sworn State Law-Enforcement Officers with the power of arrest, Department of Revenue."

Section 4. Of the funds appropriated from the General Fund to the Department of Revenue for operating expenses, the sum of sixty-seven thousand five hundred three dollars ($67,503) shall be used in the 1997-98 fiscal year to implement Sections 1 through 3 of this act.

Section 5. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 853
Appropriations Committee Substitute Adopted 7/3/97

Short Title: Revenue Officers' Police Powers. (Public)

Sponsors:

Referred to:

April 15, 1997

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE SECRETARY OF THE DEPARTMENT OF REVENUE TO APPOINT EMPLOYEES OF THE DEPARTMENT AS REVENUE LAW ENFORCEMENT AGENTS TO ENFORCE THE EXCISE TAX ON CONTROLLED SUBSTANCES AND THE CRIMINAL PROVISIONS OF THE REVENUE LAWS AND DIRECTING THE SECRETARY OF REVENUE TO NOTIFY AFFECTED INTANGIBLES TAXPAYERS BY MAIL AS SOON AS POSSIBLE OF THE COURT NOTICE IN THE CLASS ACTION LAWSUIT REGARDING REFUNDS.

The General Assembly of North Carolina enacts:

Section 1. Article 9 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-236.1. Enforcement of revenue laws by revenue law enforcement agents.**

(a) General. -- The Secretary may appoint employees of the Criminal Investigations Division to serve as revenue law enforcement officers having the responsibility and subject-matter jurisdiction to enforce the felony tax violations in G.S. 105-236 and to enforce any of the following criminal offenses when they involve a tax imposed under Chapter 105 of the General Statutes: G.S. 14-91 (Embezzlement of State Property), G.S. 14-92 (Embezzlement of Funds), G.S. 14-100 (Obtaining Property By False Pretenses), G.S. 14-119 (Forgery), and G.S. 14-120 (Uttering Forged Paper).

The Secretary may appoint employees of the Controlled Substances Tax Division to serve as revenue law enforcement officers having the responsibility and subject-

matter jurisdiction to enforce the excise tax on controlled substances imposed by Article 2D of this Chapter. To serve as a revenue law enforcement officer, an employee must be certified as a criminal justice officer under Chapter 17C of the General Statutes.

(b) Authority. -- A revenue law enforcement officer is a State officer with jurisdiction throughout the State within the officer's subject-matter jurisdiction. A revenue law enforcement officer may serve and execute notices, orders, warrants, or demands issued by the Secretary or the General Court of Justice in connection with the enforcement of the officer's subject-matter jurisdiction. A revenue law enforcement officer has the full powers of arrest as provided by G.S. 15A-401 while executing the notices, orders, warrants, or demands."

Section 2. G.S. 17C-2 reads as rewritten:

"**§ 17C-2. Definitions.**

Unless the context clearly otherwise requires, the following definitions apply in this Chapter:

~~(a)~~ ~~"Commission" means the~~ (1) Commission. -- The North Carolina Criminal Justice Education and Training Standards ~~Commission;~~ Commission.

~~(b)~~ ~~"Criminal justice agencies" means the~~ (2) Criminal justice agencies. -- The State and local law-enforcement agencies, the State correctional agencies, other correctional agencies maintained by local governments, and the juvenile justice agencies, but shall not include deputy sheriffs, special deputy sheriffs, sheriffs' jailers, or other sheriffs' department personnel governed by the provisions of Chapter 17E of these General ~~Statutes;~~ Statutes.

~~(c)~~ ~~"Criminal justice officer(s)" means and incorporates the~~ (3) Criminal justice officers. -- The administrative and subordinate personnel of all the departments, agencies, units or entities comprising the ~~"criminal justice agencies," as defined in subsection (b),~~ criminal justice agencies who are sworn law-enforcement officers, both State and local, with the power of arrest; revenue law enforcement officers; State correctional officers; State probation/parole officers; officers, supervisory and administrative personnel of local confinement facilities; State youth services officers; State probation/parole intake officers; State probation/parole officers-surveillance; State probation/parole intensive officers; and State parole case analysts.

~~(d)~~ ~~"Entry level" means the~~ (4) Entry level. -- The initial appointment or employment of any person by a criminal justice agency, or any appointment or employment of a person previously employed by a criminal justice agency who has not been employed by a criminal justice agency for the 12-month period preceding this appointment or employment, or any appointment or employment of a previously

certified criminal justice officer to a position which requires a different type of certification."

Section 3. G.S. 135-1(11b) reads as rewritten:

"(11b) 'Law-Enforcement Officer' means a full-time paid employee of an employer who is actively serving in a position with assigned primary duties and responsibilities for prevention and detection of crime or the general enforcement of the criminal laws of the State of North Carolina or serving civil processes, and who possesses the power of arrest by virtue of an oath administered under the authority of the State. The term does not include a revenue law-enforcement officer."

Section 4. G.S. 143-166.30(a)(4) reads as rewritten:

"(4) 'Law-enforcement officer' means a full-time paid employee of an employer who is actively serving in a position with assigned primary duties and responsibilities for prevention and detection of crime or the general enforcement of the criminal laws of the State or serving civil processes, and who possesses the power of arrest by virtue of an oath administered under the authority of the State. The term does not include a revenue law-enforcement officer."

Section 5. G.S. 143-166.13(a) is amended by adding a new subdivision to read:

"(18) Sworn State Law-Enforcement Officers with the power of arrest, Department of Revenue."

Section 6. Of the funds appropriated from the General Fund to the Department of Revenue for operating expenses, the sum of sixty-seven thousand five hundred three dollars ($67,503) shall be used in the 1997-98 fiscal year to implement Sections 1 through 5 of this act.

Section 7. (a) The Secretary of Revenue shall, as soon as possible, mail a copy of the Wake County Superior Court's notice in the class action lawsuit Smith v. State to all intangibles taxpayers that she has identified as possibly being affected and for whom she has identified a last known mailing address. The Secretary of Revenue shall draw the costs of implementing this subsection, up to a maximum of two hundred thousand dollars ($200,000), from collections under Division II of Article 4 of Chapter 105 of the General Statutes. The court's notice requires immediate action by affected taxpayers. The Secretary of Revenue shall, therefore, make an extraordinary effort to assure that the notices are sent as quickly as possible.

(b) It is the intent of the General Assembly that as many affected taxpayers as possible receive actual, complete information before the deadline set by the court for taxpayers to make a decision regarding the class action lawsuit. The Secretary of Revenue shall supplement the mailing required by this section with circulation of the court's notice to tax professionals and media outlets throughout the State and to any other person she considers appropriate to implement the intent of this section.

Section 8. This act is effective when it becomes law.

9:00

VISITOR REGISTRATION SHEET

RULES, CALENDAR, AND OPERATIONS OF THE HOUSE **AUGUST 27, 1997**

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
LYMAN COOPER	CSX CORP
Lucius PULLEN	ATTORNEY
Greg Maddux	Atlanta
Susan Randolph	DENR, OEE
Fred Allen	NC Ag. Assn.
R. ROGERS JR	ENR
Curt Williams	Govt Affairs
	Bell Call & Stroupe
[illegible]	Insurance Dept
BL BIRD	I/ANC
Bernard Allen	Secy of State
PG	NCFB
Michelle Cook	Weyerhaeuser
Deborah Ross	ACLU
BILL SCOGGIN	NCBA
HUGH TILSON	NCHA
Andy ROMANET	N.C.L.M.
Evelyn Hall Board	NCHFA
John Bowdish	Zeb Alley, PA.
Martha Glass	DOA
Elaine Monaghan	Council for Women
Vicky Young	NC Council for Women
Juanita Bryant	NC Council for Women
Laura Crawford	NCLC
F M Jones	NCRR
[illegible]	Retired
William H Gammon	Moore & Van Allen, Raleigh

9:00

VISITOR REGISTRATION SHEET

RULES, CALENDAR, AND OPERATIONS OF THE HOUSE **AUGUST 27, 1997**

Name of Committee Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Amy Auman	Smith Anderson
Lucia Reel	NC Medical Society
William Riddick	DOR
Jonda Smart	CAPIA
Marcus Rogers	NC DOT
Chris Kallum	Metro-Van-Allen
Cindy Cobb	DOR
Tom Dixon	DOR
Jim Worsley	
Mari Irvin	NCSA
Steve Keen	NCMS
Jerry Hall	NC Food Council
Eddie Caldwell	H McC McC P.A.
[illegible]	NC [illegible]
Douglas A. Van Essen	State Board of Cosmetic Art
R W Kaylor	Kaylor Law Firm
Wallace Hawkins	Charlotte Chamber
Robert Rose	Jordan, Price, Wall, Gray & Jones
Henry Jones	" " " " "
Kirsten Mitchell	NCAE/NCG
John Valentine	AFSCME
Leslie Bevacqua	NCCBT
Cam Covey	BPOMHL
David Simmons	ZDA, PA
David Fennell	Hoffa, McNamara, Caldwell, McElroy & Suttle PA

9:00

VISITOR REGISTRATION SHEET

RULES, CALENDAR, AND OPERATIONS OF THE HOUSE **AUGUST 27, 1997**

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jerry Wheeler	UNC-TV
John McMillan	Maupin Taylor & Ellis PA
Susan Valauri	Nationwide
Dick Zeh	NCCAUL
Alan Wilson	Bailey & Dixon LLP
Taylor Batten	Charlotte Observer
Samuel Williams	Bode & Assoc
Paul Stock	NC Bankers Assn.
Gene Upchurch	CP&L
Sean Kelly	NCBA
Jon Hall	Lance Cecil Assoc LLC
Ed	Capitol Strategies
Jeff Grant	NFIB
Jimmy Henderson	Hunton & Williams
Sandra Ray	NCAPP
[illegible]	[illegible]
Robert Redford	Hollywood, CA
Ruth Sappie	DOT

Recessed until 11:30

VISITOR REGISTRATION SHEET

RULES, CALENDAR, AND OPERATIONS OF THE HOUSE **AUGUST 27, 1997**

Name of Committee Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kirsten Mitchell	NLFRN(C)
[illegible]	[illegible]
[illegible]	GOPA
[illegible]	NZRA
[illegible]	UNC-TV
John McAlister	Duke Energy
Willie Riddick	DOR
Adam Searing	NCHAC
Rob Schofield	NCJCDC
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	CP&L
Douglas Van Essen	NC State Board of Cosmetic Art
Tommy Watts	CHS
Carmen Hooker Buell	CHS
[illegible]	NC Council of Churches
Andy Romanet	N.C.A.M.
Marion Smith	NCSA
[illegible]	NCHS
[illegible]	
[illegible]	[illegible]
[illegible]	DEHNR
Cara Cover	BPOMHL
[illegible]	DOR
Sabra Faires	DOR

11:30

VISITOR REGISTRATION SHEET

RULES, CALENDAR, AND OPERATIONS OF THE HOUSE **AUGUST 27, 1997**

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
TOM DIXON	DOR
Beth Riddle	D/O R
Jean M Kelly	Moore - Van Allen
Tom BEAN	NC Wildlife Federation
Teddy Hardesty	NC. Park Council
Dave Simpson	CAROLINAS AGC
Jenny Jones	Attorney - Raleigh
Judith MASK	Professional Insurance Agents Associ
Marshall Prosser	NC DOT
Robert PASchal	Young, Moore & Henderson, P.A.
Robert Pinn	Jordan Pinkston Mayo Tmo
Martha Glass	DOR
Vicky Young	NC Council for Women
Elaine Monaghan	NC Council for Women
Bill Seaton	NCBOR
John Smoltz	Atlanta
Suzanne Williams	Bowe & Assoc
Brenda Dougherty	Sprint
Ann Christian	NCAWA
Gary Harris	NCPMA
Doug Howey	NCPMA
K Ent	Capital Strategies
DON McCORQUODALE	NCRMA
Denny Batt	DEHNR
Laura Hartsell	NACIC
Mike Carroll	NCHBA
R. ROGERS	KHNR

MINUTES
COMMITTEE ON RULES, CALENDAR, AND OPERATIONS OF THE HOUSE
August 28, 1997
9:10 A.M.

The Committee on Rules, Calendar, and Operations of the House met August 28, 1997, at 9:10 a.m. in Room 421 in the Legislative Office Building. Representative Morgan, Committee Chair, called the meeting to order and asked the Clerk to call the roll. The following members were present: Representative Bowie, Vice Chair; and Representatives Crawford, Culp, Dockham, Esposito, Gulley, Hill, Miner, Mitchell, Neely, Thompson, and C. Wilson.

The following bills were considered:

Senate committee substitute for House Bill 435 - TO MAKE TECHNICAL CHANGES IN THE TEACHERS' AND STATE EMPLOYEES' COMPREHENSIVE MAJOR MEDICAL PLAN was back before the committee for recommendation for concurrence. The Chair recognized Representative Dockham, bill sponsor, who recommended that the House do concur with the Senate committee substitute. Motion carried.

Senate Committee Substitute for House Bill 786 - TO AMEND THE CHARTER OF THE CITY OF CONCORD TO ALLOW THE CITY MANAGER TO APPOINT THE FINANCE DIRECTOR AND THE CITY CLERK; TO PROVIDE FOR INITIATIVE AND REFERENDUM AUTHORITY FOR THE CONCORD CITY COUNCIL AND THE CABARRUS COUNTY BOARD OF COMMISSIONERS; AND AN ACT TO AMEND THE CHARTER OF THE CITY OF DURHAM AS IT RELATES TO VOLUNTARY ANNEXATIONS, PROTEST PETITIONS, THE APPROVAL OF PAYMENT OF FACILITIES FEES, AND THE RENAMING OF THE SUBDIVISION REVIEW BOARD, AND TO AMEND THE CHARTER OF THE CITY OF SANFORD RELATING TO THE PUBLICATION OF FRANCHISE ORDINANCES. Representative Moore, bill sponsor, urged the committee to support the committee substitute. Representative Thompson moved to recommend that the House do concur with the Senate committee substitute. Motion carried.

Senate Bill 122 - TO PROVIDE THAT THE LAWS RELATING TO MOTOR VEHICLES APPLY WITHIN THE LAKE ROYALE COMMUNITY IN FRANKLIN AND NASH COUNTIES. The Chair pointed out that the content of this bill had already been ratified in other format; however, there was a House committee substitute for Senate Bill 122, TO ALLOW A CONTRACTOR ON A PUBLIC PROJECT, ON BEHALF OF A SUBCONTRACTOR, TO FILE AN ACTION AGAINST THE OWNER REGARDING A CLAIM ARISING OUT OF THE CONTRACT BETWEEN THE SUBCONTRACTOR AND THE CONTRACTOR FOR THE SAME PROJECT THAT IS THE SUBJECT OF THE CONTRACT BETWEEN

THE CONTRACTOR AND THE OWNER AND TO MAKE NO DAMAGE FOR DELAY CLAUSES IN PUBLIC CONTRACTED UNENFORCEABLE. Representative Miner was recognized and moved that the committee substitute be adopted for discussion. Motion carried. Senator Hoyle was recognized to explain the committee substitute. He said two Senate bills had been rolled into this committee substitute to address a problem of the AGC office. Representative Miner moved to give the House committee substitute a favorable report; unfavorable to original bill. Motion carried.

House Committee Substitute for Senate Bill 550 - AN ACT TO AMEND CHAPTER 89C OF THE GENERAL STATUTES TO PROVIDE THAT THE DESIGN OF LAND APPLICATION IRRIGATION SYSTEMS FOR ANIMAL WASTE MANAGEMENT SYSTEMS MAY BE PERFORMED BY IRRIGATION DESIGN TECHNICAL SPECIALISTS AND CONCERNING AGRICULTURAL BEST MANAGEMENT PRACTICES. Representative Culp was recognized for a motion to adopt proposed House committee #2 to Senate Bill 550 for Committee discussion; motion carried. He then moved to give the House committee substitute bill #2 a favorable report and an unfavorable report to the original bill. Motion carried.

House Committee Substitute for Senate Bill 843 - AN ACT TO REPEAL OBSOLETE LAWS AND MAKE TECHNICAL AND CLARIFYING AMENDMENTS AND CORRECTIONS IN VARIOUS INSURANCE STATUTES; AND TO EXTEND THE EXPIRATION DATE OF THE 1986 RISK SHARING PLAN LAW. House committee substitute for Senate Bill 843 was before the Committee. Representative Dockham offered a proposed House committee substitute #2 for Senate Bill 843 and moved for its adoption for purposes of Committee discussion. Motion carried. Linwood Jones, Staff Counsel, was recognized to explain the changes in the committee substitute. He said that the majority of the changes were technical and had been considered in the Insurance Committee; however, some subtenant provisions were added on page 26 of the bill, Part XIV. Workers' Compensation TPA, third party administrators was pulled from SB 975 which has already been ratified. Other changes on page 30, lines 7 and 10, dealing with agent or broker of record; managed care contracts requires that insurance companies and service corporations must recognize the agents that have been designated by employers who must be licensed in good standing. A change on line 14 amends the law concerning exemptions on who must have an agent's license.

The Chairman recognized Susan Valauri, representative with Nationwide Insurance Company, who spoke in support of the change. Daschile Propes, chief deputy with the Department of Insurance, and Bob Bird, representing the Independent Agents, spoke in opposition to the regulation amendment. Jovita Mask with the Professional
Committee on Rules, Calendar, and Operations of the House
Insurance Association was recognized for comment and she also spoke in opposition to the change.

Representative Dockham was recognized for comment and asked to be excused from voting pursuant to Rule 24.1A. Representative Thompson moved to give a favorable report to the House committee substitute bill #2 and an unfavorable report to the House committee substitute bill #1 to Senate Bill 843. Motion carried. Two dissenting votes were cast.

House Committee Substitute for Senate Bill 932 -TO ESTABLISH HEALTH BENEFIT PLAN REPORTING AND DISCLOSURE REQUIREMENTS AND MAKE IMPROVEMENTS IN THE OPERATIONS OF HEALTH MAINTENANCE ORGANIZATIONS IN NORTH CAROLINA was before the Committee. Representative Hill moved that the House proposed committee substitute for Senate Bill 932 be adopted for Committee discussion. Motion carried. Senator Perdue, bill sponsor, was recognized to give an overview of the bill. She stated that the committee substitute contains the concepts of the four bills that have not been ratified and represents the consensus by all the players in managed care in North Carolina. She urged the committee to act favorably on the committee substitute. Counsel Linwood Jones was recognized to further explain the bill. He stated that the bill is organized into five parts--the first four parts correspond to the four bills to which Senator Perdue referred plus minor technical changes in the substitute. There are a number of conforming changes as two different pieces of managed care legislation have already been passed. The most substantive change from the four bills is the incorporation into this bill what the House passed sometime ago as House Bill 926, sponsored by Representative Brawley, being that for both PPO and HMO point of service plans, the penalty for going out of plans would be the same.

Representative Dockham was recognized for a motion to give House committee substitute for Senate Bill 932 a favorable report; unfavorable report to original bill. Motion carried

Senate Bill 992 - AN ACT AMENDING THE LAWS RELATED TO THE NORTH CAROLINA BOXING COMMISSION AND SUNSETTING THE COMMISSION AUGUST 1, 1998. Representative Bowie, vice-chair, recognized Representative Neely moved for the adoption of a proposed House committee substitute for Committee discussion. Motion carried. Representative Culpepper was recognized to explain the committee substitute which would bring our State law into compliance with the Federal Boxing Safety Act of 1996 and the Boxing Commission of this State. This bill was recommended by the Secretary of State's Office. It would also regulate boxing on the Cherokee Reservation. Representative Neely summarized an agreement with Mr. Shawn Lemmond, Director of the Boxing Commission, and Mr. Rodney Mattox, Chief Deputy Secretary of the Secretary of State's Office, to remove the tax provision and sunset. Representative Neely stated his intention to introduce a bill in the next short session to reimpose the tax and the sunset. Mr. Lemmond and Mr. Mattox were in attendance and in agreement with Representative Neely's intention to do this.

Representative Neely submitted an amendment to the proposed committee substitute for House Bill 992 and moved for its adoption. Motion carried. He then moved that the amendment be incorporated into a new committee substitute and be given a favorable report; unfavorable to original bill. Motion carried.

The meeting recessed until 10:30 a.m.

Representative Richard T. Morgan
Committee Chair

Anne M. Cole
Acting Committee Clerk

Attachments
Committee Reports
Bills
Visitor's Sheet

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House**.

☒ Senate Committee Substitute for
H.B. 435 A BILL TO BE ENTITLED AN ACT TO MAKE TECHNICAL CHANGES IN THE TEACHERS' AND STATE EMPLOYEES' COMPREHENSIVE MAJOR MEDICAL PLAN.

☐ 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)

4/24/97

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House**.

☒ Senate Committee Substitute for

H.B. 786 A BILL TO BE ENTITLED AN ACT TO AMEND THE CHARTER OF THE CITY OF CONCORD TO ALLOW THE CITY MANAGER TO APPOINT THE FINANCE DIRECTOR AND THE CITY CLERK; TO PROVIDE FOR INITIATIVE AND REFERENDUM AUTHORITY FOR THE CONCORD CITY COUNCIL AND THE CABARRUS COUNTY BOARD OF COMMISSIONERS; AND AN ACT TO AMEND THE CHARTER OF THE CITY OF DURHAM AS IT RELATES TO VOLUNTARY ANNEXATIONS, PROTEST PETITIONS, THE APPROVAL OF PAYMENT OF FACILITIES FEES, AND THE RENAMING OF THE SUBDIVISION REVIEW BOARD, AND TO AMEND THE CHARTER OF THE CITY OF SANFORD RELATING TO THE PUBLICATION OF FRANCHISE ORDINANCES.

☐ 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.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **Rules, Calendar and Operations of the House**.

☐ Committee Substitute for
S.B. 122 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT THE LAWS RELATING TO MOTOR VEHICLES APPLY WITHIN THE LAKE ROYALE COMMUNITY IN FRANKLIN AND NASH COUNTIES.

☐ 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 House 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)

4/24/97

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE**.

☒ House Committee Substitute for
S.B. 550 A BILL TO BE ENTITLED AN ACT TO AMEND CHAPTER 89C OF THE GENERAL STATUTES TO PROVIDE THAT THE DESIGN OF LAND APPLICATION IRRIGATION SYSTEMS FOR ANIMAL WASTE MANAGEMENT SYSTEMS MAY BE PERFORMED BY IRRIGATION DESIGN TECHNICAL SPECIALISTS AND CONCERNING AGRICULTURAL BEST MANAGEMENT PRACTICES, AND CLARIFYING THAT THE ENVIRONMENTAL MANAGEMENT COMMISSION MAY REQUIRE INDIVIDUAL AS WELL AS GENERAL PERMITS FOR ANIMAL WASTE MANAGEMENT SYSTEMS.

☐ 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 House committee substitute bill (# 2), ☒ which changes the title, unfavorable as to ~~original bill~~ (Committee Substitute Bill # 1), ~~(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.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **MORGAN** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE.**

☒ House Committee Substitute #1 for
S.B. 843 A BILL TO BE ENTITLED AN ACT TO REPEAL OBSOLETE LAWS AND MAKE TECHNICAL AND CLARIFYING AMENDMENTS AND CORRECTIONS IN VARIOUS INSURANCE STATUTES; AND TO EXTEND THE EXPIRATION DATE OF THE 1986 RISK SHARING PLAN LAW.

☐ 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 House committee substitute bill (# 2), ☒ which changes the title, unfavorable as to ~~original bill~~ (House Committee Substitute Bill # 1) ~~, (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)

4/24/97

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE**.

☒ Committee Substitute for
S.B. 932 A BILL TO BE ENTITLED AN ACT TO ESTABLISH HEALTH BENEFIT PLAN REPORTING AND DISCLOSURE REQUIREMENTS AND MAKE IMPROVEMENTS IN THE OPERATIONS OF HEALTH MAINTENANCE ORGANIZATIONS 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)

4/24/97

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE.**

☒ House Committee Substitute #2for
S.B. 992 A BILL TO BE ENTITLED AN ACT AMENDING THE LAWS RELATED TO THE NORTH CAROLINA BOXING COMMISSION AND TO INCREASE THE GROSS RECEIPTS TAX ON BOXING, KICKBOXING, AND TOUGHMAN EVENTS.

☐ 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~~ House substitute bill (# 3), ☒ which changes the title, unfavorable as to original bill (~~Committee~~ House Substitute Bill # 2), ~~(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)

4/24/97

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **RULES, CALENDAR AND OEPRATIONS OF THE HOUSE**.

☒ Committee Substitute for
S.B. 815 A BILL TO BE ENTITLED AN ACT TO APPOINT PERSONS TO VARIOUS PUBLIC OFFICES UPON THE RECOMMENDATION OF THE PRESIDENT PRO TEMPORE OF THE SENATE.

☐ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 435
Committee Substitute Favorable 8/18/97
Senate Rules and Operations of the Senate Committee Substitute Adopted 8/26/97

Short Title: State Health Plan Tech Amds/AB. (Public)

Sponsors:

Referred to:

March 10, 1997

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL CHANGES IN THE TEACHERS' AND STATE EMPLOYEES' COMPREHENSIVE MAJOR MEDICAL PLAN.

The General Assembly of North Carolina enacts:

Section 1. G.S. 135-40.1(1a) reads as rewritten:

"(1a) Covered Services. -- Any medically necessary, reasonable, and customary items of service, at least a portion of the expense of which is covered under at least one of the plans covering the person for whom claim is made or service provided. ~~To the extent legally possible, it~~ It shall be synonymous with allowable ~~expenses.~~ expenses, and with benefit or benefits."

Section 2. G.S. 135-40.1(7.1) reads as rewritten:

"(7.1) Experimental/Investigational Medical Procedures. -- ~~The use of any treatment, procedure, facility, equipment, drug, device, or supply not recognized as having scientifically established medical value nor accepted as standard medical treatment for the condition being treated as determined by the Executive Administrator and Board of Trustees upon the advice of the Claims Processor, nor any such items requiring federal or other governmental agency approval not granted at the time services were rendered. The Executive Administrator and Board of Trustees may overturn the advice of the Claims Processor upon convincing evidence from the American~~

~~Medical Association, North Carolina Medical Society, the United States Health Care Financing Administration, medical technological journals, associations of health care providers, and other major United States insurers of health care expenses on a consensus of medical value and accepted standard medical treatment.~~ The use of a service, supply, drug, or device not recognized as standard medical care for the condition, disease, illness, or injury being treated as determined by the Executive Administrator and Board of Trustees upon the advice of the Claims Processor. Determinations are made after independent review of scientific data. Opinions of experts in a particular field and opinions and assessments of nationally recognized review organizations shall also be considered by the Plan but are not determinative or conclusive. The fact that an experimental/investigational treatment is the only available treatment for a particular condition will not result in coverage if the treatment is experimental/investigational in the treatment of the particular condition, nor is it relevant for purposes of coverage that the member has tried other more conventional therapies without success. The following criteria are the basis for determination that a service or supply is investigational:

a. Services or supplies requiring federal or other governmental body approval, such as drugs and devices that do not have market approval from the Food and Drug Administration (FDA) or final approval from any other governmental regulatory body for use in treatment of the condition being treated, or are not recognized for the treatment of a condition in one of the standard reference compendia or in generally accepted peer-reviewed medical literature;
b. There is insufficient or inconclusive scientific evidence in peer review medical literature to permit the Plan's evaluation of the therapeutic value of the service or supply;
c. There is inconclusive evidence that the service or supply has a beneficial effect on health outcomes;
d. Is provided as part of a research or clinical trial;
e. Are provided pursuant to a written protocol or other document that lists an evaluation of the service's safety, toxicity, or efficacy as among its objectives;
f. Are subject to approval or review of an Institutional Review Board or other body that approves or reviews research; or
g. Are provided pursuant to informed consent documents that describe the service as experimental, investigational, or part of a research study."

Section 3. G.S. 135-40.6(6)i. reads as rewritten:

"i. No benefits are payable for organ transplants not listed in G.S. 135-40.6(5)a, nor will benefits be payable for surgical procedures or organ transplants determined ~~in the opinion of the~~ by the Executive Administrator and Board of Trustees upon the advice of the Claims Processor to be experimental."

Section 4. G.S. 135-40.7 is amended by adding the following subdivisions:

"(19) Any service, treatment, facility, equipment, drug, supply, or procedure that is experimental or investigational as defined in G.S. 1350-40.1(7.1).

(20) Complications arising from noncovered services known at the time the noncovered services were provided.

(21) Charges related to a noncovered service, even if the charges would have been covered if rendered in connection with a covered service."

Section 5. G.S. 135-40.6(6)j. reads as rewritten:

"j. No benefits are payable for radial keratotomy surgical ~~procedures.~~ procedures or for services to correct vision when performed in lieu of the use of corrective lenses."

Section 6. G.S. 135-40.6A(c) reads as rewritten:

"(c) No procedure for prior approval may be established except as provided by this ~~section~~ Article as it may be amended from time to time."

Section 7. G.S. 135-40.6(1) reads as rewritten:

"(1) In-Hospital Benefits. -- The Plan pays in-hospital benefits for each single confinement, when charged by a hospital, for room accommodations, including bed, board and general nursing care, but not to exceed the charge for semiprivate room or ward accommodations, or the rate negotiated for the Plan. Under the DRG reimbursement system, the coinsurance shall be based on the lower of the DRG amount or charges.

The Plan will pay the following covered charges, when charged by a hospital, for each confinement.

a. Intensive and cardiac nursing care.
b. All recognized drugs and medicines for use in the hospital.
c. Radiation services, including diagnostic x-rays, x-ray therapy, radiation therapy and treatment.
d. Clinical and pathological laboratory examinations.
e. Electrocardiograms and electroencephalograms.
f. Physical therapy.
g. Intravenous solutions.
h. Oxygen and oxygen therapy, plus the use of equipment.
i. Dressings, ordinary splints, plaster casts and sterile supplies.

j. Use of operating, delivery, recovery and treatment rooms and equipment.

k. Routine nursery charges, if the mother is eligible to receive maternity benefits.

l. Anesthetics and the administration thereof by the hospital's employee anesthesiologist.

m. Devices or appliances surgically inserted within the body.

n. Processing and administering of blood and blood plasma.

o. Children are entitled to benefits for treatment of illnesses or congenital defect, incubation or isolette care, and treatment of prematurity or postmaturity.

If the mother is a covered individual, benefits are provided for the newborn's circumcision and routine nursery care.

p. When a covered individual is admitted to or transferred to a section of a hospital providing ambulant, convalescent, or rehabilitative care, benefits are provided up to the average number of days of service for treatment of the particular diagnosis or condition involved, or more if medical necessity requires.

q. The Plan pays benefits for laboratory testing and administration of blood provided to a covered individual.

When a covered individual is the recipient of transplanted organs or bones, benefits are provided for services to the donor which are directly and specifically related to the transplantation.

r. Repealed by Session Laws 1991, c. 427, s. 31.

s. The use of nebulizers when authorized as medically necessary by the attending physician."

Section 8. G.S. 135-40.6(2)f. reads as rewritten:

"f. Prior to admission for scheduled inpatient hospitalization, the admitting physician shall contact the Plan and secure approval certification for an inpatient admission, including a length of stay, based upon clinical criteria established by the medical community, before any in-hospital benefits are allowed under G.S. 135-40.8(a). Immediately following an emergency or unscheduled inpatient hospitalization, the admitting physician shall contact the Plan and secure approval certification for the admission's length of stay before any in-hospital benefits are allowed under G.S. 135-40.8(a). ~~Effective January 1, 1987, failure~~ Failure to secure certification, or denial of certification, shall result in ~~in-hospital benefits being allowed at the rate maximum amount of out-of-pocket expenses established by G.S.~~

~~135-40.8(b).~~ a penalty of fifty percent (50%) of the eligible expenses up to five hundred dollars ($500.00) per admission and the denial of services that were not medically necessary or appropriate, as determined by the Claims Processor. Denial of certification by the Plan shall be made only after contact with the admitting physician and shall be subject to appeal to the Executive Administrator and Board of Trustees. Inpatient hospital admission and length of stay certifications required by this subdivision do not apply to inpatient admissions outside of the United States. While approval certification for inpatient admissions is required to be initiated by the admitting physician, the employee or individual covered by the Plan shall be responsible for insuring that the required certification is secured. Failure to secure certification for inpatient hospitalization shall not result in a penalty to the employee or individual when approval would have been given if requested. Denial of services under this subsection shall be done only after notification of the Plan member of his or her personal financial responsibility for such services."

Section 9. G.S. 135-40.1 is amended by adding a new subdivision to read:

"(17a) Skilled Care. -- Medically necessary services that can only be rendered under State law or regulation by licensed health professionals such as a medical doctor, physician's assistant, physical therapist, occupational therapist, speech therapist, certified clinical social worker, certified nurse midwife, licensed practical nurse, or registered nurse."

Section 10. G.S. 135-40.6(3) reads as rewritten:

"(3) Skilled Nursing Facility Benefits. -- The Plan will pay benefits in a skilled nursing facility licensed under applicable State laws as follows:

After discharge from a hospital for which inpatient hospital benefits were provided by this Plan for a period of not less than three days, and treatment consistent with the same illness or condition for which the covered individual was hospitalized, the daily charges will be paid for room and board in a semiprivate room or any multibed unit up to the maximum benefit specified in subsection (1) of this section, less the days of care already provided for the same illness in a hospital. Plan allowances for total daily charges may be negotiated but will not exceed the daily semiprivate hospital room rate as determined by the Plan.

Credit will be allowed toward private room charges in an amount equal to the facility's most prevalent charge for semiprivate accommodations. Charges will also be paid for general

nursing care and other services which would ordinarily be covered in a general hospital. In order to be eligible for these benefits, admission must occur within 14 days of discharge from the hospital.

In order to qualify for benefits provided by a skilled nursing facility, the following stipulations apply:

a. The services are medically required to be given on an inpatient basis because of the covered individual's need for medically necessary skilled nursing care on a continuing daily basis for any of the conditions for which he or she was receiving inpatient hospital services prior to transfer from a hospital to the skilled nursing facility or for a condition requiring such services which arose after such transfer and while he or she was still in the facility for treatment of the condition or conditions for which he or she was receiving inpatient hospital services,

b. Only on prior referral by and so long as, the patient remains under the active care of an attending doctor ~~who certifies that~~ and the patient requires continual hospital confinement ~~would be required~~ without the care and treatment of the skilled nursing facility, and

c. Approved in advance by the Claims Processor.

For facilities not qualified for delivery of services covered by the benefits of Title XVIII of the Social Security Act (Medicare), neither the Plan nor any of its members shall be billed or held liable by such facilities for charges that otherwise would be covered by Medicare."

Section 11. G.S. 135-40.6(8)c. reads as rewritten:

"c. Home Health Agency Services: Services provided in a covered individual's home, when ordered by the attending physician ~~who certifies that~~ and hospital or skilled nursing facility confinement would be required for the patient without such treatment and cannot be readily provided by family members. Services may include medical supplies, equipment, appliances, therapy services (when provided by a qualified speech therapist or licensed physiotherapist), and nursing services. Nursing services will be allowed for:

1. Services of a registered nurse (RN); or
2. Services of a licensed practical nurse (LPN) under the supervision of a RN; or
3. Services of a home health aide which are an adjunct to or extension of concurrent medically necessary skilled services under the supervision of a RN, limited to four hours a day.

Home health services shall be limited to 60 days per fiscal year, except that additional home health services may be provided on an individual basis if prior approval is obtained from the Claims Processor. Plan allowances for home health services shall be limited to licensed or Medicare certified home health agencies and shall not exceed ninety percent (90%) of the skilled nursing facility semiprivate rates as determined by the Plan, or charges negotiated by the Plan."

Section 12. G.S. 135-40.1(11) reads as rewritten:

"(11) Home Health Care Coverage. -- Coverage for home care and treatment established and approved in writing by a physician ~~who certifies that~~ for an individual whom continual hospital confinement would be required without the care and treatment specified by this coverage."

Section 13. G.S. 135-40.7(5) reads as rewritten:

"(5) Charges for any care, treatment, services or supplies other than those which are certified by a physician who is attending the individual as being required for the medically necessary treatment of the injury or ~~disease.~~ disease and are deemed medically necessary and appropriate for the treatment of the injury or disease by the Executive Administrator and Board of Trustees upon the advice of the Claims Processor. This subdivision shall not be construed, however, to require certification by an attending physician for a service provided by an advanced practice registered nurse acting within the nurse's lawful scope of practice, subject to the limitations of G.S. 135-40.6(10)."

Section 14. G.S. 135-40.7B reads as rewritten:

"§ 135-40.7B. Special provisions for chemical dependency and mental health benefits.

(a) Except as otherwise provided in this section, benefits for the treatment of mental illness and chemical dependency are covered by the Plan and shall be subject to the same deductibles, durational limits, and coinsurance factors as are benefits for physical illness generally.

(b) Notwithstanding any other provision of this Part, the following necessary services for the care and treatment of chemical dependency and mental illness shall be covered under this section: allowable institutional and professional charges for inpatient ~~psychiatric~~ care, outpatient ~~psychotherapy,~~ care, intensive outpatient ~~crisis management,~~ program services, partial hospitalization treatment, and residential care and ~~treatment.~~ treatment:

(1) For mental illness treatment:

a. Licensed psychiatric hospitals;

b. Licensed psychiatric beds in licensed general hospitals;

c. Licensed residential treatment facilities;

d. Area Mental Health, Developmental Disabilities, and Substance Abuse Authorities;
e. Licensed intensive outpatient treatment programs; and
f. Licensed partial hospitalization programs.

(2) For chemical dependency treatment:
a. Licensed chemical dependency units in licensed psychiatric hospitals;
b. Licensed chemical dependency hospitals;
c. Licensed chemical dependency treatment facilities;
d. Area Mental Health, Developmental Disabilities, and Substance Abuse Authorities;
e. Licensed intensive outpatient treatment programs;
f. Licensed partial hospitalization programs; and
g. Medical detoxification facilities or units.

~~The benefits provided by this section are separate and apart from those provided by G.S. 135-40.7A.~~

(c) Notwithstanding any other provisions of this Part, the following providers ~~are authorized to~~ and no others may provide necessary care and treatment for mental ~~illness~~ health under this section:

(1) ~~Licensed psychiatrists;~~ Psychiatrists who have completed a residency in psychiatry approved by the American Council for Graduate Medical Education and who are licensed as medical doctors or doctors of osteopathy in the state in which they perform and services covered by the Plan;
(2) Licensed or certified doctors of psychology;
(3) Certified clinical social workers;
(3a) Licensed professional counselors;
(4) ~~Psychiatric nurses;~~ Certified clinical specialists in psychiatric and mental health nursing;
(4a) Nurses working under the employment and direct supervision of such physicians, psychologists, or psychiatrists;
~~(5) Other social workers under the direct employment and supervision of a licensed psychiatrist or licensed doctor of psychology;~~
(6) Psychological associates with a ~~master's~~ masters degree in psychology under the direct employment and supervision of a licensed psychiatrist or licensed or certified doctor of psychology; and
~~(7) Licensed psychiatric hospitals and licensed general hospitals providing psychiatric treatment programs;~~
~~(8) Certified residential treatment facilities, community mental health centers, and partial hospitalization facilities; and~~
(9) Certified fee-based practicing pastoral counselors.

(c1) Notwithstanding any other provisions of this Part, the following providers and no others may provide necessary care and treatment for chemical dependency under this section:

(1) The following providers with appropriate substance abuse training and experience in the field of alcohol and other drug abuse as determined by the mental health case manager, in facilities described in subdivision (b)(2) of this section, in day/night programs or outpatient treatment facilities licensed after July 1, 1984, under Article 2 of Chapter 122C of the General Statutes or in North Carolina area programs in substance abuse services are authorized to provide treatment for chemical dependency under this section:

a. Licensed physicians including, but not limited to, physicians who are certified in substance abuse by the American Society of Addiction Medicine (ASAM);

b. Licensed or certified psychologists;

c. Psychiatrists;

d. Certified substance abuse counselors working under the direct supervision of such physicians, psychologists, or psychiatrists;

e. Psychological associates with a masters degree in psychology working under the direct supervision of such physicians, psychologists, or psychiatrists;

f. Nurses working under the direct supervision of such physicians, psychologists, or psychiatrists;

g. Certified clinical social workers;

h. Certified clinical specialists in psychiatric and mental health nursing;

i. Licensed professional counselors; and

j. Certified fee-based practicing pastoral counselors until July 1, 1999.

(2) The following providers with appropriate substance abuse training and experience in the field of alcohol and other drug abuse as determined by the mental health case manager are authorized to provide treatment for chemical dependency in outpatient practice settings:

a. Licensed physicians who are certified in substance abuse by the American Society of Addiction Medicine (ASAM);

b. Licensed or certified psychologists;

c. Psychiatrists;

d. Certified substance abuse counselors working under the employment and direct supervision of such physicians, psychologists, or psychiatrists;

e. Psychological associates with a masters degree in psychology working under the employment and direct supervision of such physicians, psychologists, or psychiatrists;
f. Nurses working under the employment and direct supervision of such physicians, psychologists, or psychiatrists;
g. Certified clinical social workers;
h. Certified clinical specialists in psychiatric and mental health nursing;
i. Licensed professional counselors;
j. Licensed fee-based practicing pastoral counselors until July 1, 1999; and
k. In the absence of meeting one of the criteria above, the Mental Health Case Manager could consider, on a case-by-case basis, a provider who supplies:
1. Evidence of graduate education in the diagnosis and treatment of chemical dependency, and
2. Supervised work experience in the diagnosis and treatment of chemical dependency (with supervision by an appropriately credentialed provider), and
3. Substantive past and current continuing education in the diagnosis and treatment of chemical dependency commensurate with one's profession.

Provided, however, that nothing in this subsection shall prohibit the Plan from requiring the most cost-effective treatment setting to be utilized by the person undergoing necessary care and treatment for chemical dependency.

(d) Benefits provided under this section shall be subject to a ~~managed, individualized care component~~ case management program for medical necessity and medical appropriateness consisting of (i) precertification of outpatient visits beyond 26 visits each Plan year, (ii) all electroconvulsive treatment, (iii) inpatient utilization review through preadmission and length-of-stay certification for ~~scheduled inpatient~~ nonemergency admissions to the following levels of care: inpatient units, partial hospitalization programs, residential treatment centers, chemical dependency detoxification and treatment programs, and intensive outpatient programs, (iv) ~~and~~ length-of-stay ~~reviews for unscheduled~~ certification of emergency inpatient admissions, and ~~(ii)~~ (v) a network of qualified, available providers of inpatient and outpatient psychiatric and chemical dependency ~~treatment psychotherapy.~~ treatment. Care which is not both medically necessary and medically appropriate will be noncertified, and benefits will be denied. Where qualified preferred providers of inpatient and outpatient care are reasonably available, use of providers outside of the preferred network shall be subject to a twenty percent (20%) coinsurance rate up to five thousand dollars ($5,000) per fiscal year to be assessed against each covered individual in addition to the general coinsurance percentage and maximum fiscal year amount specified by G.S. 135-40.4 and G.S. 135-40.6.

(e) For the purpose of this section, 'emergency' is the sudden and unexpected onset of a condition manifesting itself by acute symptoms of sufficient severity that, in the absence of an immediate psychiatric or chemical dependency inpatient admission, could imminently result in injury or danger to self or others."

Section 15. G.S. 135-40.7A is repealed.

Section 16. G.S. 135-40.1(7) reads as rewritten:

"(7) Enrollment. -- New employees must enroll themselves and their dependents within 30 days from the date of ~~employment.~~ employment or from first becoming eligible on a noncontributory basis. Coverage may become effective on the first day of the month following date of entry on payroll or on the first day of the following month. New employees not enrolling themselves and their dependents within 30 days, or not adding dependents when first eligible as provided herein may enroll on the first day of any month but will be subject to a 12-month waiting period for preexisting health conditions, except for employees who elect to change their coverage in accordance with rules established by the Executive Administrator and Board of Trustees for optional prepaid hospital and medical benefit plans. Children born to covered employees having coverage type (2), or (3), as outlined in G.S. 135-40.3(d) shall be automatically covered at the time of birth without any waiting period for preexisting health conditions. Children born to covered employees having coverage type (1) shall be automatically covered at birth without any waiting period for preexisting health conditions so long as the Claims Processor receives notification within 30 days of the date of birth that the employee desires to change from coverage (1) to coverage type (2), or (3), provided that the employee pays any additional premium required by the coverage type selected retroactive to the first day of the month in which the child was born.

Newly acquired dependents (spouse/child) enrolled within 30 days of becoming an eligible dependent will not be subject to the 12-month waiting period for preexisting conditions. A dependent can become qualified due to marriage, adoption, entering a foster child relationship, due to the divorce of a dependent child or the death of the spouse of a dependent child, and at the beginning of each legislative session (applies only to enrolled legislators). Effective date for newly acquired dependents if application was made within the 30 days can be the first day of the following month. Effective date for an adopted child can be date of adoption, or date of placement in the adoptive parent's home, or the first of the month following the date of adoption or placement."

Section 17. G.S. 135-40.2(a) is amended by adding new subdivisions to read:

"(7) Any member enrolled pursuant to subdivision (1) or (1a) of this subsection who is on approved leave of absence with pay or receiving workers' compensation.

(8) Employees on approved Family and Medical Leave."

Section 18. G.S. 135-40.1(8) reads as rewritten:

"(8) Health Benefits Representative. -- The employee designated by the employing unit to administer the Comprehensive Major Medical Plan for the unit and its employees. The HBR is responsible for enrolling new employees, reporting changes, explaining benefits, reconciling group statements and remitting group fees. The State Retirement System is the Health Benefits Representative for retired members."

Section 19. G.S. 135-40.2(b)(2a) reads as rewritten:

"(2a) For enrollments after September 30, 1986, former members of the General Assembly if covered under the Plan at termination of membership in the General Assembly. To be eligible for coverage as a former member of the General Assembly, application must be made within 30 days of the end of the term of office. Only members of the General Assembly covered by the Plan at the end of the term of office are eligible. If application is not made within the specified time period, the member forfeits eligibility."

Section 20. G.S. 135-40.2(b)(5) reads as rewritten:

"(5) The spouses and eligible dependent children of enrolled teachers, State employees, retirees, former members of the General Assembly, former employees covered by the provisions of G.S. 135-40.2(a)(6), Disability Income Plan beneficiaries, enrolled continuation members, and members of the General Assembly. Spouses of surviving dependents are not eligible, nor are dependent children if they were not covered at the time of the member's death. Surviving spouses may cover their dependent children provided the children were enrolled at the time of the member's death or enroll within 30 days of the member's death."

Section 21. G.S. 135-40.2(b)(6) reads as rewritten:

"(6) Blind persons licensed by the State to operate vending facilities under contract with the Department of Human Resources, Division of Services for the Blind and its successors, who are:

a. Operating such a vending facility;

b. Former operators of such a vending facility whose service as an operator would have made these operators eligible for an early or service retirement allowance under Article 1 of this Chapter had they been members of the Retirement System; and

c. Former operators of such a vending facility who attain five or more years of service as operators and who become eligible for and receive a disability benefit under the Social Security Act upon cessation of service as an operator.

Spouses, dependent children, surviving spouses, and surviving dependent children of such members are not eligible for coverage."

Section 22. G.S. 135-40.2(b)(4a) is repealed.

Section 23. G.S. 135-40.2(b)(10) reads as rewritten:

"(10) Any eligible dependent child of the deceased retiree, teacher, State employee, ~~or~~ member of the General ~~Assembly,~~ Assembly, former member of the General Assembly, or Disability Income Plan beneficiary, provided the child was covered at the time of death of the retiree, teacher, State employee, ~~or~~ member of the General ~~Assembly~~ Assembly, former member of the General Assembly, or Disability Income Plan beneficiary, (or was in posse at the time and is covered at birth under this Part), or was covered under the Plan on September 30, 1986. ~~Any eligible spouse or dependent child of a person eligible under subdivision (8) of this subsection if the spouse or dependent child was enrolled before October 1, 1986.~~ An eligible surviving dependent child can remain covered until age 19, or age 26 if a full-time student, or indefinitely if certified as incapacitated under G.S. 135-40.1(3)b."

Section 24. G.S. 135-40.2(c) reads as rewritten:

"(c) No person shall be eligible for coverage as ~~an employee or retired employee and as a dependent of an employee or retired employee at the same time.~~ a dependent if eligible as an employee or retired employee, except when a spouse is eligible on a fully contributory basis. In addition, no person shall be eligible for coverage as a dependent of more than one employee or retired employee at the same time."

Section 25. G.S. 135-40.2(d) reads as rewritten:

"(d) Former employees who are receiving disability retirement benefits or disability income benefits pursuant to Article 6 of Chapter 135 of the General Statutes, provided the former employee has at least five years of retirement membership service, shall be eligible for the benefit provisions of this Plan, as set forth in this Part, on ~~the same basis as a retired employee.~~ a noncontributory basis. Such coverage shall terminate as of the end of the month in which such former employee is no longer eligible for disability retirement benefits or disability income benefits pursuant to Article 6 of this Chapter."

Section 26. G.S. 135-40.2 is amended by adding a new subsection to read:

"(i) Any employee receiving benefits pursuant to Article 6 of this Chapter when the employee has less than five years of retirement membership service, or an employee on leave without pay due to illness or injury for up to 12 months, is

entitled to continued coverage under the Plan for the employee and any eligible dependents by paying one hundred percent (100%) of the cost."

Section 27. G.S. 135-40.2(g) reads as rewritten:

"(g) An eligible surviving spouse and any eligible surviving dependent child of a deceased retiree, teacher, State employee, ~~or~~ member of the General ~~Assembly~~ Assembly, former member of the General Assembly, or Disability Income Plan beneficiary shall be eligible for group benefits under this section without waiting periods for preexisting conditions provided coverage is elected within 90 days after the death of the former plan member. Coverage may be elected at a later time, but will be subject to the 12-month waiting period for preexisting conditions and will be effective the first day of the month following receipt of the application."

Section 28. G.S. 135-40.3(b)(4) reads as rewritten:

"(4) Employees and dependents ~~reenrolled~~ enrolling or reenrolling within 12 months after a termination of ~~enrollment,~~ enrollment or employment that were not enrolled at the time of this previous termination, regardless of the employing units involved, shall not be considered as newly-eligible employees or dependents for the purposes of waiting periods and preexisting conditions. Employees and dependents transferring from optional prepaid plans in accordance with G.S. 135-39.5B; employees and dependents immediately returning to service from an employing unit's approved periods of leave without pay for illness, injury, educational improvement, workers' compensation, parental duties, or for military reasons; employees and dependents immediately returning to service from a reduction in an employing unit's work force; retiring employees and dependents reenrolled in accordance with G.S. 135-40.3(b)(3); formerly-enrolled dependents reenrolling as eligible employees; formerly-enrolled employees reenrolling as eligible dependents; and employees and dependents reenrolled without waiting periods and preexisting conditions under specific rules and regulations adopted by the Executive Administrator and Board of Trustees in the best interests of the Plan shall not be considered reenrollments for the purpose of this subdivision. Furthermore, employees accepting permanent, full-time appointments who had previously worked in a part-time or temporary position and their qualified dependents shall not be covered by waiting periods and preexisting conditions under this division provided enrollment as a permanent, full-time employee is made when the employee and his dependents are first eligible to enroll."

Section 29. G.S. 135-40.3(c)(3) reads as rewritten:

"(3) Employees and retired employees may change from individual or parent/child(ren) coverage to parent/child(ren) or family coverage or add dependents to existing family or parent/child(ren) coverage

upon acquiring a dependent without a waiting period for preexisting conditions, and such dependents will be covered under the Plan the first of the month or the first of the second month following the dependent's eligibility for coverage, provided ~~upon~~ written application ~~at any time after acquiring a dependent, and such dependent will be covered under the Plan beginning the first of the next calendar month following receipt of such application by the Claims Processor.~~ is submitted to the Health Benefits Representative within 30 days of becoming eligible."

Section 30. G.S. 135-40.3(c)(4) reads as rewritten:

"(4) Employees or retired employees who wish to change from family coverage to parent/child(ren) or individual or from parent/child(ren) to individual coverage shall give written notice to ~~the Claims Processor within 31~~ their Health Benefits Representative within 30 days after any change in the status of dependents, (resulting from death, divorce, etc.) ~~which~~ that requires a change ~~from family coverage to individual coverage.~~ in contract type. The effective date will be the first of the month following the dependent's ineligibility event. If notification was not made within the 30 days following the dependent's ineligibility event, the dependent will be retroactively removed the first of the month following the dependent's ineligibility event, and the coverage type change will be the first of the month following written notification, except in cases of death, in which case the coverage type change will be made retroactive to the first of the month following the death."

Section 31. G.S. 135-40.3(c) is amended by adding two new subdivisions to read:

"(6) Employees or retired employees who wish to change from family to parent/child(ren) or individual coverage or from parent/child(ren) to individual coverage, even though their dependents continue to be eligible, shall give written notification to their Health Benefits Representative. Effective date of this type change will be the first of the month following written notification or any first of the month thereafter as desired by the employee.

(7) The effective date for newborns or adopted children will be date of birth, date of adoption, or placement with adoptive parent provided member is currently covered under a family or parent/child(ren) coverage. If the member wishes to add a newborn or adopted child and is currently enrolled on individual coverage, the member must submit application for coverage and a coverage type change within 30 days of the child's birth or date of adoption or placement. Effective date for the coverage type change is the first of the month in which the child is born,

adopted, or placed. Adopted children may also be covered the first of the month following placement or adoption."

Section 32. G.S. 135-40.11(a)(7) reads as rewritten:

"(7) The last day of the month in which an employee who is Medicare-eligible selects Medicare to be the primary payer of medical benefits. Coverage for a Medicare-eligible spouse of an employee shall also cease the last day of the month in which Medicare is selected to be the primary payer of medical benefits for the Medicare-eligible spouse. Such members are eligible to apply for conversion coverage."

Section 33. G.S. 135-40.11(b) is amended by adding a new subsection to read:

"(b1) Coverage under the Plan as a surviving dependent child whether covered as a dependent of a surviving spouse, or as an individual member (no living parent), ceases when the child ceases to be a dependent child as defined by G.S. 135-40.1(3), except coverage may continue under the Plan on a fully contributory basis for a period of not more than 36 months after loss of dependent status."

Section 34. G.S. 135-40.11(c)(1) reads as rewritten:

"(1) In the event of termination for any reason other than death, coverage under the Plan for an employee and his or her eligible spouse or dependent children, provided the eligible spouse or dependent children were covered under the Plan at termination of employment ~~or were covered on September 30, 1986,~~ may be continued for a period of not more than 18 months following termination of employment on a fully contributory basis. Employees who were covered under the Plan at termination of employment may be continued for a period of not more than 18 months or 29 months if determined to be disabled under the Social Security Act, Title II, OASDI or Title XVI, SSI."

Section 35. G.S. 135-40.11(h) reads as rewritten:

"(h) Continuation coverage under this Plan shall not be continued past the occurrence of any one of the following events:

(1) The termination of the Plan.

(2) Failure of a Plan member to pay monthly in advance any required premiums.

(3) A ~~member~~ person becomes a covered employee or a dependent of a covered employee under any group health plan ~~or, in the case of a surviving spouse, when the surviving spouse remarries and becomes covered under a group health plan.~~ and that group health plan has no restrictions or limitations on benefits.

(4) A ~~member~~ person becomes eligible for Medicare ~~benefits.~~ benefits on or after the effective date of the continuation coverage.

(5) The person was determined to be no longer disabled, provided the 18-month coverage was extended to 29 months due to having been

determined to be disabled under the Social Security Act, Title II, OASDI or Title XVI, SSI.

(6) The person reaches the maximum applicable continuation period of 18, 29, or 36 months."

Section 36. G.S. 135-40.6(8)i. reads as rewritten:

"i. Physical Therapy: Recognized forms of physical therapy for restoration of bodily function, provided by a doctor, hospital, ~~or by a~~ licensed professional ~~physiotherapist.~~ physiotherapist, or certified physical therapy assistant. No benefits are provided for eye exercises or visual training."

Section 37. G.S. 135-40.6(8)r. reads as rewritten:

"r. Occupational Therapy: Recognized forms of occupational therapy provided by a doctor, hospital, ~~or by a~~ licensed professional occupational therapist, or certified occupational therapy assistant to restore fine motor skills for the resumption of bodily functions."

Section 38. (a) G.S. 135-40.6(8)o. reads as rewritten:

"o. Foot Surgery: ~~All foot~~ Foot surgery on bones and ~~joints in excess of one thousand dollars ($1,000), except for emergencies, shall require prior approval from the Claims Processor.~~ joints."

(b) G.S. 135-40.6A(a)(7) is repealed.

Section 39. G.S. 135-40.6A(b)(5) and G.S. 135-40.6A(b)(6) are repealed.

Section 40. Effective July 1, 1997, G.S. 135-40.3(b)(5) reads as rewritten:

"(5) To administer the 12-month waiting period for preexisting conditions under this Article, the Plan must give credit against the 12-month period for the time that a person was covered under a previous plan if the previous plan's coverage was continuous to a date not more than ~~60~~ 63 days before the effective date of coverage. As used in this subdivision, a 'previous plan' means any policy, certificate, contract, or any other arrangement provided by any accident and health insurer, any hospital or medical service corporation, any health maintenance organization, any preferred provider organization, any multiple employer welfare arrangement, any self-insured health benefit arrangement, any governmental health benefit or health care plan or program, or any other health benefit arrangement."

Section 41. This act becomes effective October 1, 1997, unless otherwise specified.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 786
Senate State Government, Local Government, and Personnel Committee Substitute Adopted 8/4/97
Third Edition Engrossed 8/5/97

Short Title: Concord Charter. (Local)

Sponsors:

Referred to:

April 3, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CHARTER OF THE CITY OF CONCORD TO ALLOW THE CITY MANAGER TO APPOINT THE FINANCE DIRECTOR AND THE CITY CLERK; TO PROVIDE FOR INITIATIVE AND REFERENDUM AUTHORITY FOR THE CONCORD CITY COUNCIL AND THE CABARRUS COUNTY BOARD OF COMMISSIONERS; AND AN ACT TO AMEND THE CHARTER OF THE CITY OF DURHAM AS IT RELATES TO VOLUNTARY ANNEXATIONS, PROTEST PETITIONS, THE APPROVAL OF PAYMENT OF FACILITIES FEES, AND THE RENAMING OF THE SUBDIVISION REVIEW BOARD, AND TO AMEND THE CHARTER OF THE CITY OF SANFORD RELATING TO THE PUBLICATION OF FRANCHISE ORDINANCES.

The General Assembly of North Carolina enacts:

Section 1. Section 4.2 of the Charter of the City of Concord, being Chapter 861 of the 1985 Session Laws, as amended, reads as rewritten:

"Sec. 4.2. City Manager. The ~~Board of Aldermen~~ City Council shall appoint a City Manager who shall be the chief administrator of city government, and who shall be responsible to the ~~Board~~ Council for the proper administration of the affairs of the city. The Manager shall be appointed on the basis of merit only, and he shall serve at the pleasure of the ~~Board~~ Council. Although he need not be a resident at the time of his appointment, the Manager shall become a resident of the city after his

appointment. In exercising his duties as chief administrator, the Manager shall have the following powers and duties:

(a) He shall appoint, suspend or remove all city officers and employees not elected by the people, and whose appointment or removal is not otherwise provided for by law, except the ~~City Attorney, City Finance Director, Tax Collector, and City Clerk,~~ City Attorney and Tax Collector, in accordance with such general personnel rules, regulations, policies, or ordinances as the ~~Board~~ Council may adopt.

(b) He shall direct and supervise the administration of all departments, offices, and agencies of the city, subject to the general direction and control of the ~~Board,~~ Council, except as otherwise provided by law.

(c) He shall attend all meetings of the ~~Board~~ Council and recommend any measures that he deems expedient.

(d) He shall see that all laws of the State, the City Charter and the ordinances, resolutions and regulations of the ~~Board~~ Council are faithfully executed within the city.

(e) He shall prepare and submit the annual budget and capital program to the city.

(f) He shall annually submit to the ~~Board~~ Council and make available to the public a complete report on the finances and administrative activities of the city as of the end of the fiscal year.

(g) He shall make any other reports that the ~~Board~~ Council may require concerning the operations of the city departments, offices, and agencies subject to his direction and control.

(h) He shall perform any other duties that may be required and authorized by the ~~Board~~ Council."

Section 2. Sections 4.5 and 4.6 of the Charter of the City of Concord, being Chapter 861 of the 1985 Session Laws, as amended, are repealed.

Section 3. The Charter of the City of Concord, being Chapter 861 of the 1985 Session Laws, as amended, is amended by adding a new Article to read:

"ARTICLE VI.

"Sec. 6.1. Direct voting on issues by the people. The City Council may adopt an ordinance providing for a procedure of direct voting on issues by the people. Such an ordinance shall contain either or both of the following provisions:

(1) When twenty-five percent (25%) of the qualified voters of the city apply to the Council by signed petition for the purpose of voting upon any question of public interest which that petition requests be submitted to a vote of the citizens of the city, the Council shall order a referendum on the question. The election shall be held not more than 120 nor fewer than 60 days after receipt of the petition. No special act shall be necessary to authorize the Council to order that referendum. The Council shall order as many referenda under the provisions of this section as it may be petitioned to call in the manner set out in this section. The Council shall call more than one election to be held for the purpose of voting upon the same

question if a petition is filed, as herein provided, requesting the Council to call that election, notwithstanding the fact that a prior election may have been held for the purpose of ascertaining the wishes of the citizens of the city on the same question.

(2) The Council may submit to a vote of the people of the city any resolution or ordinance passed by the Council or any other question of public interest, if the Council resolves to do so by a vote of three-fifths of its total members.

If a referendum is called under either subdivision (1) or (2) of this section, the county board of elections shall cause the ordinance or resolution to be voted on to be published in accordance with G.S. 163-33. If a referendum is called under either subdivision (1) or (2) of this section and a majority of the qualified voters voting vote in favor of the measure proposed, then the vote of the people shall be binding upon the Council and the city, and the measure shall become effective throughout the city on the date the results are certified unless the measure contains another effective date.

"Sec. 6.2. The City Council may, by majority vote, repeal an ordinance for a direct vote on issues by the people it has adopted under Sec. 6.1."

Section 4. (a) The Cabarrus County Board of Commissioners may adopt an ordinance providing for a procedure of direct voting on issues by the people. Such an ordinance shall contain either or both of the following provisions:

(1) When twenty-five percent (25%) of the qualified voters of the county apply to the Board by signed petition for the purpose of voting upon any question of public interest which that petition requests be submitted to a vote of the citizens of the county, the Board shall order a referendum on the question. The election shall be held not more than 120 nor fewer than 60 days after receipt of the petition. No special act shall be necessary to authorize the Board to order that referendum. The Board shall order as many referenda under the provisions of this section as it may be petitioned to call in the manner set out in this section. The Board shall call more than one election to be held for the purpose of voting upon the same question if a petition is filed, as herein provided, requesting the Board to call that election, notwithstanding the fact that a prior election may have been held for the purpose of ascertaining the wishes of the citizens of the county on the same question.

(2) The Board may submit to a vote of the people of the county any resolution or ordinance passed by the Board or any other question of public interest, if the Board resolves to do so by a vote of three-fifths of its total members.

If a referendum is called under either subdivision (1) or (2) of this section, the county board of elections shall cause the ordinance or resolution to be voted on to be published in accordance with G.S. 163-33. If a referendum is called under either

subdivision (1) or (2) of this subsection and a majority of the qualified voters voting vote in favor of the measure proposed, then the vote of the people shall be binding upon the Board of Commissioners and the county, and the measure shall become effective throughout the county on the date the results are certified unless the measure contains another effective date.

(b) The Cabarrus County Board of Commissioners may, by majority vote, repeal an ordinance for a direct vote on issues by the people it has adopted under subsection (a) of this section.

Section 5. The Charter of the City of Durham, being Chapter 671 of the 1975 Session Laws, as amended, is amended by adding a new section to read:

"Sec. 2.6. Petition Annexation Appeals. Any judicial action contesting the validity of an annexation by the City pursuant to Part 1 or 4 of Article 4A of Chapter 160A of the General Statutes shall be filed within 30 days after the adoption of the annexation ordinance."

Section 6. Section 115.6(b) of the Charter of the City of Durham, being Chapter 671 of the 1995 Session Laws, as added by Chapter 476 of the 1989 Session Laws and rewritten by Chapter 992 of the 1991 Session Laws, reads as rewritten:

"(b) The City Council may permit the payment of a facilities fee in a lump sum or in equal monthly or annual installments over a period of time not to exceed 10 years. The City Council may delegate authority to the city manager, or designee of the city manager, to authorize the payment of a facilities fee in installments when requested by the person who is responsible for paying the fee. If paid in installments, such installments shall bear interest at a rate fixed by the City Council of not more than nine percent (9%) per annum from the date when ~~payment by lump sum would have otherwise been due.~~ the City approves payment of the facilities fee in installments. The facilities fee, with accrued interest, may be paid in full at any time."

Section 7. Subsection (3) of Section 97 of the Charter of the City of Durham, being Chapter 671 of the 1975 Session Laws, reads as rewritten:

"(3) The City Council may provide for the appointment of a board to be known as a ~~Subdivision Review Board consisting of not less than four nor more than six members~~ Development Review Board consisting of four or more members who shall serve without pay as such members, each of whom shall be appointed by the Council for a term of years or for a term at the will of the Council, as may be determined by the Council; in the event the Council appoints such Board for a term of years, the term of the office of each member shall be three years. ~~Such Subdivision~~ The Development Review Board shall hear and decide appeals from and review any order, requirement, decision or determination made by any administrative official charged with the enforcement of any ordinance adopted pursuant to this section. It shall also hear and decide all matters referred to in or upon which it is required to pass under any such ordinance. The affirmative vote of a majority of members of the Board shall be necessary to reverse any order,

requirement, decision or determination of any administrative official, or to decide in favor of the applicant any matter upon which it is required to pass under any such ordinance or to effect any variation in any of the provisions of such ordinance. Every decision of such Board shall, however, be subject to review by proceedings in the nature of certiorari. Such appeal may be taken by any person aggrieved or by an officer, department, board or bureau of the City. Such appeal shall be taken within such time as shall be prescribed by the ~~Subdivision~~ Development Review Board by general rule, by filing with the officer from whom the appeal is taken and with the ~~Subdivision~~ Development Review Board a notice of appeal, specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken. An appeal from the administrative official to the ~~Subdivision~~ Development Review Board stays all proceedings in furtherance of the action appealed from until the decision of the ~~Subdivision~~ Development Review Board is rendered, at which time the stay of proceedings shall cease, unless the proceedings shall be further stayed by a restraining order granted by a court of record or by the ~~Subdivision~~ Development Review Board. The ~~Subdivision~~ Development Review Board shall fix a reasonable time for the hearing of the appeal from the administrative official and shall give due notice thereof to the parties, and decide the same within a reasonable time. Upon the hearing, any party may appear in person or by agent or by attorney. The ~~Subdivision~~ Development Review Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, action or determination appealed from, and shall make such order, requirement, decision or determination as in its opinion ought to be made in the premises, and to that end shall have all of the powers of the officer from whom the appeal is taken. Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of such ordinances, the ~~Subdivision~~ Development Review Board shall have the power, in passing upon appeals, to vary or modify any of the regulations or provisions of such ordinances relating to subdivisions, plats, maps and all other requirements of the ordinance, in harmony with the general purpose and intent of this section, so that the spirit of the ordinance may be observed, public safety, convenience and welfare secured and substantial justice done."

Section 8. The Charter of the City of Durham, being Chapter 671 of the 1975 Session Laws, is amended by adding the following new section:

"Section 94.4. Protest Petitions.

The provisions of G.S. 160A-386, as applied to the City of Durham, are modified to require that protest petitions be received by the city clerk in sufficient time to allow the City at least four normal work days, excluding Saturdays, Sundays, and legal holidays, before the date established for a public hearing on the proposed charge or amendment to determine the sufficiency and accuracy of the petition."

Section 9. The Charter of the City of Sanford, as enacted by Chapter 650 of the Session Laws of 1967, and as amended by Chapter 403 of the Session Laws of 1987, is further amended as follows:

"Sec. 3.10. ~~Publication and~~ Reading of Ordinance. ~~No ordinance granting any franchise for the use of the streets, sidewalks, highways or other public property of the City shall be passed until the full text thereof shall have been published for three weeks in a newspaper having general circulation in the City at the expense of the applicant applying for such franchise, before the second reading of such ordinance.~~ A copy of a proposed ordinance granting any franchise for the use of the streets, sidewalks, highways or other public property of the City shall be made available in the office of the City Clerk for public inspection. All such ordinances shall be read at two separate regular meetings of the Board of Aldermen and a 'yea' and 'nay' vote shall be taken and recorded on the first and second readings. The rules shall not be suspended so as to pass any such ordinance in a shorter time."

Section 10. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 122
Proposed House Committee Substitute S122-PCS6742

Short Title: Public Contracts. (Public)

Sponsors:

Referred to:

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW A CONTRACTOR ON A PUBLIC PROJECT, ON BEHALF OF A SUBCONTRACTOR, TO FILE AN ACTION AGAINST THE OWNER REGARDING A CLAIM ARISING OUT OF THE CONTRACT BETWEEN THE SUBCONTRACTOR AND THE CONTRACTOR FOR THE SAME PROJECT THAT IS THE SUBJECT OF THE CONTRACT BETWEEN THE CONTRACTOR AND THE OWNER AND TO MAKE NO DAMAGE FOR DELAY CLAUSES IN PUBLIC CONTRACTS UNENFORCEABLE.

The General Assembly of North Carolina enacts:

Section 1. Article 8 of Chapter 143 of the General Statutes is amended by adding the following new sections to read:

"**§ 143-134.2. Actions by contractor on behalf of subcontractor.**

(a) A contractor may, on behalf of a subcontractor of any tier under the contractor, file an action against an owner regarding a claim arising out of or relating to labor, materials, or services furnished by the subcontractor to the contractor pursuant to a contract between the subcontractor and the contractor for the same project that is the subject of the contract between the contractor and the owner.

(b) In any action filed by a contractor against an owner under subsection (a) of this section, it shall not be a defense that the costs and damages at issue were incurred by a subcontractor and that subcontractor has not been paid for these costs and damages. The owner shall not be required to pay the contractor for the costs and damages incurred by a subcontractor, unless the subcontractor submits proof to the court that the contractor has paid these costs and damages to the subcontractor.

"**§ 143-134.3. No damage for delay clause.**

No contractual language forbidding or limiting compensable damages for delays caused solely by the owner or its agent may be enforced in any construction contract let by any board or governing body of the State, or of any institution of State government, or of any county, city, town, or other political subdivision thereof."

Section 2. This act becomes effective October 1, 1997, and applies to contracts entered into on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 122

Short Title: Lake Royale Motor Vehicle Laws. (Local)

Sponsors: Senator Wellons.

Referred to: Transportation.

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE LAWS RELATING TO MOTOR VEHICLES APPLY WITHIN THE LAKE ROYALE COMMUNITY IN FRANKLIN AND NASH COUNTIES.

The General Assembly of North Carolina enacts:

Section 1. The provisions of Chapter 20 of the General Statutes relating to the use of the highways of the State and the operation of motor vehicles are applicable to the streets, roadways, and alleys on the properties owned by or under the control of the Lake Royale Property Owners Association, Inc., or the members of the Lake Royale Property Owners Association, Inc. For purposes of this act, streets, roadways, and alleys in the Lake Royale Community shall have the same meaning as highways and public vehicular areas pursuant to G.S. 20-4.01. A violation of any of those laws is punishable as prescribed by those laws.

Section 2. This act is enforceable by any company policeman appointed under Chapter 74E of the General Statutes, certified by the North Carolina Criminal Justice Education and Training Standards Commission, and employed by the Lake Royale Property Owners Association, Inc.

Section 3. Pursuant to this act, golf carts, all terrain vehicles (ATVs), go-carts, dirt bikes, and mopeds may be operated within the confines of the Lake Royale Community, if:

(1) The vehicle displays a banner or pennant not less than 24 inches square and which is attached to a support or antenna extending at least six feet above the pavement;

(2) The vehicle is registered with the Lake Royale Property Owners Association, Inc., and has affixed to it a current Lake Royale registration sticker;

(3) The vehicle is not operated between dusk and sunrise; and

(4) The vehicle is operated only on streets, roadways, alleys, and designated trails.

Section 4. This act shall not be construed as in any way interfering with the ownership and control of the streets, roadways, and alleys of the Lake Royale Property Owners Association, Inc., or its members as is now vested by law in that association or its members. The speed limits within the Lake Royale Community shall be the same as those in effect at the time of ratification of this act. Any proposed change in the speed limit shall be submitted to and approved by the Boards of Commissioners of Franklin or Nash County, whichever has jurisdiction. Pursuant to G.S. 20-141, the Franklin and Nash County Boards of Commissioners may authorize by ordinance higher or lower speeds.

Section 5. This act applies only to the Lake Royale Community in Franklin and Nash Counties.

Section 6. This act is effective when it becomes law and expires two years later.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 550*
Second Edition Engrossed 4/17/97
House Committee Substitute Favorable 8/21/97
Proposed House Committee Substitute S550-PCS6741

Short Title: Irrigation Syst. Design Not Engineering. (Public)

Sponsors:

Referred to:

March 27, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND CHAPTER 89C OF THE GENERAL STATUTES TO PROVIDE THAT THE DESIGN OF LAND APPLICATION IRRIGATION SYSTEMS FOR ANIMAL WASTE MANAGEMENT SYSTEMS MAY BE PERFORMED BY IRRIGATION DESIGN TECHNICAL SPECIALISTS AND CONCERNING AGRICULTURAL BEST MANAGEMENT PRACTICES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 89C-25 reads as rewritten:

"**§ 89C-25. Limitations on application of Chapter.**

This Chapter shall not be construed to prevent or affect:

(1) The practice of architecture, landscape architecture, or contracting or any other legally recognized profession or ~~trade; or~~ trade.

(2) The practice of professional engineering or land surveying in this State or by any person not a resident of this State and having no established place of business in this State when this practice does not aggregate more than 90 days in any calendar year, whether performed in this State or elsewhere, or involve more than one specific project; provided, however, that such person is legally qualified by registration to practice the said profession in his own state or country, in which the requirements and qualifications for obtaining a certificate of registration are satisfactory to the Board;

in which case the person shall apply for and the Board will issue a temporary ~~permit; or~~ permit.

(3) The practice of professional engineering or land surveying in this State not to aggregate more than 90 days by any person residing in this State, but whose residence has not been of sufficient duration for the Board to grant or deny registration; provided, however, such person shall have filed an application for registration as a professional engineer or registered land surveyor and shall have paid the fee provided for in G.S. 89C-14, and provided that such a person is legally qualified by registration to practice professional engineering or land surveying in his own state or country in which the requirements and qualifications for obtaining a certificate of registration are satisfactory to the Board, in which case the person shall apply for and the Board will issue a temporary ~~permit; or~~ permit.

(4) Engaging in engineering or land surveying as an employee or assistant under the responsible charge of a professional engineer or registered land surveyor or as an employee or assistant of a nonresident professional engineer or a nonresident registered land surveyor provided for in subdivisions (2) and (3) of this section, provided that said work as an employee may not include responsible charge of design or ~~supervision; or~~ supervision.

(5) The practice of professional engineering or land surveying by any person not a resident of, and having no established place of business in this State, as a consulting associate of a professional engineer or registered land surveyor registered under the provisions of this Chapter; provided, the nonresident is qualified for such professional service in his own state or ~~country; or~~ country.

(6) Practice by members of the armed forces or employees of the government of the United States while engaged in the practice of engineering or land surveying solely for said government on government-owned works and projects; or practice by those employees of the Natural Resources Conservation Service having federal engineering job approval authority that involves the planning, designing, or implementation of best management practices on agricultural lands.

(7) The internal engineering or surveying activities of a person, firm or corporation engaged in manufacturing, processing, or producing a product, including the activities of public service corporations, public utility companies, authorities, State agencies, railroads, or membership cooperatives, or the installation and servicing of their product in the field; or research and development in connection with the manufacture of that product or their service; or of their

research affiliates; or their employees in the course of their employment in connection with the manufacture, installation, or servicing of their product or service in the field, or on-the-premises maintenance of machinery, equipment, or apparatus incidental to the manufacture or installation of the product or service of a firm by the employees of the firm upon property owned, leased or used by the firm; inspection, maintenance and service work done by employees of the State of North Carolina, any political subdivision thereof, or any municipality therein including construction, installation, servicing, maintenance by regular full-time employees of streets, street lighting, traffic-control signals, police and fire alarm systems, waterworks, steam, electric and sewage treatment and disposal plants; the services of superintendents, inspectors or foremen regularly employed by the State of North Carolina or any political subdivision thereof, or municipal corporation therein; provided, however, that the internal engineering or surveying activity is not a holding out to or an offer to the public of engineering or any service thereof as prohibited by this Chapter. Engineering work, not related to the foregoing exemptions, where the safety of the public is directly involved shall be under the responsible charge of a registered professional engineer, or in accordance with standards prepared or approved by a registered professional engineer.

(8) The (i) preparation of fire sprinkler planning and design drawings by a fire sprinkler contractor licensed under Article 2 of Chapter 87 of the General Statutes, or (ii) the performance of internal engineering or survey work by a manufacturing or communications common carrier company, or by a research and development company, or by employees of such corporations provided that such work is in connection with, or incidental to products of, or nonengineering services rendered by such corporations or their affiliates.

(9) The routine maintenance or servicing of machinery, equipment, facilities or structures, the work of mechanics in the performance of their established functions, or the inspection or supervision of construction by a foreman, superintendent, or agent of the architect or professional engineer, or services of an operational nature performed by an employee of a laboratory, a manufacturing plant, a public service corporation, or governmental operation.

(10) The design of land application irrigation systems for an animal waste management plan, required by G.S. 143-215.10C, by a designer who exhibits, by at least three years of relevant experience, proficiency in soil science and basic hydraulics, and

who is thereby listed as an Irrigation Design Technical Specialist by the North Carolina Soil and Water Conservation Commission."

Section 2. This act is retroactively effective March 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 3

SENATE BILL 550*
Second Edition Engrossed 4/17/97
House Committee Substitute Favorable 8/21/97

Short Title: Irrigation Syst. Design Not Engineering. (Public)

Sponsors:

Referred to:

March 27, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND CHAPTER 89C OF THE GENERAL STATUTES TO PROVIDE THAT THE DESIGN OF LAND APPLICATION IRRIGATION SYSTEMS FOR ANIMAL WASTE MANAGEMENT SYSTEMS MAY BE PERFORMED BY IRRIGATION DESIGN TECHNICAL SPECIALISTS AND CONCERNING AGRICULTURAL BEST MANAGEMENT PRACTICES, AND CLARIFYING THAT THE ENVIRONMENTAL MANAGEMENT COMMISSION MAY REQUIRE INDIVIDUAL AS WELL AS GENERAL PERMITS FOR ANIMAL WASTE MANAGEMENT SYSTEMS

The General Assembly of North Carolina enacts:

Section 1. G.S. 89C-25 reads as rewritten:

"**§ 89C-25. Limitations on application of Chapter.**

This Chapter shall not be construed to prevent or affect:

(1) The practice of architecture, landscape architecture, or contracting or any other legally recognized profession or ~~trade; or~~ trade.

(2) The practice of professional engineering or land surveying in this State or by any person not a resident of this State and having no established place of business in this State when this practice does not aggregate more than 90 days in any calendar year, whether performed in this State or elsewhere, or involve more than one specific project; provided, however, that such person is legally qualified by registration to practice the said profession in his own

state or country, in which the requirements and qualifications for obtaining a certificate of registration are satisfactory to the Board; in which case the person shall apply for and the Board will issue a temporary ~~permit; or~~ permit.

(3) The practice of professional engineering or land surveying in this State not to aggregate more than 90 days by any person residing in this State, but whose residence has not been of sufficient duration for the Board to grant or deny registration; provided, however, such person shall have filed an application for registration as a professional engineer or registered land surveyor and shall have paid the fee provided for in G.S. 89C-14, and provided that such a person is legally qualified by registration to practice professional engineering or land surveying in his own state or country in which the requirements and qualifications for obtaining a certificate of registration are satisfactory to the Board, in which case the person shall apply for and the Board will issue a temporary ~~permit; or~~ permit.

(4) Engaging in engineering or land surveying as an employee or assistant under the responsible charge of a professional engineer or registered land surveyor or as an employee or assistant of a nonresident professional engineer or a nonresident registered land surveyor provided for in subdivisions (2) and (3) of this section, provided that said work as an employee may not include responsible charge of design or ~~supervision; or~~ supervision.

(5) The practice of professional engineering or land surveying by any person not a resident of, and having no established place of business in this State, as a consulting associate of a professional engineer or registered land surveyor registered under the provisions of this Chapter; provided, the nonresident is qualified for such professional service in his own state or ~~country; or~~ country.

(6) Practice by members of the armed forces or employees of the government of the United States while engaged in the practice of engineering or land surveying solely for said government on government-owned works and projects; or practice by those employees of the Natural Resources Conservation Service having federal engineering job approval authority that involves the planning, designing, or implementation of best management practices on agricultural lands.

(7) The internal engineering or surveying activities of a person, firm or corporation engaged in manufacturing, processing, or producing a product, including the activities of public service corporations, public utility companies, authorities, State agencies, railroads, or membership cooperatives, or the installation and servicing of their

product in the field; or research and development in connection with the manufacture of that product or their service; or of their research affiliates; or their employees in the course of their employment in connection with the manufacture, installation, or servicing of their product or service in the field, or on-the-premises maintenance of machinery, equipment, or apparatus incidental to the manufacture or installation of the product or service of a firm by the employees of the firm upon property owned, leased or used by the firm; inspection, maintenance and service work done by employees of the State of North Carolina, any political subdivision thereof, or any municipality therein including construction, installation, servicing, maintenance by regular full-time employees of streets, street lighting, traffic-control signals, police and fire alarm systems, waterworks, steam, electric and sewage treatment and disposal plants; the services of superintendents, inspectors or foremen regularly employed by the State of North Carolina or any political subdivision thereof, or municipal corporation therein; provided, however, that the internal engineering or surveying activity is not a holding out to or an offer to the public of engineering or any service thereof as prohibited by this Chapter. Engineering work, not related to the foregoing exemptions, where the safety of the public is directly involved shall be under the responsible charge of a registered professional engineer, or in accordance with standards prepared or approved by a registered professional engineer.

(8) The (i) preparation of fire sprinkler planning and design drawings by a fire sprinkler contractor licensed under Article 2 of Chapter 87 of the General Statutes, or (ii) the performance of internal engineering or survey work by a manufacturing or communications common carrier company, or by a research and development company, or by employees of such corporations provided that such work is in connection with, or incidental to products of, or nonengineering services rendered by such corporations or their affiliates.

(9) The routine maintenance or servicing of machinery, equipment, facilities or structures, the work of mechanics in the performance of their established functions, or the inspection or supervision of construction by a foreman, superintendent, or agent of the architect or professional engineer, or services of an operational nature performed by an employee of a laboratory, a manufacturing plant, a public service corporation, or governmental operation.

(10) The design of land application irrigation systems for an animal waste management plan, required by G.S. 143-215.10C, by a designer who exhibits, by at least three years of relevant

experience, proficiency in soil science and basic hydraulics, and who is thereby listed as an Irrigation Design Technical Specialist by the North Carolina Soil and Water Conservation Commission."

Section 2. (a) G.S. 143-215.1(a)(12) reads as rewritten:

"(12) Construct or operate an animal waste management system, as defined in G.S. 143-215.10B, without obtaining a permit under either this Part or Part 1A of this Article."

(b) G.S. 143-215.10C(a) reads as rewritten:

"(a) No person shall construct or operate an animal waste management system for an animal operation without first obtaining an individual permit under Part 1 of this Article or a general permit under this Part. The Commission shall develop a system of individual and general permits for animal operations based on species, number of animals, and other relevant factors."

Section 3. Section 1 of this act is retroactively effective March 1, 1997. Section 2 of this act is retroactively effective January 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 843
Pensions & Retirement and Insurance Committee Substitute Adopted 4/29/97
House Committee Substitute Favorable 8/18/97
Proposed Committee Substitute S843-PCS1896

Short Title: Insurance Changes. (Public)

Sponsors:

Referred to:

April 15, 1997

A BILL TO BE ENTITLED

AN ACT TO REPEAL OBSOLETE LAWS AND MAKE TECHNICAL AND CLARIFYING AMENDMENTS AND CORRECTIONS IN VARIOUS INSURANCE STATUTES; TO EXTEND THE EXPIRATION DATE OF THE 1986 RISK SHARING PLAN LAW; TO PROVIDE FOR THE LICENSING AND REGULATION OF ENTITIES THAT ADMINISTER WORKERS' COMPENSATION INSURANCE FOR GROUPS OF EMPLOYERS THAT SELF-INSURE; AND TO AMEND THE LAW GOVERNING AGENTS INCLUDING AUTHORIZING PERSONS IN AGENTS' OFFICES TO CALL FOR POLICY EXPIRATIONS.

The General Assembly of North Carolina enacts:

PART I. REPEALS OF OBSOLETE OR UNNECESSARY PROVISIONS.

Section 1. G.S. 58-3-125, 58-6-10, 58-7-150, 58-41-35, and 58-71-90 are repealed.

Section 2. G.S. 58-2-120 reads as rewritten:

"**§ 58-2-120. Reports of Commissioner to the Governor and General Assembly.**

~~The Commissioner shall biennially submit to the General Assembly, through the Governor, a report of his official acts, including a summary of official rulings and regulations.~~ The Commissioner shall, from time to time, report to the Governor and the General Assembly any change ~~which~~ that in ~~his~~ the Commissioner's opinion should be made in the laws relating to insurance and other subjects pertaining to ~~his~~

~~department. On or before the first day of February of each year in which the General Assembly is in session he shall make to the Governor the recommendations called for in this section, to be transmitted to the General Assembly, with the last annual report of this Department, including receipts and disbursements.~~ the Department."

Section 3. G.S. 58-87-10(e) reads as rewritten:

"(e) Revenue Source. -- Revenue is credited to the Workers' Compensation Fund from appropriations made to the Department of Insurance for this purpose. In addition, every eligible unit that elects to participate shall pay into the Fund an amount set annually by the State Fire and Rescue Commission to ensure that the Fund will be able to meet its payment obligations under this section. The amount shall be set as a per capita fixed dollar amount for each member of the roster of the eligible unit.

The payment shall be made to the State Fire and Rescue Commission on or before July 1 of each year. The Commission shall remit the payments it receives to the State Treasurer, who shall credit the payments to the Fund. ~~If the Commission does not receive an annual payment from an eligible unit by July 1, then that unit shall not receive workers' compensation coverage from the Fund for the fiscal year that begins that July 1.~~"

Section 4. G.S. 120-123(55) and (65) are repealed.

Section 5. G.S. 58-36-15(e) reads as rewritten:

"(e) The Commissioner may require the filing of supporting data including:

(1) The Bureau's interpretation of any statistical data relied upon;
(2) Descriptions of the methods employed in setting the rates;
(3) Analysis of the incurred losses submitted on an accident year or policy year basis into their component parts; to wit, paid losses, reserves for losses and loss expenses, and reserves for losses incurred but not reported;
(4) The total number and dollar amount of paid claims;
(5) The total number and dollar amount of case basis reserve claims;
(6) Earned and written premiums at current rates by rating territory;
(7) Earned premiums and incurred losses according to classification plan categories; and
(8) Income from investment of unearned premiums and loss and loss expense reserves generated by business within this State.

~~Provided, however, that with respect to business written prior to January 1, 1980, the Commissioner shall not require the filing of such supporting data which has not been required to be recorded under statistical plans approved by the Commissioner.~~"

Section 6. G.S. 58-3-115 reads as rewritten:

"§ 58-3-115. Twisting with respect to insurance policies; penalties.

No insurer shall make or issue, or cause to be issued, any written or oral statement that willfully misrepresents or willfully makes an incomplete comparison as to the terms, conditions, or benefits contained in any policy of insurance for the purpose of inducing or attempting to induce a policyholder in any way to terminate or surrender, exchange, or convert any insurance policy. Any person who violates this

section is subject to the provisions of ~~G.S. 58-2-70, 58-3-90 through 58-3-100, and 58-3-125.~~ G.S. 58-2-70 or G.S. 58-3-100."

Section 7. G.S. 58-30-75(7) reads as rewritten:

"(7) Without first obtaining the written consent of the ~~Commissioner pursuant to G.S. 58-7-150,~~ Commissioner, the insurer has (i) transferred, or attempted to transfer, in a manner contrary to Article 19 of this Chapter, substantially its entire property or business, or (ii) has entered into any transaction, the effect of which is to merge, consolidate, or reinsure substantially its entire property or business in or with the property or business of any other person."

Section 8. G.S. 58-41-40(a) reads as rewritten:

"(a) There is no liability on the part of and no cause of action for defamation or invasion of privacy arises against any insurer or its authorized representatives, agents, or employees, or any licensed insurance agent or broker, for any communication or statement made, unless shown to have been made in bad faith with malice, in any of the following:

(1) A written notice of cancellation under ~~G.S. 58-41-15,~~ G.S. 58-41-15 or of nonrenewal under G.S. 58-41-20, ~~or of cessation of business through an agency under G.S. 58-41-35,~~ specifying the reasons ~~therefor;~~ for cancellation.

(2) Communications providing information pertaining to ~~such cancellation, nonrenewal, or cessation of business through an agency;~~ the cancellation or nonrenewal.

(3) Evidence submitted at any court proceeding, administrative hearing, or informal inquiry in which ~~such cancellation, nonrenewal, or cessation of business through an agency~~ the cancellation or nonrenewal is an issue."

PART II. AMENDMENTS NECESSARY BECAUSE OF 1995 REWRITE OF G.S. 58-2-50.

Section 9. G.S. 58-34-2(j) reads as rewritten:

"(j) The Commissioner shall disapprove any such contract that:

(1) Does not contain the required contract provisions specified in subsection (d) of this section;

(2) Subjects the insurer to excessive charges for expenses or commission;

(3) Vests in the MGA any control over the management of the affairs of the insurer to the exclusion of the board of directors of the insurer;

(4) Is entered into with any person if the person or its officers and directors are of known bad character or have been affiliated directly or indirectly through ownership, control, management, reinsurance transactions, or other insurance or business

relationships with any person known to have been involved in the improper manipulation of assets, accounts, or reinsurance; or

(5) Is determined by the Commissioner to contain provisions that are not fair and reasonable to the insurer.

Failure of the Commissioner to disapprove any such contract within 30 days after the contract has been filed with the Commissioner constitutes the Commissioner's approval of the contract. An insurer may continue to accept business from ~~such~~ the person until the Commissioner disapproves the contract. Any disapproval shall be in writing. The Commissioner ~~may, after a hearing held under G.S. 58-2-50,~~ may withdraw approval of any contract the Commissioner has previously approved ~~upon finding~~ if the Commissioner determines that the basis of the original approval no longer exists or that the contract has, in actual operation, shown itself to be subject to disapproval on any of the grounds in this subsection. If the Commissioner withdraws approval of a contract, the Commissioner shall give the insurer notice of, and written reasons for, the withdrawal of approval. The Commissioner shall grant any party to the contract a hearing upon request."

Section 10. G.S. 58-34-15(b) reads as rewritten:

"(b) If the Commissioner disapproves any management contract, ~~notice of such action shall be given to the insurer assigning the reasons therefor in writing.~~ the Commissioner shall give notice of, and written reasons for, the disapproval to the insurer. The Commissioner shall grant any party to the contract a hearing upon ~~request according to G.S. 58-2-50.~~ request."

Section 11. G.S. 58-40-100 reads as rewritten:

"**§ 58-40-100. Request for review of rate, rating plan, rating system or underwriting rule.**

(a) Any person aggrieved by any rate charged, rating plan, rating system, or underwriting rule followed or adopted by an insurer or rating organization may request in writing that the insurer or rating organization ~~to~~ review the manner in which the rate, plan, system, or rule has been applied with respect to ~~insurance afforded him. Such request may be made by his authorized representative, and shall be in writing.~~ the person's insurance. The person's authorized representative may make the request. If the request is not granted within 30 days after it is made, the requestor may treat it as rejected. Any person aggrieved by the action of an insurer or rating organization in refusing the review requested or in failing or refusing to grant all or part of the relief requested, may file a written complaint and request for hearing with the Commissioner, and shall specify the grounds relied upon. If the Commissioner has information concerning a similar ~~complaint he~~ complaint, the Commissioner may deny the hearing. If the Commissioner believes that probable cause for the complaint does not exist or that the complaint is not made in good faith, ~~he~~ the Commissioner shall deny the hearing. If the Commissioner finds that the complaint charges a violation of this Article and that the complainant would be aggrieved if the violation is proven, ~~he~~ the Commissioner shall proceed as provided in G.S. ~~58-2-50 or~~ 58-2-70.

(b) Repealed by Session Laws 1985 (Regular Session, 1986), c. 1027, s. 15."

Section 12. G.S. 58-42-1 reads as rewritten:

"**§ 58-42-1. Establishment of plans.**

If the Commissioner finds, after a ~~hearing held in accordance with G.S. 58-2-50,~~ hearing, that in all or any part of this State, any amount or kind of insurance authorized by G.S. 58-7-15(4) through G.S. 58-7-15(22) is not readily available in the voluntary market and that the public interest requires the availability of that insurance, ~~he~~ the Commissioner may either:

(1) Promulgate plans to provide insurance coverage for any risks in this State that are, based on reasonable underwriting standards, entitled to obtain but are otherwise unable to obtain coverage; or

(2) Call upon insurers to prepare plans for ~~his~~ the Commissioner's approval."

Section 13. G.S. 58-45-50 reads as rewritten:

"**§ 58-45-50. Appeal from acts of Association to Commissioner; appeal from Commissioner to superior court.**

Any person or any insurer who may be aggrieved by an act, ruling or decision of the Association other than an act, ruling or decision relating to the cause or amount of a claimed loss, may, within 30 days after ~~such ruling~~ the ruling, appeal to the Commissioner. Any hearings held by the Commissioner ~~pursuant to such an~~ under the appeal shall be in accordance with ~~the procedure set forth in G.S. 58-2-50.~~ rules adopted by the Commissioner: Provided, however, the Commissioner is authorized to appoint a member of ~~his~~ the Commissioner's staff as deputy commissioner for the purpose of hearing ~~such~~ those appeals and a ruling based upon ~~such~~ the hearing ~~shall have~~ has the same effect as if heard by the Commissioner. All persons or insureds aggrieved by any order or decision of the Commissioner may appeal as ~~is~~ provided ~~by the provisions of~~ in G.S. 58-2-75.

No later than 20 days before each hearing, the appellant shall file with the Commissioner or his designated hearing officer and shall serve on the appellee a written statement of ~~his~~ the appellant's case and any evidence ~~he~~ that the appellant intends to offer at the hearing. No later than five days before ~~such~~ the hearing, the appellee shall file with the Commissioner or ~~his~~ the designated hearing officer and shall serve on the appellant a written statement of ~~his~~ the appellant's case and any evidence ~~he~~ that the appellee intends to offer at the hearing. ~~Each such hearing shall be recorded and transcribed. The cost of such recording and transcribing shall be borne equally by the appellant and appellee; provided that upon any final adjudication the prevailing party shall be reimbursed for his share of such costs by the other party.~~ The procedures governing recordings of hearings and, if necessary, transcripts of recordings, as well as the fees for copies of recordings and transcripts, shall be determined by rules adopted by the Commissioner. Each party shall, on a date determined by the Commissioner or his designated hearing officer, but not sooner than 15 days after delivery of the completed transcript to the party, submit to the Commissioner or his designated hearing officer and serve on the other party, a proposed order. The Commissioner or his designated hearing officer shall then issue an order."

Section 14. G.S. 58-45-70 reads as rewritten:

"**§ 58-45-70. Commissioner may examine affairs of Association.**

The Commissioner may from time to time make an examination into the affairs of the Association when ~~he~~ the Commissioner deems it to be ~~prudent and in undertaking such examination he~~ prudent, and as part of the examination the Commissioner may hold a public ~~hearing pursuant to the provisions of G.S. 58-2-50.~~ hearing. ~~The expenses of such examination shall be borne and paid by the Association.~~ The Association shall pay the expenses of the examination."

Section 15. G.S. 58-46-20(c) reads as rewritten:

"(c) The Commissioner may designate the kinds of property insurance policies on principal residences to be offered by the association, including insurance policies under Article 36 of this Chapter, and the commission rates to be paid to agents or brokers for these policies, if ~~he~~ the Commissioner finds, after a ~~hearing held in accordance with G.S. 58-2-50,~~ hearing, that the public interest requires the designation. The provisions of Chapter 150B of the General Statutes do not apply to any procedure under this subsection, except that G.S. 150B-39 and G.S. 150B-41 shall apply to a hearing under this subsection. Within 30 days after the receipt of notification from the Commissioner of a change in designation ~~pursuant to~~ under this subsection, the association shall submit a revised plan and articles of association for approval in accordance with subsection (b) of this section."

Section 16. G.S. 58-46-30 reads as rewritten:

"**§ 58-46-30. Appeals; judicial review.**

The association shall provide reasonable means, to be approved by the Commissioner, whereby any person or insurer affected by any act or decision of the administrators of the Plan or underwriting association, other than an act or decision relating to the cause or amount of a claimed loss, may be heard in person or by an authorized representative, before the governing board of the association or a designated committee. Any person or insurer aggrieved by any decision of the governing board or designated committee, may be appealed to the Commissioner within 30 days from the date of ~~such~~ the ruling or decision. The Commissioner, after hearing held ~~pursuant to the procedure set forth in G.S. 58-2-50,~~ under rules adopted by the Commissioner, shall issue an order approving or disapproving the act or decision with respect to the matter ~~which~~ that is the subject of appeal. The Commissioner ~~is authorized to~~ may appoint a member of ~~his~~ the Commissioner's staff as deputy commissioner for the purpose of hearing ~~such~~ the appeals and a ruling based on ~~such~~ the hearing ~~shall have~~ has the same effect as if heard by the ~~Commissioner personally.~~ Commissioner. All persons or insurers or their representatives aggrieved by any order or decision of the Commissioner may appeal as provided ~~by the provisions of~~ in G.S. 58-2-75.

No later than 20 days before each hearing, the appellant shall file with the Commissioner or ~~his~~ the designated hearing officer and shall serve on the appellee a written statement of ~~his~~ the appellant's case and any evidence ~~he~~ that the appellant intends to offer at the hearing. No later than five days before ~~such~~ the hearing, the appellee shall file with the Commissioner or ~~his~~ the designated hearing officer and

shall serve on the appellant a written statement of ~~his~~ the appellee's case and any evidence ~~he~~ that the appellee intends to offer at the hearing. ~~Each such hearing shall be recorded and transcribed. The cost of such recording and transcribing shall be borne equally by the appellant and appellee; provided that upon any final adjudication the prevailing party shall be reimbursed for his share of such costs by the other party.~~ The procedures governing recordings of hearings and, if necessary, transcripts of recordings, as well as the fees for copies of recordings and transcripts, shall be determined by rules adopted by the Commissioner. Each party shall, on a date determined by the Commissioner or ~~his~~ the designated hearing officer, but not sooner than 15 days after delivery of the completed transcript to the party, submit to the Commissioner or ~~his~~ the designated hearing officer and serve on the other party, a proposed order. The Commissioner or ~~his~~ the designated hearing officer shall then issue an order."

PART III. CONTINUING CARE RETIREMENT COMMUNITY NAME CORRECTION AND RECEIVERSHIPS.

Section 17. G.S. 58-30-10(14) reads as rewritten:

"(14) 'Insurer' means any entity licensed under Articles 7, 16, 26, 49, 65, or 67 of this Chapter and any employer that has furnished to the Commissioner satisfactory proof of its financial responsibility under G.S. 97-93(a)(2). For purposes of this Article, 'insurer' also includes continuing care retirement ~~centers~~ communities licensed under Article 64 of this Chapter."

Section 18. The title of Article 64 of Chapter 58 of the General Statutes reads as rewritten:

"ARTICLE 64.

~~"Registration, Disclosure, Contract, and Financial Monitoring Requirements for~~ Continuing Care ~~Facilities.~~ Retirement Communities."

Section 19. G.S. 58-64-1 reads as rewritten:

"§ 58-64-1. Definitions.

As used in this Article, unless otherwise specified:

(1) 'Continuing care' means the furnishing to an individual other than an individual related by blood, marriage, or adoption to the person furnishing the care, of lodging together with nursing services, medical services, or other health related services, ~~pursuant to~~ under an agreement effective for the life of the individual or for a period ~~in excess of~~ longer than one year.

(2) 'Entrance fee' means a payment that assures a resident a place in a facility for a term of years or for life.

(3) 'Facility' means the ~~place or places~~ retirement community or communities in which a provider undertakes to provide continuing care to an individual.

(4) 'Health related services' means, at a minimum, nursing home admission or assistance in the activities of daily living, exclusive of the provision of meals or cleaning services.

(5) 'Living unit' means a room, apartment, cottage, or other area within a facility set aside for the exclusive use or control of one or more identified residents.

(6) 'Provider' means the promoter, developer, or owner of a ~~continuing care~~ facility, whether a natural person, partnership, or other unincorporated association, however organized, trust, or corporation, of an institution, building, residence, or other place, whether operated for profit or not, or any other person, that solicits or undertakes to provide continuing care under a continuing care facility contract, or that represents ~~himself~~ himself, herself, or itself as providing continuing care or 'life care.'

(7) 'Resident' means a purchaser of, a nominee of, or a subscriber to, a continuing care contract.

(8) 'Hazardous financial condition' means a provider is insolvent or in eminent danger of becoming insolvent."

Section 20. G.S. 58-64-40(b) reads as rewritten:

"(b) The board of directors or other governing body of a ~~continuing care~~ facility or its designated representative shall hold annual meetings with the residents of the ~~continuing care~~ facility for free discussions of subjects including, but not limited to, income, expenditures, and financial trends and problems as they apply to the facility and discussions of proposed changes in policies, programs, and services. Residents shall be entitled to at least seven days advance notice of each meeting. An agenda and any materials that will be distributed by the governing body at the meetings shall remain available upon request to residents."

Section 21. G.S. 58-64-80 reads as rewritten:

"**§ 58-64-80. Advisory Committee.**

There shall be a nine member Continuing Care Advisory Committee appointed by the Commissioner. The Committee shall consist of at least two residents of ~~continuing care communities,~~ facilities, two representatives of the North Carolina Association of Nonprofit Homes for the Aging, one individual who is a certified public accountant and is licensed to practice in this State, one individual skilled in the field of architecture or engineering, and one individual who is a health care professional."

Section 21.1. Article 64 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-64-46. Receiverships; exception for facility beds.**

When the Commissioner has been appointed as a receiver under Article 30 of this Chapter for a provider or facility subject to this Article, and if it appears to the court, upon petition of the Commissioner or the provider, or on the court's own motion, that the best interests of the facility or the welfare of persons who have previously contracted with the provider or may contract with the facility may be best served by the addition of adult care home beds, the Department of Human Resources may,

notwithstanding any other provision of law, accept and approve the addition of beds for that facility."

PART IV. WORKERS' COMPENSATION LOSS COSTS CONFORMING CHANGES.

Section 22. G.S. 58-36-1(2) reads as rewritten:

"(2) The Bureau shall provide reasonable means to be approved by the Commissioner whereby any person affected by a rate or loss costs made by it may be heard in person or by ~~his~~ the person's authorized representative before the governing committee or other proper executive of the Bureau."

Section 23. G.S. 58-36-1(5)c. reads as rewritten:

"c. Failure or refusal by any assigned employer risk to make full disclosure to the Bureau, servicing carrier, or insurer writing a policy of information regarding the employer's true ownership, change of ownership, operations, or payroll, or any other failure to disclose fully any records pertaining to workers' compensation insurance shall be sufficient grounds for ~~the Bureau to authorize~~ the termination of the policy of that employer."

Section 24. G.S. 58-36-10 reads as rewritten:

"**§ 58-36-10. Method of rate making; factors considered.**

The following standards ~~shall~~ apply to the making and use of ~~rates:~~ rates or loss costs:

(1) Rates or loss costs shall not be excessive, inadequate or unfairly discriminatory.

(2) Due consideration shall be given to actual loss and expense experience within this State for the most recent three-year period for which ~~such~~ that information is available; to prospective loss and expense experience within this State; to the hazards of conflagration and catastrophe; to a reasonable margin for underwriting profit and to contingencies; to dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers; to investment income earned or realized by insurers from their unearned premium, loss, and loss expense reserve funds generated from business within this State; to past and prospective expenses specially applicable to this State; and to all other relevant factors within this State: Provided, however, that countrywide expense and loss experience and other countrywide data may be considered only where credible North Carolina experience or data is not available.

(3) In the case of fire insurance rates, as are subject to the ratemaking authority of the Bureau, consideration may be given to the experience of such fire insurance business during the most recent five-year period for which ~~such~~ that experience is available. In

the case of fire insurance rates that are subject to the ratemaking authority of the Bureau, consideration shall be given to the insurance public protection classifications of rural fire districts based upon standards established by the Commissioner. To the extent credits are provided for proximity to fire hydrants, the Bureau may also provide appropriate credits in public protection classifications for optional water sources, such as ponds, lakes, or other bodies of water, in accordance with standards and procedures filed with and approved by the Commissioner.

(4) Risks may be grouped by classifications and lines of insurance for establishment of ~~rates~~ rates, loss costs, and base premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans ~~which~~ that establish standards for measuring variations in hazards or expense provisions or both. ~~Such~~ Those standards may measure any differences among risks that can be demonstrated to have a probable effect upon losses or expenses. The Bureau ~~is directed to~~ shall establish and implement a comprehensive classification rating plan for motor vehicle insurance under its jurisdiction within 90 days of September 1, 1977. No such classification plans shall base any standard or rating plan for private passenger (nonfleet) motor vehicles, in whole or in part, directly or indirectly, upon the age or sex of the persons insured. The Bureau shall at least once every three years make a complete review of the filed classification rates to determine whether they are proper and supported by statistical evidence, and shall at least once every 10 years make a complete review of the territories for nonfleet private passenger motor vehicle insurance to determine whether they are proper and reasonable.

(5) In the case of workers' compensation insurance and employers' liability insurance written in connection therewith, due consideration shall be given to the past and prospective effects of changes in compensation benefits and in legal and medical fees that are provided for in General Statutes Chapter 97."

Section 25. G.S. 58-36-15(a) reads as rewritten:

"(a) The Bureau shall file with the Commissioner copies of the rates, loss costs, classification plans, rating plans and rating systems used by its members. Each rate or loss costs filing shall become effective on the date specified in the filing, but not earlier than 105 days ~~from~~ after the date the filing is received by the Commissioner: Provided that (1) rate or loss costs filings for workers' compensation insurance and employers' liability insurance written in connection therewith shall not become effective earlier than 120 days from the date the filing is received by the Commissioner or on the date ~~as~~ provided ~~under~~ in G.S. 58-36-100, whichever is

earlier; and (2) any filing may become effective on a date earlier than that specified in this subsection upon agreement between the Commissioner and the Bureau."

Section 26. G.S. 58-36-15(f) reads as rewritten:

"(f) On or before September 1 of each calendar ~~year~~ year, or later with the approval of the Commissioner, the Bureau shall submit to the Commissioner the experience, data, statistics, and information referred to in subsection (c) of this section and required under G.S. 58-36-100 and a residual market rate ~~or~~ and prospective loss costs review based on ~~such~~ those data for workers' compensation insurance and employers' liability insurance written in connection therewith. Any rate or loss costs increase for ~~such~~ that insurance that is implemented ~~pursuant to~~ under this Article shall become effective solely to ~~such insurance as is written having~~ insurance with an inception date on or after the effective date of the rate or loss costs increase."

Section 27. G.S. 58-36-15(g) reads as rewritten:

"(g) The following information must be included in policy form, rule, and rate or loss costs filings under this Article and under Article 37 of this Chapter:

(1) A detailed list of the rates, loss costs, rules, and policy forms filed, accompanied by a list of those superseded; and

(2) A detailed description, properly referenced, of all changes in policy forms, rules, prospective loss costs, and rates, including the effect of each change."

Section 28. G.S. 58-36-30(a) reads as rewritten:

"(a) ~~No insurer, officer, agent or representative thereof~~ Except as permitted by G.S. 58-36-100 for workers' compensation loss costs filings, no insurer and no officer, agent, or representative of an insurer shall knowingly issue or deliver or knowingly permit the issuance or delivery of any policy of insurance in this State ~~which~~ that does not conform to the rates, rating plans, classifications, schedules, rules and standards made and filed by the Bureau. ~~However, an~~ An insurer may deviate from the rates ~~promulgated~~ adopted by the Bureau ~~provided~~ if the insurer has filed the proposed deviation ~~to be applied both~~ with the Bureau and the Commissioner, ~~and provided the deviation is uniform in its application to all risks in the State of the class to which the deviation is to apply; and provided such deviation is approved by the Commissioner.~~ if the proposed deviation is based on sound actuarial principles, and if the proposed deviation is approved by the Commissioner. ~~The Commissioner shall approve proposed deviations if they do not render the rates excessive, inadequate or unfairly discriminatory. If approved, the deviation may thereafter be amended, subject to the provisions of this subsection.~~ Amendments to deviations are subject to the same requirements as initial filings. ~~The deviation may be terminated~~ An insurer may terminate a deviation only if the deviation has been in effect for a period of six months before the effective date of the termination and the insurer notifies the Commissioner of the termination no later than 15 days before the effective date of the termination."

Section 29. G.S. 58-36-30(c) reads as rewritten:

"(c) ~~Any deviation with respect to workers' compensation and employers' liability insurance written in connection therewith as filed under subsection (a) of this section shall apply uniformly to all classifications.~~ Any approved rate under subsection (b) of this section with respect to workers' compensation and employers' liability insurance written in connection therewith shall be furnished to the Bureau."

Section 30. Effective September 1, 1997, G.S. 58-36-100(a) reads as rewritten:

"(a) ~~Nothing in this section requires the Bureau or its member insurers to refile rates previously implemented before two years after the effective date of this section. Any member insurer of the Bureau may continue to use all rates and deviations filed and approved for its use until disapproved, or the insurer makes its own filing to change its rates, either by making an independent filing or by filing a reference filing adoption form adopting the Bureau's prospective loss costs, or modification thereof.~~ Except as provided in ~~subsection~~ subsections (k) and (m) of this section, ~~with the initial prospective loss costs reference filing,~~ the Bureau shall no longer develop or file any minimum premiums, minimum premium formulas, or expense constants. If an insurer wishes to amend minimum premium ~~formulas,~~ formulas or expense constants, it must file the minimum premium rules, formulas, or amounts it proposes to use. A copy of each filing submitted to the Commissioner under subsections (e) and (g) of this section shall also be sent to the Bureau."

Section 31. Effective September 1, 1997, G.S. 58-36-100(b)(1) reads as rewritten:

"(1) 'Expenses'. -- That portion of a rate attributable to acquisition, field supervision, collection expenses, any tax levied by the State or by any political subdivision of the State, licensing costs, fees, and general expenses, as determined by the insurer."

Section 32. Effective September 1, 1997, G.S. 58-36-100(c) reads as rewritten:

"(c) Except as provided in subsection (m) of this section, for workers' compensation and employers' liability insurance written in connection with workers' compensation insurance, the Bureau shall no longer develop or file advisory final rates that contain provisions for expenses (other than loss adjustment expenses) and profit. The Bureau shall instead develop and file for approval with the Commissioner, in accordance with this section, reference filings containing advisory prospective loss costs and the underlying loss data and other supporting statistical and actuarial information for any calculations or assumptions underlying these loss costs. Loss-based ~~assessments, any tax levied by the State or any political subdivision of the State, licensing costs, and fees~~ assessments will be included in prospective loss costs."

Section 32.1. Effective September 1, 1997, G.S. 58-36-100(k) reads as rewritten:

"(k) The Bureau shall file with the Commissioner, for approval, filings containing a revision of rules and supplementary rating information. This includes policy-writing rules, rating plans, classification codes and descriptions, and rules that include factors or relativities, such as ~~employers' liability~~ increased limits ~~factors,~~ factors and related

minimum premiums, classification relativities, or similar ~~factors, but excludes minimum premiums.~~ factors. The Bureau may print and distribute manuals of rules and supplementary rating ~~information, excluding minimum premiums.~~ information."

PART V. INSURANCE COMPANY FINANCIAL OPERATIONS.

Section 33. G.S. 58-5-63(a) reads as rewritten:

"(a) All insurance companies making deposits under this Article are entitled to interest on those ~~deposits, which shall remain in the deposit accounts.~~ deposits. The right to interest is subject to a company paying its insurance policy liabilities. If any company fails to pay those liabilities, interest accruing after the failure is payable to the Commissioner for the payment of those liabilities under subsection (b) of this section."

Section 34. G.S. 58-7-21(a) reads as rewritten:

"(a) As used in this section and in G.S. ~~58-7-26, 58-7-30, and 58-7-31:~~ 58-7-26 and G.S. 58-7-30:

(1) 'Reinsurance' means a transfer of insurance risk from a ceding insurer to an assuming insurer.

(2) 'Insurance risk' means an uncertainty regarding the ultimate amount of any claim payment (underwriting risk) or an uncertainty regarding the timing of the payments (timing risk), or both."

Section 35. G.S. 58-7-31(b)(3) reads as rewritten:

"(3) The ceding insurer is required to reimburse the reinsurer for negative experience under the reinsurance agreement; except that neither offsetting experience refunds against current and prior years' losses under the reinsurance agreement nor payment by the ceding insurer of an amount equal to the current and prior years' losses under the reinsurance agreement upon voluntary termination of in-force reinsurance by the ceding insurer are a reimbursement to the reinsurer for negative experience. Voluntary termination does not include situations where termination occurs because of unreasonable provisions that allow the reinsurer to reduce its risk or increase its risk charge under the reinsurance agreement."

Section 36. G.S. 58-7-31(d)(1) reads as rewritten:

"(1) Reinsurance agreements entered into after October 1, 1993, that involve the reinsurance of business issued ~~prior to~~ before the effective date of the reinsurance agreements, along with any subsequent amendments thereto, shall be filed by the ceding company with the Commissioner within 30 days after its date of execution. Each filing shall include data detailing the ~~final impact~~ financial effect of the transaction. The ceding insurer's actuary who signs the financial statement actuarial opinion with respect to valuation of reserves shall consider this ~~statute~~ section and any applicable actuarial standards of practice when determining the

proper credit in financial statements filed with the Commissioner. The actuary ~~should~~ shall maintain adequate documentation and be prepared upon request to describe the actuarial work performed for inclusion in the financial statements and to demonstrate that ~~such~~ that work conforms to this ~~statute.~~ section."

Section 37. G.S. 58-7-173(12) reads as rewritten:

"(12) Secured obligations of duly constituted churches and of church-holding companies; and the cost of investments made under this subdivision shall not exceed the lesser of one percent (1%) of the insurer's admitted assets ~~of~~ or five percent (5%) of the insurer's capital and surplus."

Section 38. The catchline of G.S. 58-7-177 reads as rewritten:

"**§ 58-7-177. Investments in ~~subsidiaries and affiliated corporations.~~ subsidiaries.**"

Section 39. G.S. 58-8-5(a)(3) reads as rewritten:

"(3) ~~Said officers shall cause said certificate to be published once a week for two consecutive weeks in a newspaper in Raleigh and in the county where the company's principal office is located, or posted at the courthouse door if no newspaper be published within the county. Said printed or posted notices shall be in such form and of such size as the Commissioner may approve, and in addition to setting forth in full the certificate required in subdivision (2) shall state that application for amending the company's charter in the manner specified has been proposed by the board of directors, and shall also state the time set for a meeting of policyholders thereby called to be held at the principal office of the company to take action on the proposed amendment. A true copy of such notice shall be filed with the Commissioner, and also with that official who performs the functions of Commissioner in each state where the company is licensed to do business. Such publication and filing of notices shall be completed at least 30 days prior to the date set therein for the meeting of policyholders and due proof thereof shall be filed with the Commissioner at least 15 days prior to the date of such meeting.~~ If the meeting at which the proposed amendment is to be considered is a special meeting, rather than a regular annual meeting of policyholders, ~~such special~~ that meeting can be called only after the Commissioner has given ~~his~~ approval in ~~writing, and the published notice shall show the fact of such approval;~~ writing;"

Section 40. G.S. 58-8-25 reads as rewritten:

"**§ 58-8-25. Dividends to policyholders.**

(a) Any participating or dividend-paying company, stock or mutual or foreign or domestic, that writes other than life insurance or workers' compensation insurance and employers' liability insurance in connection therewith, may declare and pay a

dividend to policyholders from its ~~surplus,~~ unassigned surplus as reflected in the company's most recent annual or quarterly statement filed with the Commissioner, which shall include only its surplus in excess of any required minimum surplus. No such dividend shall be paid unless it is fair and equitable and for the best interest of the company and its policyholders. In declaring any dividend to its policyholders, any such company may make reasonable classifications of policies expiring during a fixed period, upon the basis of each general kind of insurance covered by ~~such~~ those policies and by territorial divisions of the location of risks by states, except that in fixing the amount of dividends to be paid on each general kind of insurance, ~~which~~ the dividends shall be uniform in rate and applicable to the majority of risks within ~~such~~ that general kind of insurance, and exceptions may be made as to any class or classes of risk and a different rate or amount of dividends paid on ~~such~~ the class or classes if the conditions applicable to ~~such~~ the class or classes differ substantially from the condition applicable to the kind of insurance as a whole. Every such company shall have an equal rate of dividend for the same term on all policies insuring risks in the same classification. The payment of dividends to policyholders shall not be contingent upon the maintenance or renewal of the policy. All dividends shall be paid to the policyholder unless a written assignment ~~thereof be~~ of those dividends is executed. Neither the payment of dividends nor the rate ~~thereof~~ of the dividends may be guaranteed by any company, or its agent, ~~prior to~~ before the declaration of the dividend by the board of directors of ~~such~~ the company. The holders of policies of insurance issued by a company in compliance with the orders of any public official, bureau or committee, in conformity with any statutory requirement or voluntary arrangement, for the issuance of insurance to risks not otherwise acceptable to the company, may be established as a separate class of risks.

(b) Any participating or dividend-paying company, stock or mutual or foreign or domestic, that writes workers' compensation insurance and employers' liability insurance in connection therewith may declare and pay a dividend to policyholders from its ~~surplus,~~ unassigned surplus as reflected in the company's most recent statement filed with the Commissioner under G.S. 58-2-165, which shall include only its surplus in excess of any required minimum surplus. No such dividend shall be paid unless it is fair and equitable and for the best interest of the company and its policyholders. In declaring any dividend to its policyholders, any such company may make reasonable classifications of policies expiring during a fixed period. The payment of dividends to policyholders shall not be contingent upon the maintenance or renewal of the policy. All dividends shall be paid to the policyholder unless a written assignment ~~thereof be~~ of those dividends is executed. Neither the payment of dividends nor the rate ~~thereof~~ of the dividends may be guaranteed by any company, or its agent, ~~prior to~~ before the declaration of the dividend by the board of directors of ~~such~~ the company. The holders of policies of insurance issued by a company in compliance with the orders of any public official, bureau, or committee, in conformity with any statutory requirement or voluntary arrangement, for the issuance of insurance to risks not otherwise acceptable to the company, may be established as a separate class of risks."

Section 41. G.S. 58-9-6(a) reads as rewritten:

"(a) The Commissioner shall issue an intermediary license or an exemption from the license, subject to G.S. 58-9-2(b)(2) or G.S. 58-9-2(c)(3), to any person who has complied with the requirements of this Article. A license issued to a noncorporate entity authorizes all of the members of the entity and any designated employees to act as intermediaries under the license, and those persons shall be named in the application and any supplements. A license issued to a corporation authorizes all of the officers and any designated employees and directors of the corporation to act as intermediaries on behalf of the corporation, and those persons shall be named in the application and any supplements."

Section 42. G.S. 58-9-11(b) reads as rewritten:

"(b) An insurer shall not engage the services of any person to act as a broker on its behalf unless the person is licensed ~~under G.S. 58-9-6.~~ or exempted under this Article. An insurer shall not employ an individual who is employed by a broker with which it transacts business, unless the broker is under common control with the insurer under Article 19 of this Chapter."

Section 43. G.S. 58-9-21(a) reads as rewritten:

"(a) A reinsurer shall not engage the services of any person to act as a manager on its behalf unless the person is licensed ~~under G.S. 58-9-6.~~ or exempted under this Article."

Section 44. G.S. 58-12-2(3) reads as rewritten:

"(3) Domestic insurer. -- Any insurance company organized in this State under ~~Article 7~~ Article 7 or Article 15 of this Chapter."

Section 45. G.S. 58-13-10 reads as rewritten:

"**§ 58-13-10. Scope.**

(a) This Article applies to all domestic insurers and to all kinds of insurance written by those insurers ~~under Articles 1 through 66~~ of this Chapter. Foreign insurers ~~are to~~ shall comply in substance with the requirements and limitations of this section. ~~This Article does not apply to variable contracts for which separate accounts are required to be maintained nor to statutory deposits that are required to be maintained by insurance regulatory agencies as a requirement for doing business in such jurisdictions.~~

(b) This Article does not apply to:

(1) Variable contracts for which separate accounts are required to be maintained.

(2) Statutory deposits that are required to be maintained by insurance regulatory agencies as a requirement for doing business.

(3) Real estate authorized under G.S. 58-7-187 and encumbered by a mortgage loan with a first lien."

Section 46. G.S. 58-13-15 reads as rewritten:

"**§ 58-13-15. Definitions.**

As used in this Article:

(1) 'Assets' means all property, real or personal, tangible or intangible, legal or equitable, owned by an insurer.

(2) 'Claimants' means any owners, beneficiaries, assignees, certificate holders, or third-party beneficiaries of any insurance benefit or right arising out of and within the coverage of an insurance policy covered by this Article.

(3) 'Reserve assets' means those assets of an insurer that are authorized investments for policy reserves in accordance with ~~Articles 1 through 64 of this Chapter and G.S. 58-65-95.~~ this Chapter.

(4) 'Policyholder-related liabilities' means those liabilities that are required to be established by an insurer for all of its outstanding insurance policies in accordance with ~~Articles 1 through 64 of this Chapter and G.S. 58-65-95.~~ this Chapter."

Section 47. G.S. 58-13-20(b) reads as rewritten:

"(b) The Commissioner ~~has the right to~~ may examine any of ~~such~~ these assets, reinsurance agreements, or deposit arrangements at any time in accordance with ~~his~~ the Commissioner's authority to make examinations of insurers as conferred by other provisions ~~of Articles 1 through 64~~ of this Chapter."

Section 48. G.S. 58-19-5(5) reads as rewritten:

"(5) 'Person' means an individual, corporation, partnership, limited liability company, association, joint stock company, trust, unincorporated organization, or any similar entity or any combination of the foregoing acting in concert."

Section 49. G.S. 58-19-10(b)(1) reads as rewritten:

"(1) Invest, in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries, amounts that do not exceed the lesser of ten percent (10%) of ~~such~~ the insurer's admitted assets or fifty percent (50%) of ~~such~~ the insurer's surplus as regards policyholders, provided that after ~~such~~ those investments, the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs. In calculating the amount of ~~such~~ the investments, investments in domestic or foreign insurance subsidiaries and health maintenance organizations shall be excluded, and there shall be included: (i) total net monies or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of ~~such~~ the subsidiary whether or not represented by the purchase of capital stock or issuance of other securities; and (ii) all amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities, and all contributions to the capital or surplus, of a subsidiary subsequent to its acquisition or formation;".

PART VI. HANDICAPPED PERSONS.

Section 50. G.S. 168-10 reads as rewritten:

"**§ 168-10. Eliminate discrimination in treatment of handicapped and disabled.**

Each handicapped person shall have the same consideration as any other person for individual accident and health insurance coverage, and no insurer, service corporation, multiple employer welfare arrangement, or health maintenance organization subject to Chapter 58 of the General Statutes solely on the basis of ~~such~~ the person's handicap, shall deny ~~such~~ coverage or benefits. The availability of ~~such insurance~~ coverage or benefits shall not be denied solely ~~due to~~ because of the ~~handicap, provided, however, that no such insurer shall be prohibited from excluding by waiver or otherwise, any pre-existing conditions from such coverage, and further provided that~~ handicap; however, any such insurer may charge the appropriate premiums or fees for the risk insured on the same basis and conditions as insurance issued to other ~~persons.~~ persons, in accordance with actuarial and underwriting principles prescribed in Chapter 58 of the General Statutes. ~~Nothing contained herein or in any other statute shall restrict or preclude any insurer governed by Chapter 58 of the General Statutes from setting and charging a premium or fee based upon the class or classes of risks and on sound actuarial and underwriting principles as determined by such insurer, or from applying its regular underwriting standards applicable to all classes of risks. The provisions of this section shall apply to both corporations governed by Chapter 58 of the General Statutes.~~"

Section 51. G.S. 168-22(b) reads as rewritten:

"(b) A family care home ~~shall be~~ is deemed a residential use of property for the purposes of determining charges or assessments imposed by political subdivisions or businesses for water, sewer, power, telephone service, cable television, garbage and trash collection, repairs or improvements to roads, streets, and sidewalks, and other services, utilities, and ~~improvements, and for purposes of classification for insurance.~~ improvements."

PART VII. AUTOMOBILE INSURANCE.

Section 52. G.S. 58-36-75(c) is repealed.

Section 53. G.S. 58-36-5(c) reads as rewritten:

"(c) The ~~Bureau, when created,~~ Bureau shall adopt ~~such~~ rules ~~and regulations~~ for its orderly procedure ~~as shall be~~ that are necessary for its maintenance and operation. No ~~such~~ rules ~~and regulations~~ shall discriminate against any type of insurer because of its plan of operation, nor shall any insurer be prevented from returning any unused or unabsorbed premium, deposit, savings or earnings to its policyholders or subscribers. ~~The expense of such Bureau shall be borne by its members by quarterly contributions to be made in advance, such contributions to be made in advance by prorating such expense among the members in accordance with the amount of gross premiums derived from the above lines of insurance in North Carolina during the preceding year and members entering the Bureau since that date to advance an amount to be fixed by the governing committee. After the first fiscal year of operation of the Bureau the~~ The necessary expense of the Bureau shall be advanced by the members in accordance with rules ~~and regulations to be~~ established and adopted by the governing committee. The Bureau ~~shall be empowered to~~ may

subscribe for or purchase any necessary service, ~~and~~ employ and fix the salaries of such personnel and assistants as are ~~necessary.~~ necessary, charge reasonable fees for its products and services, and engage in any lawful activities related to the objects, functions, duties, responsibilities, or authority of the Bureau."

Section 53.1. G.S. 58-37-1(7) reads as rewritten:

"(7) 'Motor vehicle insurance' means direct insurance against liability arising out of the ownership, operation, maintenance or use of a motor vehicle for bodily injury including death and property damage and includes medical payments and uninsured and underinsured motorist coverages.

With respect to motor carriers who are subject to the financial responsibility requirements established under the Motor Carrier Act of 1980, the term, 'motor vehicle insurance' includes coverage with respect to environmental restoration. As used in this subsection the term, 'environmental restoration' means restitution for the loss, damage, or destruction of natural resources arising out of the accidental discharge, dispersal, release, or escape into or upon the land, atmosphere, water course, or body of water of any commodity transported by a motor carrier. Environmental restoration includes the cost of removal and the cost of necessary measures taken to minimize or mitigate damage to human health, the natural environment, fish, shellfish, and wildlife."

Section 53.2. G.S. 58-37-35(b)(2) reads as rewritten:

"(2) Additional ceding privileges for motor vehicle insurance shall be provided by the Board of Governors if there is a substantial public demand for a coverage or coverage limit of any component of motor vehicle insurance up to the following:

Bodily injury liability: one hundred thousand dollars ($100,000) each person, three hundred thousand dollars ($300,000) each accident;

Property damage liability: fifty thousand dollars ($50,000) each accident;

Medical payments: two thousand dollars ($2,000) each person;

Underinsured motorist: one ~~hundred thousand~~ million dollars ~~($100,000)~~ ($1,000,000) each person and ~~three hundred thousand dollars ($300,000)~~ each accident for bodily injury liability;

Uninsured motorist: one ~~hundred thousand~~ million dollars ~~($100,000)~~ ($1,000,000) each person and each accident for bodily injury and ~~fifteen~~ fifty thousand dollars ~~($15,000)~~ ($50,000) for property damage (one hundred dollars ($100.00) deductible)."

Section 53.3. G.S. 58-37-35(e) reads as rewritten:

"(e) The Commissioner and member companies shall provide for a Board of ~~Governors within 30 days after May 24, 1973. If any member seat on the initial Board of Governors is not filled in accordance with this Article within such time,~~

~~then, in that event the Commissioner shall appoint natural persons from any of the classifications specified in subsection (d) of this section to serve the initial term on the Board of Governors. As soon as possible after its selection, the Commissioner shall call for the initial meeting of the Board.~~ Governors. ~~After the~~ The Board of Governors ~~have been selected it~~ shall ~~then~~ elect from its membership a chairman and shall ~~then~~ meet ~~thereafter as often as~~ at the call of the chairman ~~shall require~~ or at the request of ~~three~~ four members of the Board of Governors. The chairman shall retain the right to vote on all issues. ~~Five~~ Seven members of the Board of Governors shall constitute a quorum. The same member may not serve as chairman for more than two consecutive ~~years.~~ years; provided, however, that a member may continue to serve as chairman until a successor chairman is elected and qualified."

Section 53.4. G.S. 58-37-40(e) reads as rewritten:

"(e) Upon approval of the Commissioner of the plan so submitted or promulgation of a plan deemed approved by the Commissioner, all insurance companies licensed to write motor vehicle insurance in this State or any component thereof as a prerequisite to further engaging in writing the insurance shall formally subscribe to and participate in the plan so approved.

The plan of operation shall provide for, among other matters, (i) the establishment of necessary facilities; (ii) the management of the Facility; (iii) the preliminary assessment of all members for initial expenses necessary to commence operations; (iv) the assessment of members if necessary to defray losses and expenses; (v) the distribution of gains to defray losses incurred since September 1, 1977; (vi) the distribution of gains by credit or reduction of recoupment ~~or allocation~~ surcharges to policies subject to recoupment ~~or allocation~~ surcharges pursuant to this Article (the Facility may apportion the distribution of gains among the coverages eligible for cession pursuant to this Article); (vii) the recoupment ~~or allocation~~ of losses sustained by the Facility since September 1, 1977, pursuant to this Article, which losses may be recouped by equitable pro rata assessment of member ~~companies;~~ companies or by way of a surcharge on motor vehicle policies issued by member companies or through the Facility; (viii) the standard amount (one hundred percent (100%) or any equitable lesser amount) of coverage afforded on eligible risks which a member company may cede to the Facility; and (ix) the procedure by which reinsurance shall be accepted by the Facility. The plan shall further provide that:

(1) Members of the Board of Governors shall receive reimbursement from the Facility for their actual and necessary expenses incurred on Facility business, en route to perform Facility business, and while returning from Facility business plus a per diem allowance of twenty-five dollars ($25.00) a day which may be waived.

(2) In order to obtain a transfer of business to the Facility effective when the binder or policy or renewal thereof first becomes effective, the company must within 30 days of the binding or policy effective date notify the Facility of the identification of the insured, the coverage and limits afforded, classification data, and premium. The Facility shall accept risks at other times on receipt of

necessary information, but acceptance shall not be retroactive. The Facility shall accept renewal business after the member on underwriting review elects to again cede the business."

Section 54. G.S. 58-37-40(f) reads as rewritten:

"(f) The plan of operation shall provide that every member shall, following payment of any pro rata assessment, ~~commence~~ begin recoupment of that assessment by way of a surcharge on motor vehicle insurance policies issued by the member or through the Facility until the assessment has been recouped. ~~Such~~ Any surcharge under this subsection or under subsection (e) of this section shall be a percentage of premium adopted by the Board of Governors of the Facility; and the charges determined on the basis of the surcharge shall be combined with and displayed as a part of the applicable premium charges. ~~Provided, however, that recoupment~~ Recoupment of losses sustained by the Facility ~~since September 1, 1977,~~ with respect to nonfleet private passenger motor vehicles may be ~~recouped~~ made only by surcharging nonfleet private passenger motor vehicle insurance policies. ~~policies (i) that are subject to the classification plan promulgated pursuant to G.S. 58-36-65 and (ii) to which one or more driving record points have been assigned pursuant to said plan, subject to the provisions of G.S. 58-36-75.~~ If the amount collected during the period of surcharge exceeds assessments paid by the member to the Facility, the member shall pay over the excess to the Facility on a date specified by the Board of Governors. If the amount collected during the period of surcharge is less than the assessments paid by the member to the Facility, the Facility shall pay the difference to the member. Except as ~~hereinafter provided,~~ otherwise provided in this Article, the amount of recoupment shall not be considered or treated as a rate or premium for any purpose. The Board of Governors shall adopt and implement a plan for compensation of agents of Facility members when recoupment surcharges are imposed; ~~such~~ that compensation shall not exceed the compensation or commission rate normally paid to the agent for the issuance or renewal of the automobile liability policy issued through the North Carolina Reinsurance Facility affected by ~~such surcharge; provided, however, that~~ the surcharge. However, the surcharge ~~provided for in this section~~ shall include an amount necessary to recover the amount of the assessment to member companies and the compensation paid by each member, ~~pursuant to~~ under this section, to agents."

Section 55. G.S. 58-37-35(g)(8) reads as rewritten:

"(8) To establish fair and reasonable procedures for the sharing among members of any loss on Facility business ~~which~~ that cannot be recouped ~~pursuant to~~ under G.S. 58-37-40~~(f)~~ (e) ~~or which cannot be recouped or allocated under G.S. 58-37-75,~~ and other costs, charges, expenses, liabilities, income, property and other assets of the Facility and for assessing or distributing to members their appropriate shares. ~~Such~~ The shares may be based on the member's premiums for voluntary business for the appropriate category of motor vehicle insurance or by any other fair and reasonable method."

Section 56. G.S. 58-37-35(l) reads as rewritten:

"(l) The classifications, rules, rates, rating plans and policy forms used on motor vehicle insurance policies reinsured by the Facility may be made by the Facility or by any licensed or statutory rating organization or bureau on its behalf and shall be filed with the Commissioner. The Board of Governors shall establish a separate subclassification within the Facility for 'clean ~~risks' as herein defined.~~ risks'. For the purpose of this Article, a 'clean risk' ~~shall be~~ is any owner of a nonfleet private passenger motor vehicle as defined in G.S. 58-40-10, if the owner, principal operator, and each licensed operator in the owner's household have two years' driving experience as licensed drivers and if none of the persons has been assigned any Safe Driver Incentive Plan points under Article 36 of this Chapter during the three-year period immediately preceding either (i) the date of application for a motor vehicle insurance policy or (ii) the date of preparation of a renewal of a motor vehicle insurance policy. ~~Such~~ The filings may incorporate by reference any other material on file with the Commissioner. Rates shall be neither excessive, inadequate nor unfairly discriminatory. If the Commissioner finds, after a hearing, that a rate is either excessive, inadequate or unfairly discriminatory, ~~he~~ the Commissioner shall issue an order specifying in what respect it is deficient and stating when, within a reasonable period thereafter, ~~such rate shall be deemed~~ the rate is no longer effective. ~~Said~~ The order is subject to judicial review as set out in Article 2 of this Chapter. Pending judicial review of ~~said~~ the order, the filed classification plan and the filed rates may be used, charged and collected in the same manner as set out in G.S. 58-40-45 of this Chapter. ~~Said~~ The order shall not affect any contract or policy made or issued ~~prior to~~ before the expiration of the period set forth in the order. All rates shall be on an actuarially sound basis and shall be calculated, insofar as is possible, to produce neither a profit nor a loss. However, the rates made by or on behalf of the Facility with respect to 'clean ~~risks', as defined above,~~ risks' shall not exceed the rates charged 'clean risks' who are not reinsured in the Facility. The difference between the actual rate charged and the actuarially sound and self-supporting rates for 'clean risks' reinsured in the Facility may be recouped in similar manner as assessments ~~pursuant to G.S. 58-37-40(f) or allocated pursuant to G.S. 58-37-75.~~ under G.S. 58-37-40(f). Rates shall not include any factor for underwriting profit on Facility business, but shall provide an allowance for contingencies. There shall be a strong presumption that the rates and premiums for the business of the Facility are neither unreasonable nor excessive."

Section 57. G.S. 58-37-75 is repealed.

PART VIII. WORKERS' COMPENSATION SELF-INSURANCE.

Section 58. G.S. 58-50-60 reads as rewritten:

"**§ 58-50-60. Rules for precertification practices.**

(a) This section applies to all accident and health insurers under Articles 1 through 64 of this Chapter, all third-party administrators and preferred provider arrangements, all entities subject to Articles 65 through 67 of this Chapter, and all self-funded ~~health benefit~~ workers' compensation insurance plans.

(b) The Commissioner shall adopt reasonable rules governing ~~precertification practices and forms~~ utilization review and utilization review organizations ~~affiliated~~ that do business with the entities subject to this section."

Section 59. G.S. 58-50-65(a) reads as rewritten:

"(a) ~~Nothing~~ Except as provided in this subsection, nothing in Articles 50 through 55 of this Chapter ~~shall apply~~ applies to ~~or affect~~ any ~~policy of~~ liability or workers' compensation ~~insurance, except that~~ insurance policy. Except for G.S. 58-50-55(a), the provisions of ~~G.S. 58-50-50 and subsections (b) and (e) of G.S. 58-50-55 shall~~ this Article and Articles 65 and 67 of this Chapter and any administrative rules adopted under those Articles relating to preferred providers and utilization review apply to ~~policies of~~ workers' compensation ~~insurance.~~ insurance policies and to individual and group self-funded workers' compensation insurance plans. If there is any conflict between managed care rules adopted by the Commissioner under this Chapter and managed care rules adopted by the Industrial Commission under G.S. 97-25.2, the Industrial Commission's rules govern. If there is any conflict between managed care provisions in this Chapter and in Chapter 97 of the General Statutes with respect to workers' compensation, the provisions in Chapter 97 govern."

PART IX. CERTIFICATE OF AUTHORITY CONFORMING NAME CHANGE.

Section 60. The phrase "certificate of authority" is deleted and replaced by the word "license" wherever it occurs in each of the following sections of the General Statutes:

G.S. 58-4-15.	Revocation of certificate of authority.
G.S. 58-7-55.	Exceptions to requirements of G.S. 58-7-50.
G.S. 58-7-70.	Effects of redomestication.
G.S. 58-15-5.	Definitions.
G.S. 58-16-35.	Unauthorized Insurers Process Act.
G.S. 58-24-45.	Organization.
G.S. 58-24-145.	Injunction -- Liquidation -- Receivership of domestic society.
G.S. 58-28-5.	Transacting business without certificate of authority prohibited; exceptions.
G.S. 58-28-15.	Validity of acts or contracts of unauthorized company shall not impair obligation of contract as to the company; maintenance of suits; right to defend.
G.S. 58-28-45.	Uniform Unauthorized Insurers Act.
G.S. 58-30-10.	Definitions.
G.S. 58-30-55.	Condition on release from delinquency proceedings.
G.S. 58-30-260.	Conservation of property of foreign or alien insurers found in this State.
G.S. 58-33-132.	Qualifications of instructors.
G.S. 58-41-55.	Penalties; restitution.
G.S. 58-48-35.	Powers and duties of the Association.
G.S. 58-48-45.	Duties and powers of the Commissioner.
G.S. 58-57-80.	Penalties.

PART X. RISK SHARING PLAN SUNSET EXTENSION.

Section 61. G.S. 58-42-55 reads as rewritten:

"**§ 58-42-55. Expiration.**

This Article ~~shall expire~~ expires on July 1, ~~1997.~~ 1999."

PART XI. HEALTH INSURANCE CLARIFYING CHANGES.

Section 62. G.S. 58-50-130(a), as amended by S.L. 1997-259, is amended by adding the following new subdivision:

"(4b) Late enrollees may only be excluded from coverage for the greater of 18 months or an 18-month preexisting-condition exclusion; however, if both a period of exclusion from coverage and a preexisting-condition exclusion are applicable to a late enrollee, the combined period shall not exceed 18 months. If a period of exclusion from coverage is applied, a late enrollee shall be enrolled at the end of such period in the health benefit plan currently held by the small employer."

Section 63.1. G.S. 58-51-55(d), as amended by S.L. 1997-259, reads as rewritten:

"(d) Applicability. -- Subsection (b1) of this section applies only to group health insurance ~~contracts~~ contracts, other than excepted benefits as defined in G.S. 58-68-25, covering more than 50 employees. The remainder of this section applies only to group health insurance contracts covering 20 or more employees. For purposes of this section, 'group health insurance contracts' include MEWAs, as defined in G.S. 58-49-30(a)."

Section 63.2. G.S. 58-65-90(d), as amended by S.L. 1997-259, reads as rewritten:

"(d) Applicability. -- Subsection (b1) of this section applies only to subscriber ~~contracts~~ contracts, other than excepted benefits as defined in G.S. 58-68-25, covering more than 50 employees. The remainder of this section applies only to group contracts covering 20 or more employees."

Section 63.3. G.S. 58-67-75(d), as amended by S.L. 1997-259, reads as rewritten:

"(d) Applicability. -- Subsection (b1) of this section applies only to group ~~contracts~~ contracts, other than excepted benefits as defined in G.S. 58-68-25, covering more than 50 employees. The remainder of this section applies only to group contracts covering 20 or more employees."

Section 63.4. G.S. 58-51-15(h), as enacted by S.L. 1997-259, reads as rewritten:

"(h) Preexisting Condition Exclusion Clarification. -- Sub-subdivision (a)(2)b. of this section does not apply to:

(1) Policies issued to eligible individuals under G.S. 58-68-60.

(2) Excepted benefits as described in ~~G.S. 58-68-25(b).~~ G.S. 58-68-25(b)(1)."

Section 63.5. G.S. 58-68-40(e), as enacted by S.L. 1997-259, reads as rewritten:

"(e) Exception for ~~Coverage Offered Only to Bona Fide Association Members.~~ Coverage. -- Subsection (a) of this section does not apply to:

(1) Health insurance coverage offered by a health insurer if the coverage is made available in the small group market only through one or more bona fide associations.

(2) A self-employed individual as defined in ~~G.S. 58-50-110(21a).~~ G.S. 58-50-110(21a), except as otherwise provided for the basic and standard health care plans under the North Carolina Small Employer Group Health Coverage Reform Act."

Section 63.6. G.S. 58-68-60(b)(2), as enacted by S.L. 1997-259, reads as rewritten:

"(2) Who is not eligible for coverage under (i) ~~an ERISA~~ a group health plan, (ii) part A or part B of title XVIII of the Social Security Act, or (iii) a State plan under title XIX of the Act (or any successor program), and does not have other health insurance coverage;".

Section 63.7. G.S. 58-50-65(d) reads as rewritten:

"(d) The provisions of G.S. ~~58-51-5(5)~~ 58-51-5(a)(5) and G.S. 58-51-15(a)(1), (4), and (10) may be omitted from railroad ticket policies sold only at railroad stations or at railroad ticket offices by railroad employees."

Section 63.8. G.S. 58-67-74(a), as enacted by S.L. 1997-225, reads as rewritten:

"(a) Every health care plan written by a health maintenance organization ~~and in force,~~ that is issued, renewed, or amended on or after October 1, 1997, and that is subject to this Article, shall provide coverage for medically appropriate and necessary services, including diabetes outpatient self-management training and educational services, and equipment, supplies, medications, and laboratory procedures used to treat diabetes. Diabetes outpatient self-management training and educational services shall be provided by a physician or a health care professional designated by the physician. The health maintenance organization shall determine who shall provide and be reimbursed for the diabetes outpatient self-management training and educational services. The same deductibles, coinsurance, and other limitations ~~as~~ that apply to similar services covered under the ~~policy, contract, or~~ plan shall apply to the diabetes coverage required under this section."

Section 63.9. G.S. 58-67-79(a), as enacted by S.L. 1997-312, reads as rewritten:

"(a) Every health care plan written by a health maintenance organization ~~and in force,~~ that is issued, renewed, or amended on or after January 1, 1998, that is subject to this ~~Article~~ Article, and that provides coverage for mastectomy shall provide coverage for reconstructive breast surgery resulting from a mastectomy. The coverage shall include coverage for all stages and revisions of reconstructive breast surgery performed on a nondiseased breast to establish symmetry when reconstructive surgery on a diseased breast is performed. The same deductibles, coinsurance, and other limitations ~~as~~ that apply to similar services covered under the ~~policy, contract, or~~ plan

shall apply to coverage for reconstructive breast surgery. Reconstruction of the nipple/areolar complex following a mastectomy is covered without regard to the lapse of time between the mastectomy and the reconstruction, subject to the approval of the treating physician."

PART XII. COMMERCIAL INSURANCE FORM DOCUMENT RETENTION.

Section 64. G.S. 58-41-50(g) reads as rewritten:

"(g) An insurer subject to this Article may develop and use an individual form or rate as a result of the uniqueness of a particular risk. The form or rate shall be developed, filed, and used in accordance with rules adopted by the Commissioner. Rules adopted by the Commissioner under this section may provide for retention of certain documents and data by insurers instead of insurers filing those records with the Commissioner."

PART XIII. BAIL BONDS.

Section 65. G.S. 58-71-82 reads as rewritten:

"**§ 58-71-82. Dual license holding.**

If an individual holds a professional bondsman's license or a runner's license and a surety bondsman's license simultaneously, they are considered one license for the purpose of disciplinary actions involving suspension, revocation, or ~~renewal~~ nonrenewal under this Article. Separate renewal fees must be paid for each license, however."

PART XIV. WORKERS' COMPENSATION TPA.

Section 65.1. Article 47 of Chapter 58 of the General Statutes is amended by adding the following new Part:

"Part 3. Third-Party Administrators for Groups.

"**§ 58-47-210. Definitions.**

As used in this Part:

(1) 'Board' means the board of trustees or other governing body of a group.

(2) 'Control' means 'control' as defined in G.S. 58-19-5(2).

(3) 'GAAP financial statement' means a financial statement as defined by generally accepted accounting principles.

(4) 'Group' means a group of employers that is licensed under Part 1 of this Article.

(5) 'Hazardous financial condition' means that, based on its present or reasonably anticipated financial condition, a person is insolvent or, although not yet financially impaired or insolvent, is unlikely to be able to meet obligations with respect to known and reasonably anticipated obligations in the normal course of business.

(6) 'Member' means an employer that participates in a group.

(7) 'Third-party administrator' or 'TPA' means a person engaged by a board to execute the policies established by the board and to provide day-to-day management of the group. 'Third-Party Administrator' and 'TPA' does not mean:

a. An employer acting on behalf of its employees or the employees of one or more of its affiliates.
b. An insurer that is licensed under this Chapter or that is acting as an insurer with respect to a policy lawfully issued and delivered by it and under the laws of a state in which the insurer is licensed to write insurance.
c. An agent or broker who is licensed by the Commissioner under Article 33 of this Chapter whose activities are limited exclusively to the sale of insurance.
d. An adjuster licensed by the Commissioner under Article 33 of this Chapter whose activities are limited to adjustment of claims.
e. An individual who is an officer, a member, or an employee of a board.

"§ 58-47-215. TPA authority; license, qualification for approval.

(a) No person shall act as, offer to act as, or hold himself or herself out as a TPA with respect to risks located in this State for a group unless that person is licensed by the Commissioner under this Part.

(b) An applicant for a license shall file with the Commissioner the information required by subsection (c) of this section on a form prescribed by the Commissioner at least 90 days before the proposed licensing date. No application is complete until the Commissioner has received all required information.

(c) The following information shall be included in the license application:

(1) All organizational documents of the TPA, including articles of incorporation, articles of association, a partnership agreement, a trade name certificate, or a trust agreement, any other applicable documents, and all amendments to these documents;
(2) The bylaws, rules, regulations, or similar documents regulating the internal affairs of the TPA;
(3) The names, addresses, official positions, and professional qualifications of the individuals who are responsible for the conduct of affairs of the TPA, including (i) all members of the board of directors, executive committee, or other governing board or committee, (ii) the principal officers in the case of a corporation or the partners or members in the case of a partnership or association, (iii) all shareholders holding directly or indirectly ten percent (10%) or more of the voting securities of the TPA, and (iv) any other person who exercises control or influence over the affairs of the TPA;
(4) The annual audited GAAP financial statements for the two most recent years that demonstrate the applicant is solvent and an ongoing concern and any other information the Commissioner may require in order to review the current financial condition of the applicant;

(5) A general description of the business operations, including information on staffing levels and activities proposed in this State and nationwide. The description shall provide details setting forth the TPA's capability for providing a sufficient number of experienced and qualified personnel in the areas of claims processing, record keeping, and underwriting;

(6) The annual report of the manner and amount of all charges, fees, and direct and indirect compensation received from the group as specified in the service agreement;

(7) All written agreements or contracts with groups; and

(8) Any other pertinent information, including evidence of compliance with other provisions of this Article, as required by the Commissioner.

(d) The information required by subsection (c) of this section, including any trade secrets, shall be kept confidential; provided that the Commissioner may use that information in any judicial or administrative proceeding instituted against the TPA.

(e) TPA licenses shall be renewed annually and applications for renewals of licenses shall include or be accompanied by any changes in the information required by subsection (c) of this section.

(f) A TPA shall notify the Commissioner of any material change in its ownership, control, or other fact or circumstance affecting its qualification for a license in this State, 30 business days before the change. Failure of the Commissioner to disapprove any material changes within 30 days after the changes have been filed with the Commissioner constitutes the Commissioner's approval of the filed changes.

(g) After initial licensing, a TPA shall file with the Commissioner all contracts with a group 60 days before the effective date of the contract.

"§ 58-47-220. TPA license; termination; revocation; restrictions.

(a) The Commissioner may refuse to issue a license if the Commissioner determines that any of the provisions of this section apply to the TPA, or to any individual responsible for the conduct of affairs of the TPA.

(b) The Commissioner shall suspend or revoke automatically the license of a TPA and a request for a hearing shall not stay the effect of the revocation, suspension, or nonrenewal if the Commissioner finds that any of the following apply to the TPA:

(1) The TPA is using methods or practices in the conduct of its business that render its further transaction of business in this State hazardous or injurious to insured persons or the public;

(2) The TPA has failed to pay any judgment rendered against it in this State within 60 days after the judgment has become final;

(3) The TPA has refused to be examined or to produce its accounts, records, and files for examination, or any of its officers have refused to give information with respect to its affairs or have refused to perform any other legal obligation as to that examination, when required by the Commissioner;

(4) The TPA has, without just cause, refused to pay proper claims or perform services arising under its contract, has caused covered members to accept less than the amount due them, or has caused covered members to employ attorneys or bring suit against the TPA to secure full payment or settlement of the claims;

(5) The TPA is an affiliate of or under the same general management, interlocking directorate, or ownership as another TPA or group that unlawfully transacts business in this State;

(6) The TPA, or any principal or affiliate of the TPA, has been convicted of or has entered a plea of guilty or nolo contendere to a felony without regard to whether judgment was withheld;

(7) The TPA or an affiliate is under revocation, suspension, or nonrenewal in another state;

(8) The TPA is in hazardous financial condition;

(9) The TPA has filed for protection under the United States Bankruptcy Code or any state receivership law;

(10) The financial condition or business practices of the TPA otherwise pose an imminent threat to the public health, safety, or welfare of the residents of this State; or

(11) The TPA is found to be in violation of Article 63 of this Chapter.

(c) The Commissioner may, after notice and opportunity for hearing, suspend or revoke the license of a TPA if the Commissioner finds that any of the following apply to the TPA:

(1) The TPA has violated a rule or an order of the Commissioner or any provision of this Chapter or Chapter 97 of the General Statutes; or

(2) The TPA at any time fails to meet any qualification for which issuance of the license could have been refused had the failure then existed and been known to the Commissioner at the time of the application.

(d) If the Commissioner determines that a TPA or any other person has not materially complied with this Article or with any rule adopted or order issued under this Article, after notice and opportunity to be heard, the Commissioner may order:

(1) For each separate violation, a civil penalty pursuant to G.S. 58-2-70(d); or

(2) Revocation, suspension, or nonrenewal of the person's license.

(e) If the Commissioner finds that because of a material noncompliance a group has suffered any loss or damage, the Commissioner may maintain a civil action brought by or on behalf of the group and its policyholders and creditors for recovery of compensatory damages for the benefit of the group and its policyholders and creditors or for other appropriate relief.

(f) Nothing in this Article affects the Commissioner's right to impose any other penalties provided for in this Chapter. Nothing in this Article limits or restricts the rights of policyholders, claimants, and creditors.

(g) If an order of rehabilitation or liquidation of the group has been entered under Article 30 of this Chapter, and the receiver appointed under that order determines that the TPA or any other person has not materially complied with this section, or any order or rule adopted thereunder, and the group suffered any loss or damage therefrom, the receiver may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the group."

PART XV. AGENTS.

Section 65.2. Article 33 of Chapter 58 of the General Statutes is amended by adding the following new section to read:

"**§ 58-33-41. Agent or broker of record; managed care contracts.**

An insurer or service corporation offering managed care products and an HMO shall recognize a licensed agent or broker that has been designated by an employer to inquire about or secure group health coverage for the employer."

Section 65.3. G.S. 58-33-25(o) reads as rewritten:

"(o) No license as an agent, broker, or limited representative is required of the following:

(1) Any regular salaried officer or employee of an insurance company, of a licensed agent, of a broker, or of a limited representative, if such officer's or employee's duties and responsibilities do not include the negotiation or solicitation of insurance.

(2) Persons who secure and furnish information on behalf of an employer, where no commission is paid for such service, for the purpose of group or wholesale life insurance, annuities, or group, blanket or franchise health insurance; or for enrolling individuals under such plans or issuing certificates thereunder; or otherwise assisting in administering such plans.

(3) Employers or their officers or employees, or the trustees of any employee trust plan, to the extent that such employers, officers, employees, or trustees are engaged in the administration or operation of any program of employee benefits for their own employees or the employees of their subsidiaries or affiliates involving the use of insurance issued by a licensed insurance company; provided that such employers, officers, employees, or trustees are not in any manner compensated, directly or indirectly, by the insurance company issuing such insurance.

(4) Agency office employees acting within the confines of the agent's office, under the direction and personal supervision of the duly licensed agent and within the scope of the agent's license, in the acceptance of applications, personally underwritten by the agent, payment of premiums, and the performance of clerical, stenographic, and similar office duties; provided that the activity does not amount to the interpretation of insurance policies, provisions or coverage, to sales or negotiation of insurance policies,

to any underwriting function, or to the signing or verification of applications for insurance.

(4a) Agency office employees, acting within the confines of an agent's office, under the direct and personal supervision of an agent licensed under this Article and within the scope of the agent's license, who only obtain policy expiration or renewal dates from persons or who only obtain the names of insurance companies with which those persons have coverage; provided, that these activities by these employees are not the primary function of the agent's office, and provided further that these activities do not amount to the interpretation of insurance policies, provisions, or coverage, to sales or negotiation of insurance policies, to any underwriting function, or to the signing or verification of applications for insurance. The Commissioner may adopt rules to govern methods and manners of communications made by employees under this subdivision.

(5) Licensed insurers authorized to write the kinds of insurance described in G.S. 58-7-15(1) through G.S. 58-7-15(3) that do business without the involvement of a licensed agent."

PART XVI. EFFECT OF HEADINGS.

Section 66. The headings to the parts of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act.

PART XVII. EFFECTIVE DATE.

Section 67. Sections 30 through 32.1 of this act become effective September 1, 1997. Section 61 of this act is effective retroactively to June 30, 1997. Sections 62, 63.4, 63.5, and 63.6 of this act are effective retroactively July 1, 1997. Section 63.8 is effective retroactively to June 26, 1997. Section 63.9 is effective retroactively to July 17, 1997. Sections 63.1, 63.2, and 63.3 become effective January 1, 1998. Section 65.1 of this act becomes effective July 1, 1998. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 3

SENATE BILL 843
Pensions & Retirement and Insurance Committee Substitute Adopted 4/29/97
House Committee Substitute Favorable 8/18/97

Short Title: Insurance Technical Changes. (Public)

Sponsors:

Referred to:

April 15, 1997

A BILL TO BE ENTITLED

AN ACT TO REPEAL OBSOLETE LAWS AND MAKE TECHNICAL AND CLARIFYING AMENDMENTS AND CORRECTIONS IN VARIOUS INSURANCE STATUTES; AND TO EXTEND THE EXPIRATION DATE OF THE 1986 RISK SHARING PLAN LAW.

The General Assembly of North Carolina enacts:

PART I. REPEALS OF OBSOLETE OR UNNECESSARY PROVISIONS.

Section 1. G.S. 58-3-125, 58-6-10, 58-7-150, 58-41-35, and 58-71-90 are repealed.

Section 2. G.S. 58-2-120 reads as rewritten:

"**§ 58-2-120. Reports of Commissioner to the Governor and General Assembly.**

~~The Commissioner shall biennially submit to the General Assembly, through the Governor, a report of his official acts, including a summary of official rulings and regulations.~~ The Commissioner shall, from time to time, report to the Governor and the General Assembly any change ~~which~~ that in ~~his~~ the Commissioner's opinion should be made in the laws relating to insurance and other subjects pertaining to ~~his department. On or before the first day of February of each year in which the General Assembly is in session he shall make to the Governor the recommendations called for in this section, to be transmitted to the General Assembly, with the last annual report of this Department, including receipts and disbursements.~~ the Department."

Section 3. G.S. 58-87-10(e) reads as rewritten:

"(e) Revenue Source. -- Revenue is credited to the Workers' Compensation Fund from appropriations made to the Department of Insurance for this purpose. In addition, every eligible unit that elects to participate shall pay into the Fund an amount set annually by the State Fire and Rescue Commission to ensure that the Fund will be able to meet its payment obligations under this section. The amount shall be set as a per capita fixed dollar amount for each member of the roster of the eligible unit.

The payment shall be made to the State Fire and Rescue Commission on or before July 1 of each year. The Commission shall remit the payments it receives to the State Treasurer, who shall credit the payments to the Fund. ~~If the Commission does not receive an annual payment from an eligible unit by July 1, then that unit shall not receive workers' compensation coverage from the Fund for the fiscal year that begins that July 1.~~"

Section 4. G.S. 120-123(55) and (65) are repealed.

Section 5. G.S. 58-36-15(e) reads as rewritten:

"(e) The Commissioner may require the filing of supporting data including:

(1) The Bureau's interpretation of any statistical data relied upon;

(2) Descriptions of the methods employed in setting the rates;

(3) Analysis of the incurred losses submitted on an accident year or policy year basis into their component parts; to wit, paid losses, reserves for losses and loss expenses, and reserves for losses incurred but not reported;

(4) The total number and dollar amount of paid claims;

(5) The total number and dollar amount of case basis reserve claims;

(6) Earned and written premiums at current rates by rating territory;

(7) Earned premiums and incurred losses according to classification plan categories; and

(8) Income from investment of unearned premiums and loss and loss expense reserves generated by business within this State.

~~Provided, however, that with respect to business written prior to January 1, 1980, the Commissioner shall not require the filing of such supporting data which has not been required to be recorded under statistical plans approved by the Commissioner.~~"

Section 6. G.S. 58-3-115 reads as rewritten:

"**§ 58-3-115. Twisting with respect to insurance policies; penalties.**

No insurer shall make or issue, or cause to be issued, any written or oral statement that willfully misrepresents or willfully makes an incomplete comparison as to the terms, conditions, or benefits contained in any policy of insurance for the purpose of inducing or attempting to induce a policyholder in any way to terminate or surrender, exchange, or convert any insurance policy. Any person who violates this section is subject to the provisions of ~~G.S. 58-2-70, 58-3-90 through 58-3-100, and 58-3-125.~~ G.S. 58-2-70 or G.S. 58-3-100."

Section 7. G.S. 58-30-75(7) reads as rewritten:

"(7) Without first obtaining the written consent of the ~~Commissioner pursuant to G.S. 58-7-150,~~ Commissioner, the insurer has (i)

transferred, or attempted to transfer, in a manner contrary to Article 19 of this Chapter, substantially its entire property or business, or (ii) has entered into any transaction, the effect of which is to merge, consolidate, or reinsure substantially its entire property or business in or with the property or business of any other person."

Section 8. G.S. 58-41-40(a) reads as rewritten:

"(a) There is no liability on the part of and no cause of action for defamation or invasion of privacy arises against any insurer or its authorized representatives, agents, or employees, or any licensed insurance agent or broker, for any communication or statement made, unless shown to have been made in bad faith with malice, in any of the following:

(1) A written notice of cancellation under ~~G.S. 58-41-15,~~ G.S. 58-41-15 or of nonrenewal under G.S. 58-41-20, ~~or of cessation of business through an agency under G.S. 58-41-35,~~ specifying the reasons ~~therefor;~~ for cancellation.

(2) Communications providing information pertaining to ~~such cancellation, nonrenewal, or cessation of business through an agency;~~ the cancellation or nonrenewal.

(3) Evidence submitted at any court proceeding, administrative hearing, or informal inquiry in which ~~such cancellation, nonrenewal, or cessation of business through an agency~~ the cancellation or nonrenewal is an issue."

PART II. AMENDMENTS NECESSARY BECAUSE OF 1995 REWRITE OF G.S. 58-2-50.

Section 9. G.S. 58-34-2(j) reads as rewritten:

"(j) The Commissioner shall disapprove any such contract that:

(1) Does not contain the required contract provisions specified in subsection (d) of this section;

(2) Subjects the insurer to excessive charges for expenses or commission;

(3) Vests in the MGA any control over the management of the affairs of the insurer to the exclusion of the board of directors of the insurer;

(4) Is entered into with any person if the person or its officers and directors are of known bad character or have been affiliated directly or indirectly through ownership, control, management, reinsurance transactions, or other insurance or business relationships with any person known to have been involved in the improper manipulation of assets, accounts, or reinsurance; or

(5) Is determined by the Commissioner to contain provisions that are not fair and reasonable to the insurer.

Failure of the Commissioner to disapprove any such contract within 30 days after the contract has been filed with the Commissioner constitutes the Commissioner's

approval of the contract. An insurer may continue to accept business from ~~such~~ the person until the Commissioner disapproves the contract. Any disapproval shall be in writing. The Commissioner ~~may, after a hearing held under G.S. 58-2-50,~~ may withdraw approval of any contract the Commissioner has previously approved ~~upon finding~~ if the Commissioner determines that the basis of the original approval no longer exists or that the contract has, in actual operation, shown itself to be subject to disapproval on any of the grounds in this subsection. If the Commissioner withdraws approval of a contract, the Commissioner shall give the insurer notice of, and written reasons for, the withdrawal of approval. The Commissioner shall grant any party to the contract a hearing upon request."

Section 10. G.S. 58-34-15(b) reads as rewritten:

"(b) If the Commissioner disapproves any management contract, ~~notice of such action shall be given to the insurer assigning the reasons therefor in writing.~~ the Commissioner shall give notice of, and written reasons for, the disapproval to the insurer. The Commissioner shall grant any party to the contract a hearing upon ~~request according to G.S. 58-2-50.~~ request."

Section 11. G.S. 58-40-100 reads as rewritten:

"§ 58-40-100. Request for review of rate, rating plan, rating system or underwriting rule.

(a) Any person aggrieved by any rate charged, rating plan, rating system, or underwriting rule followed or adopted by an insurer or rating organization may request in writing that the insurer or rating organization ~~to~~ review the manner in which the rate, plan, system, or rule has been applied with respect to ~~insurance afforded him. Such request may be made by his authorized representative, and shall be in writing.~~ the person's insurance. The person's authorized representative may make the request. If the request is not granted within 30 days after it is made, the requestor may treat it as rejected. Any person aggrieved by the action of an insurer or rating organization in refusing the review requested or in failing or refusing to grant all or part of the relief requested, may file a written complaint and request for hearing with the Commissioner, and shall specify the grounds relied upon. If the Commissioner has information concerning a similar ~~complaint he~~ complaint, the Commissioner may deny the hearing. If the Commissioner believes that probable cause for the complaint does not exist or that the complaint is not made in good faith, ~~he~~ the Commissioner shall deny the hearing. If the Commissioner finds that the complaint charges a violation of this Article and that the complainant would be aggrieved if the violation is proven, ~~he~~ the Commissioner shall proceed as provided in G.S. ~~58-2-50 or~~ 58-2-70.

(b) Repealed by Session Laws 1985 (Regular Session, 1986), c. 1027, s. 15."

Section 12. G.S. 58-42-1 reads as rewritten:

"§ 58-42-1. Establishment of plans.

If the Commissioner finds, after a ~~hearing held in accordance with G.S. 58-2-50,~~ hearing, that in all or any part of this State, any amount or kind of insurance authorized by G.S. 58-7-15(4) through G.S. 58-7-15(22) is not readily available in the

voluntary market and that the public interest requires the availability of that insurance, ~~he~~ the Commissioner may either:

(1) Promulgate plans to provide insurance coverage for any risks in this State that are, based on reasonable underwriting standards, entitled to obtain but are otherwise unable to obtain coverage; or

(2) Call upon insurers to prepare plans for ~~his~~ the Commissioner's approval."

Section 13. G.S. 58-45-50 reads as rewritten:

"**§ 58-45-50. Appeal from acts of Association to Commissioner; appeal from Commissioner to superior court.**

Any person or any insurer who may be aggrieved by an act, ruling or decision of the Association other than an act, ruling or decision relating to the cause or amount of a claimed loss, may, within 30 days after ~~such ruling~~ the ruling, appeal to the Commissioner. Any hearings held by the Commissioner ~~pursuant to such an~~ under the appeal shall be in accordance with ~~the procedure set forth in G.S. 58-2-50:~~ rules adopted by the Commissioner: Provided, however, the Commissioner is authorized to appoint a member of ~~his~~ the Commissioner's staff as deputy commissioner for the purpose of hearing ~~such~~ those appeals and a ruling based upon ~~such~~ the hearing ~~shall have~~ has the same effect as if heard by the Commissioner. All persons or insureds aggrieved by any order or decision of the Commissioner may appeal as ~~is~~ provided ~~by the provisions of~~ in G.S. 58-2-75.

No later than 20 days before each hearing, the appellant shall file with the Commissioner or his designated hearing officer and shall serve on the appellee a written statement of ~~his~~ the appellant's case and any evidence ~~he~~ that the appellant intends to offer at the hearing. No later than five days before ~~such~~ the hearing, the appellee shall file with the Commissioner or ~~his~~ the designated hearing officer and shall serve on the appellant a written statement of ~~his~~ the appellant's case and any evidence ~~he~~ that the appellee intends to offer at the hearing. ~~Each such hearing shall be recorded and transcribed. The cost of such recording and transcribing shall be borne equally by the appellant and appellee; provided that upon any final adjudication the prevailing party shall be reimbursed for his share of such costs by the other party.~~ The procedures governing recordings of hearings and, if necessary, transcripts of recordings, as well as the fees for copies of recordings and transcripts, shall be determined by rules adopted by the Commissioner. Each party shall, on a date determined by the Commissioner or his designated hearing officer, but not sooner than 15 days after delivery of the completed transcript to the party, submit to the Commissioner or his designated hearing officer and serve on the other party, a proposed order. The Commissioner or his designated hearing officer shall then issue an order."

Section 14. G.S. 58-45-70 reads as rewritten:

"**§ 58-45-70. Commissioner may examine affairs of Association.**

The Commissioner may from time to time make an examination into the affairs of the Association when ~~he~~ the Commissioner deems it to be ~~prudent and in undertaking such examination he~~ prudent, and as part of the examination the

Commissioner may hold a public ~~hearing pursuant to the provisions of G.S. 58-2-50.~~ hearing. ~~The expenses of such examination shall be borne and paid by the Association.~~ The Association shall pay the expenses of the examination."

Section 15. G.S. 58-46-20(c) reads as rewritten:

"(c) The Commissioner may designate the kinds of property insurance policies on principal residences to be offered by the association, including insurance policies under Article 36 of this Chapter, and the commission rates to be paid to agents or brokers for these policies, if ~~he~~ the Commissioner finds, after a ~~hearing held in accordance with G.S. 58-2-50,~~ hearing, that the public interest requires the designation. The provisions of Chapter 150B of the General Statutes do not apply to any procedure under this subsection, except that G.S. 150B-39 and G.S. 150B-41 shall apply to a hearing under this subsection. Within 30 days after the receipt of notification from the Commissioner of a change in designation ~~pursuant to~~ under this subsection, the association shall submit a revised plan and articles of association for approval in accordance with subsection (b) of this section."

Section 16. G.S. 58-46-30 reads as rewritten:

"**§ 58-46-30. Appeals; judicial review.**

The association shall provide reasonable means, to be approved by the Commissioner, whereby any person or insurer affected by any act or decision of the administrators of the Plan or underwriting association, other than an act or decision relating to the cause or amount of a claimed loss, may be heard in person or by an authorized representative, before the governing board of the association or a designated committee. Any person or insurer aggrieved by any decision of the governing board or designated committee, may be appealed to the Commissioner within 30 days from the date of ~~such~~ the ruling or decision. The Commissioner, after hearing held ~~pursuant to the procedure set forth in G.S. 58-2-50,~~ under rules adopted by the Commissioner, shall issue an order approving or disapproving the act or decision with respect to the matter ~~which~~ that is the subject of appeal. The Commissioner ~~is authorized to~~ may appoint a member of ~~his~~ the Commissioner's staff as deputy commissioner for the purpose of hearing ~~such~~ the appeals and a ruling based on ~~such~~ the hearing ~~shall have~~ has the same effect as if heard by the ~~Commissioner personally.~~ Commissioner. All persons or insurers or their representatives aggrieved by any order or decision of the Commissioner may appeal as provided ~~by the provisions of~~ in G.S. 58-2-75.

No later than 20 days before each hearing, the appellant shall file with the Commissioner or ~~his~~ the designated hearing officer and shall serve on the appellee a written statement of ~~his~~ the appellant's case and any evidence ~~he~~ that the appellant intends to offer at the hearing. No later than five days before ~~such~~ the hearing, the appellee shall file with the Commissioner or ~~his~~ the designated hearing officer and shall serve on the appellant a written statement of ~~his~~ the appellee's case and any evidence ~~he~~ that the appellee intends to offer at the hearing. ~~Each such hearing shall be recorded and transcribed. The cost of such recording and transcribing shall be borne equally by the appellant and appellee; provided that upon any final adjudication the prevailing party shall be reimbursed for his share of such costs by~~

~~the other party.~~ The procedures governing recordings of hearings and, if necessary, transcripts of recordings, as well as the fees for copies of recordings and transcripts, shall be determined by rules adopted by the Commissioner. Each party shall, on a date determined by the Commissioner or ~~his~~ the designated hearing officer, but not sooner than 15 days after delivery of the completed transcript to the party, submit to the Commissioner or ~~his~~ the designated hearing officer and serve on the other party, a proposed order. The Commissioner or ~~his~~ the designated hearing officer shall then issue an order."

PART III. CONTINUING CARE RETIREMENT COMMUNITY NAME CORRECTION AND RECEIVERSHIPS.

Section 17. G.S. 58-30-10(14) reads as rewritten:

"(14) 'Insurer' means any entity licensed under Articles 7, 16, 26, 49, 65, or 67 of this Chapter and any employer that has furnished to the Commissioner satisfactory proof of its financial responsibility under G.S. 97-93(a)(2). For purposes of this Article, 'insurer' also includes continuing care retirement ~~centers~~ communities licensed under Article 64 of this Chapter."

Section 18. The title of Article 64 of Chapter 58 of the General Statutes reads as rewritten:

"ARTICLE 64.

~~"Registration, Disclosure, Contract, and Financial Monitoring Requirements for~~ Continuing Care ~~Facilities.~~ Retirement Communities."

Section 19. G.S. 58-64-1 reads as rewritten:

"**§ 58-64-1. Definitions.**

As used in this Article, unless otherwise specified:

(1) 'Continuing care' means the furnishing to an individual other than an individual related by blood, marriage, or adoption to the person furnishing the care, of lodging together with nursing services, medical services, or other health related services, ~~pursuant to~~ under an agreement effective for the life of the individual or for a period ~~in excess of~~ longer than one year.

(2) 'Entrance fee' means a payment that assures a resident a place in a facility for a term of years or for life.

(3) 'Facility' means the ~~place or places~~ retirement community or communities in which a provider undertakes to provide continuing care to an individual.

(4) 'Health related services' means, at a minimum, nursing home admission or assistance in the activities of daily living, exclusive of the provision of meals or cleaning services.

(5) 'Living unit' means a room, apartment, cottage, or other area within a facility set aside for the exclusive use or control of one or more identified residents.

(6) 'Provider' means the promoter, developer, or owner of a ~~continuing care~~ facility, whether a natural person, partnership, or

other unincorporated association, however organized, trust, or corporation, of an institution, building, residence, or other place, whether operated for profit or not, or any other person, that solicits or undertakes to provide continuing care under a continuing care facility contract, or that represents ~~himself~~ himself, herself, or itself as providing continuing care or 'life care.'

(7) 'Resident' means a purchaser of, a nominee of, or a subscriber to, a continuing care contract.

(8) 'Hazardous financial condition' means a provider is insolvent or in eminent danger of becoming insolvent."

Section 20. G.S. 58-64-40(b) reads as rewritten:

"(b) The board of directors or other governing body of a ~~continuing care~~ facility or its designated representative shall hold annual meetings with the residents of the ~~continuing care~~ facility for free discussions of subjects including, but not limited to, income, expenditures, and financial trends and problems as they apply to the facility and discussions of proposed changes in policies, programs, and services. Residents shall be entitled to at least seven days advance notice of each meeting. An agenda and any materials that will be distributed by the governing body at the meetings shall remain available upon request to residents."

Section 21. G.S. 58-64-80 reads as rewritten:

"**§ 58-64-80. Advisory Committee.**

There shall be a nine member Continuing Care Advisory Committee appointed by the Commissioner. The Committee shall consist of at least two residents of ~~continuing care communities,~~ facilities, two representatives of the North Carolina Association of Nonprofit Homes for the Aging, one individual who is a certified public accountant and is licensed to practice in this State, one individual skilled in the field of architecture or engineering, and one individual who is a health care professional."

Section 21.1. Article 64 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-64-46. Receiverships; exception for facility beds.**

When the Commissioner has been appointed as a receiver under Article 30 of this Chapter for a provider or facility subject to this Article, and if it appears to the court, upon petition of the Commissioner or the provider, or on the court's own motion, that the best interests of the facility or the welfare of persons who have previously contracted with the provider or may contract with the facility may be best served by the addition of adult care home beds, the Department of Human Resources may, notwithstanding any other provision of law, accept and approve the addition of beds for that facility."

PART IV. WORKERS' COMPENSATION LOSS COSTS CONFORMING CHANGES.

Section 22. G.S. 58-36-1(2) reads as rewritten:

"(2) The Bureau shall provide reasonable means to be approved by the Commissioner whereby any person affected by a rate or loss

costs made by it may be heard in person or by ~~his~~ the person's authorized representative before the governing committee or other proper executive of the Bureau."

Section 23. G.S. 58-36-1(5)c. reads as rewritten:

"c. Failure or refusal by any assigned employer risk to make full disclosure to the Bureau, servicing carrier, or insurer writing a policy of information regarding the employer's true ownership, change of ownership, operations, or payroll, or any other failure to disclose fully any records pertaining to workers' compensation insurance shall be sufficient grounds for ~~the Bureau to authorize~~ the termination of the policy of that employer."

Section 24. G.S. 58-36-10 reads as rewritten:

"**§ 58-36-10. Method of rate making; factors considered.**

The following standards ~~shall~~ apply to the making and use of ~~rates:~~ rates or loss costs:

(1) Rates or loss costs shall not be excessive, inadequate or unfairly discriminatory.

(2) Due consideration shall be given to actual loss and expense experience within this State for the most recent three-year period for which ~~such~~ that information is available; to prospective loss and expense experience within this State; to the hazards of conflagration and catastrophe; to a reasonable margin for underwriting profit and to contingencies; to dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers; to investment income earned or realized by insurers from their unearned premium, loss, and loss expense reserve funds generated from business within this State; to past and prospective expenses specially applicable to this State; and to all other relevant factors within this State: Provided, however, that countrywide expense and loss experience and other countrywide data may be considered only where credible North Carolina experience or data is not available.

(3) In the case of fire insurance rates, as are subject to the ratemaking authority of the Bureau, consideration may be given to the experience of such fire insurance business during the most recent five-year period for which ~~such~~ that experience is available. In the case of fire insurance rates that are subject to the ratemaking authority of the Bureau, consideration shall be given to the insurance public protection classifications of rural fire districts based upon standards established by the Commissioner. To the extent credits are provided for proximity to fire hydrants, the Bureau may also provide appropriate credits in public protection

classifications for optional water sources, such as ponds, lakes, or other bodies of water, in accordance with standards and procedures filed with and approved by the Commissioner.

(4) Risks may be grouped by classifications and lines of insurance for establishment of ~~rates~~ rates, loss costs, and base premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans ~~which~~ that establish standards for measuring variations in hazards or expense provisions or both. ~~Such~~ Those standards may measure any differences among risks that can be demonstrated to have a probable effect upon losses or expenses. The Bureau ~~is directed to~~ shall establish and implement a comprehensive classification rating plan for motor vehicle insurance under its jurisdiction within 90 days of September 1, 1977. No such classification plans shall base any standard or rating plan for private passenger (nonfleet) motor vehicles, in whole or in part, directly or indirectly, upon the age or sex of the persons insured. The Bureau shall at least once every three years make a complete review of the filed classification rates to determine whether they are proper and supported by statistical evidence, and shall at least once every 10 years make a complete review of the territories for nonfleet private passenger motor vehicle insurance to determine whether they are proper and reasonable.

(5) In the case of workers' compensation insurance and employers' liability insurance written in connection therewith, due consideration shall be given to the past and prospective effects of changes in compensation benefits and in legal and medical fees that are provided for in General Statutes Chapter 97."

Section 25. G.S. 58-36-15(a) reads as rewritten:

"(a) The Bureau shall file with the Commissioner copies of the rates, loss costs, classification plans, rating plans and rating systems used by its members. Each rate or loss costs filing shall become effective on the date specified in the filing, but not earlier than 105 days ~~from~~ after the date the filing is received by the Commissioner: Provided that (1) rate or loss costs filings for workers' compensation insurance and employers' liability insurance written in connection therewith shall not become effective earlier than 120 days from the date the filing is received by the Commissioner or on the date ~~as~~ provided ~~under~~ in G.S. 58-36-100, whichever is earlier; and (2) any filing may become effective on a date earlier than that specified in this subsection upon agreement between the Commissioner and the Bureau."

Section 26. G.S. 58-36-15(f) reads as rewritten:

"(f) On or before September 1 of each calendar year the Bureau shall submit to the Commissioner the experience, data, statistics, and information referred to in subsection (c) of this section and required under G.S. 58-36-100 and a residual market rate ~~or~~ and prospective loss costs review based on ~~such~~ those data for

workers' compensation insurance and employers' liability insurance written in connection therewith. Any rate or loss costs increase for ~~such~~ that insurance that is implemented ~~pursuant to~~ under this Article shall become effective solely to ~~such insurance as is written having~~ insurance with an inception date on or after the effective date of the rate or loss costs increase."

Section 27. G.S. 58-36-15(g) reads as rewritten:

"(g) The following information must be included in policy form, rule, and rate or loss costs filings under this Article and under Article 37 of this Chapter:

(1) A detailed list of the rates, loss costs, rules, and policy forms filed, accompanied by a list of those superseded; and

(2) A detailed description, properly referenced, of all changes in policy forms, rules, prospective loss costs, and rates, including the effect of each change."

Section 28. G.S. 58-36-30(a) reads as rewritten:

"(a) ~~No insurer, officer, agent or representative thereof~~ Except as permitted by G.S. 58-36-100 for workers' compensation loss costs filings, no insurer and no officer, agent, or representative of an insurer shall knowingly issue or deliver or knowingly permit the issuance or delivery of any policy of insurance in this State ~~which~~ that does not conform to the rates, rating plans, classifications, schedules, rules and standards made and filed by the Bureau. ~~However, an~~ An insurer may deviate from the rates ~~promulgated~~ adopted by the Bureau ~~provided~~ if the insurer has filed the proposed deviation ~~to be applied both~~ with the Bureau and the Commissioner, ~~and provided the deviation is uniform in its application to all risks in the State of the class to which the deviation is to apply; and provided such deviation is approved by the Commissioner.~~ if the proposed deviation is based on sound actuarial principles, and if the proposed deviation is approved by the Commissioner. ~~The Commissioner shall approve proposed deviations if they do not render the rates excessive, inadequate or unfairly discriminatory. If approved, the deviation may thereafter be amended, subject to the provisions of this subsection.~~ Amendments to deviations are subject to the same requirements as initial filings. ~~The deviation may be terminated~~ An insurer may terminate a deviation only if the deviation has been in effect for a period of six months before the effective date of the termination and the insurer notifies the Commissioner of the termination no later than 15 days before the effective date of the termination."

Section 29. G.S. 58-36-30(c) reads as rewritten:

"(c) ~~Any deviation with respect to workers' compensation and employers' liability insurance written in connection therewith as filed under subsection (a) of this section shall apply uniformly to all classifications.~~ Any approved rate under subsection (b) of this section with respect to workers' compensation and employers' liability insurance written in connection therewith shall be furnished to the Bureau."

Section 30. Effective September 1, 1997, G.S. 58-36-100(a) reads as rewritten:

"(a) ~~Nothing in this section requires the Bureau or its member insurers to refile rates previously implemented before two years after the effective date of this section.~~

~~Any member insurer of the Bureau may continue to use all rates and deviations filed and approved for its use until disapproved, or the insurer makes its own filing to change its rates, either by making an independent filing or by filing a reference filing adoption form adopting the Bureau's prospective loss costs, or modification thereof.~~ Except as provided in ~~subsection~~ subsections (k) and (m) of this section, ~~with the initial prospective loss costs reference filing,~~ the Bureau shall no longer develop or file any minimum premiums, minimum premium formulas, or expense constants. If an insurer wishes to amend minimum premium ~~formulas,~~ formulas or expense constants, it must file the minimum premium rules, formulas, or amounts it proposes to use. A copy of each filing submitted to the Commissioner under subsections (e) and (g) of this section shall also be sent to the Bureau."

Section 31. Effective September 1, 1997, G.S. 58-36-100(b)(1) reads as rewritten:

"(1) 'Expenses'. -- That portion of a rate attributable to acquisition, field supervision, collection expenses, any tax levied by the State or by any political subdivision of the State, licensing costs, fees, and general expenses, as determined by the insurer."

Section 32. Effective September 1, 1997, G.S. 58-36-100(c) reads as rewritten:

"(c) Except as provided in subsection (m) of this section, for workers' compensation and employers' liability insurance written in connection with workers' compensation insurance, the Bureau shall no longer develop or file advisory final rates that contain provisions for expenses (other than loss adjustment expenses) and profit. The Bureau shall instead develop and file for approval with the Commissioner, in accordance with this section, reference filings containing advisory prospective loss costs and the underlying loss data and other supporting statistical and actuarial information for any calculations or assumptions underlying these loss costs. Loss-based ~~assessments, any tax levied by the State or any political subdivision of the State, licensing costs, and fees~~ assessments will be included in prospective loss costs."

Section 32.1. Effective September 1, 1997, G.S. 58-36-100(k) reads as rewritten:

"(k) The Bureau shall file with the Commissioner, for approval, filings containing a revision of rules and supplementary rating information. This includes policy-writing rules, rating plans, classification codes and descriptions, and rules that include factors or relativities, such as ~~employers' liability~~ increased limits ~~factors,~~ factors and related minimum premiums, classification relativities, or similar ~~factors, but excludes minimum premiums.~~ factors. The Bureau may print and distribute manuals of rules and supplementary rating ~~information, excluding minimum premiums.~~ information."

PART V. INSURANCE COMPANY FINANCIAL OPERATIONS.

Section 33. G.S. 58-5-63(a) reads as rewritten:

"(a) All insurance companies making deposits under this Article are entitled to interest on those ~~deposits, which shall remain in the deposit accounts.~~ deposits. The right to interest is subject to a company paying its insurance policy liabilities. If any company fails to pay those liabilities, interest accruing after the failure is payable to

the Commissioner for the payment of those liabilities under subsection (b) of this section."

Section 34. G.S. 58-7-21(a) reads as rewritten:

"(a) As used in this section and in G.S. ~~58-7-26, 58-7-30, and 58-7-31.~~ 58-7-26 and G.S. 58-7-30:

(1) 'Reinsurance' means a transfer of insurance risk from a ceding insurer to an assuming insurer.

(2) 'Insurance risk' means an uncertainty regarding the ultimate amount of any claim payment (underwriting risk) or an uncertainty regarding the timing of the payments (timing risk), or both."

Section 35. G.S. 58-7-31(b)(3) reads as rewritten:

"(3) The ceding insurer is required to reimburse the reinsurer for negative experience under the reinsurance agreement; except that neither offsetting experience refunds against current and prior years' losses under the reinsurance agreement nor payment by the ceding insurer of an amount equal to the current and prior years' losses under the reinsurance agreement upon voluntary termination of in-force reinsurance by the ceding insurer are a reimbursement to the reinsurer for negative experience. Voluntary termination does not include situations where termination occurs because of unreasonable provisions that allow the reinsurer to reduce its risk or increase its risk charge under the reinsurance agreement."

Section 36. G.S. 58-7-31(d)(1) reads as rewritten:

"(1) Reinsurance agreements entered into after October 1, 1993, that involve the reinsurance of business issued ~~prior to~~ before the effective date of the reinsurance agreements, along with any subsequent amendments thereto, shall be filed by the ceding company with the Commissioner within 30 days after its date of execution. Each filing shall include data detailing the ~~final impact~~ financial effect of the transaction. The ceding insurer's actuary who signs the financial statement actuarial opinion with respect to valuation of reserves shall consider this ~~statute~~ section and any applicable actuarial standards of practice when determining the proper credit in financial statements filed with the Commissioner. The actuary ~~should~~ shall maintain adequate documentation and be prepared upon request to describe the actuarial work performed for inclusion in the financial statements and to demonstrate that ~~such~~ that work conforms to this ~~statute.~~ section."

Section 37. G.S. 58-7-173(12) reads as rewritten:

"(12) Secured obligations of duly constituted churches and of church-holding companies; and the cost of investments made under this subdivision shall not exceed the lesser of one percent (1%) of the

insurer's admitted assets ~~of~~ or five percent (5%) of the insurer's capital and surplus."

Section 38. The catchline of G.S. 58-7-177 reads as rewritten:

"**§ 58-7-177. Investments in ~~subsidiaries and affiliated corporations.~~ subsidiaries.**"

Section 39. G.S. 58-8-5(a)(3) reads as rewritten:

"(3) ~~Said officers shall cause said certificate to be published once a week for two consecutive weeks in a newspaper in Raleigh and in the county where the company's principal office is located, or posted at the courthouse door if no newspaper be published within the county. Said printed or posted notices shall be in such form and of such size as the Commissioner may approve, and in addition to setting forth in full the certificate required in subdivision (2) shall state that application for amending the company's charter in the manner specified has been proposed by the board of directors, and shall also state the time set for a meeting of policyholders thereby called to be held at the principal office of the company to take action on the proposed amendment. A true copy of such notice shall be filed with the Commissioner, and also with that official who performs the functions of Commissioner in each state where the company is licensed to do business. Such publication and filing of notices shall be completed at least 30 days prior to the date set therein for the meeting of policyholders and due proof thereof shall be filed with the Commissioner at least 15 days prior to the date of such meeting.~~ If the meeting at which the proposed amendment is to be considered is a special meeting, rather than a regular annual meeting of policyholders, ~~such special~~ that meeting can be called only after the Commissioner has given ~~his~~ approval in ~~writing, and the published notice shall show the fact of such approval;~~ writing;"

Section 40. G.S. 58-8-25 reads as rewritten:

"**§ 58-8-25. Dividends to policyholders.**

(a) Any participating or dividend-paying company, stock or mutual or foreign or domestic, that writes other than life insurance or workers' compensation insurance and employers' liability insurance in connection therewith, may declare and pay a dividend to policyholders from its ~~surplus,~~ unassigned surplus as reflected in the company's most recent annual or quarterly statement filed with the Commissioner, which shall include only its surplus in excess of any required minimum surplus. No such dividend shall be paid unless it is fair and equitable and for the best interest of the company and its policyholders. In declaring any dividend to its policyholders, any such company may make reasonable classifications of policies expiring during a fixed period, upon the basis of each general kind of insurance covered by ~~such~~ those policies and by territorial divisions of the location of risks by states, except that in fixing the amount of dividends to be paid on each general kind of insurance, ~~which~~

the dividends shall be uniform in rate and applicable to the majority of risks within ~~such~~ that general kind of insurance, and exceptions may be made as to any class or classes of risk and a different rate or amount of dividends paid on ~~such~~ the class or classes if the conditions applicable to ~~such~~ the class or classes differ substantially from the condition applicable to the kind of insurance as a whole. Every such company shall have an equal rate of dividend for the same term on all policies insuring risks in the same classification. The payment of dividends to policyholders shall not be contingent upon the maintenance or renewal of the policy. All dividends shall be paid to the policyholder unless a written assignment ~~thereof be~~ of those dividends is executed. Neither the payment of dividends nor the rate ~~thereof~~ of the dividends may be guaranteed by any company, or its agent, ~~prior to~~ before the declaration of the dividend by the board of directors of ~~such~~ the company. The holders of policies of insurance issued by a company in compliance with the orders of any public official, bureau or committee, in conformity with any statutory requirement or voluntary arrangement, for the issuance of insurance to risks not otherwise acceptable to the company, may be established as a separate class of risks.

(b) Any participating or dividend-paying company, stock or mutual or foreign or domestic, that writes workers' compensation insurance and employers' liability insurance in connection therewith may declare and pay a dividend to policyholders from its ~~surplus,~~ unassigned surplus as reflected in the company's most recent statement filed with the Commissioner under G.S. 58-2-165, which shall include only its surplus in excess of any required minimum surplus. No such dividend shall be paid unless it is fair and equitable and for the best interest of the company and its policyholders. In declaring any dividend to its policyholders, any such company may make reasonable classifications of policies expiring during a fixed period. The payment of dividends to policyholders shall not be contingent upon the maintenance or renewal of the policy. All dividends shall be paid to the policyholder unless a written assignment ~~thereof be~~ of those dividends is executed. Neither the payment of dividends nor the rate ~~thereof~~ of the dividends may be guaranteed by any company, or its agent, ~~prior to~~ before the declaration of the dividend by the board of directors of ~~such~~ the company. The holders of policies of insurance issued by a company in compliance with the orders of any public official, bureau, or committee, in conformity with any statutory requirement or voluntary arrangement, for the issuance of insurance to risks not otherwise acceptable to the company, may be established as a separate class of risks."

Section 41. G.S. 58-9-6(a) reads as rewritten:

"(a) The Commissioner shall issue an intermediary license or an exemption from the license, subject to G.S. 58-9-2(b)(2) or G.S. 58-9-2(c)(3), to any person who has complied with the requirements of this Article. A license issued to a noncorporate entity authorizes all of the members of the entity and any designated employees to act as intermediaries under the license, and those persons shall be named in the application and any supplements. A license issued to a corporation authorizes all of the officers and any designated employees and directors of the corporation to act as

intermediaries on behalf of the corporation, and those persons shall be named in the application and any supplements."

Section 42. G.S. 58-9-11(b) reads as rewritten:

"(b) An insurer shall not engage the services of any person to act as a broker on its behalf unless the person is licensed ~~under G.S. 58-9-6.~~ or exempted under this Article. An insurer shall not employ an individual who is employed by a broker with which it transacts business, unless the broker is under common control with the insurer under Article 19 of this Chapter."

Section 43. G.S. 58-9-21(a) reads as rewritten:

"(a) A reinsurer shall not engage the services of any person to act as a manager on its behalf unless the person is licensed ~~under G.S. 58-9-6.~~ or exempted under this Article."

Section 44. G.S. 58-12-2(3) reads as rewritten:

"(3) Domestic insurer. -- Any insurance company organized in this State under ~~Article 7~~ Article 7 or Article 15 of this Chapter."

Section 45. G.S. 58-13-10 reads as rewritten:

"**§ 58-13-10. Scope.**

(a) This Article applies to all domestic insurers and to all kinds of insurance written by those insurers ~~under Articles 1 through 66~~ of this Chapter. Foreign insurers ~~are to~~ shall comply in substance with the requirements and limitations of this section. ~~This Article does not apply to variable contracts for which separate accounts are required to be maintained nor to statutory deposits that are required to be maintained by insurance regulatory agencies as a requirement for doing business in such jurisdictions.~~

(b) This Article does not apply to:

(1) Variable contracts for which separate accounts are required to be maintained.

(2) Statutory deposits that are required to be maintained by insurance regulatory agencies as a requirement for doing business.

(3) Real estate authorized under G.S. 58-7-187 and encumbered by a mortgage loan with a first lien."

Section 46. G.S. 58-13-15 reads as rewritten:

"**§ 58-13-15. Definitions.**

As used in this Article:

(1) 'Assets' means all property, real or personal, tangible or intangible, legal or equitable, owned by an insurer.

(2) 'Claimants' means any owners, beneficiaries, assignees, certificate holders, or third-party beneficiaries of any insurance benefit or right arising out of and within the coverage of an insurance policy covered by this Article.

(3) 'Reserve assets' means those assets of an insurer that are authorized investments for policy reserves in accordance with ~~Articles 1 through 64 of this Chapter and G.S. 58-65-95.~~ this Chapter.

(4) 'Policyholder-related liabilities' means those liabilities that are required to be established by an insurer for all of its outstanding insurance policies in accordance with ~~Articles 1 through 64 of this Chapter and G.S. 58-65-95.~~ this Chapter."

Section 47. G.S. 58-13-20(b) reads as rewritten:

"(b) The Commissioner ~~has the right to~~ may examine any of ~~such~~ these assets, reinsurance agreements, or deposit arrangements at any time in accordance with ~~his~~ the Commissioner's authority to make examinations of insurers as conferred by other provisions ~~of Articles 1 through 64~~ of this Chapter."

Section 48. G.S. 58-19-5(5) reads as rewritten:

"(5) 'Person' means an individual, corporation, partnership, limited liability company, association, joint stock company, trust, unincorporated organization, or any similar entity or any combination of the foregoing acting in concert."

Section 49. G.S. 58-19-10(b)(1) reads as rewritten:

"(1) Invest, in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries, amounts that do not exceed the lesser of ten percent (10%) of ~~such~~ the insurer's admitted assets or fifty percent (50%) of ~~such~~ the insurer's surplus as regards policyholders, provided that after ~~such~~ those investments, the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs. In calculating the amount of ~~such~~ the investments, investments in domestic or foreign insurance subsidiaries and health maintenance organizations shall be excluded, and there shall be included: (i) total net monies or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of ~~such~~ the subsidiary whether or not represented by the purchase of capital stock or issuance of other securities; and (ii) all amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities, and all contributions to the capital or surplus, of a subsidiary subsequent to its acquisition or formation;".

PART VI. HANDICAPPED PERSONS.

Section 50. G.S. 168-10 reads as rewritten:

"**§ 168-10. Eliminate discrimination in treatment of handicapped and disabled.**

Each handicapped person shall have the same consideration as any other person for individual accident and health insurance coverage, and no insurer, service corporation, multiple employer welfare arrangement, or health maintenance organization subject to Chapter 58 of the General Statutes solely on the basis of ~~such~~ the person's handicap, shall deny ~~such~~ coverage or benefits. The availability of ~~such~~ ~~insurance~~ coverage or benefits shall not be denied solely ~~due to~~ because of the

~~handicap, provided, however, that no such insurer shall be prohibited from excluding by waiver or otherwise, any pre-existing conditions from such coverage, and further provided that~~ handicap; however, any such insurer may charge the appropriate premiums or fees for the risk insured on the same basis and conditions as insurance issued to other ~~persons.~~ persons, in accordance with actuarial and underwriting principles prescribed in Chapter 58 of the General Statutes. ~~Nothing contained herein or in any other statute shall restrict or preclude any insurer governed by Chapter 58 of the General Statutes from setting and charging a premium or fee based upon the class or classes of risks and on sound actuarial and underwriting principles as determined by such insurer, or from applying its regular underwriting standards applicable to all classes of risks. The provisions of this section shall apply to both corporations governed by Chapter 58 of the General Statutes.~~"

Section 51. G.S. 168-22(b) reads as rewritten:

"(b) A family care home ~~shall be~~ is deemed a residential use of property for the purposes of determining charges or assessments imposed by political subdivisions or businesses for water, sewer, power, telephone service, cable television, garbage and trash collection, repairs or improvements to roads, streets, and sidewalks, and other services, utilities, and ~~improvements, and for purposes of classification for insurance.~~ improvements."

PART VII. AUTOMOBILE INSURANCE.

Section 52. G.S. 58-36-75(c) is repealed.

Section 53. G.S. 58-36-5(c) reads as rewritten:

"(c) The ~~Bureau, when created,~~ Bureau shall adopt ~~such~~ rules ~~and regulations~~ for its orderly procedure ~~as shall be~~ that are necessary for its maintenance and operation. No ~~such~~ rules ~~and regulations~~ shall discriminate against any type of insurer because of its plan of operation, nor shall any insurer be prevented from returning any unused or unabsorbed premium, deposit, savings or earnings to its policyholders or subscribers. ~~The expense of such Bureau shall be borne by its members by quarterly contributions to be made in advance, such contributions to be made in advance by prorating such expense among the members in accordance with the amount of gross premiums derived from the above lines of insurance in North Carolina during the preceding year and members entering the Bureau since that date to advance an amount to be fixed by the governing committee. After the first fiscal year of operation of the Bureau the~~ The necessary expense of the Bureau shall be advanced by the members in accordance with rules ~~and regulations to be~~ established and adopted by the governing committee. The Bureau ~~shall be empowered to~~ may subscribe for or purchase any necessary service, ~~and~~ employ and fix the salaries of such personnel and assistants as are ~~necessary.~~ necessary, charge reasonable fees for its products and services, and engage in any lawful activities related to the objects, functions, duties, responsibilities, or authority of the Bureau."

Section 53.1. G.S. 58-37-1(7) reads as rewritten:

"(7) 'Motor vehicle insurance' means direct insurance against liability arising out of the ownership, operation, maintenance or use of a motor vehicle for bodily injury including death and property

damage and includes medical payments and uninsured and underinsured motorist coverages.

With respect to motor carriers who are subject to the financial responsibility requirements established under the Motor Carrier Act of 1980, the term, 'motor vehicle insurance' includes coverage with respect to environmental restoration. As used in this subsection the term, 'environmental restoration' means restitution for the loss, damage, or destruction of natural resources arising out of the accidental discharge, dispersal, release, or escape into or upon the land, atmosphere, water course, or body of water of any commodity transported by a motor carrier. Environmental restoration includes the cost of removal and the cost of necessary measures taken to minimize or mitigate damage to human health, the natural environment, fish, shellfish, and wildlife."

Section 53.2. G.S. 58-37-35(b)(2) reads as rewritten:

"(2) Additional ceding privileges for motor vehicle insurance shall be provided by the Board of Governors if there is a substantial public demand for a coverage or coverage limit of any component of motor vehicle insurance up to the following:

Bodily injury liability: one hundred thousand dollars ($100,000) each person, three hundred thousand dollars ($300,000) each accident;

Property damage liability: fifty thousand dollars ($50,000) each accident;

Medical payments: two thousand dollars ($2,000) each person;

Underinsured motorist: one ~~hundred thousand~~ million dollars ~~($100,000)~~ ($1,000,000) each person and ~~three hundred thousand dollars ($300,000)~~ each accident for bodily injury liability;

Uninsured motorist: one ~~hundred thousand~~ million dollars ~~($100,000)~~ ($1,000,000) each person and each accident for bodily injury and ~~fifteen~~ fifty thousand dollars ~~($15,000)~~ ($50,000) for property damage (one hundred dollars ($100.00) deductible)."

Section 53.3. G.S. 58-37-35(e) reads as rewritten:

"(e) The Commissioner and member companies shall provide for a Board of ~~Governors within 30 days after May 24, 1973. If any member seat on the initial Board of Governors is not filled in accordance with this Article within such time, then, in that event the Commissioner shall appoint natural persons from any of the classifications specified in subsection (d) of this section to serve the initial term on the Board of Governors. As soon as possible after its selection, the Commissioner shall call for the initial meeting of the Board.~~ Governors. ~~After the~~ The Board of Governors ~~have been selected it~~ shall ~~then~~ elect from its membership a chairman and shall ~~then~~ meet ~~thereafter as often as~~ at the call of the chairman ~~shall require~~ or at the request of ~~three~~ four members of the Board of Governors. The chairman shall retain the right to vote on all issues. ~~Five~~ Seven members of the Board of Governors

shall constitute a quorum. The same member may not serve as chairman for more than two consecutive ~~years.~~ years; provided, however, that a member may continue to serve as chairman until a successor chairman is elected and qualified."

Section 53.4. G.S. 58-37-40(e) reads as rewritten:

"(e) Upon approval of the Commissioner of the plan so submitted or promulgation of a plan deemed approved by the Commissioner, all insurance companies licensed to write motor vehicle insurance in this State or any component thereof as a prerequisite to further engaging in writing the insurance shall formally subscribe to and participate in the plan so approved.

The plan of operation shall provide for, among other matters, (i) the establishment of necessary facilities; (ii) the management of the Facility; (iii) the preliminary assessment of all members for initial expenses necessary to commence operations; (iv) the assessment of members if necessary to defray losses and expenses; (v) the distribution of gains to defray losses incurred since September 1, 1977; (vi) the distribution of gains by credit or reduction of recoupment ~~or allocation~~ surcharges to policies subject to recoupment ~~or allocation~~ surcharges pursuant to this Article (the Facility may apportion the distribution of gains among the coverages eligible for cession pursuant to this Article); (vii) the recoupment ~~or allocation~~ of losses sustained by the Facility since September 1, 1977, pursuant to this Article, which losses may be recouped by equitable pro rata assessment of member ~~companies;~~ companies or by way of a surcharge on motor vehicle policies issued by member companies or through the Facility; (viii) the standard amount (one hundred percent (100%) or any equitable lesser amount) of coverage afforded on eligible risks which a member company may cede to the Facility; and (ix) the procedure by which reinsurance shall be accepted by the Facility. The plan shall further provide that:

(1) Members of the Board of Governors shall receive reimbursement from the Facility for their actual and necessary expenses incurred on Facility business, en route to perform Facility business, and while returning from Facility business plus a per diem allowance of twenty-five dollars ($25.00) a day which may be waived.

(2) In order to obtain a transfer of business to the Facility effective when the binder or policy or renewal thereof first becomes effective, the company must within 30 days of the binding or policy effective date notify the Facility of the identification of the insured, the coverage and limits afforded, classification data, and premium. The Facility shall accept risks at other times on receipt of necessary information, but acceptance shall not be retroactive. The Facility shall accept renewal business after the member on underwriting review elects to again cede the business."

Section 54. G.S. 58-37-40(f) reads as rewritten:

"(f) The plan of operation shall provide that every member shall, following payment of any pro rata assessment, ~~commence~~ begin recoupment of that assessment by way of a surcharge on motor vehicle insurance policies issued by the member or through the Facility until the assessment has been recouped. ~~Such~~ Any surcharge

under this subsection or under subsection (e) of this section shall be a percentage of premium adopted by the Board of Governors of the Facility; and the charges determined on the basis of the surcharge shall be combined with and displayed as a part of the applicable premium charges. ~~Provided, however, that recoupment~~ Recoupment of losses sustained by the Facility ~~since September 1, 1977,~~ with respect to nonfleet private passenger motor vehicles may be ~~recouped~~ made only by surcharging nonfleet private passenger motor vehicle insurance policies. ~~policies (i) that are subject to the classification plan promulgated pursuant to G.S. 58-36-65 and (ii) to which one or more driving record points have been assigned pursuant to said plan, subject to the provisions of G.S. 58-36-75.~~ If the amount collected during the period of surcharge exceeds assessments paid by the member to the Facility, the member shall pay over the excess to the Facility on a date specified by the Board of Governors. If the amount collected during the period of surcharge is less than the assessments paid by the member to the Facility, the Facility shall pay the difference to the member. Except as ~~hereinafter provided,~~ otherwise provided in this Article, the amount of recoupment shall not be considered or treated as a rate or premium for any purpose. The Board of Governors shall adopt and implement a plan for compensation of agents of Facility members when recoupment surcharges are imposed; ~~such~~ that compensation shall not exceed the compensation or commission rate normally paid to the agent for the issuance or renewal of the automobile liability policy issued through the North Carolina Reinsurance Facility affected by ~~such surcharge; provided, however, that~~ the surcharge. However, the surcharge ~~provided for in this section~~ shall include an amount necessary to recover the amount of the assessment to member companies and the compensation paid by each member, ~~pursuant to~~ under this section, to agents."

Section 55. G.S. 58-37-35(g)(8) reads as rewritten:

"(8) To establish fair and reasonable procedures for the sharing among members of any loss on Facility business ~~which~~ that cannot be recouped ~~pursuant to~~ under G.S. 58-37-40~~(f)~~ (e) ~~or which cannot be recouped or allocated under G.S. 58-37-75,~~ and other costs, charges, expenses, liabilities, income, property and other assets of the Facility and for assessing or distributing to members their appropriate shares. ~~Such~~ The shares may be based on the member's premiums for voluntary business for the appropriate category of motor vehicle insurance or by any other fair and reasonable method."

Section 56. G.S. 58-37-35(l) reads as rewritten:

"(l) The classifications, rules, rates, rating plans and policy forms used on motor vehicle insurance policies reinsured by the Facility may be made by the Facility or by any licensed or statutory rating organization or bureau on its behalf and shall be filed with the Commissioner. The Board of Governors shall establish a separate subclassification within the Facility for 'clean ~~risks' as herein defined.~~ risks'. For the purpose of this Article, a 'clean risk' ~~shall be~~ is any owner of a nonfleet private passenger motor vehicle as defined in G.S. 58-40-10, if the owner, principal

operator, and each licensed operator in the owner's household have two years' driving experience as licensed drivers and if none of the persons has been assigned any Safe Driver Incentive Plan points under Article 36 of this Chapter during the three-year period immediately preceding either (i) the date of application for a motor vehicle insurance policy or (ii) the date of preparation of a renewal of a motor vehicle insurance policy. ~~Such~~ The filings may incorporate by reference any other material on file with the Commissioner. Rates shall be neither excessive, inadequate nor unfairly discriminatory. If the Commissioner finds, after a hearing, that a rate is either excessive, inadequate or unfairly discriminatory, ~~he~~ the Commissioner shall issue an order specifying in what respect it is deficient and stating when, within a reasonable period thereafter, ~~such rate shall be deemed~~ the rate is no longer effective. ~~Said~~ The order is subject to judicial review as set out in Article 2 of this Chapter. Pending judicial review of ~~said~~ the order, the filed classification plan and the filed rates may be used, charged and collected in the same manner as set out in G.S. 58-40-45 of this Chapter. ~~Said~~ The order shall not affect any contract or policy made or issued ~~prior to~~ before the expiration of the period set forth in the order. All rates shall be on an actuarially sound basis and shall be calculated, insofar as is possible, to produce neither a profit nor a loss. However, the rates made by or on behalf of the Facility with respect to 'clean ~~risks', as defined above,~~ risks' shall not exceed the rates charged 'clean risks' who are not reinsured in the Facility. The difference between the actual rate charged and the actuarially sound and self-supporting rates for 'clean risks' reinsured in the Facility may be recouped in similar manner as assessments ~~pursuant to G.S. 58-37-40(f) or allocated pursuant to G.S. 58-37-75.~~ under G.S. 58-37-40(f). Rates shall not include any factor for underwriting profit on Facility business, but shall provide an allowance for contingencies. There shall be a strong presumption that the rates and premiums for the business of the Facility are neither unreasonable nor excessive."

Section 57. G.S. 58-37-75 is repealed.

PART VIII. WORKERS' COMPENSATION SELF-INSURANCE.

Section 58. G.S. 58-50-60 reads as rewritten:

"**§ 58-50-60. Rules for precertification practices.**

(a) This section applies to all accident and health insurers under Articles 1 through 64 of this Chapter, all third-party administrators and preferred provider arrangements, all entities subject to Articles 65 through 67 of this Chapter, and all self-funded ~~health benefit~~ workers' compensation insurance plans.

(b) The Commissioner shall adopt reasonable rules governing ~~precertification practices and forms~~ utilization review and utilization review organizations ~~affiliated~~ that do business with the entities subject to this section."

Section 59. G.S. 58-50-65(a) reads as rewritten:

"(a) ~~Nothing~~ Except as provided in this subsection, nothing in Articles 50 through 55 of this Chapter ~~shall apply~~ applies to ~~or affect~~ any ~~policy of~~ liability or workers' compensation ~~insurance, except that~~ insurance policy. Except for G.S. 58-50-55(a), the provisions of ~~G.S. 58-50-50 and subsections (b) and (e) of G.S. 58-50-55 shall~~ this Article and Articles 65 and 67 of this Chapter and any administrative rules adopted

under those Articles relating to preferred providers and utilization review apply to ~~policies of~~ workers' compensation ~~insurance.~~ insurance policies and to individual and group self-funded workers' compensation insurance plans. If there is any conflict between managed care rules adopted by the Commissioner under this Chapter and managed care rules adopted by the Industrial Commission under G.S. 97-25.2, the Industrial Commission's rules govern. If there is any conflict between managed care provisions in this Chapter and in Chapter 97 of the General Statutes with respect to workers' compensation, the provisions in Chapter 97 govern."

PART IX. CERTIFICATE OF AUTHORITY CONFORMING NAME CHANGE.

Section 60. The phrase "certificate of authority" is deleted and replaced by the word "license" wherever it occurs in each of the following sections of the General Statutes:

G.S. 58-4-15.	Revocation of certificate of authority.
G.S. 58-7-55.	Exceptions to requirements of G.S. 58-7-50.
G.S. 58-7-70.	Effects of redomestication.
G.S. 58-15-5.	Definitions.
G.S. 58-16-35.	Unauthorized Insurers Process Act.
G.S. 58-24-45.	Organization.
G.S. 58-24-145.	Injunction -- Liquidation -- Receivership of domestic society.
G.S. 58-28-5.	Transacting business without certificate of authority prohibited; exceptions.
G.S. 58-28-15.	Validity of acts or contracts of unauthorized company shall not impair obligation of contract as to the company; maintenance of suits; right to defend.
G.S. 58-28-45.	Uniform Unauthorized Insurers Act.
G.S. 58-30-10.	Definitions.
G.S. 58-30-55.	Condition on release from delinquency proceedings.
G.S. 58-30-260.	Conservation of property of foreign or alien insurers found in this State.
G.S. 58-33-132.	Qualifications of instructors.
G.S. 58-41-55.	Penalties; restitution.
G.S. 58-48-35.	Powers and duties of the Association.
G.S. 58-48-45.	Duties and powers of the Commissioner.
G.S. 58-57-80.	Penalties.

PART X. RISK SHARING PLAN SUNSET EXTENSION.

Section 61. G.S. 58-42-55 reads as rewritten:

"**§ 58-42-55. Expiration.**

This Article ~~shall expire~~ expires on July 1, ~~1997.~~ 1999."

PART XI. HEALTH INSURANCE CLARIFYING CHANGES.

Section 62. G.S. 58-50-130(a), as amended by S.L. 1997-259, is amended by adding the following new subdivision:

"(4b) Late enrollees may only be excluded from coverage for the greater of 18 months or an 18-month preexisting-condition exclusion; however, if both a period of exclusion from coverage and a

preexisting-condition exclusion are applicable to a late enrollee, the combined period shall not exceed 18 months. If a period of exclusion from coverage is applied, a late enrollee shall be enrolled at the end of such period in the health benefit plan currently held by the small employer."

Section 63.1. G.S. 58-51-55(d), as amended by S.L. 1997-259, reads as rewritten:

"(d) Applicability. -- Subsection (b1) of this section applies only to group health insurance ~~contracts~~ contracts, other than excepted benefits as defined in G.S. 58-68-25, covering more than 50 employees. The remainder of this section applies only to group health insurance contracts covering 20 or more employees. For purposes of this section, 'group health insurance contracts' include MEWAs, as defined in G.S. 58-49-30(a)."

Section 63.2. G.S. 58-65-90(d), as amended by S.L. 1997-259, reads as rewritten:

"(d) Applicability. -- Subsection (b1) of this section applies only to subscriber ~~contracts~~ contracts, other than excepted benefits as defined in G.S. 58-68-25, covering more than 50 employees. The remainder of this section applies only to group contracts covering 20 or more employees."

Section 63.3. G.S. 58-67-75(d), as amended by S.L. 1997-259, reads as rewritten:

"(d) Applicability. -- Subsection (b1) of this section applies only to group ~~contracts~~ contracts, other than excepted benefits as defined in G.S. 58-68-25, covering more than 50 employees. The remainder of this section applies only to group contracts covering 20 or more employees."

Section 63.4. G.S. 58-51-15(h), as enacted by S.L. 1997-259, reads as rewritten:

"(h) Preexisting Condition Exclusion Clarification. -- Sub-subdivision (a)(2)b. of this section does not apply to:

(1) Policies issued to eligible individuals under G.S. 58-68-60.

(2) Excepted benefits as described in ~~G.S. 58-68-25(b).~~ G.S. 58-68-25(b)(1)."

Section 63.5. G.S. 58-68-40(e), as enacted by S.L. 1997-259, reads as rewritten:

"(e) Exception for ~~Coverage Offered Only to Bona Fide Association Members.~~ Coverage. -- Subsection (a) of this section does not apply to:

(1) Health insurance coverage offered by a health insurer if the coverage is made available in the small group market only through one or more bona fide associations.

(2) A self-employed individual as defined in ~~G.S. 58-50-110(21a).~~ G.S. 58-50-110(21a), except as otherwise provided for the basic and standard health care plans under the North Carolina Small Employer Group Health Coverage Reform Act."

Section 63.6. G.S. 58-68-60(b)(2), as enacted by S.L. 1997-259, reads as rewritten:

"(2) Who is not eligible for coverage under (i) ~~an ERISA~~ a group health plan, (ii) part A or part B of title XVIII of the Social Security Act, or (iii) a State plan under title XIX of the Act (or any successor program), and does not have other health insurance coverage;".

Section 63.7. G.S. 58-50-65(d) reads as rewritten:

"(d) The provisions of G.S. ~~58-51-5(5)~~ 58-51-5(a)(5) and G.S. 58-51-15(a)(1), (4), and (10) may be omitted from railroad ticket policies sold only at railroad stations or at railroad ticket offices by railroad employees."

PART XII. COMMERCIAL INSURANCE FORM DOCUMENT RETENTION.

Section 64. G.S. 58-41-50(g) reads as rewritten:

"(g) An insurer subject to this Article may develop and use an individual form or rate as a result of the uniqueness of a particular risk. The form or rate shall be developed, filed, and used in accordance with rules adopted by the Commissioner. Rules adopted by the Commissioner under this section may provide for retention of certain documents and data by insurers instead of insurers filing those records with the Commissioner."

PART XIII. BAIL BONDS.

Section 65. G.S. 58-71-82 reads as rewritten:

"**§ 58-71-82. Dual license holding.**

If an individual holds a professional bondsman's license or a runner's license and a surety bondsman's license simultaneously, they are considered one license for the purpose of disciplinary actions involving suspension, revocation, or ~~renewal~~ nonrenewal under this Article. Separate renewal fees must be paid for each license, however."

PART XIV. EFFECT OF HEADINGS.

Section 66. The headings to the parts of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act.

PART XV. EFFECTIVE DATE.

Section 67. Sections 30 through 32.1 of this act become effective September 1, 1997. Section 61 of this act becomes effective June 30, 1997. Sections 62, 63.4, 63.5, and 63.6 of this act become effective July 1, 1997. Sections 63.1, 63.2, and 63.3 become effective January 1, 1998. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 932
Commerce Committee Substitute Adopted 6/18/97
Proposed House Committee Substitute S932-PCS7874

Short Title: Strengthen Managed Care Regulation. (Public)

Sponsors:

Referred to:

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS GOVERNING HEALTH BENEFIT PLAN REPORTING AND DISCLOSURE REQUIREMENTS; TO MAKE IMPROVEMENTS IN THE OPERATIONS OF HEALTH MAINTENANCE ORGANIZATIONS IN NORTH CAROLINA; TO ESTABLISH STANDARDS FOR COVERAGE AND PROVIDER NETWORKS UNDER HEALTH INSURANCE POLICIES AND MANAGED CARE PLANS; TO REWRITE AND MODERNIZE THE LAWS ON INSURERS OFFERING PREFERRED PROVIDER BENEFIT PLANS, PREFERRED PROVIDER ORGANIZATIONS, AND PREFERRED PROVIDER BENEFIT PLANS WITH RESPECT TO COVERAGE DETERMINATIONS, MEDICAL NECESSITY, NONDISCRIMINATION AGAINST HIGH-RISK POPULATIONS, SERVICES OUTSIDE PROVIDER NETWORKS WHEN PARTICIPATING PROVIDERS ARE NOT REASONABLY AVAILABLE, AND CONTINUING CARE RETIREMENT COMMUNITY RESIDENTS; TO AMEND THE LAWS TO PROVIDE PARITY BETWEEN HEALTH MAINTENANCE ORGANIZATION POINT-OF- SERVICE PRODUCTS AND PREFERRED PROVIDER BENEFIT PLANS WITH RESPECT TO REIMBURSEMENT DIFFERENTIALS FOR COVERAGE OF HEALTH CARE PROVIDED BY NONPARTICIPATING PROVIDERS; AND TO ESTABLISH PROCEDURES AND RIGHTS FOR MANAGED CARE PLAN MEMBERS IN UTILIZATION REVIEW DECISIONS AND GRIEVANCES AGAINST MANAGED CARE ORGANIZATIONS.

Whereas, managed care is increasingly being used to deliver health care services to citizens of this State; and

Whereas, managed care's use of provider networks, precertification, utilization review, and similar features makes it critical that the State regulate the use of managed care to ensure quality, availability, and accessibility of health care services to enrollees and participants; Now, therefore,

The General Assembly of North Carolina enacts:

PART I. HEALTH PLAN REPORTING AND DISCLOSURE

Section 1.1. G.S. 58-3-190, as enacted by Senate Bill 973 of the 1997 Session, is recodified as G.S. 58-3-191 and reads as rewritten:

"**~~§58-3-190.~~ 58-3-191. Managed care reporting and disclosure requirements.**

(a) Each health benefit plan shall annually, on or before the first day of March of each year, file in the office of the Commissioner the following ~~information, to the extent applicable:~~ information for the previous calendar year:

(1) The number of and reasons for ~~complaints~~ grievances received from plan participants regarding medical ~~treatment;~~ treatment. The report shall include the number of covered lives, total number of grievances categorized by reason for the grievance, the number of grievances referred to the second level grievance review, the number of grievances resolved at each level and their resolution, and a description of the actions that are being taken to correct the problems that have been identified through grievances received. Every health benefit plan shall file with the Commissioner, as part of its annual grievance report, a certificate of compliance stating that the carrier has established and follows, for each of its lines of business, grievance procedures that comply with G.S. 58-50-62.

(2) The number of participants and groups who terminated coverage under the plan for any ~~reason;~~ reason. The report shall include the number of participants who terminated coverage because the group contract under which they were covered was terminated, the number of participants who terminated coverage for reasons other than the termination of the group under which they were enrolled, and the number of group contracts terminated.

(3) The number of provider contracts that were terminated ~~in the preceding year~~ and the reasons for termination. This information shall include the number of providers leaving the plan and the number of new ~~providers;~~ providers. The report shall show voluntary and involuntary terminations separately.

(4) ~~Utilization data that includes statistics~~ Data relating to the utilization, quality, availability, and accessibility of ~~services, as defined by the Commissioner; and~~ services. The report shall include the following:

a. Information on the health benefit plan's program to determine the level of network availability, as measured by the numbers and types of network providers, required to provide covered services to covered persons. This information shall include the plan's methodology for:

1. Establishing performance targets for the numbers and types of providers by specialty, area of practice, or facility type, for each of the following categories: primary care physicians, specialty care physicians, nonphysician health care providers, hospitals, and nonhospital health care facilities.
2. Determining when changes in plan membership will necessitate changes in the provider network.

The report shall also include: the availability performance targets for the previous and current years; the numbers and types of providers currently participating in the health benefit plan's provider network; and an evaluation of actual plan performance against performance targets.

b. The health benefit plan's method for arranging or providing health care services from nonnetwork providers, both within and outside of its service area, when network providers are not available to provide covered services.

c. Information on the health benefit plan's program to determine the level of provider network accessibility necessary to serve its membership. This information shall include the health benefit plan's methodology for establishing performance targets for member access to covered services from primary care physicians, specialty care physicians, nonphysician health care providers, hospitals, and nonhospital health care facilities. The methodology shall establish targets for:

1. The proximity of network providers to members, as measured by member driving distance, to access primary care, specialty care, hospital-based services, and services of nonhospital facilities.
2. Expected waiting time for appointments for urgent care, acute care, specialty care, and routine services for prevention and wellness.

The report shall also include: the accessibility performance targets for the previous and current years; data on actual overall accessibility as measured by driving distance and average appointment waiting time; and an evaluation of actual plan performance against performance targets.

Measures of actual accessibility may be developed using scientifically valid random sample techniques.

d. A statement of the health benefit plan's methods and standards for determining whether in-network services are reasonably available and accessible to a covered person, for the purpose of determining whether a covered person should receive the in-network level of coverage for services received from a nonnetwork provider.

e. A description of the health benefit plan's program to monitor the adequacy of its network availability and accessibility methodologies and performance targets, plan performance, and network provider performance.

f. A summary of the health benefit plan's utilization review program activities for the previous calendar year. The report shall include the number of: each type of utilization review performed, noncertifications for each type of review, each type of review appealed, and appeals settled in favor of covered persons. The report shall be accompanied by a certification from the carrier that it has established and follows procedures that comply with G.S. 58-50-61.

(5) Aggregate financial compensation data, including the percentage of providers paid under a capitation arrangement, discounted fee-for-service or salary, the services included in the capitation payment, and the range of compensation paid by withhold or incentive payments. This information shall be submitted on a form prescribed by the Commissioner.

The name, or group or institutional name, of an individual provider may not be disclosed pursuant to this subsection. No civil liability shall arise from compliance with the provisions of this subsection, provided that the acts or omissions are made in good faith and do not constitute gross negligence, willful or wanton misconduct, or intentional wrongdoing.

(b) Disclosure requirements. -- Each health benefit plan shall provide the following applicable information to plan participants and bona fide prospective participants upon request:

(1) The evidence of coverage (G.S. 58-67-50), subscriber contract (G.S. 58-65-60, 58-65-140), health insurance policy (G.S. 58-51-80, 58-50-125, 58-50-55), or the contract and benefit summary of any other type of health benefit plan;

(2) An explanation of the utilization review criteria and treatment protocol under which treatments are provided for conditions specified by the prospective participant. This explanation shall be in writing if so requested;

(3) If denied a recommended treatment, written reasons for the denial and an explanation of the utilization review criteria or treatment protocol upon which the denial was based;

(4) The plan's restrictive formularies or prior approval requirements for obtaining prescription drugs, whether a particular drug or therapeutic class of drugs is excluded from its formulary, and the circumstances under which a nonformulary drug may be covered; and

(5) The plan's procedures and medically based criteria for determining whether a specified procedure, test, or treatment is experimental.

(b1) Effective March 1, 1998, insurers shall make the reports that are required under subsection (a) of this section and that have been filed with the Commissioner available on their business premises and shall provide any insured access to them upon request.

(c) For purposes of this section, 'health benefit plan' or 'plan' means (i) health maintenance organization (HMO) subscriber contracts and (ii) insurance company or hospital and medical service corporation preferred provider benefit plans in which utilization review or quality management programs are used to manage the provision of covered health care services, and enrollees are given incentives through benefit differentials to limit the receipt of covered health care services to those provided by participating providers."

Section 1.2. Article 67 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-67-11. Additional HMO application information.**

(a) In addition to the information filed under G.S. 58-67-10(c), each application shall include a description of the following:

(1) The program to be used to evaluate whether the applicant's provider network is sufficient, in numbers and types of providers, to assure that all health care services will be accessible without unreasonable delay.

(2) The program to be used for verifying provider credentials.

(3) The quality management program to assure quality of care and health care services managed and provided through the health care plan.

(4) The utilization review program for the review and control of health care services provided or paid for.

(5) The applicant's provider network and evidence of the ability of that network to provide all health care services to the applicant's prospective enrollees.

(b) G.S. 58-67-10(d) applies to the information specified in this section."

Section 1.3. G.S. 58-67-50(e) reads as rewritten:

"(e) Effective ~~on~~ January 1, 1989, every health maintenance organization shall provide at least minimum cost and utilization information for group contracts of 100 or more subscribers on an annual basis when requested by the group. Such

information shall be compiled in accordance with the Data Collection Form developed by the Standardized HMO Date Form Task Force as endorsed by the Washington Business Group on Health and the Group Health Association of America on November 19, 1986, and any subsequent amendments. In addition, beginning with data for the calendar year 1998, every HMO, for group contracts of 1,000 or more members, shall provide cost, use of service, prevention, outcomes, and other group-specific data as collected in accordance with the latest edition of the Health Plan Employer Data and Information Set (HEDIS) guidelines, as published by the National Committee for Quality Assurance. Beginning with data for the calendar year 1998, every HMO shall file with the Commissioner and make available to all employer groups, not later than July 1 of the following calendar year, a report of health benefit plan-wide experience on its costs, use of services, and other aspects of performance, in the HEDIS format."

Section 1.4. G.S. 58-67-100 reads as rewritten:

"**§ 58-67-100. Examinations.**

(a) The Commissioner may make an examination of the affairs of any health maintenance organization and the contracts, agreements or other arrangements pursuant to its health care plan as often as ~~he~~ the Commissioner deems it necessary for the protection of the interests of the people of this State but not less frequently than once every three years. Examinations shall otherwise be conducted under G.S. 58-2-131, 58-2-132, and 58-2-133.

~~(b) Every health maintenance organization shall submit its books and records relating to the health care plan to such examinations and in every way facilitate them. For the purpose of examinations, the Commissioner may administer oaths to, and examine the officers and agents of the health maintenance organization concerning their business.~~

(c) Repealed by Session Laws 1995, c. 360, s. 2(m).

(d) ~~In lieu of such~~ Instead of conducting an examination, the Commissioner may accept the report of an examination made by the ~~Commissioner of Insurance or Commissioner of Public Health~~ HMO regulator of another state."

Section 1.5. G.S. 58-67-140 reads as rewritten:

"**§ 58-67-140. Suspension or revocation of ~~certificate of authority.~~ license.**

(a) The Commissioner may ~~suspend or revoke any certificate of authority issued to a health maintenance organization under this Article if he finds that any of the following conditions exist:~~ suspend, revoke, or refuse to renew an HMO license if the Commissioner finds that the HMO:

(1) ~~The health maintenance organization is~~ Is operating significantly in contravention of its basic organizational document, or in a manner contrary to that described in and reasonably inferred from any other information submitted under G.S. 58-67-10, unless amendments to such submissions have been filed with and approved by the Commissioner.

(2) ~~The health maintenance organization issues evidence~~ Issues evidences of coverage or uses a schedule of premiums for health

care services ~~which~~ that do not comply with ~~the requirements of~~ G.S. 58-67-50.

(3) ~~The health maintenance organization no~~ No longer maintains the financial reserve specified in G.S. 58-67-40 or is no longer financially responsible and may reasonably be expected to be unable to meet its obligations to enrollees or prospective enrollees.

(4) ~~The health maintenance organization, or any person on its behalf, has~~ Has itself or through any person on its behalf advertised or merchandised its services in an untrue, misrepresentative, misleading, deceptive or unfair manner.

(5) ~~The continued operation of the health maintenance organization~~ Is operating in a manner that would be hazardous to its enrollees.

(6) ~~The health maintenance organization has otherwise failed to substantially comply with this Article.~~ Knowingly or repeatedly fails or refuses to comply with any law or rule applicable to the HMO or with any order issued by the Commissioner after notice and opportunity for a hearing.

(7) Has knowingly published or made to the Department or to the public any false statement or report, including any report or any data that serves as the basis for any report, required to be submitted under G.S. 58-3-210.

(b) A ~~certificate of authority~~ license shall be suspended or revoked only after compliance with ~~the requirements of~~ G.S. 58-67-155.

(c) When ~~the certificate of authority of a health maintenance organization~~ an HMO license is suspended, the ~~health maintenance organization~~ HMO shall not, during the ~~period of such~~ suspension, enroll any additional enrollees except newborn children or other newly acquired dependents of existing enrollees, and shall not engage in any advertising or ~~solicitation whatsoever.~~ solicitation.

(d) When ~~the certificate of authority of a health maintenance organization~~ an HMO license is revoked, ~~such organization~~ the HMO shall proceed, immediately following the effective date of the order of revocation, to wind up its affairs, and shall conduct no further business except as may be essential to the orderly conclusion of the affairs of ~~such organization.~~ the HMO. ~~It~~ The HMO shall engage in no advertising or ~~solicitation whatsoever.~~ solicitation. The Commissioner may, by written order, permit such further operation of the ~~organization as he~~ HMO as the Commissioner may find to be in the best interest of enrollees, to the end that enrollees will be afforded the greatest practical opportunity to obtain continuing health care coverage."

PART II. PROVIDER NETWORKS AND COVERAGE STANDARDS

Section 2.1. Article 3 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-3-200. Miscellaneous insurance and managed care coverage and network provisions.**

(a) Definitions. -- As used in this section:

(1) 'Health benefit plan' means any of the following if written by an insurer: an accident and health insurance policy or certificate; a nonprofit hospital or medical service corporation contract; a health maintenance organization subscriber contract; or a plan provided by a multiple employer welfare arrangement. 'Health benefit plan' does not mean any plan implemented or administered through the Department of Human Resources or its representatives. 'Health benefit plan' also does not mean any of the following kinds of insurance:

a. Accident.
b. Credit.
c. Disability income.
d. Long-term or nursing home care.
e. Medicare supplement.
f. Specified disease.
g. Dental or vision.
h. Coverage issued as a supplement to liability insurance.
i. Workers' compensation.
j. Medical payments under automobile or homeowners insurance.
k. Hospital income or indemnity.
l. Insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability policy or equivalent self-insurance.

(2) 'Insurer' means an entity that writes a health benefit plan and that is an insurance company subject to this Chapter, a service corporation under Article 65 of this Chapter, a health maintenance organization under Article 67 of this Chapter, or a multiple employer welfare arrangement under Article 49 of this Chapter.

(b) Medical Necessity. -- An insurer that limits its health benefit plan coverage to medically necessary services and supplies shall define 'medically necessary services or supplies' in its health benefit plan as those covered services or supplies that are:

(1) Provided for the diagnosis, treatment, cure, or relief of a health condition, illness, injury, or disease; and not for experimental, investigational, or cosmetic purposes.

(2) Necessary for and appropriate to the diagnosis, treatment, cure, or relief of a health condition, illness, injury, disease, or its symptoms.

(3) Within generally accepted standards of medical care in the community.

(4) Not solely for the convenience of the insured, the insured's family, or the provider.

For medically necessary services, nothing in this subsection precludes an insurer from comparing the cost-effectiveness of alternative services or supplies when determining which of the services or supplies will be covered.

(c) Coverage Determinations. -- If an insurer or its authorized representative determines that services, supplies, or other items are covered under its health benefit plan, including any determination under G.S. 58-50-61, the insurer shall not subsequently retract its determination after the services, supplies, or other items have been provided, or reduce payments for a service, supply, or other item furnished in reliance on such a determination, unless the determination was based on a material misrepresentation about the insured's health condition that was knowingly made by the insured or the provider of the service, supply, or other item.

(d) Services Outside Provider Networks. -- No insurer shall penalize an insured or subject an insured to the out-of-network benefit levels offered under the insured's approved health benefit plan unless contracting health care providers able to meet health needs of the insured are reasonably available to the insured without unreasonable delay.

(e) Nondiscrimination Against High-Risk Populations. -- No insurer shall establish provider selection or contract renewal standards or procedures that are designed to avoid or otherwise have the effect of avoiding enrolling high-risk populations by excluding providers because they are located in geographic areas that contain high-risk populations or because they treat or specialize in treating populations that present a risk of higher-than-average claims or health care services utilization. This subsection does not prohibit an insurer from declining to select a provider or from not renewing a contract with a provider who fails to meet the insurer's selection criteria.

(f) Continuing Care Retirement Community Residents. -- As used in this subsection, 'Medicare benefits' means medical and health products, benefits, and services used in accordance with Title XVIII of the Social Security Act. If an insured with coverage for Medicare benefits or similar benefits under a plan for retired federal government employees is a resident of a continuing care retirement community regulated under Article 64 of this Chapter, and the insured's primary care physician determines that it is medically necessary for the insured to be referred to a skilled nursing facility upon discharge from an acute care facility, the insurer shall not require that the insured relocate to a skilled nursing facility outside the continuing care retirement community if the continuing care retirement community:

(1) Is a Medicare-certified skilled nursing facility.

(2) Agrees to be reimbursed at the insurer's contract rate negotiated with similar providers for the same services and supplies.

(3) Agrees not to bill the insured for fees over and above the insurer's contract rate.

(4) Meets all guidelines established by the insurer related to quality of care, including:

a. Quality assurance programs that promote continuous quality improvement.

b. Standards for performance measurement for measuring and reporting the quality of health care services provided to insureds.
c. Utilization review, including compliance with utilization management procedures.
d. Confidentiality of medical information.
e. Insured grievances and appeals from adverse treatment decisions.
f. Nondiscrimination.

(5) Agrees to comply with the insurer's procedures for referral authorization, risk assumption, use of insurer services, and other criteria applicable to providers under contract for the same services and supplies.

A continuing care retirement community that satisfies subdivisions (1) through (5) of this subsection shall not be obligated to accept, as a skilled nursing facility, any patient other than a resident of the continuing care retirement community, and neither the insurer nor the retirement community shall be allowed to list or otherwise advertise the skilled nursing facility as a participating network provider for Medicare benefits for anyone other than residents of the continuing care retirement community."

PART III. PREFERRED PROVIDER AMENDMENTS

Section 3.1. Article 50 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-50-56. Insurers, preferred provider organizations, and preferred provider benefit plans.**

(a) Definitions. -- As used in this section:

(1) 'Insurer' means an insurer or service corporation subject to this Chapter.

(2) 'Preferred provider' means a health care provider who has agreed to accept special reimbursement or other terms for health care services from an insurer for health care services on a fee-for-service basis. A 'preferred provider' is not a health care provider participating in any prepaid health service or capitation arrangement implemented or administered by the Department of Human Resources or its representatives.

(3) 'Preferred provider benefit plan' means a health benefit plan offered by an insurer in which both of the following features are present:

a. Utilization review or quality management programs are used to manage the provision of covered health care services; and

b. Enrollees are given incentives through benefit differentials to limit the receipt of covered health care services to those

furnished by participating providers, and health care services are provided by preferred providers under a contract pursuant to this section.

(4) 'Preferred provider organization' or 'PPO' means an insurer holding contracts with preferred providers to be used by or offered to insurers offering preferred provider benefit plans.

(b) Insurers may enter into preferred provider contracts or enter into other cost containment arrangements approved by the Commissioner to reduce the costs of providing health care services. These contracts or arrangements may be entered into with licensed health care providers of all kinds without regard to specialty of services or limitation to a specific type of practice.

(c) At the initial offering of a preferred provider plan to the public, health care providers may submit proposals for participation in accordance with the terms of the preferred provider plan within 30 days after that offering. After that time period, any health care provider may submit a proposal, and the insurer offering the preferred provider benefit plan shall consider all pending applications for participation and give reasons for any rejections or failure to act on an application on at least an annual basis. Any health care provider seeking to participate in the preferred provider benefit plan, whether upon the initial offering or subsequently, may be permitted to do so in the discretion of the insurer offering the preferred provider benefit plan. The second and third paragraphs of G.S. 58-50-30(a) apply to preferred provider benefit plans.

(d) Any provision of a contract between an insurer offering a preferred provider benefit plan and a health care provider that restricts the provider's right to enter into preferred provider contracts with other persons is prohibited, is void ab initio, and is not enforceable. The existence of that restriction does not invalidate any other provision of the contract.

(e) Except where specifically prohibited either by this section or by rules adopted by the Commissioner, the contractual terms and conditions for special reimbursements shall be those that the parties find mutually agreeable.

(f) Every insurer offering a preferred provider benefit plan and contracting with a PPO shall require by contract that the PPO shall provide all of the preferred providers with whom it holds contracts information about the insurer and the insurer's preferred provider benefit plans. This information shall include for each insurer and preferred provider benefit plan the benefit designs and incentives that are used to encourage insureds to use preferred providers.

(g) The Commissioner may adopt rules applicable to insurers offering preferred provider benefit plans under this section. These rules shall provide for:

(1) Accessibility of preferred provider services to individuals within the insured group.

(2) The adequacy of the number and locations of health care providers.

(3) The availability of services at reasonable times.

(4) Financial solvency.

(h) Each insurer offering a preferred provider benefit plan shall provide the Commissioner with summary data about the financial reimbursements offered to health care providers. All such insurers shall disclose annually the following information:

(1) The name by which the preferred provider benefit plan is known and its business address.

(2) The name, address, and nature of any PPO or other separate organization that administers the preferred provider benefit plan for the insurer.

(3) The terms of the agreements entered into by the insurer with preferred providers.

(4) Any other information necessary to determine compliance with this section, rules adopted under this section, or other requirements applicable to preferred provider benefit plans.

(i) A person enrolled in a preferred provider benefit plan may obtain covered health care services from a provider who does not participate in the plan. In accordance with rules adopted by the Commissioner and subject to G.S. 58-3-200(d), the preferred provider benefit plan may limit coverage for health care services obtained from a nonparticipating provider. The Commissioner shall adopt rules on product limitations, including payment differentials for services rendered by nonparticipating providers. These rules shall be similar in substance to rules governing HMO point-of-service products.

(j) A list of the current participating providers in the geographic area in which a substantial portion of health care services will be available shall be provided to insureds and contracting parties.

(k) Publications or advertisements of preferred provider benefit plans or organizations shall not refer to the quality or efficiency of the services of nonparticipating providers."

Section 3.2. Article 63 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-63-70. Health care service discount practices by insurers and service corporations.**

(a) It is an unfair trade practice for any insurer or service corporation subject to this Chapter to make an intentional misrepresentation to a health care provider to the effect that the insurer or service corporation is entitled to a certain preferred provider or other discount off the fees charged for medical services, procedures, or supplies provided by the health care provider, when the insurer or service corporation is not entitled to any discount or is entitled to a lesser discount from the provider on those fees.

(b) It is an unfair trade practice for any person with knowledge that an insurer or service corporation intends to make the type of misrepresentation prohibited in subsection (a) of this section to provide substantial assistance to that insurer or service corporation in accomplishing that misrepresentation."

Section 3.3. G.S. 58-51-57(a) reads as rewritten:

"(a) Every policy or contract of accident or health insurance, and every preferred provider ~~contract, policy, or plan as defined and regulated under G.S. 58-50-50 and G.S. 58-50-55,~~ benefit plan under G.S. 58-50-56, that is issued, renewed, or amended on or after January 1, 1992, shall provide coverage for pap smears and for low-dose screening mammography. The same deductibles, coinsurance, and other limitations as apply to similar services covered under the policy, contract, or plan shall apply to coverage for pap smears and low-dose screening mammography."

Section 3.4. G.S. 58-51-58(a) reads as rewritten:

"(a) Every policy or contract of accident and health insurance, and every preferred provider ~~contract, policy, or plan as defined and regulated under G.S. 58-50-50 and G.S. 58-50-55,~~ benefit plan under G.S. 58-50-56, that is issued, renewed, or amended on or after January 1, 1994, shall provide coverage for prostate-specific antigen (PSA) tests or equivalent tests for the presence of prostate cancer. The same deductibles, coinsurance, and other limitations as apply to similar services covered under the policy, contract, or plan shall apply to coverage for prostate-specific antigen (PSA) tests or equivalent tests for the presence of prostate cancer."

Section 3.5. G.S. 58-51-59(a) reads as rewritten:

"(a) No policy or contract of accident or health insurance, and no preferred provider ~~contract, policy, or plan as defined and regulated under G.S. 58-50-50 and G.S. 58-50-55,~~ benefit plan under G.S. 58-50-56, that is issued, renewed, or amended on or after January 1, 1994, and that provides coverage for prescribed drugs approved by the federal Food and Drug Administration for the treatment of certain types of cancer shall exclude coverage of any drug on the basis that the drug has been prescribed for the treatment of a type of cancer for which the drug has not been approved by the federal Food and Drug Administration. The drug, however, must be approved by the federal Food and Drug Administration and must have been proven effective and accepted for the treatment of the specific type of cancer for which the drug has been prescribed in any one of the following established reference compendia:

(1) The American Medical Association Drug Evaluations;
(2) The American Hospital Formulary Service Drug Information; or
(3) The United States Pharmacopeia Drug Information."

Section 3.6. G.S. 58-65-92(a) reads as rewritten:

"(a) Every insurance certificate or subscriber contract under any hospital service plan or medical service plan governed by this Article and Article 66 of this Chapter, and every preferred provider ~~contract, policy, or plan as defined and regulated under G.S. 58-50-50 and G.S. 58-50-55,~~ benefit plan under G.S. 58-50-56, that is issued, renewed, or amended on or after January 1, 1992, shall provide coverage for pap smears and for low-dose screening mammography. The same deductibles, coinsurance, and other limitations as apply to similar services covered under the certificate or contract shall apply to coverage for pap smears and low-dose screening mammography."

Section 3.7. G.S. 58-65-93(a) reads as rewritten:

"(a) Every insurance certificate or subscriber contract under any hospital service plan or medical service plan governed by this Article and Article 66 of this Chapter, and every preferred provider ~~contract, policy, or plan as defined and regulated under G.S. 58-50-50 and G.S. 58-50-55,~~ benefit plan under G.S. 58-50-56, that is issued, renewed, or amended on or after January 1, 1994, shall provide coverage for prostate-specific antigen (PSA) tests or equivalent tests for the presence of prostate cancer. The same deductibles, coinsurance, and other limitations as apply to similar services covered under the certificate or contract shall apply to coverage for prostate-specific antigen (PSA) tests or equivalent tests for the presence of prostate cancer."

Section 3.8. G.S. 58-65-94(a) reads as rewritten:

"(a) No insurance certificate or subscriber contract under any hospital service plan or medical service plan governed by this Article and Article 66 of this Chapter, and no preferred provider ~~contract, policy, or plan as defined and regulated under G.S. 58-50-50 and G.S. 58-50-55,~~ benefit plan under G.S. 58-50-56, that is issued, renewed, or amended on or after January 1, 1994, and that provides coverage for prescribed drugs approved by the federal Food and Drug Administration for the treatment of certain types of cancer shall exclude coverage of any drug on the basis that the drug has been prescribed for the treatment of a type of cancer for which the drug has not been approved by the federal Food and Drug Administration. The drug, however, must be approved by the federal Food and Drug Administration and must have been proven effective and accepted for the treatment of the specific type of cancer for which the drug has been prescribed in any one of the following established reference compendia:

(1) The American Medical Association Drug Evaluations;
(2) The American Hospital Formulary Service Drug Information; or
(3) The United States Pharmacopeia Drug Information."

Section 3.9. G.S. 58-51-61(a), as enacted by S.L. 1997-312, reads as rewritten:

"(a) Every policy or contract of accident and health insurance, and every preferred provider ~~contract, policy, or plan as defined and regulated under G.S. 58-50-50 and G.S. 58-50-55,~~ benefit plan under G.S. 58-50-60 that is issued, renewed, or amended on or after January 1, 1998, and that provides coverage for mastectomy shall provide coverage for reconstructive breast surgery resulting from a mastectomy. The coverage shall include coverage for all stages and revisions of reconstructive breast surgery performed on a nondiseased breast to establish symmetry when reconstructive surgery on a diseased breast is performed. The same deductibles, coinsurance, and other limitations as apply to similar services covered under the policy, contract, or plan shall apply to coverage for reconstructive breast surgery. Reconstruction of the nipple/areolar complex following a mastectomy is covered without regard to the lapse of time between the mastectomy and the reconstruction, subject to the approval of the treating physician."

Section 3.10. G.S. 58-65-96(a), as enacted by S.L. 1997-312, reads as rewritten:

"(a) Every insurance certificate or subscriber contract under any hospital service plan or medical service plan governed by this Article and Article 66 of this Chapter, and every preferred provider ~~contract, policy, or plan as defined and regulated under G.S. 58-50-50 and G.S. 58-50-55,~~ benefit plan under G.S. 58-50-56 that is issued, renewed, or amended on or after January 1, 1998, that provides coverage for mastectomy shall provide coverage for reconstructive breast surgery resulting from a mastectomy. The coverage shall include coverage for all stages and revisions of reconstructive breast surgery performed on a nondiseased breast to establish symmetry when reconstructive surgery on a diseased breast is performed. The same deductibles, coinsurance, and other limitations as apply to similar services covered under the policy, contract, or plan shall apply to coverage for reconstructive breast surgery. Reconstruction of the nipple/areolar complex following a mastectomy is covered without regard to the lapse of time between the mastectomy and the reconstruction, subject to the approval of the treating physician."

Section 3.11. G.S. 58-51-61(a), as enacted by S.L. 1997-225, reads as rewritten:

"(a) Every policy or contract of accident or health insurance, and every preferred provider ~~contract, policy, or plan as defined and regulated under G.S. 58-50-50 and G.S. 58-50-55,~~ benefit plan under G.S. 58-50-56 that is issued, renewed, or amended on or after October 1, 1997, shall provide coverage for medically appropriate and necessary services, including diabetes outpatient self-management training and educational services, and equipment, supplies, medications, and laboratory procedures used to treat diabetes. Diabetes outpatient self-management training and educational services shall be provided by a physician or a health care professional designated by the physician. The insurer shall determine who shall provide and be reimbursed for the diabetes outpatient self-management training and educational services. The same deductibles, coinsurance, and other limitations as apply to similar services covered under the policy, contract, or plan shall apply to the diabetes coverage required under this section."

Section 3.12. G.S. 58-65-91(a), as enacted by S.L. 1997-225, reads as rewritten:

"(a) Every insurance certificate or subscriber contract under any hospital service plan or medical service plan governed by this Article and Article 66 of this Chapter, and every preferred provider ~~contract, policy, or plan as defined and regulated under G.S. 58-50-50 and G.S. 58-50-55,~~ plan under G.S. 58-50-56 that is issued, renewed, or amended on or after October 1, 1997, shall provide coverage for medically appropriate and necessary services, including diabetes outpatient self-management training and educational services, and equipment, supplies, medications, and laboratory procedures used to treat diabetes. Diabetes outpatient self-management training and educational services shall be provided by a physician or a health care professional designated by the physician. The hospital or medical service plan shall determine who shall provide and be reimbursed for the diabetes outpatient self-management training and educational services. The same deductibles, coinsurance,

and other limitations as apply to similar services covered under the policy, contract, or plan shall apply to the diabetes coverage required under this section."

Section 3.13. If Senate Bill 843 becomes law, G.S. 58-50-65(a), as amended by Section 59 of Senate Bill 843, reads as rewritten:

"(a) Except as provided in this subsection, nothing in Articles 50 through 55 of this Chapter applies to any liability or workers' compensation insurance policy. ~~Except for G.S. 58-50-55(a), the~~ The provisions of this Article and Articles 65 and 67 of this Chapter and any administrative rules adopted under those Articles relating to preferred providers and utilization review apply to workers' compensation insurance policies and to individual and group self-funded workers' compensation insurance plans. If there is any conflict between managed care rules adopted by the Commissioner under this Chapter and managed care rules adopted by the Industrial Commission under G.S. 97-25.2, the Industrial Commission's rules govern. If there is any conflict between managed care provisions in this Chapter and in Chapter 97 of the General Statutes with respect to workers' compensation, the provisions in Chapter 97 govern."

Section 3.14. G.S. 90-14.13 reads as rewritten:

"§ 90-14.13. Reports of disciplinary action by health care institutions; immunity from liability.

The chief administrative officer of every licensed hospital or other health care institution, including Health Maintenance Organizations, as defined in G.S. 58-67-5, preferred providers, as defined in ~~G.S. 58-50-50,~~ G.S. 58-50-56, and all other provider organizations that issue credentials to physicians who practice medicine in the State, shall, after consultation with the chief of staff of such institution, report to the Board any revocation, suspension, or limitation of a physician's privileges to practice in that institution. Each such institution shall also report to the Board resignations from practice in that institution by persons licensed under this Article. The Board shall report all violations of this subsection known to it to the licensing agency for the institution involved.

Any licensed physician who does not possess professional liability insurance shall report to the Board any award of damages or any settlement of any malpractice complaint affecting his or her practice within 30 days of the award or settlement.

The chief administrative officer of each insurance company providing professional liability insurance for physicians who practice medicine in North Carolina, the administrative officer of the Liability Insurance Trust Fund Council created by G.S. 116-220, and the administrative officer of any trust fund operated by a hospital authority, group, or provider shall report to the Board within 30 days:

(1) Any award of damages or settlement affecting or involving a physician it insures, or

(2) Any cancellation or nonrenewal of its professional liability coverage of a physician, if the cancellation or nonrenewal was for cause.

The Board may request details about any action and the officers shall promptly furnish the requested information. The reports required by this section are privileged

and shall not be open to the public. The Board shall report all violations of this paragraph to the Commissioner of Insurance.

Any person making a report required by this section shall be immune from any criminal prosecution or civil liability resulting therefrom unless such person knew the report was false or acted in reckless disregard of whether the report was false."

Section 3.15. G.S. 135-39.5(12) reads as rewritten:

"(12) Determining basis of payments to health care providers, including payments in accordance with ~~G.S. 58-50-55.~~ G.S. 58-50-56."

Section 3.16. G.S. 58-65-140 is repealed.

Section 3.17. G.S. 58-50-50 and G.S. 58-50-55 are repealed.

Section 3.18. G.S. 58-67-35(a)(6) reads as rewritten:

"(6) The offering and contracting for the provision or arranging of, in addition to health care services, of:

a. Additional health care services;

b. Indemnity benefits, covering out-of-area or emergency services;

c. Indemnity benefits, in addition to those relating to out-of-area and emergency services, provided through insurers or hospital or medical service corporations; and

d. Point-of-service products, for which the Commissioner shall adopt rules governing:

1. The percentage of an HMO's total health care expenditures for out-of-plan covered services for all of its members that may be spent on those services, which may not exceed twenty percent (20%);

2. Product ~~limitations;~~ limitations, which may provide for payment differentials for services rendered by providers who are not in an HMO network, subject to G.S. 58-3-200(d).

3. Deposit and other financial requirements; and

4. Other requirements for marketing and administering those products."

Section 3.19. Except as modified by G.S. 58-50-56(i), as enacted in this Part, any administrative rules that were adopted by the Commissioner under the authority of G.S. 58-50-50 or G.S. 58-50-55 and that were effective before January 1, 1998, are not affected by the repeals in Section 3.17 of this act.

PART IV. UTILIZATION REVIEW AND GRIEVANCES

Section 4.1. Article 50 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-50-61. Utilization review.**

(a) Definitions. -- As used in this section and in G.S. 58-50-62, the term:

(1) 'Clinical peer' means a health care professional who holds an unrestricted license in a state of the United States, in the same or similar specialty, and routinely provides the health care services subject to utilization review.

(2) 'Clinical review criteria' means the written screening procedures, decision abstracts, clinical protocols, and practice guidelines used by an insurer to determine medically necessary services and supplies.

(3) 'Covered person' means a policyholder, subscriber, enrollee, or other individual covered by a health benefit plan. 'Covered person' includes another person, other than the covered person's provider, who is authorized to act on behalf of a covered person.

(4) 'Emergency medical condition' means a medical condition manifesting itself by acute symptoms of sufficient severity including, but not limited to, severe pain, or by acute symptoms developing from a chronic medical condition that would lead a prudent layperson, possessing an average knowledge of health and medicine, to reasonably expect the absence of immediate medical attention to result in any of the following:

a. Placing the health of an individual, or with respect to a pregnant woman, the health of the woman or her unborn child, in serious jeopardy.

b. Serious impairment to bodily functions.

c. Serious dysfunction of any bodily organ or part.

(5) 'Emergency services' means health care items and services furnished or required to screen for or treat an emergency medical condition until the condition is stabilized, including prehospital care and ancillary services routinely available to the emergency department.

(6) 'Grievance' means a written complaint submitted by a covered person about any of the following:

a. An insurer's decisions, policies, or actions related to availability, delivery, or quality of health care services.

b. Claims payment or handling; or reimbursement for services.

c. The contractual relationship between a covered person and an insurer.

d. The outcome of an appeal of a noncertification under this section.

(7) 'Health benefit plan' means any of the following if offered by an insurer: an accident and health insurance policy or certificate; a nonprofit hospital or medical service corporation contract; a health maintenance organization subscriber contract; or a plan provided by a multiple employer welfare arrangement. 'Health benefit plan' does not mean any plan implemented or administered through the

Department of Human Resources or its representatives. 'Health benefit plan' also does not mean any of the following kinds of insurance:

a. Accident.
b. Credit.
c. Disability income.
d. Long-term or nursing home care.
e. Medicare supplement.
f. Specified disease.
g. Dental or vision.
h. Coverage issued as a supplement to liability insurance.
i. Workers' compensation.
j. Medical payments under automobile or homeowners.
k. Hospital income or indemnity.
l. Insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability policy or equivalent self-insurance.

(8) 'Health care provider' means any person who is licensed, registered, or certified under Chapter 90 of the General Statutes; a health care facility as defined in G.S. 131E-176(9b); or a pharmacy.

(9) 'Health care services' means services provided for the diagnosis, prevention, treatment, cure, or relief of a health condition, illness, injury, or disease.

(10) 'Insurer' means an entity that writes a health benefit plan and that is an insurance company subject to this Chapter, a service corporation under Article 65 of this Chapter, a health maintenance organization under Article 67 of this Chapter, or a multiple employer welfare arrangement under Article 49 of this Chapter.

(11) 'Managed care plan' means a health benefit plan in which an insurer either (i) requires a covered person to use or (ii) creates incentives, including financial incentives, for a covered person to use providers that are under contract with or managed, owned, or employed by the insurer.

(12) 'Medically necessary services or supplies' means those covered services or supplies that are:

a. Provided for the diagnosis, treatment, cure, or relief of a health condition, illness, injury, or disease.
b. Not for experimental, investigational, or cosmetic purposes.
c. Necessary for and appropriate to the diagnosis, treatment, cure, or relief of a health condition, illness, injury, disease, or its symptoms.
d. Within generally accepted standards of medical care in the community.

e. Not solely for the convenience of the insured, the insured's family, or the provider.

For medically necessary services, nothing in this subdivision precludes an insurer from comparing the cost-effectiveness of alternative services or supplies when determining which of the services or supplies will be covered.

(13) 'Noncertification' means a determination by an insurer or its designated utilization review organization that an admission, availability of care, continued stay, or other health care service has been reviewed and, based upon the information provided, does not meet the insurer's requirements for medical necessity, appropriateness, health care setting, level of care or effectiveness, and the requested service is therefore denied, reduced, or terminated. A 'noncertification' is not a decision rendered solely on the basis that the health benefit plan does not provide benefits for the health care service in question, if the exclusion of the specific service requested is clearly stated in the certificate of coverage.

(14) 'Participating provider' means a provider who, under a contract with an insurer or with an insurer's contractor or subcontractor, has agreed to provide health care services to covered persons in return for direct or indirect payment from the insurer, other than coinsurance, copayments, or deductibles.

(15) 'Provider' means a health care provider.

(16) 'Stabilize' means to provide medical care that is appropriate to prevent a material deterioration of the person's condition, within reasonable medical probability, in accordance with the HCFA (Health Care Financing Administration) interpretative guidelines, policies, and regulations pertaining to responsibilities of hospitals in emergency cases (as provided under the Emergency Medical Treatment and Labor Act, section 1867 of the Social Security Act, 42 U.S.C.S. § 1395dd), including medically necessary services and supplies to maintain stabilization until the person is transferred.

(17) 'Utilization review' means a set of formal techniques designed to monitor the use of or evaluate the clinical necessity, appropriateness, efficacy or efficiency of health care services, procedures, providers, or facilities. These techniques may include:

a. Ambulatory review. -- Utilization review of services performed or provided in an outpatient setting.

b. Case management. -- A coordinated set of activities conducted for individual patient management of serious, complicated, protracted, or other health conditions.

c. Certification. -- A determination by an insurer or its designated URO that an admission, availability of care,

continued stay, or other service has been reviewed and, based on the information provided, satisfies the insurer's requirements for medically necessary services and supplies, appropriateness, health care setting, level of care, and effectiveness.

d. Concurrent review. -- Utilization review conducted during a patient's hospital stay or course of treatment.

e. Discharge planning. -- The formal process for determining, before discharge from a provider facility, the coordination and management of the care that a patient receives after discharge from a provider facility.

f. Prospective review. -- Utilization review conducted before an admission or a course of treatment including any required preauthorization or precertification.

g. Retrospective review. -- Utilization review of medically necessary services and supplies that is conducted after services have been provided to a patient, but not the review of a claim that is limited to an evaluation of reimbursement levels, veracity of documentation, accuracy of coding, or adjudication for payment.

h. Second opinion. -- An opportunity or requirement to obtain a clinical evaluation by a provider other than the provider originally making a recommendation for a proposed service to assess the clinical necessity and appropriateness of the proposed service.

(18) 'Utilization review organization' or 'URO' means an entity that conducts utilization review under a managed care plan, but does not mean an insurer performing utilization review for its own health benefit plan.

(b) Insurer Oversight. -- Every insurer shall monitor all utilization review carried out by or on behalf of the insurer and ensure compliance with this section. An insurer shall ensure that appropriate personnel have operational responsibility for the conduct of the insurer's utilization review program. If an insurer contracts to have a URO perform its utilization review, the insurer shall monitor the URO to ensure compliance with this section, which shall include:

(1) A written description of the URO's activities and responsibilities, including reporting requirements.

(2) Evidence of formal approval of the utilization review organization program by the insurer.

(3) A process by which the insurer evaluates the performance of the URO.

(c) Scope and Content of Program. -- Every insurer shall prepare and maintain a utilization review program document that describes all delegated and nondelegated review functions for covered services including:

(1) Procedures to evaluate the clinical necessity, appropriateness, efficacy, or efficiency of health services.
(2) Data sources and clinical review criteria used in decision making.
(3) The process for conducting appeals of noncertifications.
(4) Mechanisms to ensure consistent application of review criteria and compatible decisions.
(5) Data collection processes and analytical methods used in assessing utilization of health care services.
(6) Provisions for assuring confidentiality of clinical and patient information in accordance with State and federal law.
(7) The organizational structure (e.g., utilization review committee, quality assurance, or other committee) that periodically assesses utilization review activities and reports to the insurer's governing body.
(8) The staff position functionally responsible for day-to-day program management.
(9) The methods of collection and assessment of data about underutilization and overutilization of health care services and how the assessment is used to evaluate and improve procedures and criteria for utilization review.

(d) Program Operations. -- In every utilization review program, an insurer or URO shall use documented clinical review criteria that are based on sound clinical evidence and that are periodically evaluated to assure ongoing efficacy. An insurer may develop its own clinical review criteria or purchase or license clinical review criteria. Qualified health care professionals shall administer the utilization review program and oversee review decisions under the direction of a medical doctor. A medical doctor shall evaluate the clinical appropriateness of noncertifications. Compensation to persons involved in utilization review shall not contain any direct or indirect incentives for them to make any particular review decisions. Compensation to utilization reviewers shall not be directly or indirectly based on the number or type of noncertifications they render. In issuing a utilization review decision, an insurer shall: obtain all information required to make the decision, including pertinent clinical information; employ a process to ensure that utilization reviewers apply clinical review criteria consistently; and issue the decision in a timely manner pursuant to this section.

(e) Insurer Responsibilities. -- Every insurer shall:
(1) Routinely assess the effectiveness and efficiency of its utilization review program.
(2) Coordinate the utilization review program with its other medical management activity, including quality assurance, credentialing, provider contracting, data reporting, grievance procedures, processes for assessing satisfaction of covered persons, and risk management.

(3) Provide covered persons and their providers with access to its review staff by a toll-free or collect call telephone number whenever any provider is required to be available to provide services which may require prior certification to any plan enrollee. Every insurer shall establish standards for telephone accessibility and monitor telephone service as indicated by average speed of answer and call abandonment rate, on at least a month-by-month basis, to ensure that telephone service is adequate, and take corrective action when necessary.

(4) Limit its requests for information to only that information that is necessary to certify the admission, procedure or treatment, length of stay, and frequency and duration of health care services.

(5) Have written procedures for making utilization review decisions and for notifying covered persons of those decisions.

(6) Have written procedures to address the failure or inability of a provider or covered person to provide all necessary information for review. If a provider or covered person fails to release necessary information in a timely manner, the insurer may deny certification.

(f) Prospective and Concurrent Reviews. -- As used in this subsection, 'necessary information' includes the results of any patient examination, clinical evaluation, or second opinion that may be required. Prospective and concurrent determinations shall be communicated to the covered person's provider within three business days after the insurer obtains all necessary information about the admission, procedure, or health care service. If an insurer certifies a health care service, the insurer shall notify the covered person's provider. For a noncertification, the insurer shall notify the covered person's provider and send written or electronic confirmation of the noncertification to the covered person. In concurrent reviews, the insurer shall remain liable for health care services until the covered person has been notified of the noncertification.

(g) Retrospective Reviews. -- As used in this subsection, 'necessary information' includes the results of any patient examination, clinical evaluation, or second opinion that may be required. For retrospective review determinations, an insurer shall make the determination within 30 days after receiving all necessary information. For a certification, the insurer may give written notification to the covered person's provider. For a noncertification, the insurer shall give written notification to the covered person and the covered person's provider within five business days after making the noncertification.

(h) Notice of Noncertification. -- A written notification of a noncertification shall include all reasons for the noncertification, including the clinical rationale, the instructions for initiating a voluntary appeal or reconsideration of the noncertification, and the instructions for requesting a written statement of the clinical review criteria used to make the noncertification. An insurer shall provide the clinical review criteria used to make the noncertification to any person who received the notification of the noncertification and who follows the procedures for a request.

(i) Requests for Reconsideration. -- An insurer may establish procedures for informal reconsideration of noncertifications. The reconsideration shall be conducted between the covered person's provider and a medical doctor designated by the insurer. An insurer shall not require a covered person to participate in an informal reconsideration before the covered person may appeal a noncertification under subsection (j) of this section.

(j) Appeals of Noncertifications. -- Every insurer shall have written procedures for appeals of noncertifications by covered persons or their providers acting on their behalves, including expedited review to address a situation where the time frames for the standard review procedures set forth in this section would reasonably appear to seriously jeopardize the life or health of a covered person or jeopardize the covered person's ability to regain maximum function. Each appeal shall be evaluated by a medical doctor who was not involved in the noncertification.

(k) Nonexpedited Appeals. -- Within three business days after receiving a request for a standard, nonexpedited appeal, the insurer shall provide the covered person with the name, address, and telephone number of the coordinator and information on how to submit written material. For standard, nonexpedited appeals, the insurer shall give written notification of the decision to the covered person and the covered person's provider within 30 days after the insurer receives the request for an appeal. The written decision shall contain:

(1) The professional qualifications and licensure of the person or persons reviewing the appeal.

(2) A statement of the reviewers' understanding of the reason for the covered person's appeal.

(3) The reviewers' decision in clear terms and the medical rationale in sufficient detail for the covered person to respond further to the insurer's position.

(4) A reference to the evidence or documentation that is the basis for the decision, including the clinical review criteria used to make the determination, and instructions for requesting the clinical review criteria.

(5) A statement advising the covered person of the covered person's right to request a second-level grievance review and a description of the procedure for submitting a second-level grievance under G.S. 58-50-62.

(l) Expedited Appeals. -- An expedited appeal of a noncertification may be requested by a covered person or his or her provider acting on the covered person's behalf only when a nonexpedited appeal would reasonably appear to seriously jeopardize the life or health of a covered person or jeopardize the covered person's ability to regain maximum function. The insurer may require documentation of the medical justification for the expedited appeal. The insurer shall, in consultation with a medical doctor, provide expedited review, and the insurer shall communicate its decision in writing to the covered person and his or her provider as soon as possible, but not later than four days after receiving the information justifying expedited

review. The written decision shall contain the provisions specified in subsection (k) of this section. If the expedited review is a concurrent review determination, the insurer shall remain liable for the coverage of health care services until the covered person has been notified of the determination. An insurer is not required to provide an expedited review for retrospective noncertifications.

(m) Disclosure Requirements. -- In the certificate of coverage and member handbook provided to covered persons, an insurer shall include a clear and comprehensive description of its utilization review procedures, including the procedures for appealing noncertifications and a statement of the rights and responsibilities of covered persons, including the voluntary nature of the appeal process, with respect to those procedures. An insurer shall include a summary of its utilization review procedures in materials intended for prospective covered persons. An insurer shall print on its membership cards a toll-free telephone number to call for utilization review purposes.

(n) Maintenance of Records. -- Every insurer and URO shall maintain records of each review performed and each appeal received or reviewed, as well as documentation sufficient to demonstrate compliance with this section. The maintenance of these records, including electronic reproduction and storage, shall be governed by rules adopted by the Commissioner that apply to insurers. These records shall be retained by the insurer and URO for a period of three years or until the Commissioner has adopted a final report of a general examination that contains a review of these records for that calendar year, whichever is later.

(o) Violation. -- A violation of this section subjects an insurer to G.S. 58-2-70."

Section 4.2. Article 50 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-50-62. Insurer grievance procedures.**

(a) Purpose and Intent. -- The purpose of this section is to provide standards for the establishment and maintenance of procedures by insurers to assure that covered persons have the opportunity for appropriate resolutions of their grievances.

(b) Availability of Grievance Process. -- Every insurer shall have a grievance process whereby a covered person may voluntarily request a review of any decision, policy, or action of the insurer that affects that covered person. The grievance process may provide for an immediate informal consideration by the insurer of a grievance. If the insurer does not have a procedure for informal consideration or if an informal consideration does not resolve the grievance, the grievance process shall provide for first- and second-level reviews of grievances; except that an appeal of a noncertification that has been reviewed under G.S. 58-50-61 shall be reviewed as a second-level grievance under this section.

(c) Grievance Procedures. -- Every insurer shall have written procedures for receiving and resolving grievances from covered persons. A description of the grievance procedures shall be set forth in or attached to the certificate of coverage and member handbook provided to covered persons. The description shall include a statement informing the covered person that the grievance procedures are voluntary

and shall also inform the covered person about the availability of the Commissioner's office for assistance, including the telephone number and address of the office.

(d) Maintenance of Records. -- Every insurer shall maintain records of each grievance received and the insurer's review of each grievance, as well as documentation sufficient to demonstrate compliance with this section. The maintenance of these records, including electronic reproduction and storage, shall be governed by rules adopted by the Commissioner that apply to insurers. The insurer shall retain these records for three years or until the Commissioner has adopted a final report of a general examination that contains a review of these records for that calendar year, whichever is later.

(e) First-Level Grievance Review. -- A grievance may be submitted by a covered person or his or her provider acting on the covered person's behalf.

(1) The insurer does not have to allow a covered person to attend the first-level grievance review. A covered person may submit written material. Within three business days after receiving a grievance, the insurer shall provide the covered person with the name, address, and telephone number of the coordinator and information on how to submit written material.

(2) An insurer shall issue a written decision to the covered person and, if applicable, to the covered person's provider, within 30 days after receiving a grievance. The person or persons reviewing the grievance shall not be the same person or persons who initially handled the matter that is the subject of the grievance and, if the issue is a clinical one, at least one of whom shall be a medical doctor with appropriate expertise to evaluate the matter. The written decision issued in a first-level grievance review shall contain:

a. The professional qualifications and licensure of the person or persons reviewing the grievance.

b. A statement of the reviewers' understanding of the grievance.

c. The reviewers' decision in clear terms and the contractual basis or medical rationale in sufficient detail for the covered person to respond further to the insurer's position.

d. A reference to the evidence or documentation used as the basis for the decision.

e. A statement advising the covered person of his or her right to request a second-level grievance review and a description of the procedure for submitting a second-level grievance under this section.

(f) Second-Level Grievance Review. -- An insurer shall establish a second-level grievance review process for covered persons who are dissatisfied with the first-level grievance review decision or a utilization review appeal decision.

(1) An insurer shall, within 10 business days after receiving a request for a second-level grievance review, make known to the covered person:

a. The name, address, and telephone number of a person designated to coordinate the grievance review for the insurer.

b. A statement of a covered person's rights, which include the right to request and receive from an insurer all information relevant to the case; attend the second-level grievance review; present his or her case to the review panel; submit supporting materials before and at the review meeting; ask questions of any member of the review panel; and be assisted or represented by a person of his or her choice, which person may be without limitation to: a provider, family member, employer representative, or attorney. If the covered person chooses to be represented by an attorney, the insurer may also be represented by an attorney.

(2) An insurer shall convene a second-level grievance review panel for each request. The panel shall comprise persons who were not previously involved in any matter giving rise to the second-level grievance, are not employees of the insurer or URO, and do not have a financial interest in the outcome of the review. A person who was previously involved in the matter may appear before the panel to present information or answer questions. All of the persons reviewing a second-level grievance involving a noncertification or a clinical issue shall be providers who have appropriate expertise, including at least one clinical peer. Provided, however, an insurer that uses a clinical peer on an appeal of a noncertification under G.S. 58-50-61 or on a first-level grievance review panel under this section may use one of the insurer's employees on the second-level grievance review panel in the same matter if the second-level grievance review panel comprises three or more persons.

(g) Second-Level Grievance Review Procedures. -- An insurer's procedures for conducting a second-level grievance review shall include:

(1) The review panel shall schedule and hold a review meeting within 45 days after receiving a request for a second-level review.

(2) The covered person shall be notified in writing at least 15 days before the review meeting date.

(3) The covered person's right to a full review shall not be conditioned on the covered person's appearance at the review meeting.

(h) Second-Level Grievance Review Decisions. -- An insurer shall issue a written decision to the covered person and, if applicable, to the covered person's provider,

within seven business days after completing the review meeting. The decision shall include:

(1) The professional qualifications and licensure of the members of the review panel.

(2) A statement of the review panel's understanding of the nature of the grievance and all pertinent facts.

(3) The review panel's recommendation to the insurer and the rationale behind that recommendation.

(4) A description of or reference to the evidence or documentation considered by the review panel in making the recommendation.

(5) In the review of a noncertification or other clinical matter, a written statement of the clinical rationale, including the clinical review criteria, that was used by the review panel to make the recommendation.

(6) The rationale for the insurer's decision if it differs from the review panel's recommendation.

(7) A statement that the decision is the insurer's final determination in the matter.

(8) Notice of the availability of the Commissioner's office for assistance, including the telephone number and address of the Commissioner's office.

(i) Expedited Second-Level Procedures. -- An expedited second-level review shall be made available where medically justified as provided in G.S. 58-50-61(l), whether or not the initial review was expedited. The provisions of subsections (f), (g), and (h) of this section apply to this subsection except for the following timetable: When a covered person is eligible for an expedited second-level review, the insurer shall conduct the review proceeding and communicate its decision within four days after receiving all necessary information. The review meeting may take place by way of a telephone conference call or through the exchange of written information.

(j) No insurer shall discriminate against any provider based on any action taken by the provider under this section or G.S. 58-50-61 on behalf of a covered person.

(k) Violation. -- A violation of this section subjects an insurer to G.S. 58-2-70."

Section 4.3. Article 1 of Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-21.22A. Medical review committees.**

(a) As used in this section, 'medical review committee' means a committee composed of health care providers licensed under this Chapter that is formed for the purpose of evaluating the quality of, cost of, or necessity for health care services, including provider credentialing. 'Medical review committee' does not mean a medical review committee established under G.S. 131E-95.

(b) A member of a duly appointed medical review committee who acts without malice or fraud shall not be subject to liability for damages in any civil action on account of any act, statement, or proceeding undertaken, made, or performed within the scope of the functions of the committee.

(c) The proceedings of a medical review committee, the records and materials it produces, and the materials it considers shall be confidential and not considered public records within the meaning of G.S. 132-1 or G.S. 58-2-100; and shall not be subject to discovery or introduction into evidence in any civil action against a provider of health care services who directly provides services and is licensed under this Chapter or a hospital licensed under Chapter 122C or Chapter 131E of the General Statutes or that is owned or operated by the State, which civil action results from matters that are the subject of evaluation and review by the committee. No person who was in attendance at a meeting of the committee shall be required to testify in any civil action as to any evidence or other matters produced or presented during the proceedings of the committee or as to any findings, recommendations, evaluations, opinions, or other actions of the committee or its members. However, information, documents, or records otherwise available are not immune from discovery or use in a civil action merely because they were presented during proceedings of the committee. A member of the committee may testify in a civil action but cannot be asked about his or her testimony before the committee or any opinions formed as a result of the committee hearings.

(d) This section applies to a medical review committee, including a medical review committee appointed by one of the entities licensed under Articles 1 through 67 of Chapter 58 of the General Statutes.

(e) Subsection (c) of this section does not apply to proceedings initiated under G.S. 58-50-61 or G.S. 58-50-62."

Section 4.4. G.S. 58-50-60 is repealed.

PART V. EFFECTIVE DATE AND APPLICABILITY

Section 5. This act becomes effective January 1, 1998. Part II of this act applies to all health benefit plans that are delivered, issued for delivery, or renewed on and after January 1, 1998. For the purposes of this act, renewal of a health benefit plan is presumed to occur on each anniversary of the date on which coverage was first effective on the person or persons covered by the health benefit plan. Insurers other than health maintenance organizations that are subject to Part IV of this act have until July 1, 1998, to implement the procedures for grievances that are contained in Section 4.2 of Part IV of this act; provided, however, that insurers other than health maintenance organizations shall comply with the second-level grievance review procedures in Section 4.2 of Part IV of this act for appeals of noncertifications effective January 1, 1998.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 932
Commerce Committee Substitute Adopted 6/18/97

Short Title: HMO Operations. (Public)

Sponsors:

Referred to:

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH HEALTH BENEFIT PLAN REPORTING AND DISCLOSURE REQUIREMENTS AND MAKE IMPROVEMENTS IN THE OPERATIONS OF HEALTH MAINTENANCE ORGANIZATIONS IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. Article 3 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-3-210. Health plan reporting and disclosure requirements.**

(a) Definitions. -- As used in this section:

(1) 'Health benefit plan' means any of the following if offered by an insurer: an accident and health insurance policy or certificate; a nonprofit hospital or medical service corporation contract; a health maintenance organization subscriber contract; or a plan provided by a multiple employer welfare arrangement. 'Health benefit plan' does not mean any plan implemented or administered through the Department of Human Resources or its representatives. 'Health benefit plan' also does not mean any of the following kinds of insurance:

a. Accident

b. Credit

c. Disability income

d. Long-term or nursing home care

e. Medicare supplement
f. Specified disease
g. Dental or vision
h. Coverage issued as a supplement to liability insurance
i. Workers' compensation
j. Medical payments under automobile or homeowners
k. Hospital income or indemnity
l. Insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability policy or equivalent self-insurance.

(2) 'Insurer' means an entity that writes a health benefit plan and that is an insurance company subject to this Chapter, a service corporation under Article 65 of this Chapter, a health maintenance organization under Article 67 of this Chapter, or a multiple employer welfare arrangement under Article 49 of this Chapter.

(b) Each insurer shall annually, on or before April 1 of each year, file in the office of the Commissioner the following information and reports relating to its activities in the previous calendar year, to the extent applicable. All information and reports shall be in a format prescribed by or acceptable to the Commissioner:

(1) A report on the availability and accessibility of each of its provider networks offered, which shall include:

a. Information on the insurer's program to determine the level of network availability, as measured by the numbers and types of network providers, required to provide covered services to covered persons. This information shall include the insurer's methodology for:

1. Establishing performance targets for the numbers and types of providers by specialty, area of practice, or facility type, for each of the following categories: primary care physicians, specialty care physicians, nonphysician health care providers, hospitals, and nonhospital health care facilities.
2. Determining when changes in plan membership will necessitate changes in the provider network.

The report shall also include: the availability performance targets for the previous and current years; the numbers and types of providers currently participating in the insurer's provider network; and an evaluation of actual plan performance against performance targets.

b. The insurer's method for arranging or providing health care services from nonnetwork providers, both within and outside of its service area, when network providers are not available to provide covered services.

c. Information on the insurer's program to determine the level of provider network accessibility necessary to serve its membership. This information shall include the insurer's methodology for establishing performance targets for member access to covered services from primary care physicians, specialty care physicians, nonphysician health care providers, hospitals, and nonhospital health care facilities. The methodology shall establish targets for:

1. The proximity of network providers to members, as measured by member driving distance, to access primary care, specialty care, hospital-based services, and services of nonhospital facilities.
2. Expected waiting time for appointments for urgent care, acute care, specialty care, and routine services for prevention and wellness.

The report shall also include: the accessibility performance targets for the previous and current years; data on actual overall accessibility as measured by driving distance and average appointment waiting time; and an evaluation of actual plan performance against performance targets. Measures of actual accessibility may be developed using scientifically valid random sample techniques.

d. A statement of the insurer's methods and standards for determining whether in-network services are reasonably available and accessible to a covered person, for the purpose of determining whether a covered person should receive the in-network level of coverage for services received from a nonnetwork provider.

e. A description of the insurer's program to monitor the adequacy of its network availability and accessibility methodologies and performance targets, plan performance, and network provider performance.

(2) A report of grievances for the previous calendar year, as defined in G.S. 58-50-61 and processed in accordance with G.S. 58-50-62. The report shall include number of covered lives, total number of grievances categorized by reason for the grievance, the number of grievances referred to the second level grievance review, the number of grievances resolved at each level and their resolution, and a description of the actions that are being taken to correct the problems that have been identified through grievances received. Every insurer shall file with the Commissioner, as part of its annual grievance report, a certificate of compliance stating that the carrier has established and follows, for each of its lines of business, grievance procedures that comply with G.S. 58-50-62.

(3) A report summarizing its utilization review program activities for the previous calendar year. The report shall include the number of: each type of utilization review performed, noncertifications for each type of review, each type of review appealed, and appeals settled in favor of covered persons. The report shall be accompanied by a certification from the carrier that it has established and follows procedures that comply with G.S. 58-50-61.

(4) A report showing the number of participants and groups who terminated coverage under the plan in the previous calendar year, which includes the number of participants who terminated coverage because the group contract under which they were covered was terminated, the number of participants who terminated coverage for reasons other than the termination of the group under which they were enrolled, and the number of group contracts terminated.

(5) A report showing the number of changes in provider network. The report shall detail the number of provider contracts that were terminated during the previous calendar year, showing voluntary and involuntary terminations separately, and the number of provider contracts that were added to the network. This subdivision does not require the disclosure of any identifying information about a provider, and no civil liability shall arise from compliance with this subdivision.

(6) A report listing the types of methods of provider compensation utilized in its provider contracts, such as: capitation arrangements; discounted fee-for-service; salary; and withhold or incentive arrangements.

(c) Each health benefit plan shall provide its prospective insureds upon request its evidence of coverage (G.S. 58-67-50), subscriber contract (G.S. 58-65-60, G.S. 58-65-140), health insurance policy (G.S. 58-51-80, 58-50-125, 58-50-55), or the contract and benefit summary of any other type of health benefit plan written by the insurer.

(d) Effective April 1, 1998, insurers shall make the reports that are required under subsection (b) of this section and that have been filed with the Commissioner available on their business premises and shall provide any insured access to them upon request."

Section 2. Article 67 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-67-11. Additional HMO application information.**

(a) In addition to the information filed under G.S. 58-67-10(c), each application shall include a description of the following:

(1) The program to be used to evaluate whether the applicant's provider network is sufficient, in numbers and types of providers, to assure that all health care services will be accessible without unreasonable delay.

(2) The program to be used for verifying provider credentials.
(3) The quality management program to assure quality of care and health care services managed and provided through the health care plan.
(4) The utilization review program for the review and control of health care services provided or paid for.
(5) The applicant's provider network and evidence of the ability of that network to provide all health care services to the applicant's prospective enrollees.

(b) G.S. 58-67-10(d) applies to the information specified in this section."

Section 3. G.S. 58-67-50(e) reads as rewritten:

"(e) Effective January 1, 1989, every health maintenance organization shall provide at least minimum cost and utilization information for group contracts of 100 or more subscribers on an annual basis when requested by the group. Such information shall be compiled in accordance with the Data Collection Form developed by the Standardized HMO Date Form Task Force as endorsed by the Washington Business Group on Health and the Group Health Association of America on November 19, 1986, and any subsequent amendments. In addition, beginning with data for the calendar year 1998, every HMO, for group contracts of 1,000 or more members, shall provide cost, use of service, prevention, outcomes, and other group-specific data as collected in accordance with the latest edition of the Health Plan Employer Data and Information Set (HEDIS) guidelines, as published by the National Committee for Quality Assurance. Beginning with data for the calendar year 1998, every HMO shall file with the Commissioner and make available to all employer groups, not later than July 1 of the following calendar year, a report of health benefit plan-wide experience on its costs, use of services, and other aspects of performance, in the HEDIS format."

Section 4. G.S. 58-67-100 reads as rewritten:

"**§ 58-67-100. Examinations.**

(a) The Commissioner may make an examination of the affairs of any health maintenance organization and the contracts, agreements or other arrangements pursuant to its health care plan as often as ~~he~~ the Commissioner deems it necessary for the protection of the interests of the people of this State but not less frequently than once every three years. Examinations shall otherwise be conducted under G.S. 58-2-131, 58-2-132, and 58-2-133.

~~(b) Every health maintenance organization shall submit its books and records relating to the health care plan to such examinations and in every way facilitate them. For the purpose of examinations, the Commissioner may administer oaths to, and examine the officers and agents of the health maintenance organization concerning their business.~~

(c) Repealed by Session Laws 1995, c. 360, s. 2(m).

(d) ~~In lieu of such~~ Instead of conducting an examination, the Commissioner may accept the report of an examination made by the ~~Commissioner of Insurance or Commissioner of Public Health~~ HMO regulator of another state."

Section 5. G.S. 58-67-140 reads as rewritten:

"**§ 58-67-140. Suspension or revocation of ~~certificate of authority.~~ license.**

(a) The Commissioner may ~~suspend or revoke any certificate of authority issued to a health maintenance organization under this Article if he finds that any of the following conditions exist: suspend, revoke, or refuse to renew~~ suspend or revoke any HMO license if the Commissioner finds that the HMO:

(1) ~~The health maintenance organization is~~ Is operating significantly in contravention of its basic organizational document, or in a manner contrary to that described in and reasonably inferred from any other information submitted under G.S. 58-67-10, unless amendments to such submissions have been filed with and approved by the Commissioner.

(2) ~~The health maintenance organization issues evidence~~ Issues evidences of coverage or uses a schedule of premiums for health care services ~~which~~ that do not comply with ~~the requirements of~~ G.S. 58-67-50.

(3) ~~The health maintenance organization no~~ No longer maintains the financial reserve specified in G.S. 58-67-40 or is no longer financially responsible and may reasonably be expected to be unable to meet its obligations to enrollees or prospective enrollees.

(4) ~~The health maintenance organization, or any person on its behalf, has~~ Has itself or through any person on its behalf advertised or merchandised its services in an untrue, misrepresentative, misleading, deceptive or unfair manner.

(5) ~~The continued operation of the health maintenance organization~~ Is operating in a manner that would be hazardous to its enrollees.

(6) ~~The health maintenance organization has otherwise failed to substantially comply with this Article.~~ Knowingly or repeatedly fails or refuses to comply with any law or rule applicable to the HMO or with any order issued by the Commissioner after notice and opportunity for a hearing.

(7) Has knowingly published or made to the Department or to the public any false statement or report, including any report or any data that serves as the basis for any report, required to be submitted under G.S. 58-3-210.

(b) A ~~certificate of authority~~ license shall be suspended or revoked only after compliance with ~~the requirements of~~ G.S. 58-67-155.

(c) When ~~the certificate of authority of a health maintenance organization~~ an HMO license is suspended, the ~~health maintenance organization~~ HMO shall not, during the ~~period of such~~ suspension, enroll any additional enrollees except newborn children or other newly acquired dependents of existing enrollees, and shall not engage in any advertising or ~~solicitation whatsoever.~~ solicitation.

(d) When ~~the certificate of authority of a health maintenance organization~~ an HMO license is revoked, ~~such organization~~ the HMO shall proceed, immediately following the effective date of the order of revocation, to wind up its affairs, and shall conduct

no further business except as may be essential to the orderly conclusion of the affairs of ~~such organization.~~ the HMO. ~~It~~ The HMO shall engage in no advertising or ~~solicitation whatsoever.~~ solicitation. The Commissioner may, by written order, permit such further operation of the ~~organization as he~~ HMO as the Commissioner may find to be in the best interest of enrollees, to the end that enrollees will be afforded the greatest practical opportunity to obtain continuing health care coverage."

Section 6. This act becomes effective January 1, 1998.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 992
House Committee Substitute Favorable 7/9/97
House Committee Substitute #2 Favorable 8/20/97
Proposed House Committee Substitute S992-PCS7876

Short Title: NC Boxing Commission. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT AMENDING THE LAWS RELATED TO THE NORTH CAROLINA BOXING COMMISSION AND SUNSETTING THIS ACT ON AUGUST 1, 1998.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-651 reads as rewritten:

"**§ 143-651. Definitions.**

~~As used in this Article:~~ The following definitions apply in this Article:

(1) ~~'Amateur' means a~~ Amateur. -- A person who is not receiving or competing for and has never received or competed for any purse or other article or thing of value for participating in a match.

(2) ~~'Announcer' means any~~ Announcer. -- Any person who engages in the act of announcing a boxing match.

(3) ~~'Boxer' means any~~ Boxer. -- Any person who engages as a participant in a boxing match.

(4) ~~'Boxing match' means a~~ Boxing match. -- A match where the participants engage in the use of full contact boxing techniques (using the fist only), and where the object of a match is to win by decision, knockout (KO), or ~~technical knockout (TKO), and shall include kickboxing matches as defined in this section.~~ technical knockout (TKO).

(5) ~~'Commission' means the~~ Commission. -- The North Carolina State Boxing Commission.

(6) ~~'Contest' means a~~ Contest. -- A boxing match in which the participants strive ~~earnestly~~ to win.

(7) ~~'Contestant' means any~~ Contestant. -- Any person who engages as a participant in a boxing match.

(8) ~~'Exhibition' means a~~ Exhibition. -- A boxing match where the participants display their boxing skills and technique without necessarily striving to win.

(9) ~~'Judge' means a~~ Judge. -- A person who has a vote in determining the winner of any match or contest.

(10) ~~'Kickboxer' means any~~ Kickboxer. -- Any person who engages as a participant in a kickboxing match.

(11) ~~'Kickboxing match' means a~~ Kickboxing match. -- A match in which the participants engage in full contact martial arts fighting techniques using the hands and the feet, and where the object of the match is to win by decision, knockout (KO), or technical knockout (TKO).

(12) ~~'Licensee' means any~~ Licensee. -- Any person, club, corporation, organization, or association to whom a license has been issued pursuant to the provisions of this Article.

(13) ~~'Manager' means any person, including an officer of a corporate manager and a managing partner of a partnership manager,~~ Manager. -- Any person who controls or administers the boxing affairs of any contestant, and who:

a. By contract, agreement, or other arrangement with any person undertakes or has undertaken to represent in any way the interest of the contestant in any professional boxing contest in which the boxer is to participate as a contestant, and is entitled under that contract, agreement, or arrangement to receive monetary or other compensation for his services, without regard to the sources of the ~~compensation, except that the~~ compensation. The term 'manager' shall not be construed to mean any attorney licensed to practice in this State whose participation in the activities is restricted solely to ~~his~~ representing the interests of a professional boxer as ~~his client;~~ a client.

b. Directs or controls the professional boxing activities of any professional ~~boxer; or~~ boxer.

c. Receives or is entitled to receive a percentage of the gross purse or gross income of any professional boxing contest.

(14) ~~'Match' means any~~ Match. -- Any boxing or kickboxing contest or exhibition, and includes any event, engagement, sparring or practice session, show or program where the public is admitted and

in which there is intended to be physical contact, whether an exhibition or contest. This definition does not include training or practice sessions when no admission is charged.

(15) ~~'Matchmaker' means a~~ Matchmaker. -- A person through whom matches are arranged for participants and who otherwise assists participants in procuring engagement dates for boxing.

(16) ~~'Natural person' means an~~ Natural person. -- An individual.

(17) ~~'Participant' means any~~ Participant. -- Any person who engages in a match or exhibition and performs as a boxer.

(18) ~~'Person' means an~~ Person. -- An individual, group of individuals, business, corporation, limited liability company, partnership, or any other individual or collective entity.

(19) ~~'Physician' means an~~ Physician. -- An individual licensed to practice medicine in this State.

(20) ~~'Professional' means any person who has received or competed for any purse or other article or thing of value for participating in a boxing match.~~ Professional. -- Any person who is licensed as a professional boxer under the federal Professional Boxing Safety Act of 1996.

(21) ~~'Promoter' means any person, including an officer of a corporate promoter and a managing partner of a partnership promoter,~~ Promoter. -- Any person who produces, arranges, stages, holds, or gives any match in North Carolina involving a professional participant.

(22) ~~'Referee' means the~~ Referee. -- The official who shall enter and remain in the ring for the duration of a match and shall enforce the rules and maintain order in the ring.

(23) ~~'Ring official' means any~~ Ring official. -- Any person who performs an official function for the duration of a match.

(23a) Sanctioned amateur. -- A person who competes in a sanctioned amateur match.

(23b) Sanctioned amateur match. -- Any boxing or kickboxing match regulated by an amateur sports organization that has been recognized and approved by the North Carolina Boxing Commission.

(24) ~~'Second' means any~~ Second. -- Any person who will work or be present in the corner of a participant for the duration of a match.

(25) ~~'Timekeeper' means any~~ Timekeeper. -- Any person who will operate the clock or watch for the duration of a match for the purpose of keeping the official time of the match.

(25a) Toughman contestant. -- Any person who competes in a toughman event.

(25b) Toughman event. -- An elimination program of matches in which (i) the contestants are not professional boxers, (ii) the finalist

receives a purse or other article of value, (iii) the participants engage in the use of full contact boxing techniques, and (iv) the object of each match is to win by decision, knockout (KO), or technical knockout (TKO).

(26) ~~'Ultimate warrior match' means a~~ Ultimate warrior match. -- A match where the participants use any combination of boxing, kicking, wrestling, hitting, punching, or other combative, contact techniques and which combination of techniques is not specifically authorized by and conducted pursuant to this Article."

Section 2. G.S. 143-652 reads as rewritten:

"**§ 143-652. State Boxing Commission.**

(a) Creation. -- The North Carolina State Boxing Commission is created within the Department of the Secretary of State to regulate in North Carolina live boxing and kickboxing matches, whether ~~professional or~~ professional, amateur, sanctioned amateur, or toughman events, ~~in North Carolina.~~ in which admission is charged for viewing, or the contestants compete for a purse or prize of value greater than twenty-five dollars ($25.00). The Commission shall consist of ~~five~~ six voting members and two nonvoting advisory members. All the members shall be residents of North ~~Carolina.~~ Carolina and shall meet requirements for membership under the Professional Boxing Safety Act of 1996. The members shall be appointed as follows:

(1) One voting member shall be appointed by the Governor for an initial term of two years.

(2) One voting member shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate for an initial term of one year, in accordance with G.S. 120-121.

(3) One voting member shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives for an initial term of one year.

(4) Two voting members shall be appointed by the Secretary of State. One shall serve for an initial term of three years, and the other shall serve for an initial term of two years.

(5) One member shall be appointed by the Tribal Council of the Eastern Band of the Cherokee for an initial term of three years.

~~(5)~~ (6) One nonvoting advisory member shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives for an initial term of one year, in accordance with G.S. 120-121, from nominations made by the North Carolina Medical Society, which shall nominate two licensed physicians for the position.

~~(6)~~ (7) One nonvoting advisory member shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate for an initial term of one year, in accordance with G.S. 120-121, from nominations made by the

North Carolina Medical Society, which shall nominate two licensed physicians for the position.

The member appointed pursuant to subdivision (5) of subsection (a) of this section may serve on the Commission only if an agreement exists and remains in effect between the Tribal Council of the Eastern Band of the Cherokee and the Commission authorizing the Commission to regulate professional boxing matches within the Cherokee Indian Reservation as provided by the Professional Boxing Safety Act of 1996.

The two nonvoting advisory members appointed pursuant to subdivisions (6) and (7) of subsection (a) of this section shall advise the Commission on matters concerning the health and physical condition of boxers and health issues relating to the conduct of exhibitions and boxing matches. They may prepare and submit to the Commission for its consideration and approval any rules that in their judgment will safeguard the physical welfare of all participants engaged in boxing.

Terms for all members of the Commission except for the initial appointments shall be for three years.

The Secretary of State shall designate which member of the Commission is to serve as chair. A member of the Commission may be removed from office by the Secretary of State for cause. Each member before entering upon the duties of a member shall take and subscribe an oath to perform the duties of the office faithfully, impartially, and justly to the best of the member's ability. A record of these oaths shall be filed in the Department of the Secretary of State.

(b) Vacancies. -- Members shall serve until their successors are appointed and have been qualified. Any vacancy in the membership of the Commission shall be filled in the same manner as the original appointment. Vacancies for members appointed by the General Assembly shall be filled in accordance with G.S. 120-122. A vacancy in the membership of the Commission other than by expiration of term shall be filled for the unexpired term only.

(c) Meetings. -- Meetings of the Commission shall be called by the chair or by any two members of the Commission, and meetings shall be held at least quarterly. Any three voting members of the Commission shall constitute a quorum at any meeting. Action may be taken and motions and resolutions adopted by the Commission at any meeting by the affirmative vote of a majority of the members of the Commission present at a meeting at which a quorum exists. Any or all members may participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all members participating may simultaneously hear each other during the meeting. A member participating in the meeting by this means is deemed to be present in person at the meeting.

(d) Rule-Making Authority of the Commission. -- The Commission shall have the exclusive authority to approve and issue rules for the regulation of the conduct, promotion, and performances of live ~~boxing~~ boxing, kickboxing, sanctioned amateur, amateur, and toughman matches and exhibitions in this State. The rules shall be issued pursuant to the provisions of Chapter 150B of the General Statutes and may include, without limitation, the following subjects:

(1) Requirements for issuance of licenses and permits required by this Article.
(2) Regulation of ticket sales.
(3) Physical requirements for contestants, including classification by weight and skill.
(4) Supervision of matches and exhibitions by licensed physicians and referees.
(5) Insurance and bonding requirements.
(6) Compensation of participants and licensees.
(7) Contracts and financial arrangements.
(8) Prohibition of dishonest, unethical, and injurious practices.
(9) Facilities.
(10) Approval of sanctioning amateur sports organizations.
(11) Procedures and requirements for compliance with the Professional Boxing Safety Act of 1996.

(e) Compensation. -- None of the members of the Commission shall receive compensation for serving on the Commission. However, members of the Commission may be reimbursed for their expenses in accordance with the provisions of Chapter 138 of the General Statutes.

(f) Staff Assistance. -- The Secretary of State shall hire a person to serve as Executive Director of the Commission and shall provide staff assistance to the ~~Commission.~~ Executive Director. The Executive Director may train and contract with independent contractors for the purpose of regulating and monitoring events, issuing licenses, collecting fees, and enforcing rules of the Commission. The Executive Director may initiate criminal background checks on persons requesting to work as independent contractors for the Commission or persons applying to be licensed by the Commission."

Section 3. G.S. 143-653 reads as rewritten:

"**§ 143-653. Ultimate warrior matches prohibited.**

Ultimate warrior matches, whether the participants are professionals or amateurs, are prohibited. No person shall promote, conduct, or engage in ultimate warrior matches. This section shall not preclude ~~boxing and kickboxing as regulated in this Article or~~ professional wrestling."

Section 4. G.S. 143-654 reads as rewritten:

"**§ 143-654. Licensing and permitting.**

(a) License and Permit Required. -- Except for sanctioned amateur matches, it ~~It~~ is unlawful for any person to act in this State as an announcer, contestant, judge, manager, matchmaker, promoter, referee, timekeeper, or second unless the person is licensed to do so under this Article. It is unlawful for a promoter to present a match in this ~~State~~ State, other than a sanctioned amateur match, unless the promoter has a permit issued under this Article to do so. The Commission has the exclusive authority to issue, deny, suspend, or revoke any license or permit provided for in this Article.

(b) License. -- ~~A license issued under this Article must be renewed annually on or before January 1.~~ All licenses issued under this Article shall be valid only during the

calendar year in which they are issued, except contestant licenses shall be valid for one year from the date of issuance. A license for an announcer, contestant, judge, matchmaker, referee, timekeeper, or second shall be issued only to a natural person. A natural person shall not transfer or assign a license or change it into another name. A license for a manager or promoter may be issued to a corporation or partnership; provided, however, that all officers or partners shall submit an application for individual licensure, and only those officers or partners who are licensed shall be entitled to negotiate or sign contracts. The addition of a new officer or partner during the license period shall necessitate the filing of an application for individual licensure by the new officer or partner.

An applicant for a license shall file with the Commission the appropriate nonrefundable fee and any forms, documents, medical examinations, or exhibits the Commission may require in order to properly administer this Article. The information requested shall include the date of birth and social security number of each applicant as well as any other personal data necessary to positively identify the applicant and may include the requirement of verification of any documents the Commission deems appropriate. A person may not participate under a fictitious or assumed name in any match unless the person has first registered the name with the Commission.

(c) Surety Bond. -- An applicant for a promoter's license must submit, in addition to any other forms, documents, or ~~exhibits,~~ exhibits requested by the Commission, a surety bond payable to the Commission for the benefit of any person injured or damaged by (i) the promoter's failure to comply with any provision of this Article or any rules adopted by the Commission or (ii) the promoter's failure to fulfill the obligations of any contract between or among licensees related to the holding of a boxing event. The surety bond shall be issued in an amount to be no less than five thousand dollars ($5,000). The amount of the surety bond shall be negotiable upon the sole discretion of the Commission. All surety bonds shall be upon forms approved by the Secretary of State and supplied by the Commission.

(d) Permit. -- A permit issued to a promoter under this Article is valid for a single match. An applicant for a permit shall file with the Commission the appropriate nonrefundable fee and any forms or documents the Commission may require."

Section 5. G.S. 143-656 reads as rewritten:

"**§ 143-656. Contracts and financial arrangements.**

Any contract between ~~a boxer and any other licensee~~ licensees and ~~any contract involving~~ related to a boxing match or exhibition held or to be held in this State must meet the requirements of administrative rules as set forth by the Commission. Any contract which does not satisfy the requirements of the administrative rules shall be void and unenforceable. All contracts shall be in writing."

Section 6. G.S. 143-657 is repealed.

Section 7. Article 68 of Chapter 143 of the General Statutes is amended by adding the following new section:

"**§ 143-657.1. Sanctioned amateur matches.**

In addition to the other applicable provisions of this Article, a sanctioned amateur match shall be conducted pursuant to the rules of the sports organization sanctioning the boxing match or exhibition."

Section 8. G.S. 143-658 reads as rewritten:

"**§ 143-658. Violations.**

(a) Civil Penalties. -- The ~~Commission~~ Secretary of State may issue an order against a licensee or other person who willfully violates any provision of this Article, imposing a civil penalty of up to five thousand dollars ($5,000) for a single violation or of up to twenty-five thousand dollars ($25,000) for multiple violations in a single proceeding or a series of related proceedings. No order under this subsection may be entered without giving the licensee or other person 15 days' prior notice and an opportunity for a contested case hearing conducted pursuant to Article 3 of Chapter 150B of the General Statutes.

(b) Criminal Penalties. -- A willful violation of any provision of this Article shall constitute a Class 2 misdemeanor. The Secretary of State may refer any available evidence concerning violations of this Article to the proper district attorney, who may, with or without such a reference, institute the appropriate criminal proceedings.

The attorneys employed by the Secretary of State shall be available to prosecute or assist in the prosecution of criminal cases when requested to do so by a district attorney and the Secretary of State approves.

(c) Injunction. -- Whenever it appears to the ~~Commission~~ Secretary of State that a person has engaged or is about to engage in an act or practice constituting a violation of any provision of this Article or any rule or order hereunder, the ~~Commission~~ Secretary of State may ~~in its discretion~~ bring an action in any court of competent jurisdiction to enjoin those acts or practices and to enforce compliance with this Article or any rule or order issued pursuant to this Article.

(d) Enforcement. -- For purposes of enforcing this Article, the Department of the Secretary of State's law enforcement agents have statewide jurisdiction. These law enforcement agents may assist local law enforcement agencies in their investigations and may initiate and carry out, in coordination with local law enforcement agencies, investigations of violations of this Article. These law enforcement agents have all the powers and authority of law enforcement officers when executing arrest warrants."

Section 9. Except as otherwise specified herein, this act is effective when it becomes law. This act expires August 1, 1998.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 992
House Committee Substitute Favorable 7/9/97
House Committee Substitute #2 Favorable 8/20/97
Proposed House Committee Substitute S992-PCS7872

Short Title: NC Boxing Commission. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT AMENDING THE LAWS RELATED TO THE NORTH CAROLINA BOXING COMMISSION AND SUNSETTING THE COMMISSION AUGUST 1, 1998.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-651 reads as rewritten:

"**§ 143-651. Definitions.**

~~As used in this Article:~~ The following definitions apply in this Article:

(1) ~~'Amateur' means a~~ Amateur. -- A person who is not receiving or competing for and has never received or competed for any purse or other article or thing of value for participating in a match.

(2) ~~'Announcer' means any~~ Announcer. -- Any person who engages in the act of announcing a boxing match.

(3) ~~'Boxer' means any~~ Boxer. -- Any person who engages as a participant in a boxing match.

(4) ~~'Boxing match' means a~~ Boxing match. -- A match where the participants engage in the use of full contact boxing techniques (using the fist only), and where the object of a match is to win by decision, knockout (KO), or ~~technical knockout (TKO), and shall include kickboxing matches as defined in this section.~~ technical knockout (TKO).

(5) ~~'Commission' means the~~ Commission. -- The North Carolina State Boxing Commission.

(6) ~~'Contest' means a~~ Contest. -- A boxing match in which the participants strive ~~earnestly~~ to win.

(7) ~~'Contestant' means any~~ Contestant. -- Any person who engages as a participant in a boxing match.

(8) ~~'Exhibition' means a~~ Exhibition. -- A boxing match where the participants display their boxing skills and technique without necessarily striving to win.

(9) ~~'Judge' means a~~ Judge. -- A person who has a vote in determining the winner of any match or contest.

(10) ~~'Kickboxer' means any~~ Kickboxer. -- Any person who engages as a participant in a kickboxing match.

(11) ~~'Kickboxing match' means a~~ Kickboxing match. -- A match in which the participants engage in full contact martial arts fighting techniques using the hands and the feet, and where the object of the match is to win by decision, knockout (KO), or technical knockout (TKO).

(12) ~~'Licensee' means any~~ Licensee. -- Any person, club, corporation, organization, or association to whom a license has been issued pursuant to the provisions of this Article.

(13) ~~'Manager' means any person, including an officer of a corporate manager and a managing partner of a partnership manager,~~ Manager. -- Any person who controls or administers the boxing affairs of any contestant, and who:

a. By contract, agreement, or other arrangement with any person undertakes or has undertaken to represent in any way the interest of the contestant in any professional boxing contest in which the boxer is to participate as a contestant, and is entitled under that contract, agreement, or arrangement to receive monetary or other compensation for his services, without regard to the sources of the ~~compensation, except that the~~ compensation. The term 'manager' shall not be construed to mean any attorney licensed to practice in this State whose participation in the activities is restricted solely to ~~his~~ representing the interests of a professional boxer as ~~his client;~~ a client.

b. Directs or controls the professional boxing activities of any professional ~~boxer; or~~ boxer.

c. Receives or is entitled to receive a percentage of the gross purse or gross income of any professional boxing contest.

(14) ~~'Match' means any~~ Match. -- Any boxing or kickboxing contest or exhibition, and includes any event, engagement, sparring or practice session, show or program where the public is admitted and

in which there is intended to be physical contact, whether an exhibition or contest. This definition does not include training or practice sessions when no admission is charged.

(15) ~~'Matchmaker' means a~~ Matchmaker. -- A person through whom matches are arranged for participants and who otherwise assists participants in procuring engagement dates for boxing.

(16) ~~'Natural person' means an~~ Natural person. -- An individual.

(17) ~~'Participant' means any~~ Participant. -- Any person who engages in a match or exhibition and performs as a boxer.

(18) ~~'Person' means an~~ Person. -- An individual, group of individuals, business, corporation, limited liability company, partnership, or any other individual or collective entity.

(19) ~~'Physician' means an~~ Physician. -- An individual licensed to practice medicine in this State.

(20) ~~'Professional' means any person who has received or competed for any purse or other article or thing of value for participating in a boxing match.~~ Professional. -- Any person who is licensed as a professional boxer under the federal Professional Boxing Safety Act of 1996.

(21) ~~'Promoter' means any person, including an officer of a corporate promoter and a managing partner of a partnership promoter;~~ Promoter. -- Any person who produces, arranges, stages, holds, or gives any match in North Carolina involving a professional participant.

(22) ~~'Referee' means the~~ Referee. -- The official who shall enter and remain in the ring for the duration of a match and shall enforce the rules and maintain order in the ring.

(23) ~~'Ring official' means any~~ Ring official. -- Any person who performs an official function for the duration of a match.

(23a) Sanctioned amateur. -- A person who competes in a sanctioned amateur match.

(23b) Sanctioned amateur match. -- Any boxing or kickboxing match regulated by an amateur sports organization that has been recognized and approved by the North Carolina Boxing Commission.

(24) ~~'Second' means any~~ Second. -- Any person who will work or be present in the corner of a participant for the duration of a match.

(25) ~~'Timekeeper' means any~~ Timekeeper. -- Any person who will operate the clock or watch for the duration of a match for the purpose of keeping the official time of the match.

(25a) Toughman contestant. -- Any person who competes in a toughman event.

(25b) Toughman event. -- An elimination program of matches in which (i) the contestants are not professional boxers, (ii) the finalist

receives a purse or other article of value, (iii) the participants engage in the use of full contact boxing techniques, and (iv) the object of each match is to win by decision, knockout (KO), or technical knockout (TKO).

(26) ~~'Ultimate warrior match' means a~~ Ultimate warrior match. -- A match where the participants use any combination of boxing, kicking, wrestling, hitting, punching, or other combative, contact techniques and which combination of techniques is not specifically authorized by and conducted pursuant to this Article."

Section 2. G.S. 143-652 reads as rewritten:

"**§ 143-652. State Boxing Commission.**

(a) Creation. -- The North Carolina State Boxing Commission is created within the Department of the Secretary of State to regulate in North Carolina live boxing and kickboxing matches, whether ~~professional or~~ professional, amateur, sanctioned amateur, or toughman events, ~~in North Carolina.~~ in which admission is charged for viewing, or the contestants compete for a purse or prize of value greater than twenty-five dollars ($25.00). The Commission shall consist of ~~five~~ six voting members and two nonvoting advisory members. All the members shall be residents of North ~~Carolina.~~ Carolina and shall meet requirements for membership under the Professional Boxing Safety Act of 1996. The members shall be appointed as follows:

(1) One voting member shall be appointed by the Governor for an initial term of two years.

(2) One voting member shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate for an initial term of one year, in accordance with G.S. 120-121.

(3) One voting member shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives for an initial term of one year.

(4) Two voting members shall be appointed by the Secretary of State. One shall serve for an initial term of three years, and the other shall serve for an initial term of two years.

(5) One member shall be appointed by the Tribal Council of the Eastern Band of the Cherokee for an initial term of three years.

~~(5)~~ (6) One nonvoting advisory member shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives for an initial term of one year, in accordance with G.S. 120-121, from nominations made by the North Carolina Medical Society, which shall nominate two licensed physicians for the position.

~~(6)~~ (7) One nonvoting advisory member shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate for an initial term of one year, in accordance with G.S. 120-121, from nominations made by the

North Carolina Medical Society, which shall nominate two licensed physicians for the position.

The member appointed pursuant to subdivision (5) of subsection (a) of this section may serve on the Commission only if an agreement exists and remains in effect between the Tribal Council of the Eastern Band of the Cherokee and the Commission authorizing the Commission to regulate professional boxing matches within the Cherokee Indian Reservation as provided by the Professional Boxing Safety Act of 1996.

The two nonvoting advisory members appointed pursuant to subdivisions (6) and (7) of subsection (a) of this section shall advise the Commission on matters concerning the health and physical condition of boxers and health issues relating to the conduct of exhibitions and boxing matches. They may prepare and submit to the Commission for its consideration and approval any rules that in their judgment will safeguard the physical welfare of all participants engaged in boxing.

Terms for all members of the Commission except for the initial appointments shall be for three years.

The Secretary of State shall designate which member of the Commission is to serve as chair. A member of the Commission may be removed from office by the Secretary of State for cause. Each member before entering upon the duties of a member shall take and subscribe an oath to perform the duties of the office faithfully, impartially, and justly to the best of the member's ability. A record of these oaths shall be filed in the Department of the Secretary of State.

(b) Vacancies. -- Members shall serve until their successors are appointed and have been qualified. Any vacancy in the membership of the Commission shall be filled in the same manner as the original appointment. Vacancies for members appointed by the General Assembly shall be filled in accordance with G.S. 120-122. A vacancy in the membership of the Commission other than by expiration of term shall be filled for the unexpired term only.

(c) Meetings. -- Meetings of the Commission shall be called by the chair or by any two members of the Commission, and meetings shall be held at least quarterly. Any three voting members of the Commission shall constitute a quorum at any meeting. Action may be taken and motions and resolutions adopted by the Commission at any meeting by the affirmative vote of a majority of the members of the Commission present at a meeting at which a quorum exists. Any or all members may participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all members participating may simultaneously hear each other during the meeting. A member participating in the meeting by this means is deemed to be present in person at the meeting.

(d) Rule-Making Authority of the Commission. -- The Commission shall have the exclusive authority to approve and issue rules for the regulation of the conduct, promotion, and performances of live ~~boxing~~ boxing, kickboxing, sanctioned amateur, amateur, and toughman matches and exhibitions in this State. The rules shall be issued pursuant to the provisions of Chapter 150B of the General Statutes and may include, without limitation, the following subjects:

(1) Requirements for issuance of licenses and permits required by this Article.
(2) Regulation of ticket sales.
(3) Physical requirements for contestants, including classification by weight and skill.
(4) Supervision of matches and exhibitions by licensed physicians and referees.
(5) Insurance and bonding requirements.
(6) Compensation of participants and licensees.
(7) Contracts and financial arrangements.
(8) Prohibition of dishonest, unethical, and injurious practices.
(9) Facilities.
(10) Approval of sanctioning amateur sports organizations.
(11) Procedures and requirements for compliance with the Professional Boxing Safety Act of 1996.

(e) Compensation. -- None of the members of the Commission shall receive compensation for serving on the Commission. However, members of the Commission may be reimbursed for their expenses in accordance with the provisions of Chapter 138 of the General Statutes.

(f) Staff Assistance. -- The Secretary of State shall hire a person to serve as Executive Director of the Commission and shall provide staff assistance to the ~~Commission.~~ Executive Director. The Executive Director may train and contract with independent contractors for the purpose of regulating and monitoring events, issuing licenses, collecting fees, and enforcing rules of the Commission. The Executive Director may initiate criminal background checks on persons requesting to work as independent contractors for the Commission or persons applying to be licensed by the Commission."

Section 3. G.S. 143-653 reads as rewritten:

"**§ 143-653. Ultimate warrior matches prohibited.**

Ultimate warrior matches, whether the participants are professionals or amateurs, are prohibited. No person shall promote, conduct, or engage in ultimate warrior matches. This section shall not preclude ~~boxing and kickboxing as regulated in this Article or~~ professional wrestling."

Section 4. G.S. 143-654 reads as rewritten:

"**§ 143-654. Licensing and permitting.**

(a) License and Permit Required. -- Except for sanctioned amateur matches, it ~~It~~ is unlawful for any person to act in this State as an announcer, contestant, judge, manager, matchmaker, promoter, referee, timekeeper, or second unless the person is licensed to do so under this Article. It is unlawful for a promoter to present a match in this ~~State~~ State, other than a sanctioned amateur match, unless the promoter has a permit issued under this Article to do so. The Commission has the exclusive authority to issue, deny, suspend, or revoke any license or permit provided for in this Article.

(b) License. -- ~~A license issued under this Article must be renewed annually on or before January 1.~~ All licenses issued under this Article shall be valid only during the

calendar year in which they are issued, except contestant licenses shall be valid for one year from the date of issuance. A license for an announcer, contestant, judge, matchmaker, referee, timekeeper, or second shall be issued only to a natural person. A natural person shall not transfer or assign a license or change it into another name. A license for a manager or promoter may be issued to a corporation or partnership; provided, however, that all officers or partners shall submit an application for individual licensure, and only those officers or partners who are licensed shall be entitled to negotiate or sign contracts. The addition of a new officer or partner during the license period shall necessitate the filing of an application for individual licensure by the new officer or partner.

An applicant for a license shall file with the Commission the appropriate nonrefundable fee and any forms, documents, medical examinations, or exhibits the Commission may require in order to properly administer this Article. The information requested shall include the date of birth and social security number of each applicant as well as any other personal data necessary to positively identify the applicant and may include the requirement of verification of any documents the Commission deems appropriate. A person may not participate under a fictitious or assumed name in any match unless the person has first registered the name with the Commission.

(c) Surety Bond. -- An applicant for a promoter's license must submit, in addition to any other forms, documents, or ~~exhibits,~~ exhibits requested by the Commission, a surety bond payable to the Commission for the benefit of any person injured or damaged by (i) the promoter's failure to comply with any provision of this Article or any rules adopted by the Commission or (ii) the promoter's failure to fulfill the obligations of any contract between or among licensees related to the holding of a boxing event. The surety bond shall be issued in an amount to be no less than five thousand dollars ($5,000). The amount of the surety bond shall be negotiable upon the sole discretion of the Commission. All surety bonds shall be upon forms approved by the Secretary of State and supplied by the Commission.

(d) Permit. -- A permit issued to a promoter under this Article is valid for a single match. An applicant for a permit shall file with the Commission the appropriate nonrefundable fee and any forms or documents the Commission may require."

Section 5. G.S. 143-656 reads as rewritten:

"**§ 143-656. Contracts and financial arrangements.**

Any contract between ~~a boxer and any other licensee~~ licensees and ~~any contract involving~~ related to a boxing match or exhibition held or to be held in this State must meet the requirements of administrative rules as set forth by the Commission. Any contract which does not satisfy the requirements of the administrative rules shall be void and unenforceable. All contracts shall be in writing."

Section 6. G.S. 143-657 is repealed.

Section 7. Article 68 of Chapter 143 of the General Statutes is amended by adding the following new section:

"**§ 143-657.1. Sanctioned amateur matches.**

In addition to the other applicable provisions of this Article, a sanctioned amateur match shall be conducted pursuant to the rules of the sports organization sanctioning the boxing match or exhibition."

Section 8. G.S. 143-658 reads as rewritten:

"**§ 143-658. Violations.**

(a) Civil Penalties. -- The ~~Commission~~ Secretary of State may issue an order against a licensee or other person who willfully violates any provision of this Article, imposing a civil penalty of up to five thousand dollars ($5,000) for a single violation or of up to twenty-five thousand dollars ($25,000) for multiple violations in a single proceeding or a series of related proceedings. No order under this subsection may be entered without giving the licensee or other person 15 days' prior notice and an opportunity for a contested case hearing conducted pursuant to Article 3 of Chapter 150B of the General Statutes.

(b) Criminal Penalties. -- A willful violation of any provision of this Article shall constitute a Class 2 misdemeanor. The Secretary of State may refer any available evidence concerning violations of this Article to the proper district attorney, who may, with or without such a reference, institute the appropriate criminal proceedings.

The attorneys employed by the Secretary of State shall be available to prosecute or assist in the prosecution of criminal cases when requested to do so by a district attorney and the Secretary of State approves.

(c) Injunction. -- Whenever it appears to the ~~Commission~~ Secretary of State that a person has engaged or is about to engage in an act or practice constituting a violation of any provision of this Article or any rule or order hereunder, the ~~Commission~~ Secretary of State may ~~in its discretion~~ bring an action in any court of competent jurisdiction to enjoin those acts or practices and to enforce compliance with this Article or any rule or order issued pursuant to this Article.

(d) Enforcement. -- For purposes of enforcing this Article, the Department of the Secretary of State's law enforcement agents have statewide jurisdiction. These law enforcement agents may assist local law enforcement agencies in their investigations and may initiate and carry out, in coordination with local law enforcement agencies, investigations of violations of this Article. These law enforcement agents have all the powers and authority of law enforcement officers when executing arrest warrants."

Section 9. Effective August 1, 1998, the North Carolina Boxing Commission is abolished, and Article 68 of Chapter 143 of the General Statutes is repealed.

Section 10. Except as otherwise specified herein, this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 3

SENATE BILL 992
House Committee Substitute Favorable 7/9/97
House Committee Substitute #2 Favorable 8/20/97

Short Title: NC Boxing Commission. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT AMENDING THE LAWS RELATED TO THE NORTH CAROLINA BOXING COMMISSION AND TO INCREASE THE GROSS RECEIPTS TAX ON BOXING, KICKBOXING, AND TOUGHMAN EVENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-651 reads as rewritten:

"**§ 143-651. Definitions.**

~~As used in this Article:~~ The following definitions apply in this Article:

(1) ~~'Amateur' means a~~ Amateur. -- A person who is not receiving or competing for and has never received or competed for any purse or other article or thing of value for participating in a match.

(2) ~~'Announcer' means any~~ Announcer. -- Any person who engages in the act of announcing a boxing match.

(3) ~~'Boxer' means any~~ Boxer. -- Any person who engages as a participant in a boxing match.

(4) ~~'Boxing match' means a~~ Boxing match. -- A match where the participants engage in the use of full contact boxing techniques (using the fist only), and where the object of a match is to win by decision, knockout (KO), or ~~technical knockout (TKO), and shall include kickboxing matches as defined in this section.~~ technical knockout (TKO).

(5) ~~'Commission' means the~~ Commission. -- The North Carolina State Boxing Commission.

(6) ~~'Contest' means a~~ Contest. -- A boxing match in which the participants strive ~~earnestly~~ to win.

(7) ~~'Contestant' means any~~ Contestant. -- Any person who engages as a participant in a boxing match.

(8) ~~'Exhibition' means a~~ Exhibition. -- A boxing match where the participants display their boxing skills and technique without necessarily striving to win.

(9) ~~'Judge' means a~~ Judge. -- A person who has a vote in determining the winner of any match or contest.

(10) ~~'Kickboxer' means any~~ Kickboxer. -- Any person who engages as a participant in a kickboxing match.

(11) ~~'Kickboxing match' means a~~ Kickboxing match. -- A match in which the participants engage in full contact martial arts fighting techniques using the hands and the feet, and where the object of the match is to win by decision, knockout (KO), or technical knockout (TKO).

(12) ~~'Licensee' means any~~ Licensee. -- Any person, club, corporation, organization, or association to whom a license has been issued pursuant to the provisions of this Article.

(13) ~~'Manager' means any person, including an officer of a corporate manager and a managing partner of a partnership manager,~~ Manager. -- Any person who controls or administers the boxing affairs of any contestant, and who:

a. By contract, agreement, or other arrangement with any person undertakes or has undertaken to represent in any way the interest of the contestant in any professional boxing contest in which the boxer is to participate as a contestant, and is entitled under that contract, agreement, or arrangement to receive monetary or other compensation for his services, without regard to the sources of the ~~compensation, except that the~~ compensation. The term 'manager' shall not be construed to mean any attorney licensed to practice in this State whose participation in the activities is restricted solely to ~~his~~ representing the interests of a professional boxer as ~~his client;~~ a client.

b. Directs or controls the professional boxing activities of any professional ~~boxer; or~~ boxer.

c. Receives or is entitled to receive a percentage of the gross purse or gross income of any professional boxing contest.

(14) ~~'Match' means any~~ Match. -- Any boxing or kickboxing contest or exhibition, and includes any event, engagement, sparring or practice session, show or program where the public is admitted and

in which there is intended to be physical contact, whether an exhibition or contest. This definition does not include training or practice sessions when no admission is charged.

(15) ~~'Matchmaker' means a~~ Matchmaker. -- A person through whom matches are arranged for participants and who otherwise assists participants in procuring engagement dates for boxing.

(16) ~~'Natural person' means an~~ Natural person. -- An individual.

(17) ~~'Participant' means any~~ Participant. -- Any person who engages in a match or exhibition and performs as a boxer.

(18) ~~'Person' means an~~ Person. -- An individual, group of individuals, business, corporation, limited liability company, partnership, or any other individual or collective entity.

(19) ~~'Physician' means an~~ Physician. -- An individual licensed to practice medicine in this State.

(20) ~~'Professional' means any person who has received or competed for any purse or other article or thing of value for participating in a boxing match.~~ Professional. -- Any person who is licensed as a professional boxer under the federal Professional Boxing Safety Act of 1996.

(21) ~~'Promoter' means any person, including an officer of a corporate promoter and a managing partner of a partnership promoter,~~ Promoter. -- Any person who produces, arranges, stages, holds, or gives any match in North Carolina involving a professional participant.

(22) ~~'Referee' means the~~ Referee. -- The official who shall enter and remain in the ring for the duration of a match and shall enforce the rules and maintain order in the ring.

(23) ~~'Ring official' means any~~ Ring official. -- Any person who performs an official function for the duration of a match.

(23a) Sanctioned amateur. -- A person who competes in a sanctioned amateur match.

(23b) Sanctioned amateur match. -- Any boxing or kickboxing match regulated by an amateur sports organization that has been recognized and approved by the North Carolina Boxing Commission.

(24) ~~'Second' means any~~ Second. -- Any person who will work or be present in the corner of a participant for the duration of a match.

(25) ~~'Timekeeper' means any~~ Timekeeper. -- Any person who will operate the clock or watch for the duration of a match for the purpose of keeping the official time of the match.

(25a) Toughman contestant. -- Any person who competes in a toughman event.

(25b) Toughman event. -- An elimination program of matches in which (i) the contestants are not professional boxers, (ii) the finalist

receives a purse or other article of value, (iii) the participants engage in the use of full contact boxing techniques, and (iv) the object of each match is to win by decision, knockout (KO), or technical knockout (TKO).

(26) ~~'Ultimate warrior match' means a~~ Ultimate warrior match. -- A match where the participants use any combination of boxing, kicking, wrestling, hitting, punching, or other combative, contact techniques and which combination of techniques is not specifically authorized by and conducted pursuant to this Article."

Section 2. G.S. 143-652 reads as rewritten:

"**§ 143-652. State Boxing Commission.**

(a) Creation. -- The North Carolina State Boxing Commission is created within the Department of the Secretary of State to regulate in North Carolina live boxing and kickboxing matches, whether ~~professional or~~ professional, amateur, sanctioned amateur, or toughman events, ~~in North Carolina.~~ in which admission is charged for viewing, or the contestants compete for a purse or prize of value greater than twenty-five dollars ($25.00). The Commission shall consist of ~~five~~ six voting members and two nonvoting advisory members. All the members shall be residents of North ~~Carolina.~~ Carolina and shall meet requirements for membership under the Professional Boxing Safety Act of 1996. The members shall be appointed as follows:

(1) One voting member shall be appointed by the Governor for an initial term of two years.

(2) One voting member shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate for an initial term of one year, in accordance with G.S. 120-121.

(3) One voting member shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives for an initial term of one year.

(4) Two voting members shall be appointed by the Secretary of State. One shall serve for an initial term of three years, and the other shall serve for an initial term of two years.

(5) One member shall be appointed by the Tribal Council of the Eastern Band of the Cherokee for an initial term of three years.

~~(5)~~ (6) One nonvoting advisory member shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives for an initial term of one year, in accordance with G.S. 120-121, from nominations made by the North Carolina Medical Society, which shall nominate two licensed physicians for the position.

~~(6)~~ (7) One nonvoting advisory member shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate for an initial term of one year, in accordance with G.S. 120-121, from nominations made by the

North Carolina Medical Society, which shall nominate two licensed physicians for the position.

The member appointed pursuant to subdivision (5) of subsection (a) of this section may serve on the Commission only if an agreement exists and remains in effect between the Tribal Council of the Eastern Band of the Cherokee and the Commission authorizing the Commission to regulate professional boxing matches within the Cherokee Indian Reservation as provided by the Professional Boxing Safety Act of 1996.

The two nonvoting advisory members appointed pursuant to subdivisions (6) and (7) of subsection (a) of this section shall advise the Commission on matters concerning the health and physical condition of boxers and health issues relating to the conduct of exhibitions and boxing matches. They may prepare and submit to the Commission for its consideration and approval any rules that in their judgment will safeguard the physical welfare of all participants engaged in boxing.

Terms for all members of the Commission except for the initial appointments shall be for three years.

The Secretary of State shall designate which member of the Commission is to serve as chair. A member of the Commission may be removed from office by the Secretary of State for cause. Each member before entering upon the duties of a member shall take and subscribe an oath to perform the duties of the office faithfully, impartially, and justly to the best of the member's ability. A record of these oaths shall be filed in the Department of the Secretary of State.

(b) Vacancies. -- Members shall serve until their successors are appointed and have been qualified. Any vacancy in the membership of the Commission shall be filled in the same manner as the original appointment. Vacancies for members appointed by the General Assembly shall be filled in accordance with G.S. 120-122. A vacancy in the membership of the Commission other than by expiration of term shall be filled for the unexpired term only.

(c) Meetings. -- Meetings of the Commission shall be called by the chair or by any two members of the Commission, and meetings shall be held at least quarterly. Any three voting members of the Commission shall constitute a quorum at any meeting. Action may be taken and motions and resolutions adopted by the Commission at any meeting by the affirmative vote of a majority of the members of the Commission present at a meeting at which a quorum exists. Any or all members may participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all members participating may simultaneously hear each other during the meeting. A member participating in the meeting by this means is deemed to be present in person at the meeting.

(d) Rule-Making Authority of the Commission. -- The Commission shall have the exclusive authority to approve and issue rules for the regulation of the conduct, promotion, and performances of live ~~boxing~~ boxing, kickboxing, sanctioned amateur, amateur, and toughman matches and exhibitions in this State. The rules shall be issued pursuant to the provisions of Chapter 150B of the General Statutes and may include, without limitation, the following subjects:

(1) Requirements for issuance of licenses and permits required by this Article.
(2) Regulation of ticket sales.
(3) Physical requirements for contestants, including classification by weight and skill.
(4) Supervision of matches and exhibitions by licensed physicians and referees.
(5) Insurance and bonding requirements.
(6) Compensation of participants and licensees.
(7) Contracts and financial arrangements.
(8) Prohibition of dishonest, unethical, and injurious practices.
(9) Facilities.
(10) Approval of sanctioning amateur sports organizations.
(11) Procedures and requirements for compliance with the Professional Boxing Safety Act of 1996.

(e) Compensation. -- None of the members of the Commission shall receive compensation for serving on the Commission. However, members of the Commission may be reimbursed for their expenses in accordance with the provisions of Chapter 138 of the General Statutes.

(f) Staff Assistance. -- The Secretary of State shall hire a person to serve as Executive Director of the Commission and shall provide staff assistance to the ~~Commission.~~ Executive Director. The Executive Director may train and contract with independent contractors for the purpose of regulating and monitoring events, issuing licenses, collecting fees, and enforcing rules of the Commission. The Executive Director may initiate criminal background checks on persons requesting to work as independent contractors for the Commission or persons applying to be licensed by the Commission."

Section 3. G.S. 143-653 reads as rewritten:

"**§ 143-653. Ultimate warrior matches prohibited.**

Ultimate warrior matches, whether the participants are professionals or amateurs, are prohibited. No person shall promote, conduct, or engage in ultimate warrior matches. This section shall not preclude ~~boxing and kickboxing as regulated in this Article or~~ professional wrestling."

Section 4. G.S. 143-654 reads as rewritten:

"**§ 143-654. Licensing and permitting.**

(a) License and Permit Required. -- Except for sanctioned amateur matches, it ~~It~~ is unlawful for any person to act in this State as an announcer, contestant, judge, manager, matchmaker, promoter, referee, timekeeper, or second unless the person is licensed to do so under this Article. It is unlawful for a promoter to present a match in this ~~State~~ State, other than a sanctioned amateur match, unless the promoter has a permit issued under this Article to do so. The Commission has the exclusive authority to issue, deny, suspend, or revoke any license or permit provided for in this Article.

(b) License. -- ~~A license issued under this Article must be renewed annually on or before January 1.~~ All licenses issued under this Article shall be valid only during the

calendar year in which they are issued, except contestant licenses shall be valid for one year from the date of issuance. A license for an announcer, contestant, judge, matchmaker, referee, timekeeper, or second shall be issued only to a natural person. A natural person shall not transfer or assign a license or change it into another name. A license for a manager or promoter may be issued to a corporation or partnership; provided, however, that all officers or partners shall submit an application for individual licensure, and only those officers or partners who are licensed shall be entitled to negotiate or sign contracts. The addition of a new officer or partner during the license period shall necessitate the filing of an application for individual licensure by the new officer or partner.

An applicant for a license shall file with the Commission the appropriate nonrefundable fee and any forms, documents, medical examinations, or exhibits the Commission may require in order to properly administer this Article. The information requested shall include the date of birth and social security number of each applicant as well as any other personal data necessary to positively identify the applicant and may include the requirement of verification of any documents the Commission deems appropriate. A person may not participate under a fictitious or assumed name in any match unless the person has first registered the name with the Commission.

(c) Surety Bond. -- An applicant for a promoter's license must submit, in addition to any other forms, documents, or ~~exhibits,~~ exhibits requested by the Commission, a surety bond payable to the Commission for the benefit of any person injured or damaged by (i) the promoter's failure to comply with any provision of this Article or any rules adopted by the Commission or (ii) the promoter's failure to fulfill the obligations of any contract between or among licensees related to the holding of a boxing event. The surety bond shall be issued in an amount to be no less than five thousand dollars ($5,000). The amount of the surety bond shall be negotiable upon the sole discretion of the Commission. All surety bonds shall be upon forms approved by the Secretary of State and supplied by the Commission.

(d) Permit. -- A permit issued to a promoter under this Article is valid for a single match. An applicant for a permit shall file with the Commission the appropriate nonrefundable fee and any forms or documents the Commission may require."

Section 5. G.S. 143-655 reads as rewritten:

"**§ 143-655. Fees; State Boxing Commission Revenue Account.**

(a) License Fees. -- The Commission shall collect the following license fees:

Announcer	$50.00
Contestant	$25.00
Judge	$50.00
Manager	$100.00
Matchmaker	$200.00
Promoter	$300.00
Referee	$50.00
Timekeeper	$50.00
Second	$25.00.

The annual license renewal fees shall ~~not exceed~~ be the same as the initial license fees.

(b) Permit Fees. -- The Commission ~~may establish a fee schedule for permits issued under this Article. The fees may vary depending on the seating capacity of the facility to be used to present a match. The fee may not exceed the following amounts:~~ shall collect the following permit fees:

Seating Capacity	Fee Amount
Less than 2,000	$100.00
2,000 -- 5,000	$200.00
Over 5,000	$300.00.

(c) State Boxing Commission Revenue Account. -- There is created the State Boxing Commission Revenue Account within the Department of the Secretary of State. Monies collected pursuant to the provisions of this Article shall be credited to the Account and applied to the administration of the Article."

Section 6. G.S. 143-656 reads as rewritten:

"**§ 143-656. Contracts and financial arrangements.**

Any contract between ~~a boxer and any other licensee~~ licensees and ~~any contract involving~~ related to a boxing match or exhibition held or to be held in this State must meet the requirements of administrative rules as set forth by the Commission. Any contract which does not satisfy the requirements of the administrative rules shall be void and unenforceable. All contracts shall be in writing."

Section 7. G.S. 143-657 is repealed.

Section 8. Article 68 of Chapter 143 of the General Statutes is amended by adding the following new section:

"**§ 143-657.1. Sanctioned amateur matches.**

In addition to the other applicable provisions of this Article, a sanctioned amateur match shall be conducted pursuant to the rules of the sports organization sanctioning the boxing match or exhibition."

Section 9. G.S. 143-658 reads as rewritten:

"**§ 143-658. Violations.**

(a) Civil Penalties. -- The ~~Commission~~ Secretary of State may issue an order against a licensee or other person who willfully violates any provision of this Article, imposing a civil penalty of up to five thousand dollars ($5,000) for a single violation or of up to twenty-five thousand dollars ($25,000) for multiple violations in a single proceeding or a series of related proceedings. No order under this subsection may be entered without giving the licensee or other person 15 days' prior notice and an opportunity for a contested case hearing conducted pursuant to Article 3 of Chapter 150B of the General Statutes.

(b) Criminal Penalties. -- A willful violation of any provision of this Article shall constitute a Class 2 misdemeanor. The Secretary of State may refer any available evidence concerning violations of this Article to the proper district attorney, who may, with or without such a reference, institute the appropriate criminal proceedings.

The attorneys employed by the Secretary of State shall be available to prosecute or assist in the prosecution of criminal cases when requested to do so by a district attorney and the Secretary of State approves.

(c) Injunction. -- Whenever it appears to the ~~Commission~~ Secretary of State that a person has engaged or is about to engage in an act or practice constituting a violation of any provision of this Article or any rule or order hereunder, the ~~Commission~~ Secretary of State may ~~in its discretion~~ bring an action in any court of competent jurisdiction to enjoin those acts or practices and to enforce compliance with this Article or any rule or order issued pursuant to this Article.

(d) Enforcement. -- For purposes of enforcing this Article, the Department of the Secretary of State's law enforcement agents have statewide jurisdiction. These law enforcement agents may assist local law enforcement agencies in their investigations and may initiate and carry out, in coordination with local law enforcement agencies, investigations of violations of this Article. These law enforcement agents have all the powers and authority of law enforcement officers when executing arrest warrants."

Section 10. Article 2 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-37.2. Amusements -- Boxing.**

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

(1) Boxing match. -- Defined in G.S. 143-651.

(2) Kickboxing match. -- Defined in G.S. 143-651.

(3) Toughman event. -- Defined in G.S. 143-651.

(b) Gross Receipts Tax. -- Every person engaged in the business of giving, offering, or managing any boxing match, kickboxing match, or toughman event for which an admission is charged shall pay a tax on the gross receipts of the business at the rate of twelve percent (12%). If the entertainment for which the taxpayer charges admission includes both an event taxable under this section and other entertainment or amusement otherwise taxable under G.S. 105-37.1 or G.S. 105-38, the tax levied in this section applies to the combined entertainment and the taxes levied in G.S. 105-37.1 and G.S. 105-38 do not apply.

The gross receipts tax is due on the 10th day of the month following the month in which the gross receipts accrue. Every person liable for the gross receipts tax shall, on or before the due date, prepare and render a return on a form prescribed by the Secretary. The return shall state the total gross receipts derived in the preceding month from taxable entertainments and shall include any other information required by the Secretary.

(c) Local Tax. -- Counties may not levy any license tax on the business taxed under this section. Municipalities may levy a license tax not in excess of twenty-five dollars ($25.00) a year on the business taxed under this section."

Section 11. G.S. 105-259(b) is amended by adding the following new subdivision to read:

"(16b) To exchange information with the Department of Secretary of State concerning persons issued a license or permit under Article 68 of Chapter 143 of the General Statutes, when the information is

needed to administer the gross receipts tax levied in G.S. 105-37.2."

Section 12. G.S. 105-109.1 reads as rewritten:

"**§ 105-109.1. Interest.**

The taxes on gross receipts levied in G.S. ~~105-37.1(a) and G.S.~~ 105-37.1(a), 105-37.2(b), and 105-38(f), the tax on installment paper dealers levied in G.S. 105-83(b), and the tax on publishers of newsprint publications levied in G.S. 105-102.6, shall bear interest at the rate established under G.S. 105-241.1(i) from the time the taxes were due until the taxes are paid."

Section 13. Sections 10, 11, and 12 of this act become effective October 1, 1997, and apply to entertainments presented on or after that date. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 815
Rules and Operations of the Senate Committee Substitute Adopted 8/26/97
Proposed House Committee Substitute S815-PCS1898

Short Title: Appointments. (Public)

Sponsors:

Referred to:

April 14, 1997

A BILL TO BE ENTITLED

AN ACT TO APPOINT PERSONS TO VARIOUS PUBLIC OFFICES UPON THE RECOMMENDATION OF THE PRESIDENT PRO TEMPORE OF THE SENATE AND THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND TO MAKE RELATED STATUTORY CHANGES CONCERNING THEIR APPOINTMENTS.

Whereas, G.S. 120-121 authorizes the General Assembly to make certain appointments to public offices upon the recommendation of the President Pro Tempore of the Senate and the Speaker of the House of Representatives;

Whereas, the President Pro Tempore of the Senate and the Speaker of the House of Representatives have made recommendations; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Charles Hayes of Guilford County is appointed to the North Carolina Global TransPark Authority for a term to expire on June 30, 1999. Frank Holding of Mecklenburg County and Howard Chapin of Beaufort County are appointed to the North Carolina Global TransPark Authority for terms expiring on June 30, 2001.

Section 2. Russell Mohn Hull, Jr., of Pasquotank County, Eugene Price of Wayne County, and John Edward Pechmann of Cumberland County, are appointed to the North Carolina Wildlife Resources Commission for terms expiring on April 24, 1999.

Section 3. Anita C. McCorkle of Mecklenburg County and Rebekah Beerbower of Catawba County are appointed to the Child Day-Care Commission for terms expiring on June 30, 1999.

Section 4. William F. Forsyth of Cherokee County, Sam Neill of Henderson County, and David Reeves of Henderson County are appointed to the Western North Carolina Regional Economic Development Commission for terms expiring on June 30, 2001.

Section 5. Thomas J. Burgin, Jr., of Lincoln County and William A. Allen of Pasquotank County are appointed to the Private Protective Services Board for terms expiring on June 30, 1999.

t Section 6. Dr. Patricia A. Chamings of Guilford County is appointed to the North Carolina Center for Nursing for a term expiring June 30, 1999. Barbara Morris of Cumberland County and Henson Barnes of Bladen County are appointed to the North Carolina Center for Nursing for terms expiring on June 30, 2000.

Section 7. Thomas Mehder of Mecklenburg County, Douglas E. Howey of Wake County, Anne Coan of Wake County, Bill Weatherspoon of Wake County, and Russ Stephenson of Wake County are appointed to the North Carolina Petroleum Underground Storage Tank Funds Council for terms expiring on June 30, 1999.

Section 8. Margaret Arbuckle of Guilford County and Mayor Jerry Campbell of Lincoln County are appointed to the Watershed Protection Advisory Council for terms expiring on June 30, 1999.

Section 9. Wayne Louis Lofton of New Hanover County and Anthony M. Copeland of Wake County are appointed to the North Carolina Agency for Public Telecommunications for terms expiring on June 30, 1999.

Section 10. John Phillips of Wake County is appointed to the North Carolina Board for Licensing of Soil Scientists for a term to expire on June 30, 1999.

Section 11. Paul Brooks of Robeson County is appointed to the North Carolina State Commission of Indian Affairs for a term to expire on June 30, 1999.

Section 12. John H. Cilley, IV, of Catawba County is appointed to the Board of Trustees Teachers' and State Employees' Retirement System for a term to expire on June 30, 1999.

Section 13. The Honorable Terry Sanford of Durham County and Linda Godwin Murphy of Duplin County are appointed to the Board of Trustees of the North Carolina Museum of Art for terms expiring on June 30, 1999.

Section 14. Rick Lee of Haywood County is appointed to the North Carolina Code Officials Qualification Board for a term to expire on June 30, 2001.

Section 15. Lisa Eberhart of Wake County and Sheila Garner of Carteret County are appointed to the North Carolina Board of Dietetics/Nutrition for terms to expire on June 30, 2000.

Section 16. Robert Epting of Orange County and Jeffrey V. Morse of Burke County are appointed to the Environmental Management Commission for terms expiring on June 30, 1999.

Section 17. Russell Howard Langley of Dare County is appointed to the North Carolina Seafood Industrial Park Authority for a term to expire on June 30, 1999.

Section 18. Richard Lee Frye of Alamance County is appointed to the North Carolina Sheriffs' Education and Training Standards Commission for a term to expire on June 30, 2000.

Section 19. Stewart Bryan Coleman of Buncombe County is appointed to the North Carolina State Ports Authority for a term to expire on June 30, 1999.

Section 20. Ann McArthur of Dare County and Carol Newman of Mecklenburg County are appointed to the North Carolina Center for the Advancement of Teaching Board of Trustees for terms expiring on June 30, 2001.

Section 21. Jimmy Hughes of Pitt County is appointed to the North Carolina Home Inspector Licensure Board for a term to expire on July 1, 1998.

Section 22. Kathy Weeks of Harnett County and Virginia Adams of New Hanover County are appointed to the North Carolina Nursing Scholars Commission for terms expiring on June 30, 2001.

Section 23. Kenneth Robinette of Richmond County, Jane Smith of Robeson County, and William Phipps of Columbus County are appointed to the Southeastern North Carolina Regional Economic Development Commission for terms expiring on June 30, 2001.

Section 24. R. B. Heater of Wake County and Ingram Walters of Union County are appointed to the North Carolina Low-Level Radioactive Waste Management Authority for terms expiring on June 30, 2001.

Section 25. Dr. Leroy Walker of Durham County is appointed to the North Carolina Teaching Fellows Commission for a term to expire on June 30, 2001.

Section 26. Jeffrey A. Nelson of Martin County is appointed to the Local Government Commission for a term to expire on June 30, 2001.

Section 27. Terry Waterfield of Pasquotank County is appointed to the North Carolina Criminal Justice Education and Training Standards Commission for a term to expire on June 30, 1999.

Section 28. William Earl Antone, Sr., of Robeson County and Walter Clark of Lincoln County are appointed to the North Carolina Housing Finance Agency for terms expiring on June 30, 1999.

Section 29. Randy Gregory of Cumberland County is appointed to the North Carolina School of Science and Mathematics Board of Trustees for a term that expires on June 30, 2001.

Section 30. Clay Ferebee of Camden County and Reef Ivey of Wake County are appointed to the Centennial Authority for terms expiring on June 30, 2001.

Section 31. Mary Lilley of Martin County is appointed to the Northeastern North Carolina Regional Economic Development Commission for a term that expires on June 30, 1999. Ray Hollowell of Dare County is appointed to the Northeastern North Carolina Regional Economic Development Commission for a term that expires on June 30, 2001. Bob Spivey of Bertie County (county

commissioner) is appointed to the Northeastern North Carolina Regional Economic Development Commission for a term that expires on June 30, 2001. Charlie Shaw of Chowan County is appointed to the Northeastern North Carolina Regional Economic Development Commission for a term expiring June 30, 1999, in accordance with G.S. 158-8.2(b)(2). Ernie Bowden of Currituck County is appointed to the Northeastern North Carolina Regional Economic Development Commission for a term expiring June 30, 2001.

Section 32. Hank Debnam of Cumberland County is appointed to the North Carolina State Board of Therapeutic Recreation Certification for a term that expires on June 30, 2001.

Section 33. Jo Anne Jeffries of Hertford County (at large), Richard Clark of Buncombe County, Jim Scarborough of Wake County, Nancy McKeel of Buncombe County, Bobby Bollinger of Mecklenburg County, Emily Moore of Lenoir County (at large), Donald Hines of Mecklenburg County (representative of persons with mental illness) are appointed to the Governor's Advocacy Council for Persons with Disabilities for terms expiring on June 30, 1999.

Section 34. Christie Knittel Mabry of Wake County and Althea Calloway of Mecklenburg County are appointed to the Board of Trustees of the Teachers' and State Employees' Comprehensive Major Medical Plan for terms expiring on June 30, 1999.

Section 35. Jim Funderburke of Gaston County and David Ray Twiddy of Chowan County are appointed to the Rules Review Commission for terms expiring on June 30, 1999.

Section 36. Drew King, Sr., of Durham County is appointed to the Board of Trustees of the North Carolina Public Employee Deferred Compensation Plan for a term that expires on June 30, 1999.

Section 37. Beverly McCracken of Guilford County is appointed to the Board of Trustees of the University of North Carolina Center for Public Television for a term that expires on June 30, 1999.

Section 38. Charles E. Truelove, Jr., of Wake County is appointed to the State Building Commission for a term that expires June 30, 2000.

Section 39. Martha Smith Ragsdale of Lee County is appointed to the State Health Plan Purchasing Alliance Board for a term that expires on July 1, 2001.

Section 40. Dr. Larry W. Watson of Wake County is appointed to the North Carolina Board of Science and Technology for a term that expires on June 30, 1999.

Section 40.1. Henry E. Faircloth of Sampson County is appointed to the North Carolina Appraisal Board for a term that expires June 30, 1999.

Section 40.2. Rick Proctor of Davidson County and Florence C. Moses of Wake County are appointed to the North Carolina Board of Athletic Trainer Examiners for terms to expire July 31, 2000. Dr. Donald D'Allesandro of Mecklenburg County is appointed to the North Carolina Board of Athletic Trainer Examiners for a term to expire July 31, 1998.

Section 41. Roger Hill of Henderson County, Michael Geouge of Buncombe County, and Harold Stallcup of Rutherford County are appointed to the Western North Carolina Regional Economic Development Commission for terms expiring June 30, 2001.

Section 42. Louis Pate of Wayne County is appointed to the North Carolina Global TransPark Authority Board of Directors for a term expiring June 30, 2001.

Section 43. Phil Matthews of Wake County is appointed to the Alarm Systems Licensing Board for a term expiring June 30, 2000.

Section 44. Borden Hanes of Forsyth County and Emily Meymandi of Wake County are appointed to the North Carolina Museum of Art Board of Trustees for terms expiring June 30, 1999.

Section 45. Arthur Smith of Mecklenburg County (voting) and Dr. Noel McDevitt of Moore County (nonvoting) are appointed to the North Carolina State Boxing Commission for terms expiring December 31, 2000.

Section 46. Danny Gray of Dare County is appointed to the North Carolina Bridge Authority for a term expiring June 30, 2001.

Section 47. Melinda Spencer of Guilford County and Jerri Howell of Robeson County are appointed to the Child Day-Care Commission for terms expiring June 30, 1999.

Section 48. Brent Barringer of Wake County and Temple Sloan of Wake County are appointed to the Centennial Authority for terms expiring June 30, 2001.

Section 49. Dr. Bob Stroud of Randolph County is appointed to the State Board of Chiropractic Examiners for a term expiring June 30, 1999.

Section 50. Jeannie Blakenship of Randolph County is appointed to the State Board of Cosmetic Arts Examiners for a term expiring June 30, 2000.

Section 51. Renee Kumor of Henderson County is appointed to the Criminal Justice Information Network Governing Board for a term expiring June 30, 2001.

Section 52. Bill Anderson of Wilkes County is appointed to the North Carolina Criminal Justice Education and Training Standards Commission for a term expiring June 30, 1999.

Section 53. Mary Howard Sutton of Lenoir County (at-large), Pat Clapp of Guilford County (representative for mental retardation), Sharon Plain of Onslow County (representative for physical disability), William Morris of Wake County (at-large), Laurie Collins of Forsyth County (at-large), James Wells of Guilford County (representative for developmental disability), and Max Krebs of Moore County (representative for mental illness) are appointed to the Governor's Advocacy Council for Persons with Disabilities for terms expiring June 30, 1999.

Section 54. Douglas Boykin of New Hanover County and Mark C. Surles of Mecklenburg County are appointed to the Environmental Management Commission for terms expiring June 30, 1999.

Section 55. Linwood Parker of Johnston County (owner/manager of alliance member) and Barbara Dickens of Halifax County (employee enrollee) are

appointed to the State Health Plan Purchasing Alliance Board for terms expiring June 30, 2001.

Section 56. James Oglesby of Buncombe County (at-large), John Georgius, Jr. of Forsyth County (mortgage servicing institution), Don Barnes of Wayne County (at-large), and Harris Blake of Moore County (licensed real estate broker) are appointed to the North Carolina Housing Finance Agency Board of Directors for terms expiring June 30, 1999.

Section 57. Bob Doepke of Guilford County (insurance representative) and Don Fuquay of Wake County (finance representative) are appointed to the North Carolina Manufactured Housing Board for terms commencing October 1, 1997, expiring September 30, 2000.

Section 58. Scott Dedmon of Buncombe County (nonprofit housing development corporation), Brian Coyle of Wake County (real estate lending), E. G. Fowler of Watauga County (at-large), and Janet Pueschel of Wake County (at-large) are appointed to the North Carolina Housing Partnership for terms expiring June 30, 2000.

Section 59. Sandra Trivett of Buncome County is appointed to the Local Government Commission for a term expiring June 30, 2001.

Section 60. Herb Council of Wake County (public member non-State employee) and C. V. Parks of Randolph County (retired State employee) are appointed to the Teachers' and State Employees' Comprehensive Major Medical Plan Board of Trustees for terms expiring June 30, 1999.

Section 61. Theresa Nunn of Forsyth County and Laura Thomas of Mecklenburg County are appointed to the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services for terms expiring June 30, 1999.

Section 62. John Schrote of Currituck County (at-large), Philip McMullan, Jr. of Perquimans County (economic developer), and Bill Lehmann of Perquimans County (at-large) are appointed to the Northeastern North Carolina Regional Economic Development Commission for terms expiring June 30, 2001.

Section 62.1. Gene Minton of Halifax County is appointed to the Northeastern North Carolina Regional Economic Development Commission for a term expiring June 30, 1999.

Section 63. Sherry Thomas of Wake County is appointed to the North Carolina Center for Nursing Board of Directors for a term expiring June 30, 2000.

Section 64. Frances Tutterow of Davie County and Deana Burrow of Randolph County are appointed to the North Carolina Nursing Scholars Commission for terms expiring June 30, 2001.

Section 65. Steve Williams of Forsyth County (convenience store owner/operator), David Clary of Cleveland County (groundwater contamination remediation experience), Richard Catlin of New Hanover County (noncommercial tank owner), George Luckadoo (environmental slot) of Rutherford County, and Lloyd Williams, Jr. of Cleveland County (motor fuel service station dealer) are

appointed to the North Carolina Petroleum Underground Storage Tank Funds Council for terms expiring June 30, 1999.

Section 66. Estell Lee of New Hanover County is appointed to the North Carolina State Ports Authority for a term expiring June 30, 1999.

Section 67. Tim McIntyre of Forsyth County is appointed to the Private Protective Services Board for a term expiring June 30, 2000.

Section 68. John Tyson of Cumberland County is appointed to the Property Tax Commission for a term expiring June 30, 1999.

Section 69. Edward Goode of Mecklenburg County is appointed to the Teachers' and State Employees' Retirement System Board of Trustees for a term expiring June 30, 1999.

Section 70. Mark Garside of Mecklenburg County, Steve Rader of Beaufort County, and George Robinson of Caldwell County are appointed to the Rules Review Commission for terms expiring June 30, 1999.

Section 71. Michael Egues of Mecklenburg County and Eddie Browning of Washington County are appointed to the North Carolina School of Science and Mathematics Board of Trustees for terms expiring June 30, 1999.

Section 72. Robert Annechiarico of Forsyth County is appointed to the North Carolina Board of Science and Technology for a term expiring June 30, 1999.

Section 73. Litchard Hurley of Randolph County is appointed to the North Carolina Sheriffs' Education and Training Standards Commission for a term expiring August 31, 1999.

Section 74. David Turpin of Wake County is appointed to the North Carolina Substance Abuse Professionals Certification Board for a term expiring June 30, 2000.

Section 75. Gayle Mitchell of Iredell County (grades 6-8), Bea Oettinger of Onslow County (grades K-2), Judy Corso of Moore County (grades 3-5), and Claudia Hadley of Nash County (grades 9-12) are appointed to the North Carolina Teacher Academy Board of Trustees for terms expiring June 30, 2001.

Section 76. James Batten of Buncombe County is appointed to the North Carolina Teaching Fellows Commission for a term expiring June 30, 2001.

Section 77. Cherie Loflin of Davidson County and Jerry Tillman of Randolph County are appointed to the North Carolina Center for the Advancement of Teaching Board of Trustees for terms expiring June 30, 2001.

Section 78. Marilyn Nason of Buncombe County and D. K. McLaughlin of Guilford County are appointed to the North Carolina Agency for Public Telecommunications for terms expiring June 30, 1999.

Section 79. Chip Shelton of Mecklenburg County and Jack Poole of Lenoir County are appointed to the North Carolina Board of Transportation for terms expiring June 30, 1999.

Section 80. Joan Danieley of Forsyth County is appointed to the Board of Trustees of the UNC Center for Public Television for a term expiring June 30, 1999.

Section 81. John Hairr of Harnett County is appointed to the North Carolina Low-Level Radioactive Waste Management Authority for a term expiring June 30, 2001.

Section 82. Doug Story of Pitt County is appointed to the North Carolina Low-Level Radioactive Waste Management Authority to fill the remainder of the unexpired term of Dr. Constance Walker (expires June 30, 1999).

Section 83. James Reddish of Union County is appointed to the North Carolina Low-Level Radioactive Waste Management Authority for a term expiring June 30, 2000.

Section 84. John Coley of Wake County and Joe Long of Davie County are appointed to the North Carolina Wildlife Resources Commission for terms expiring April 24, 1999.

Section 84.1. Deborah Rosenquist of Forsyth County is appointed to the Board of Dietetics and Nutrition for a term expiring June 30, 2000.

STATE BUILDING COMMISSION

Section 85. G.S. 143-135.25(c) reads as rewritten:

"(c) The Commission shall consist of nine members qualified and appointed as follows:

(1) A licensed architect whose primary practice is or was in the design of buildings, chosen from among not more than three persons nominated by the North Carolina Chapter of the American Institute of Architects, appointed by the Governor.

(2) A registered engineer whose primary practice is or was in the design of engineering systems for buildings, chosen from among not more than three persons nominated by the Consulting Engineers Council and the Professional Engineers of North Carolina, appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.

(3) A licensed building contractor whose primary business is or was in the construction of buildings, or an employee of a company holding a general contractor's license, chosen from among not more than three persons nominated by the Carolinas AGC (Associated General Contractors), appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.

(4) A licensed electrical contractor whose primary business is or was in the installation of electrical systems for buildings, chosen from among not more than three persons nominated by the North Carolina Association of Electrical Contractors, and the Carolinas Electrical Contractors' Association, appointed by the Governor.

(5) A public member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.

(6) A licensed mechanical contractor whose primary business is or was in the installation of mechanical systems for buildings, chosen from among not more than three persons nominated by the North Carolina Association of Plumbing, Heating, Cooling Contractors, appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.

(7) An employee of the university system currently involved in the capital facilities development process, chosen from among not more than three persons nominated by the Board of Governors of The University of North Carolina, appointed by the Governor.

(8) A public member who is knowledgeable in the building construction or building maintenance area, appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.

(9) ~~A manager of physical plant operations whose responsibilities are or were in the operations and maintenance of physical facilities, chosen from among not more than three persons nominated by the North Carolina Association of Physical Plant Administrators,~~ A representative of local government, chosen from among not more than two persons nominated by the North Carolina Association of County Commissioners and two persons nominated by the North Carolina League of Municipalities, appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.

The members shall be appointed for staggered three-year terms: The initial appointments to the Commission shall be made within 15 days of the effective date of this act [April 14, 1987]. The initial terms of members appointed pursuant to subdivisions (1), (2), and (3) shall expire June 30, 1990; the initial terms of members appointed pursuant to (4), (5), and (6) shall expire June 30, 1989; and the initial terms of members appointed pursuant to (7), (8), and (9) shall expire June 30, 1988. Members may serve no more than six consecutive years. In making new appointments or filling vacancies, the Governor shall ensure that minorities and women are represented on the Commission.

Vacancies in appointments made by the Governor shall be filled by the Governor for the remainder of the unexpired terms. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. Persons appointed to fill vacancies shall qualify in the same manner as persons appointed for full terms.

The chairman of the Commission shall be elected by the Commission. The Secretary of State shall serve as chairman until a chairman is elected."

ECONOMIC DEVELOPMENT COMMISSIONS

Section 86. Article 2 of Chapter 158 of the General Statutes is amended by adding a new section to read:

"**§ 158-8.4. Removal of commission members.**

A commission created under G.S. 158-8.1, 158-8.2, or 158-8.3 may, by majority vote, remove a member of the commission if that member does not attend at least eighty percent (80%) of the regularly scheduled meetings of the commission during any full year of service of that member on the board, except that absences excused by the commission due to serious medical or family circumstances shall not be considered. If the commission votes to remove a member under this section, the vacancy will be filled in the same manner as the original appointment."

Section 87. (a) G.S. 158-8.2(b) reads as rewritten:

"(b) The Commission shall consist of ~~17~~ 18 ~~members appointed~~ appointed members and two ex officio members, as follows:

(1) ~~Five~~ Six members shall be appointed by the Governor, including one developer of northeastern North Carolina, one banker, one county commissioner from Camden, Currituck, Pasquotank, or Perquimans Counties, or from the county or counties assigned to the Commission by the Department of Commerce as authorized by law, and one county commissioner from Beaufort, Bertie, Chowan, or Martin Counties, or from the county or counties assigned to the Commission by the Department of Commerce as authorized by ~~law;~~ law.

(2) ~~Five~~ Six members shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, including one developer of northeastern North Carolina, one banker, and one county commissioner from Dare, Hyde, Tyrrell, or Washington ~~Counties;~~ Counties.

(3) ~~Five~~ Six members shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, including one developer of northeastern North Carolina, one banker, and one county commissioner from Halifax, Hertford, Gates, or Northampton ~~Counties;~~ Counties.

(4) The Secretary of ~~Commerce or a designee; and~~ Commerce, or a designee.

(5) The Secretary of ~~Environment, Health, and Natural~~ Cultural Resources, or a designee.

Any person appointed to the Commission in a categorical appointment as a county commissioner may hold such office in addition to the offices permitted by G.S. 128-1.1. The appointing authorities are encouraged to discuss and coordinate their appointments in an effort to ensure as many counties served by the Commission are represented among the membership of the Commission."

(b) The additional appointments made under subsection (a) of this section shall be for initial terms expiring June 30, 1999.

BOARD OF TRANPORTATION

Section 88. (a) G.S. 143B-350(d) reads as rewritten:

"(d) The Board of Transportation shall have ~~two~~ four members appointed by the General Assembly. ~~One~~ Two of these members shall be appointed upon the recommendation of the Speaker of the House of Representatives, and ~~one~~ two shall be appointed upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121. The initial members appointed by the General Assembly shall serve for terms expiring June 30, 1983. Thereafter, their successors shall serve for two-year terms beginning July 1 of odd-numbered years. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122."

(b) The additional two members appointed by the General Assembly under this section shall serve for terms expiring June 30, 1999.

(c) Michael Mills of Columbus County is appointed to the Board of Transportation for a term expiring June 30, 1999.

TRAVEL AND TOURISM BOARD

Section 89. (a) G.S. 143B-434.1(c) reads as rewritten:

"(c) The Board shall consist of ~~25~~ 27 members as follows:

(1) The Secretary of Commerce, who shall not be a voting member.

(2) The Director of the Division of Travel and Tourism, who shall not be a voting member.

(3) Two members designated by the Board of Directors of the North Carolina Hotel and Motel Association.

(4) Two members designated by the Board of Directors of the North Carolina Restaurant Association.

(5) Three Directors of Convention and Visitor Bureaus designated by the Board of Directors of the North Carolina Association of Convention and Visitor Bureaus.

(6) The Chairperson of the Travel and Tourism Coalition.

(7) The President of the Travel Council of North Carolina.

(8) A member designated by the Board of Directors of the Travel Council of North Carolina.

(9) The President of North Carolina Citizens for Business and Industry.

(10) One member designated by the North Carolina Petroleum Marketers Association.

(11) One person associated with tourism attractions in North Carolina, appointed by ~~the General Assembly, upon recommendation of~~ the Speaker of the House of Representatives. One person who is not a member of the General Assembly, appointed by the Speaker of the House of Representatives.

(12) One person associated with the tourism-related transportation industry, appointed by ~~the General Assembly upon recommendation of~~ the President Pro Tempore of the Senate. One person who is not a member of the General Assembly, appointed by the President Pro Tempore of the Senate.

(13) Four public members each interested in matters relating to travel and tourism, two appointed by the Governor (one from a rural area and one from an urban area), one appointed by ~~the General Assembly upon recommendation of~~ the Speaker of the House, and one appointed by ~~the General Assembly upon recommendation of~~ the President Pro Tempore of the Senate.

(14) One member associated with the major cultural resources and activities of the State in North Carolina, appointed by the Governor.

(15) Two members of the House of Representatives, appointed by ~~the General Assembly upon recommendation of~~ the Speaker of the House of Representatives.

(16) Two members of the Senate, appointed by the ~~General Assembly upon recommendation of the~~ President Pro Tempore of the Senate."

(b) The two additional appointments authorized by this section are for terms expiring December 31, 1998.

RULES REVIEW COMMISSION

Section 90. (a) G.S. 143B-30.1(a) reads as rewritten:

"(a) The Rules Review Commission is created. The Commission shall consist of ~~eight~~ 10 members to be appointed by the General Assembly, ~~four~~ five upon the recommendation of the President Pro Tempore of the Senate, and ~~four~~ five upon the recommendation of the Speaker of the House of Representatives. These appointments shall be made in accordance with G.S. 120-121, and vacancies in these appointments shall be filled in accordance with G.S. 120-122. Except as provided in subsection (b) of this section, all appointees shall serve two-year terms."

(b) G.S. 143B-30.1(c) reads as rewritten:

"(c) Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, ineligibility, death, or disability of any member shall be for the balance of the unexpired term. The chairman shall be elected by the Commission, and he shall designate the times and places at which the Commission shall meet. The Commission shall meet at least once a month. A quorum of the Commission shall consist of ~~five~~ six members of the Commission. The Commission is an independent agency under Article III, Section 11 of the Constitution."

(c) Initial appointments authorized by this section are for terms expiring June 30, 1999.

JOINT LEGISLATIVE EDUCATION OVERSIGHT COMMITTEE

Section 91. (a) G.S. 120-70.80 reads as rewritten:

"**§ 120-70.80. Creation and membership of Joint Legislative Education Committee.**

The Joint Legislative Education Committee is established. The Committee consists of ~~16~~ 18 members as follows:

(1) ~~Eight~~ Nine members of the Senate appointed by the President Pro Tempore of the Senate, at least two of whom are members of the minority party; and

(2) ~~Eight~~ Nine members of the House of Representatives appointed by the Speaker of the House of Representatives, at least three of whom are members of the minority party.

Terms on the Committee are for two years and begin on the convening of the General Assembly in each odd-numbered year, except the terms of the initial members, which begin on appointment and end on the day of the convening of the 1991 General Assembly. Members may complete a term of service on the Committee even if they do not seek reelection or are not reelected to the General Assembly, but resignation or removal from service in the General Assembly constitutes resignation or removal from service on the Committee.

A member continues to serve until his successor is appointed. A vacancy shall be filled within 30 days by the officer who made the original appointment."

(b) G.S. 120-70.82(b) reads as rewritten:

"(b) A quorum of the Committee is ~~nine~~ 10 members. No action may be taken except by a majority vote at a meeting at which a quorum is present. While in the discharge of its official duties, the Committee has the powers of a joint committee under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4."

(c) The additional appointments authorized by this section are for terms expiring on convening of the 1999 General Assembly.

JOINT LEGISLATIVE COMMISSION ON GOVERNMENTAL OPERATIONS

Section 92. G.S. 120-74 reads as rewritten:

"**§ 120-74. Appointment of members; terms of office.**

The Commission shall consist of ~~26~~ 30 members. The President pro tempore of the Senate, the Speaker pro tempore of the House, and the Majority Leader of the Senate and the Speaker of the House shall serve as ex officio members of the Commission. The Speaker of the House of Representatives shall appoint ~~eleven~~ 13 members from the House. The President pro tempore of the Senate shall appoint ~~eleven~~ 13 members from the Senate. Vacancies created by resignation or otherwise shall be filled by the original appointing authority. Members shall serve two-year terms beginning and ending on January 15 of the odd-numbered years, except that initial appointments shall begin on July 1, 1975. Members shall not be disqualified from completing a term of service on the Commission because they fail to run or are defeated for reelection. Resignation or removal from the General Assembly shall constitute resignation or removal from membership on the Commission. The terms of the initial members of the Commission shall expire January 15, 1977."

Section 93. Unless otherwise specified, all appointments made by this act are for terms to begin when this act becomes law.

Section 94. This act is effective when it becomes law.

MINUTES
COMMITTEE ON RULES, CALENDAR, AND OPERATIONS OF THE HOUSE
August 28, 1997
10:30 A.M.

The Committee on Rules, Calendar, and Operations of the House reconvened August 28, 1997, at 10:30 a.m. in Room 421 in the Legislative Office Building. Representative Morgan, Committee Chair, called the meeting to order to consider the following bill:

House committee substitute for Senate Bill 815 - AN ACT TO APPOINT PERSONS TO VARIOUS PUBLIC OFFICES UPON THE RECOMMENDATION OF THE PRESIDENT PRO TEMPORE OF THE SENATE AND THE SPEAKER OF THE HOUSE OF REPRESENTATIVE AND TO MAKE RELATED STATUTORY CHANGES CONCERNING THEIR APPOINTMENTS. The Chair recognized Representative Mitchell who moved for adoption of the proposed House committee substitute for Senate Bill 815 for discussion. Staff Counsel, Linwood Jones, explained the changes in the committee substitute.

Representative Dockham moved to give House committee substitute to Senate Bill 815 a favorable report; unfavorable report to the original bill. Motion carried.

The meeting adjourned.

Representative Richard T. Morgan
Committee Chair

Anne M. Cole
Acting Committee Clerk

Attachments:
Committee Report
Bill
Visitor's Sheet

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 815
Rules and Operations of the Senate Committee Substitute Adopted 8/26/97

Short Title: Pro Tem Appointments. (Public)

Sponsors:

Referred to:

April 14, 1997

A BILL TO BE ENTITLED

AN ACT TO APPOINT PERSONS TO VARIOUS PUBLIC OFFICES UPON THE RECOMMENDATION OF THE PRESIDENT PRO TEMPORE OF THE SENATE.

Whereas, G.S. 120-121 authorizes the General Assembly to make certain appointments to public offices upon the recommendation of the President Pro Tempore of the Senate; and

Whereas, the President Pro Tempore of the Senate has made recommendations; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Charles Hayes of Guilford County is appointed to the North Carolina Global TransPark Authority for a term to expire on June 30, 1999. Frank Holding of Mecklenburg County and Howard Chapin of Beaufort County are appointed to the North Carolina Global TransPark Authority for terms expiring on June 30, 2001.

Section 2. Russell Mohn Hull, Jr., of Pasquotank County, Eugene Price of Wayne County, and John Edward Pechmann of Cumberland County, are appointed to the North Carolina Wildlife Resources Commission for terms expiring on April 24, 1999.

Section 3. Anita C. McCorkle of Mecklenburg County and Rebekah Beerbower of Catawba County are appointed to the Child Day-Care Commission for terms expiring on June 30, 1999.

Section 4. William F. Forsyth of Cherokee County, Sam Neill of Henderson County, and David Reeves of Henderson County are appointed to the Western North Carolina Regional Economic Development Commission for terms expiring on June 30, 2001.

Section 5. Thomas J. Burgin, Jr., of Lincoln County and William A. Allen of Pasquotank County are appointed to the Private Protective Services Board for terms expiring on June 30, 1999.

t Section 6. Dr. Patricia A. Chamings of Guilford County is appointed to the North Carolina Center for Nursing for a term expiring June 30, 1999. Barbara Morris of Cumberland County and Henson Barnes of Bladen County are appointed to the North Carolina Center for Nursing for terms expiring on June 30, 2000.

Section 7. Thomas Mehder of Mecklenburg County, Douglas E. Howey of Wake County, Anne Coan of Wake County, Bill Weatherspoon of Wake County, and Russ Stephenson of Wake County are appointed to the North Carolina Petroleum Underground Storage Tank Funds Council for terms expiring on June 30, 1999.

Section 8. Margaret Arbuckle of Guilford County and Mayor Jerry Campbell of Lincoln County are appointed to the Watershed Protection Advisory Council for terms expiring on June 30, 1999.

Section 9. Wayne Louis Lofton of New Hanover County and Anthony M. Copeland of Wake County are appointed to the North Carolina Agency for Public Telecommunications for terms expiring on June 30, 1999.

Section 10. John Phillips of Wake County is appointed to the North Carolina Board for Licensing of Soil Scientists for a term to expire on June 30, 1999.

Section 11. Paul Brooks of Robeson County is appointed to the North Carolina State Commission of Indian Affairs for a term to expire on June 30, 1999.

Section 12. John H. Cilley, IV, of Catawba County is appointed to the Board of Trustees Teachers' and State Employees' Retirement System for a term to expire on June 30, 1999.

Section 13. The Honorable Terry Sanford of Durham County and Linda Godwin Murphy of Duplin County are appointed to the Board of Trustees of the North Carolina Museum of Art for terms expiring on June 30, 1999.

Section 14. Rick Lee of Haywood County is appointed to the North Carolina Code Officials Qualification Board for a term to expire on June 30, 2001.

Section 15. Lisa Eberhart of Wake County and Sheila Garner of Carteret County are appointed to the North Carolina Board of Dietetics/Nutrition for terms to expire on June 30, 2000.

Section 16. Robert Epting of Orange County and Jeffrey V. Morse of Burke County are appointed to the Environmental Management Commission for terms expiring on June 30, 1999.

Section 17. Russell Howard Langley of Dare County is appointed to the North Carolina Seafood Industrial Park Authority for a term to expire on June 30, 1999.

Section 18. Richard Lee Frye of Alamance County is appointed to the North Carolina Sheriffs' Education and Training Standards Commission for a term to expire on June 30, 2000.

Section 19. Stewart Bryan Coleman of Buncombe County is appointed to the North Carolina State Ports Authority for a term to expire on June 30, 1999.

Section 20. Ann McArthur of Dare County and Carol Newman of Mecklenburg County are appointed to the North Carolina Center for the Advancement of Teaching Board of Trustees for terms expiring on June 30, 2001.

Section 21. Jimmy Hughes of Pitt County is appointed to the North Carolina Home Inspector Licensure Board for a term to expire on July 1, 1998.

Section 22. Kathy Weeks of Harnett County and Virginia Adams of New Hanover County are appointed to the North Carolina Nursing Scholars Commission for terms expiring on June 30, 2001.

Section 23. Kenneth Robinette of Richmond County, Jane Smith of Robeson County, and William Phipps of Columbus County are appointed to the Southeastern North Carolina Regional Economic Development Commission for terms expiring on June 30, 2001.

Section 24. R. B. Heater of Wake County and Ingram Walters of Union County are appointed to the North Carolina Low-Level Radioactive Waste Management Authority for terms expiring on June 30, 2001.

Section 25. Dr. Leroy Walker of Durham County is appointed to the North Carolina Teaching Fellows Commission for a term to expire on June 30, 2001.

Section 26. Jeffrey A. Nelson of Martin County is appointed to the Local Government Commission for a term to expire on June 30, 2001.

Section 27. Terry Waterfield of Pasquotank County is appointed to the North Carolina Criminal Justice Education and Training Standards Commission for a term to expire on June 30, 1999.

Section 28. William Earl Antone, Sr., of Robeson County and Walter Clark of Lincoln County are appointed to the North Carolina Housing Finance Agency for terms expiring on June 30, 1999.

Section 29. Randy Gregory of Cumberland County is appointed to the North Carolina School of Science and Mathematics Board of Trustees for a term that expires on June 30, 2001.

Section 30. Clay Ferebee of Camden County and Reef Ivey of Wake County are appointed to the Centennial Authority for terms expiring on June 30, 2001.

Section 31. Mary Lilley of Martin County is appointed to the Northeastern North Carolina Regional Economic Development Commission for a term that expires on June 30, 1999. Ray Hollowell of Dare County is appointed to the Northeastern North Carolina Regional Economic Development Commission for a term that expires on June 30, 2001. Bob Spivey of Bertie County (county commissioner) is appointed to the Northeastern North Carolina Regional Economic Development Commission for a term that expires on June 30, 2001. Charlie Shaw of Chowan County is appointed to the Northeastern North Carolina Regional Economic

Development Commission for a term expiring June 30, 1999, in accordance with G.S. 158-8.2(b)(2). Ernie Bowden of Currituck County is appointed to the Northeastern North Carolina Regional Economic Development Commission for a term expiring June 30, 2001.

Section 32. Hank Debnam of Cumberland County is appointed to the North Carolina State Board of Therapeutic Recreation Certification for a term that expires on June 30, 2001.

Section 33. Jo Anne Jeffries of Hertford County (at large), Richard Clark of Buncombe County, Jim Scarborough of Wake County, Nancy McKeel of Buncombe County, Bobby Bollinger of Mecklenburg County, Emily Moore of Lenoir County (at large), Donald Hines of Mecklenburg County (representative of persons with mental illness) are appointed to the Governor's Advocacy Council for Persons with Disabilities for terms expiring on June 30, 1999.

Section 34. Christie Knittel Mabry of Wake County and Althea Calloway of Mecklenburg County are appointed to the Board of Trustees of the Teachers' and State Employees' Comprehensive Major Medical Plan for terms expiring on June 30, 1999.

Section 35. Jim Funderburke of Gaston County and David Ray Twiddy of Chowan County are appointed to the Rules Review Commission for terms expiring on June 30, 1999.

Section 36. Drew King, Sr., of Durham County is appointed to the Board of Trustees of the North Carolina Public Employee Deferred Compensation Plan for a term that expires on June 30, 1999.

Section 37. Beverly McCracken of Guilford County is appointed to the Board of Trustees of the University of North Carolina Center for Public Television for a term that expires on June 30, 1999.

Section 38. Charles E. Truelove, Jr., of Wake County is appointed to the State Building Commission for a term that expires June 30, 2000.

Section 39. Martha Smith Ragsdale of Lee County is appointed to the State Health Plan Purchasing Alliance Board for a term that expires on July 1, 2001.

Section 40. Dr. Larry W. Watson of Wake County is appointed to the North Carolina Board of Science and Technology for a term that expires on June 30, 1999.

Section 40.1. Henry E. Faircloth of Sampson County is appointed to the North Carolina Appraisal Board for a term that expires June 30, 1999.

Section 40.2. Rick Proctor of Davidson County and Florence C. Moses of Wake County are appointed to the North Carolina Board of Athletic Trainer Examiners for terms to expire July 31, 2000. Dr. Donald D'Allesandro of Mecklenburg County is appointed to the North Carolina Board of Athletic Trainer Examiners for a term to expire July 31, 1998.

ECONOMIC DEVELOPMENT COMMISSIONS

Section 41. Article 2 of Chapter 158 of the General Statutes is amended by adding a new section to read:

"**§ 158-8.4. Removal of commission members.**

A commission created under G.S. 158-8.1, 158-8.2, or 158-8.3 may, by majority vote, remove a member of the commission if that member does not attend at least eighty percent (80%) of the regularly scheduled meetings of the commission during any full year of service of that member on the board, except that absences excused by the commission due to serious medical or family circumstances shall not be considered. If the commission votes to remove a member under this section, the vacancy will be filled in the same manner as the original appointment."

Section 42. (a) G.S. 158-8.2(b) reads as rewritten:

"(b) The Commission shall consist of ~~17~~ 18 ~~members appointed~~ appointed members and two ex officio members, as follows:

(1) ~~Five~~ Six members shall be appointed by the Governor, including one developer of northeastern North Carolina, one banker, one county commissioner from Camden, Currituck, Pasquotank, or Perquimans Counties, or from the county or counties assigned to the Commission by the Department of Commerce as authorized by law, and one county commissioner from Beaufort, Bertie, Chowan, or Martin Counties, or from the county or counties assigned to the Commission by the Department of Commerce as authorized by ~~law;~~ law.

(2) ~~Five~~ Six members shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, including one developer of northeastern North Carolina, one banker, and one county commissioner from Dare, Hyde, Tyrrell, or Washington ~~Counties;~~ Counties.

(3) ~~Five~~ Six members shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, including one developer of northeastern North Carolina, one banker, and one county commissioner from Halifax, Hertford, Gates, or Northampton ~~Counties;~~ Counties.

(4) The Secretary of ~~Commerce or a designee; and~~ Commerce, or a designee.

(5) The Secretary of ~~Environment, Health, and Natural~~ Cultural Resources, or a designee.

Any person appointed to the Commission in a categorical appointment as a county commissioner may hold such office in addition to the offices permitted by G.S. 128-1.1. The appointing authorities are encouraged to discuss and coordinate their appointments in an effort to ensure as many counties served by the Commission are represented among the membership of the Commission."

(b) The additional appointments made under subsection (a) of this section shall be for initial terms expiring June 30, 1999.

BOARD OF TRANPORTATION

Section 43. (a) G.S. 143B-350(d) reads as rewritten:

"(d) The Board of Transportation shall have ~~two~~ four members appointed by the General Assembly. ~~One~~ Two of these members shall be appointed upon the recommendation of the Speaker of the House of Representatives, and ~~one~~ two shall be appointed upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121. The initial members appointed by the General Assembly shall serve for terms expiring June 30, 1983. Thereafter, their successors shall serve for two-year terms beginning July 1 of odd-numbered years. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122."

(b) The additional two members appointed by the General Assembly under this section shall serve for terms expiring June 30, 1999.

(c) Michael Mills of Columbus County is appointed to the Board of Transportation for a term expiring June 30, 1999.

TRAVEL AND TOURISM BOARD

Section 44. (a) G.S. 143B-434.1(c) reads as rewritten:

"(c) The Board shall consist of ~~25~~ 27 members as follows:

(1) The Secretary of Commerce, who shall not be a voting member.

(2) The Director of the Division of Travel and Tourism, who shall not be a voting member.

(3) Two members designated by the Board of Directors of the North Carolina Hotel and Motel Association.

(4) Two members designated by the Board of Directors of the North Carolina Restaurant Association.

(5) Three Directors of Convention and Visitor Bureaus designated by the Board of Directors of the North Carolina Association of Convention and Visitor Bureaus.

(6) The Chairperson of the Travel and Tourism Coalition.

(7) The President of the Travel Council of North Carolina.

(8) A member designated by the Board of Directors of the Travel Council of North Carolina.

(9) The President of North Carolina Citizens for Business and Industry.

(10) One member designated by the North Carolina Petroleum Marketers Association.

(11) One person associated with tourism attractions in North Carolina, appointed by ~~the General Assembly, upon recommendation of~~ the Speaker of the House of Representatives. One person who is not a member of the General Assembly, appointed by the Speaker of the House of Representatives.

(12) One person associated with the tourism-related transportation industry, appointed by ~~the General Assembly upon recommendation of~~ the President Pro Tempore of the Senate. One person who is not a member of the General Assembly, appointed by the President Pro Tempore of the Senate.

(13) Four public members each interested in matters relating to travel and tourism, two appointed by the Governor (one from a rural area and one from an urban area), one appointed by ~~the General Assembly upon recommendation of~~ the Speaker of the House, and one appointed by ~~the General Assembly upon recommendation of~~ the President Pro Tempore of the Senate.

(14) One member associated with the major cultural resources and activities of the State in North Carolina, appointed by the Governor.

(15) Two members of the House of Representatives, appointed by ~~the General Assembly upon recommendation of~~ the Speaker of the House of Representatives.

(16) Two members of the Senate, appointed by the ~~General Assembly upon recommendation of the~~ President Pro Tempore of the Senate."

(b) The two additional appointments authorized by this section are for terms expiring December 31, 1998.

RULES REVIEW COMMISSION

Section 45. (a) G.S. 143B-30.1(a) reads as rewritten:

"(a) The Rules Review Commission is created. The Commission shall consist of ~~eight~~ 10 members to be appointed by the General Assembly, ~~four~~ five upon the recommendation of the President Pro Tempore of the Senate, and ~~four~~ five upon the recommendation of the Speaker of the House of Representatives. These appointments shall be made in accordance with G.S. 120-121, and vacancies in these appointments shall be filled in accordance with G.S. 120-122. Except as provided in subsection (b) of this section, all appointees shall serve two-year terms.

(b) Initial appointments authorized by this section are for terms expiring June 30, 1999.

JOINT LEGISLATIVE EDUCATION OVERSIGHT COMMITTEE

Section 46. (a) G.S. 120-70.80 reads as rewritten:

"**§ 120-70.80. Creation and membership of Joint Legislative Education Committee.**

The Joint Legislative Education Committee is established. The Committee consists of ~~16~~ 18 members as follows:

(1) ~~Eight~~ Nine members of the Senate appointed by the President Pro Tempore of the Senate, at least two of whom are members of the minority party; and

(2) ~~Eight~~ Nine members of the House of Representatives appointed by the Speaker of the House of Representatives, at least three of whom are members of the minority party.

Terms on the Committee are for two years and begin on the convening of the General Assembly in each odd-numbered year, except the terms of the initial members, which begin on appointment and end on the day of the convening of the 1991 General Assembly. Members may complete a term of service on the Committee even if they do not seek reelection or are not reelected to the General Assembly, but

resignation or removal from service in the General Assembly constitutes resignation or removal from service on the Committee.

A member continues to serve until his successor is appointed. A vacancy shall be filled within 30 days by the officer who made the original appointment."

(b) The additional appointments authorized by this section are for terms expiring on convening of the 1999 General Assembly.

JOINT LEGISLATIVE COMMISSION ON GOVERNMENTAL OPERATIONS

Section 47. G.S. 120-74 reads as rewritten:

"**§ 120-74. Appointment of members; terms of office.**

The Commission shall consist of ~~26~~ 30 members. The President pro tempore of the Senate, the Speaker pro tempore of the House, and the Majority Leader of the Senate and the Speaker of the House shall serve as ex officio members of the Commission. The Speaker of the House of Representatives shall appoint ~~eleven~~ 13 members from the House. The President pro tempore of the Senate shall appoint ~~eleven~~ 13 members from the Senate. Vacancies created by resignation or otherwise shall be filled by the original appointing authority. Members shall serve two-year terms beginning and ending on January 15 of the odd-numbered years, except that initial appointments shall begin on July 1, 1975. Members shall not be disqualified from completing a term of service on the Commission because they fail to run or are defeated for reelection. Resignation or removal from the General Assembly shall constitute resignation or removal from membership on the Commission. The terms of the initial members of the Commission shall expire January 15, 1977."

Section 48. Unless otherwise specified, all appointments made by this act are for terms to begin when this act becomes law.

Section 49. This act is effective when it becomes law.

AM.

VISITOR REGISTRATION SHEET

RULES, CALENDAR, AND OPERATIONS OF THE HOUSE **AUGUST 28, 1997**

Name of Committee Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
George Reed	NC Council of Churches
Doris Wicks	Speaker Senior Gas Real Legislature
David Simmons	ZOA PA
David Fenell	Hofer, McNamara Etal
Chip Killian	Moore - Van Allen
Ralph E. Campbell	NCPA
Gene Upchurch	CP&L
Michelle Cook	Weyerhaeuser
Natalie Hoskins	Charlotte Chamber
Carrie Cowles	BPMHL
Mike Carpenter	NCATSA
Sheila M. McKinney	NC DOT
Dan McCoggnodale	NCRMA
J. Mark	NC Assoc of Realtors
W.O. Cornell	SEANC
Curt Williams	Governor's Office
Rosalyn Sawatt	NC Coalition Against Domestic Violence
Susan Salaam	Nationwide
HUGH TILSON	NCHA
Stacy Flannery	SEANC
Hilda M. Miles	Bailey & Dixon LLP
Jane Rangelist	Everyone
Suzzanne Williams	Rose Bone
Tommy Work	CHS
Laurel Hartsell	MCIC
ROBERT SELIGSON	NCMS
Andy Romanet	N.C.L.M.

A.M.

VISITOR REGISTRATION SHEET

RULES, CALENDAR, AND OPERATIONS OF THE HOUSE **AUGUST 28, 1997**

Name of Committee Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Lucia Dell	NC Medical Society
Steve Neave	✓ ✓ ✓
Douglas Van Essen	NC State Board of Cosmetic Art
John Palecki	AT&T
James Dorsett	
Jan McMillan	Mary Kay Cosmetics
Ken Eudy	Capital Strategies
W.R. Hale	Insurance Dept
Dan Long	Small Business
Bob Bird	NANC
Juanita S Mask	Professional Insurance Agents (PIPIA)
Evelyn Armstrong	NC HA
John Bowdish	Zeb Alley P.A.
Robert Ross	Jordan Price Wall Gray & Jones
A B Swindell	BET
Bill SCOGGIN	NCBA
PG	NCFB
John Johnson	Lobbyist
Carroll Price	Soil & Water
[illegible]	Means & Van Allen
Henry Jones	Attorney - Raleigh
Dave Simpson	CAROLINAS AGC
Jim Blackburn	Friend of Dave's
[illegible]	Smith Anderson
Ed Scott	NCCBI
Jim Hardy	NC Sch. Board
Leslie Bullock	NCCBI

MINUTES
COMMITTEE ON RULES, CALENDAR, AND OPERATIONS OF THE HOUSE
August 28, 1997
3:05 P.M.

The Committee on Rules, Calendar, and Operations of the House met August 28, 1997, at 3:05 p.m. in Room 421 of the Legislative Office Building. Representative Morgan, Committee Chair, called the meeting to order and asked the Clerk to call the roll. The following members were present: Representative Bowie, Vice Chair; and Representatives Crawford, Culp, Dockham, Esposito, Gulley, Hill, Miner, Mitchell, Neely, Thompson, and C. Wilson.

The following bill was considered:

Committee substitute for House Joint Resolution 306 - SETTING THE TIME FOR ADJOURNMENT OF THE 1997 GENERAL ASSEMBLY TO MEET IN 1998, LIMITING THE SUBJECTS THAT MAY BE CONSIDERED IN THAT SESSION, AND PROVIDING FOR ADJOURNMENT SINE DIE OF THE GENERAL ASSEMBLY. The Chair recognized Representative Esposito who moved for the adoption of the proposed committee substitute for House Joint Resolution 306 for Committee discussion. Motion carried. Staff Counsel, Linwood Jones, explained the Resolution which states the matters authorized to be considered in the 1997 General Assembly to meet in 1998. Representative Hill sent forth an amendment to amend the bill on page 1, line 7, by changing the time of 4:00 p.m. to 5:00 p.m. and moved for the adoption of the amendment. Motion carried. Representative Esposito moved that the amendment be incorporated into a new committee substitute and given a favorable report; unfavorable to the original bill. Motion carried.

The Chair announced that the Committee would stand in recess until 3:35 p.m..

Representative Richard T. Morgan
Committee Chairman

Anne M. Cole
Acting Committee Clerk

Attachments:
Committee Bill
Amendment
Committee Report

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE.**

☐ Committee Substitute for
H.B. 306 A BILL TO BE ENTITLED AN ACT TO DIRECTLY AFFECT THE STATE BUDGET AND AMEND THE PUBLIC LAWS.

☐ 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 ☐

HOUSE JOINT RESOLUTION

☒ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE JOINT RESOLUTION 306
Proposed Committee Substitute H306-PCS1459

Sponsors:

Referred to:

February 24, 1997

A BILL TO BE ENTITLED

A JOINT RESOLUTION SETTING THE TIME FOR ADJOURNMENT OF THE 1997 GENERAL ASSEMBLY TO MEET IN 1998, LIMITING THE SUBJECTS THAT MAY BE CONSIDERED IN THAT SESSION, AND PROVIDING FOR ADJOURNMENT SINE DIE OF THE GENERAL ASSEMBLY.

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

Section 1. At 4:00 p.m. on Thursday, August 28, 1997, the House of Representatives and the Senate shall adjourn to reconvene at noon on Monday, May 11, 1998. During that session only the following matters may be considered:

(1) Bills directly and primarily affecting the State budget for fiscal year 1998-99, provided that no such bill may be introduced in the House of Representatives or filed for introduction in the Senate after 4:00 p.m. Thursday, May 28, 1998, and any such measure must have been submitted to the Bill Drafting Division of the Legislative Services Office by 4:00 p.m. Thursday, May 21, 1998.

(2) Bills and resolutions introduced in 1997 and having passed third reading in 1997 in the house in which introduced, received in the other house in accordance with Senate Rule 41 or House Rule 31.1(d) as appropriate, and not disposed of in the other house by tabling, unfavorable committee report, indefinite postponement, or failure to pass any reading, and which do not violate the rules of either body.

(3) Bills and resolutions implementing the recommendations of:

a. Study commissions authorized or directed to report to the 1998 Session;
b. The House Ethics Committee; or
c. The Joint Legislative Ethics Committee or its Advisory Subcommittee.

Any bills authorized by this subdivision must be filed for introduction in the Senate or introduced in the House of Representatives no later than 4:00 p.m. Thursday, May 21, 1998, and any such measure must have been submitted to the Bill Drafting Division of the Legislative Services Office by 4:00 p.m. Thursday, May 14, 1998.

(4) Any local bill introduced in the House of Representatives or filed for introduction in the Senate by 4:00 p.m. Wednesday, May 27, 1998, and any such measure must have been submitted to the Bill Drafting Division of the Legislative Services Office by 4:00 p.m. Wednesday, May 20, 1996, and accompanied by a certificate signed by the principal sponsor stating that no public hearing will be required or asked for by a member on the bill, the bill is noncontroversial, and the bill is approved for introduction by each member of the House of Representatives and Senate whose district includes the area to which the bill applies.

(5) Selection, appointment, or confirmation of members of State boards and commissions as required by law, including the filling of vacancies of positions for which the appointees were elected by the General Assembly upon recommendation of the Speaker of the House of Representatives, President of the Senate, or President Pro Tempore of the Senate.

(6) Any matter authorized by joint resolution passed during the 1998 Session by two-thirds majority of the members of the House of Representatives present and voting and by two-thirds majority of the members of the Senate present and voting. A bill or resolution filed in either house under the provisions of this subdivision shall have a copy of the ratified enabling resolution attached to the jacket before filing for introduction in the Senate or introduction in the House of Representatives.

(7) Any bills primarily affecting any State or local pension or retirement system, introduced in the House of Representatives or filed for introduction in the Senate by 4:00 p.m. Wednesday, May 27, 1998, and any such measure must have been submitted to the Bill Drafting Division of the Legislative Services Office by 4:00 p.m. Wednesday, May 20, 1998.

(8) Joint resolutions, House resolutions, and Senate resolutions pertaining to Section 5(10) of Article III of the Constitution of North Carolina.

(9) A joint resolution adjourning the 1997 Regular Session, sine die on a date earlier than provided by Section 3 of this resolution.

(10) Bills to disapprove rules under G.S. 150B-21.3.

Section 2. The Speaker of the House of Representatives or the President Pro Tempore of the Senate may authorize appropriate committees or subcommittees of their respective houses to meet during the interim between sessions to:

(1) Review matters related to the State budget for the 1997-99 biennium,

(2) Prepare reports, including revised budgets, or

(3) Consider any other matters as the Speaker of the House of Representatives or the President Pro Tempore of the Senate deems appropriate,

except that no committee or subcommittee of a house may consider, after the date of adjournment provided in Section 1 of this resolution and before the date of reconvening provided in Section 1 of this resolution, any bill, or proposed committee substitute for such bill, which originated in the other house. A conference committee may meet in the interim upon approval by the Speaker of the House of Representatives or the President Pro Tempore of the Senate.

Section 3. The Senate and House of Representatives constituting the General Assembly of 1997 do adjourn sine die, on Friday, June 19, 1998, at 5:00 p.m.

Section 4. This resolution is effective upon ratification.

VISITOR REGISTRATION SHEET

3pm

RULES, CALENDAR, AND OPERATIONS OF THE HOUSE **AUGUST 28, 1997**

Name of Committee Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Starla N McKenney	NC DOI
Tim Minton	NC Assoc of Real Estate Bds
Ron Commissioner	same
Roz Sawatt	Lobbyist
Alan Myers	Bailey & Dixon LLP
Heather Yates	OSA
Nancy Bradley	NCCPD
Leslie Boroughs	NCCBD
Robert Rawls	Jordan Price Wall Gray & Jones
Adam Searing	NCJAC
[illegible]	DHHS
Angie Harris	Commerce
DG Martin	UNC
Evelyn Hawthorne	NC HA
Gary Harris	NC PMA
Doug Howey	"
Nat Ford	CCNC
Carmen Hooker Buell	CHS
David Simmons	EDA/PA
Amy Case	DEHNR
John Polleastro	AT&T
Stacy Flannery	SEANC
Troy Green	SEANC
Darrell Gerrard	SEANC
Will Lacy	NCAHC
Ken Wright	BCBSNC
Paul Mahoney	NC Hosp Assn

VISITOR REGISTRATION SHEET

3pm

RULES, CALENDAR, AND OPERATIONS OF THE HOUSE **AUGUST 28, 1997**

Name of Committee Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Captain B. Nuttall	USCG
Jean M Killian	Moore Van Allen
A B Swindell, IV	BFI
Michelle Cook	Weyerhaeuser
John Scarborough	Randolph & Cloud + Assoc.
Alice Garland	Electricities
Jane Rudolph	LPD Associates
[illegible]	[illegible]
Robert Henderson	WCDA
Pam Mazza	NFI3

MINUTES
COMMITTEE ON RULES, CALENDAR, AND OPERATIONS OF THE HOUSE
August 28, 1997
4:00 P.M. Meeting

The Committee on Rules, Calendar, and Operations of the House reconvened August 28, 1997, at 4:00 p.m. in Room 421 in the Legislative Office Building. Chairman Morgan called the meeting to order to consider the following bills:

Senate Committee Substitute for Senate Bill 977 - AN ACT TO ENACT INTO LAW THE SOUTHERN DAIRY COMPACT, TO DIRECT THE APPOINTMENT OF MEMBERS FROM NORTH CAROLINA TO THE SOUTHERN DAIRY COMPACT COMMISSION, AND TO APPROPRIATE FUNDS. The Chair recognized Representative Mitchell to explain the bill. He said it is identical to a House bill passed by the House in June; however, the Senate has requested that their bill be acted on. Representative Mitchell made a motion to give Senate Bill 977 a favorable report. Motion carried.

House committee substitute for Senate Bill 843 was before the Committee for reconsideration. Representative Miner offered an amendment. The Chairman recognized Linwood Jones, Staff Counsel, to explain the amendment which clarifies that the provision as written does not override the appointment statute that requires an insurance agent to be appointed by a company to carry out its business.

Bill Hale, Department of Insurance; Susan Valauri, Nationwide Insurance; Jovita Mask, Professional Insurance Association, and Bob Bird representing the Independent Agents, spoke in support of the amendment.

Representative Miner moved for adoption of the amendment. Motion carried. He then moved that the amendment be incorporated into a new committee substitute and be given a favorable report; unfavorable report to original bill. Motion carried.

House committee substitute for Senate Bill 32, TO AUTHORIZE STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, TO CREATE VARIOUS COMMISSIONS, TO CONTINUE A COUNSEL, TO DIRECT STATE AGENCIES AND LEGISLATIVE OVERSIGHT COMMITTEES AND COMMISSIONS TO STUDY SPECIFIED ISSUES, AND TO AMEND CERTAIN LAWS. The Chair recognized Representative Neely who moved for the adoption of House committee substitute for Senate Bill 32 for the purpose of discussion. Staff Counsel was recognized to explain the House committee substitute which deleted a few of the Senate provisions, moved some to different types of studies, and added a significant number of other studies on which House members have filled bills.

Representative Neely made a motion that the House committee substitute for Senate Bill 32 be given a favorable report; unfavorable to the original bill. Motion carried.

There being no further business before the Committee, the meeting adjourned.

Representative Richard T. Morgan
Committee Chair

Anne M. Cole
Acting Committee Clerk

Attachment:
Committee Reports
Bills
Amendment to Senate Bill 843
Visitor's Sheet

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **MORGAN** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE.**

☒ Committee Substitute for
S.B. 977 A BILL TO BE ENTITLED AN ACT TO ENACT INTO LAW THE SOUTHERN DAIRY COMPACT, TO DIRECT THE APPOINTMENT OF MEMBERS FROM NORTH CAROLINA TO THE SOUTHERN DAIRY COMPACT COMMISSION, AND TO APPROPRIATE FUNDS.

☒ 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)

4/24/97

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **MORGAN** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE.**

☒ House Committee Substitute #2 for
S.B. 843 A BILL TO BE ENTITLED AN ACT TO REPEAL OBSOLETE LAWS AND MAKE TECHNICAL AND CLARIFYING AMENDMENTS AND CORRECTIONS IN VARIOUS INSURANCE STATUTES; TO EXTEND THE EXPIRATION DATE OF THE 1986 RISK SHARING PLAN LAW; TO PROVIDE FOR THE LICENSING AND REGULATION OF ENTITIES THAT ADMINISTER WORKERS' COMPENSATION INSURANCE FOR GROUPS OF EMPLOYERS THAT SELF-INSURE; AND TO AMEND THE LAW GOVERNING AGENTS INCLUDING AUTHORIZING PERSONS IN AGENTS' OFFICES TO CALL FOR POLICY EXPIRATIONS.

☐ 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~~ House substitute bill (# 3), ☒ which changes the title, unfavorable as to ~~original bill~~ (House Committee Substitute Bill # 2), ~~(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.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **MORGAN** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE.**

☒ Committee Substitute for
S.B. 32 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, TO CREATE VARIOUS COMMISSIONS, TO CONTINUE A COUNCIL, TO DIRECT STATE AGENCIES AND LEGISLATIVE OVERSIGHT COMMITTEES AND COMMISSIONS TO STUDY SPECIFIED ISSUES, AND TO AMEND CERTAIN LAWS.

☐ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 3

SENATE BILL 977*
Agriculture, Environment, and Natural Resources Committee Substitute Adopted 8/14/97
Third Edition Engrossed 8/27/97

Short Title: Southern Dairy Compact. (Public)

Sponsors:

Referred to: Appropriations.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO ENACT INTO LAW THE SOUTHERN DAIRY COMPACT, TO DIRECT THE APPOINTMENT OF MEMBERS FROM NORTH CAROLINA TO THE SOUTHERN DAIRY COMPACT COMMISSION, AND TO APPROPRIATE FUNDS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 106 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 68.

"Southern Dairy Compact.

"**§ 106-810. Southern Dairy Compact entered into; form of Compact.**

The Southern Dairy Compact is enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

ARTICLE I. Statement of Purpose, Findings, and Declaration of Policy

"**§ 1. Statement of purpose, findings, and declaration of policy.**

The purpose of this compact is to recognize the interstate character of the southern dairy industry and the prerogative of the states under the United States Constitution to form an interstate commission for the southern region. The mission of the Commission is to take such steps as are necessary to assure the continued viability of dairy farming in the South, and to assure consumers of an adequate, local supply of pure and wholesome milk.

The participating states find and declare that the dairy industry is an essential agricultural activity of the South. Dairy farms, and associated suppliers, marketers, processors, and retailers, are an integral component of the region's economy. Their ability to provide a stable, local supply of pure, wholesome milk is a matter of great importance to the health and welfare of the region.

The participating states further find that dairy farms are essential, and they are an integral part of the region's rural communities. The farms preserve land for agricultural purposes and provide needed economic stimuli for rural communities.

By entering into this compact, the participating states affirm that their ability to regulate the price that southern dairy farmers receive for their product is essential to the public interest. Assurance of a fair and equitable price for dairy farmers ensures their ability to provide milk to the market and the vitality of the southern dairy industry, with all the associated benefits.

Recent dramatic price fluctuations, with a pronounced downward trend, threaten the viability and stability of the southern dairy region. Historically, individual state regulatory action had been an effective emergency remedy available to farmers confronting a distressed market. The system of federal orders, implemented by the Agricultural Marketing Agreement Act of 1937, establishes only minimum prices paid to producers for raw milk, without preempting the power of states to regulate milk prices above the minimum levels so established.

In today's regional dairy marketplace, cooperative, rather than individual state action is needed to more effectively address the market disarray. Under our constitutional system, properly authorized states acting cooperatively may exercise more power to regulate interstate commerce than they may assert individually without such authority. For this reason, the participating states invoke their authority to act in common agreement, with the consent of Congress, under the compact clause of the Constitution.

In establishing their constitutional regulatory authority over the region's fluid milk market by this compact, the participating states declare their purpose that this compact neither displace the system of federal orders nor encourage the merging of federal orders. Specific provisions of the compact itself set forth this basic principle.

Designed as a flexible mechanism able to adjust to changes in a regulated marketplace, the compact also contains a contingency provision should the system of federal orders be discontinued. In that event, the interstate commission may regulate the marketplace in lieu of the system of federal orders. This contingent authority does not anticipate such a change, however, and should not be so construed. It is only provided should developments in the market other than establishment of this compact result in discontinuance of the system of federal orders.

ARTICLE II. Definitions and Rules of Construction

"**§ 2. Definitions.**

For the purposes of this compact, and of any supplemental or concurring legislation enacted pursuant thereto, except as may be otherwise required by the context:

(1) 'Class I milk' means milk disposed of in fluid form or as a fluid milk product, subject to further definition in accordance with the principles expressed in subsection (b) of Section 3.

(2) 'Commission' means the Southern Dairy Compact Commission established by this compact.

(3) 'Commission marketing order' means regulations adopted by the Commission pursuant to Sections 9 and 10 of this compact in place of a terminated federal marketing order or state dairy regulation. Such order may apply throughout the region or in any part or parts thereof as defined in the regulations of the Commission. Such order may establish minimum prices for any or all classes of milk.

(4) 'Compact' means this interstate compact.

(5) 'Compact over-order price' means a minimum price required to be paid to producers for Class I milk established by the Commission in regulations adopted pursuant to Sections 9 and 10 of this compact, which is above the price established in federal marketing orders or by state farm price regulation in the regulated area. Such price may apply throughout the region or in any part or parts thereof as defined in the regulations of the Commission.

(6) 'Milk' means the lacteal secretion of cows and includes all skim, butterfat, or other constituents obtained from separation or any other process. The term is used in its broadest sense and may be further defined by the Commission for regulatory purposes.

(7) 'Partially regulated plant' means a milk plant not located in a regulated area but having Class I distribution within such area. Commission regulations may exempt plants having such distribution or receipts in amounts less than the limits defined therein.

(8) 'Participating state' means a state which has become a party to this compact by the enactment of concurring legislation.

(9) 'Pool plant' means any milk plant located in a regulated area.

(10) 'Region' means the territorial limits of the states which are parties to this compact.

(11) 'Regulated area' means any area within the region governed by and defined in regulations establishing a compact over-order price or commission marketing order.

(12) 'State dairy regulation' means any state regulation of dairy prices and associated assessments, whether by statute, marketing order, or otherwise.

"§ 3. Rules of construction.

(a) This compact shall not be construed to displace existing federal milk marketing orders or state dairy regulation in the region but to supplement them. In the event some or all federal orders in the region are discontinued, the compact shall

be construed to provide the Commission the option to replace them with one or more commission marketing orders pursuant to this compact.

(b) This compact shall be construed liberally in order to achieve the purposes and intent enunciated in Section 1. It is the intent of this compact to establish a basic structure by which the Commission may achieve those purposes through the application, adaptation, and development of the regulatory techniques historically associated with milk marketing and to afford the Commission broad flexibility to devise regulatory mechanisms to achieve the purposes of this compact. In accordance with this intent, the technical terms which are associated with market order regulation and which have acquired commonly understood general meanings are not defined herein but the Commission may further define the terms used in this compact and develop additional concepts and define additional terms as it may find appropriate to achieve its purposes.

ARTICLE III. Commission Established

"§ 4. Commission established.

There is hereby created a commission to administer the compact, composed of delegations from each state in the region. The Commission shall be known as the Southern Dairy Compact Commission. A delegation shall include not less than three nor more than five persons. Each delegation shall include at least one dairy farmer who is engaged in the production of milk at the time of appointment or reappointment, and one consumer representative. Delegation members shall be residents and voters of, and subject to such confirmation process as is provided for in, the appointing state. Delegation members shall serve no more than three consecutive terms with no single term of more than four years, and be subject to removal for cause. In all other respects, delegation members shall serve in accordance with the laws of the state represented. The compensation, if any, of the members of a state delegation shall be determined and paid by each state, but their expenses shall be paid by the Commission.

"§ 5. Voting requirements.

All actions taken by the Commission, except for the establishment or termination of an over-order price or commission marketing order, and the adoption, amendment, or rescission of the Commission's bylaws, shall be by majority vote of the delegations present. Each state delegation shall be entitled to one vote in the conduct of the Commission's affairs. Establishment or termination of an over-order price or commission marketing order shall require at least a two-thirds vote of the delegations present. The establishment of a regulated area that covers all or part of a participating state shall require also the affirmative vote of that state's delegation. A majority of the delegations from the participating states shall constitute a quorum for the conduct of the Commission's business.

"§ 6. Administration and management.

(a) The Commission shall elect annually from among the members of the participating state delegations a chairperson, a vice-chairperson, and a treasurer. The Commission shall appoint an executive director and fix his or her duties and compensation. The executive director shall serve at the pleasure of the Commission,

and, together with the treasurer, shall be bonded in an amount determined by the Commission. The Commission may establish through its bylaws an executive committee composed of one member elected by each delegation.

(b) The Commission shall adopt bylaws for the conduct of its business by a two-thirds vote and shall have the power by the same vote to amend and rescind these bylaws. The Commission shall publish its bylaws in convenient form with the appropriate agency or officer in each of the participating states. The bylaws shall provide for appropriate notice to the delegations of all Commission meetings and hearings and of the business to be transacted at such meetings or hearings. Notice also shall be given to other agencies or officers of participating states as provided by the laws of those states.

(c) The Commission shall file an annual report with the Secretary of Agriculture of the United States, and with each of the participating states by submitting copies to the Governor, both houses of the legislature, and the head of the state department having responsibilities for agriculture.

(d) In addition to the powers and duties elsewhere prescribed in this compact, the Commission may engage in all of the following:

(1) Sue and be sued in any state or federal court.

(2) Have a seal and alter the same at pleasure.

(3) Acquire, hold, and dispose of real and personal property by gift, purchase, lease, license, or other similar manner, for its corporate purposes.

(4) Borrow money and to issue notes, to provide for the rights of the holders thereof, and to pledge the revenue of the Commission as security therefor, subject to the provisions of Section 18 of this compact.

(5) Appoint such officers, agents, and employees as it may deem necessary, prescribe their powers, duties, and qualifications.

(6) Create and abolish such offices, employments, and positions as it deems necessary for the purposes of the compact and provide for the removal, term, tenure, compensation, fringe benefits, pension, and retirement rights of its officers and employees.

(7) Retain personal services on a contract basis.

"§ 7. Rule-making power.

In addition to the power to promulgate a compact over-order price or commission marketing orders as provided by this compact, the Commission is further empowered to make and enforce such additional rules and regulations as it deems necessary to implement any provisions of this compact, or to effectuate in any other respect the purposes of this compact.

ARTICLE IV. Powers of the Commission

"§ 8. Powers to promote regulatory uniformity, simplicity, and interstate cooperation.

The Commission may:

(1) Investigate or provide for investigations or research projects designed to review the existing laws and regulations of the

participating states, to consider their administration and costs, to measure their impact on the production and marketing of milk and their effects on the shipment of milk and milk products within the region.

(2) Study and recommend to the participating states joint or cooperative programs for the administration of the dairy marketing laws and regulations and to prepare estimates of cost savings and benefits of such programs.

(3) Encourage the harmonious relationships between the various elements in the industry for the solution of their material problems. Conduct symposia or conferences designed to improve industry relations, or a better understanding of problems.

(4) Prepare and release periodic reports on activities and results of the Commission's efforts to the participating states.

(5) Review the existing marketing system for milk and milk products and recommend changes in the existing structure for assembly and distribution of milk which may assist, improve, or promote more efficient assembly and distribution of milk.

(6) Investigate costs and charges for producing, hauling, handling, processing, distributing, selling, and for all other services, performed with respect to milk.

(7) Examine current economic forces affecting producers, probable trends in production and consumption, the level of dairy farm prices in relation to costs, the financial conditions of dairy farmers, and the need for an emergency order to relieve critical conditions on dairy farms.

"**§ 9. Equitable farm prices.**

(a) The powers granted in this section and Section 10 shall apply only to the establishment of a compact over-order price, so long as federal milk marketing orders remain in effect in the region. In the event that any or all such orders are terminated, this Article authorizes the Commission to establish one or more commission marketing orders, as herein provided, in the region or parts thereof as defined in the order.

(b) A compact over-order price established pursuant to this section shall apply only to Class I milk. Such compact over-order price shall not exceed one dollar and fifty cents ($1.50) per gallon at Atlanta, Georgia, however, this compact over-order price shall be adjusted upward or downward at other locations in the region to reflect differences in minimum federal order prices. Beginning in 1990, and using that year as a base, the foregoing one dollar and fifty cents ($1.50) per gallon maximum shall be adjusted annually by the rate of change in the Consumer Price Index as reported by the Bureau of Labor Statistics of the United States Department of Labor. For purposes of the pooling and equalization of an over-order price, the value of milk used in other use classifications shall be calculated at the appropriate class price established pursuant to the applicable federal order or state dairy regulation and the

value of unregulated milk shall be calculated in relation to the nearest prevailing class price in accordance with and subject to such adjustments as the Commission may prescribe in regulations.

(c) A commission marketing order shall apply to all classes and uses of milk.

(d) The Commission may establish a compact over-order price for milk to be paid by pool plants and partially regulated plants. The Commission also may establish a compact over-order price to be paid by all other handlers receiving milk from producers located in a regulated area. This price shall be established either as a compact over-order price or by one or more commission marketing orders. Whenever such a price has been established by either type of regulation, the legal obligation to pay such price shall be determined solely by the terms and purpose of the regulation without regard to the situs of the transfer of title, possession, or any other factors not related to the purposes of the regulation and this compact. Producer-handlers as defined in an applicable federal market order shall not be subject to a compact over-order price. The Commission shall provide for similar treatment of producer-handlers under commission marketing orders.

(e) In determining the price, the Commission shall consider the balance between production and consumption of milk and milk products in the regulated area, the costs of production including, but not limited to, the price of feed, the cost of labor including the reasonable value of the producer's own labor and management, machinery expense and interest expense, the prevailing price for milk outside the regulated area, the purchasing power of the public, and the price necessary to yield a reasonable return to the producer and distributor.

(f) When establishing a compact over-order price, the Commission shall take such other action as is necessary and feasible to help ensure that the over-order price does not cause or compensate producers so as to generate local production of milk in excess of those quantities necessary to assure consumers of an adequate supply for fluid purposes.

(g) The Commission shall whenever possible enter into agreements with state or federal agencies for exchange of information or services for the purpose of reducing regulatory burden and cost of administering the compact. The Commission may reimburse other agencies for the reasonable cost of providing these services.

"§ 10. Optional provisions for pricing order.

Regulations establishing a compact over-order price or a commission marketing order may contain, but shall not be limited to, any of the following:

(1) Provisions classifying milk in accordance with the form in which or purpose for which it is used, or creating a flat pricing program.

(2) With respect to a commission marketing order only, provisions establishing or providing a method for establishing separate minimum prices for each use classification prescribed by the Commission, or a single minimum price for milk purchased from producers or associations of producers.

(3) With respect to an over-order minimum price, provisions establishing or providing a method for establishing such minimum price for Class I milk.

(4) Provisions for establishing either an over-order price or a commission marketing order may make use of any reasonable method for establishing such price or prices including flat pricing and formula pricing. Provision may also be made for location adjustments, zone differentials, and competitive credits with respect to regulated handlers who market outside the regulated area.

(5) Provisions for the payment to all producers and associations of producers delivering milk to all handlers of uniform prices for all milk so delivered, irrespective of the uses made of such milk by the individual handler to whom it is delivered, or for the payment of producers delivering milk to the same handler of uniform prices for all milk delivered by them.

a. With respect to regulations establishing a compact over-order price, the Commission may establish one equalization pool within the regulated area for the sole purpose of equalizing returns to producers throughout the regulated area.

b. With respect to any commission marketing order, as defined in Section 2, subdivision (9), which replaces one or more terminated federal orders or state dairy regulation, the marketing area of now separate state or federal orders shall not be merged without the affirmative consent of each state, voting through its delegation, which is partly or wholly included within any such new marketing area.

(6) Provisions requiring persons who bring Class I milk into the regulated area to make compensatory payments with respect to all such milk to the extent necessary to equalize the cost of milk purchased by handlers subject to a compact over-order price or commission marketing order. No such provisions shall discriminate against milk producers outside the regulated area. The provisions for compensatory payments may require payment of the difference between the Class I price required to be paid for such milk in the state of production by a federal milk marketing order or state dairy regulation and the Class I price established by the compact over-order price or commission marketing order.

(7) Provisions specially governing the pricing and pooling of milk handled by partially regulated plants.

(8) Provisions requiring that the account of any person regulated under the compact over-order price shall be adjusted for any payments made to or received by such persons with respect to a

producer settlement fund of any federal or state milk marketing order or other state dairy regulation within the regulated area.

(9) Provision requiring the payment by handlers of an assessment to cover the costs of the administration and enforcement of such order pursuant to subsection (a) of Section 18 of Article VII.

(10) Provisions for reimbursement to participants of the Women, Infants and Children Special Supplemental Food Program of the United States Child Nutrition Act of 1966.

(11) Other provisions and requirements as the Commission may find are necessary or appropriate to effectuate the purposes of this compact and to provide for the payment of fair and equitable minimum prices to producers.

ARTICLE V. Rule-Making Procedure.

"§ 11. Rule-making procedure.

Before promulgation of any regulations establishing a compact over-order price or commission marketing order, including any provision with respect to milk supply under subsection (f) of Section 9, or amendment thereof, as provided in Article IV, the Commission shall conduct an informal rule-making proceeding to provide interested persons with an opportunity to present data and views. Such rule-making proceeding shall be governed by Section 4 of the Federal Administrative Procedure Act, as amended (5 U.S.C. § 553). In addition, the Commission shall, to the extent practicable, publish notice of rule-making proceedings in the official register of each participating state. Before the initial adoption of regulations establishing a compact over-order price or a commission marketing order and thereafter before any amendment with regard to prices or assessments, the Commission shall hold a public hearing. The Commission may commence a rule-making proceeding on its own initiative or may in its sole discretion act upon the petition of any person including individual milk producers, any organization of milk producers or handlers, general farm organizations, consumer or public interest groups, and local, state or federal officials.

"§ 12. Findings and referendum.

(a) In addition to the concise general statement of basis and purpose required by section 4(b) of the Federal Administrative Procedure Act, as amended (5 U.S.C. § 53 (c)), the Commission shall make findings of fact with respect to:

(1) Whether the public interest will be served by the establishment of minimum milk prices to dairy farmers under Article IV.

(2) What level of prices will assure that producers receive a price sufficient to cover their costs of production and will elicit an adequate supply of milk for the inhabitants of the regulated area and for manufacturing purposes.

(3) Whether the major provisions of the order, other than those fixing minimum milk prices, are in the public interest and are reasonably designed to achieve the purposes of the order.

(4) Whether the terms of the proposed regional order or amendment are approved by producers as provided in Section 13.

"**§ 13. Producer referendum.**

(a) For the purpose of ascertaining whether the issuance or amendment of regulations establishing a compact over-order price or a commission marketing order, including any provision with respect to milk supply under subsection (f) of Section 9, is approved by producers, the Commission shall conduct a referendum among producers. The referendum shall be held in a timely manner, as determined by regulation of the Commission. The terms and conditions of the proposed order or amendment shall be described by the Commission in the ballot used in the conduct of the referendum, but the nature, content, or extent of such description shall not be a basis for attacking the legality of the order or any action relating thereto.

(b) An order or amendment shall be deemed approved by producers if the Commission determines that it is approved by at least two-thirds of the voting producers who, during a representative period determined by the Commission, have been engaged in the production of milk the price of which would be regulated under the proposed order or amendment.

(c) For purposes of any referendum, the Commission shall consider the approval or disapproval by any cooperative association of producers, qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the Capper-Volstead Act, bona fide engaged in marketing milk, or in rendering services for or advancing the interests of producers of such commodity, as the approval or disapproval of the producers who are members or stockholders in, or under contract with, such cooperative association of producers, except as provided in subdivision (1) of this subsection and subject to the provisions of subdivisions (2) through (5) of this subsection.

(1) No cooperative that has been formed to act as a common marketing agency for both cooperatives and individual producers shall be qualified to block vote for either.

(2) Any cooperative that is qualified to block vote shall, before submitting its approval or disapproval in any referendum, give prior written notice to each of its members as to whether and how it intends to cast its vote. The notice shall be given in a timely manner as established, and in the form prescribed, by the Commission.

(3) Any producer may obtain a ballot from the Commission in order to register approval or disapproval of the proposed order.

(4) A producer who is a member of a cooperative which has provided notice of its intent to approve or not to approve a proposed order, and who obtains a ballot and with such ballot expresses his or her approval or disapproval of the proposed order, shall notify the Commission as to the name of the cooperative of which he or she is a member, and the Commission shall remove such producer's

name from the list certified by such cooperative with its corporate vote.

(5) In order to ensure that all milk producers are informed regarding a proposed order, the Commission shall notify all milk producers that an order is being considered and that each producer may register his or her approval or disapproval with the Commission either directly or through his or her cooperative.

"§ 14. Termination of over-order price or marketing order.

(a) The Commission shall terminate any regulations establishing an over-order price or commission marketing order issued under this Article whenever it finds that such order or price obstructs or does not tend to effectuate the declared policy of this compact.

(b) The Commission shall terminate any regulations establishing an over-order price or a commission marketing order issued under this Article whenever it finds that such termination is favored by a majority of the producers who, during a representative period determined by the Commission, have been engaged in the production of milk, the price of which is regulated by such order; but such termination shall be effective only if announced on or before such date as may be specified in such marketing agreement or order.

(c) The termination or suspension of any order or provision thereof, shall not be considered an order within the meaning of this Article and shall require no hearing, but shall comply with the requirements for informal rule making prescribed by Section 4 of the Federal Administrative Procedure Act, as amended (5 U.S.C. § 553).

ARTICLE VI. Enforcement

"§ 15. Records, reports, access to premises.

(a) The Commission may by rule and regulation prescribe record keeping and reporting requirements for all regulated persons. For purposes of the administration and enforcement of this compact, the Commission may examine the books and records of any regulated person relating to his or her milk business and for that purpose, the Commission's properly designated officers, employees, or agents shall have full access during normal business hours to the premises and records of all regulated persons.

(b) Information furnished to or acquired by the Commission officers, employees, or its agents pursuant to this section shall be confidential and not subject to disclosure except to the extent that the Commission deems disclosure to be necessary in any administrative or judicial proceeding involving the administration or enforcement of this compact, an over-order price, a compact marketing order, or other regulations of the Commission. The Commission may adopt rules further defining the confidentiality of information pursuant to this section. Nothing in this section shall be deemed to prohibit (i) the issuance of general statements based upon the reports of a number of handlers, which do not identify the information furnished by any person, or (ii) the publication by direction of the Commission of the name of any person violating any regulation of the Commission, together with a statement of the particular provisions violated by such person.

(c) No officer, employee, or agent of the Commission shall intentionally disclose information, by inference or otherwise, that is made confidential pursuant to this section. Any person violating the provisions of this section shall, upon conviction, be subject to a fine of not more than one thousand dollars ($1,000) or to imprisonment for not more than one year, or both, and shall be removed from office. The Commission shall refer any allegation of a violation of this section to the appropriate state enforcement authority or United States Attorney.

"§ 16. Subpoena, hearings, and judicial review.

(a) The Commission is hereby authorized and empowered by its members and its properly designated officers to administer oaths and issue subpoenas throughout all signatory states to compel the attendance of witnesses and the giving of testimony and the production of other evidence.

(b) Any handler subject to an order may file a written petition with the Commission stating that any order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with law and praying for a modification thereof or to be exempted therefrom. The handler shall thereupon be given an opportunity for a hearing upon such petition, in accordance with regulations made by the Commission. After such hearing, the Commission shall make a ruling upon the prayer of such petition which shall be final, if in accordance with law.

(c) The district courts of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, are hereby vested with jurisdiction to review such ruling, provided a complaint for that purpose is filed within 30 days from the date of the entry of the ruling. Service of process in these proceedings may be had upon the Commission by delivering to it a copy of the complaint. If the court determines that the ruling is not in accordance with law, it shall remand such proceedings to the Commission with directions either (i) to make such ruling as the court shall determine to be in accordance with law, or (ii) to take such further proceedings as, in its opinion, the law requires. The pendency of proceedings instituted pursuant to this subdivision shall not impede, hinder, or delay the Commission form obtaining relief pursuant to Section 17. Any proceedings brought pursuant to Section 17, except where brought by way of counterclaim in proceedings instituted pursuant to this section, shall abate whenever a final decree has been rendered in proceedings between the same parties, and covering the same subject matter, instituted pursuant to this section.

"§ 17. Enforcement with respect to handlers.

(a) Any violation by a handler of the provisions of regulation establishing an over-order price or a commission marketing order, or other regulations adopted pursuant to this compact shall:

(1) Constitute a violation of the laws of each of the signatory states. Such violation shall render the violator subject to a civil penalty in an amount as may be prescribed by the laws of each of the participating states, recoverable in any state or federal court of

competent jurisdiction. Each day such violation continues shall constitute a separate violation.

(2) Constitute grounds for the revocation of license or permit to engage in the milk business under the applicable laws of the participating states.

(b) With respect to handlers, the Commission shall enforce the provisions of this compact, regulations establishing an over-order price, a commission marketing order or other regulations adopted hereunder by:

(1) Commencing an action for legal or equitable relief brought in the name of the Commission in any state or federal court of competent jurisdiction; or

(2) Referral to the state agency for enforcement by judicial or administrative remedy with the agreement of the appropriate state agency of a participating state.

(c) With respect to handlers, the Commission may bring an action for injunction to enforce the provisions of this compact or the order or regulations adopted thereunder without being compelled to allege or prove that an adequate remedy of law does not exist.

ARTICLE VII. Finance

"**§ 18. Finance of start-up and regular costs.**

(a) To provide for its start-up costs, the Commission may borrow money pursuant to its general power under Section 6, subdivision (d), paragraph 4. In order to finance the cost of administration and enforcement of this compact, including payback of start-up costs, the Commission may collect an assessment from each handler who purchases milk from producers within the region. If imposed, this assessment shall be collected on a monthly basis for up to one year from the date the Commission convenes, in an amount not to exceed $.015 per hundred weight of milk purchased from producers during the period of the assessment. The initial assessment may apply to the projected purchases of handlers for the two-month period following the date the Commission convenes. In addition, if regulations establishing an over-order price or a compact marketing order are adopted, they may include an assessment for the specific purpose of their administration. These regulations shall provide for establishment of a reserve for the Commission's ongoing operating expenses.

(b) The Commission shall not pledge the credit of any participating state or of the United States. Notes issued by the Commission and all other financial obligations incurred by it, shall be its sole responsibility and no participating state or the United States shall be liable therefor.

"**§ 19. Audit and accounts.**

(a) The Commission shall keep accurate accounts of all receipts and disbursements, which shall be subject to the audit and accounting procedures established under its rules. In addition, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a qualified public accountant

and the report of the audit shall be included in and become part of the annual report of the Commission.

(b) The accounts of the Commission shall be open at any reasonable time for inspection by duly constituted officers of the participating states and by any persons authorized by the Commission.

(c) Nothing contained in this Article shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any participating state or of the United States.

ARTICLE VIII. Entry into Force; Additional Members and Withdrawal

"§ 20. Entry into force; additional members.

The compact shall enter into force effective when enacted into law by any three states of the group of states composed of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia and when the consent of Congress has been obtained.

"§ 21. Withdrawal from compact.

Any participating state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after notice in writing of the withdrawal is given to the Commission and the governors of all the participating states. No withdrawal shall affect any liability already already incurred by or chargeable to a participating state prior to the time of such withdrawal.

"§ 22. Severability.

If any part or provision of this compact is adjudged invalid by any court, such judgment shall be confined in its operation to the part or provision directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this compact. In the event Congress consents to this compact subject to conditions, said conditions shall not impair the validity of this compact when said conditions are accepted by three or more compacting states. A compact state may accept the conditions of Congress by implementation of this compact.

"§ 106-811. Appointment of members to the Southern Dairy Compact Commission.

(a) The delegation from the State of North Carolina to the Southern Dairy Compact Commission, as established in Article IV of the Compact, shall be composed of five members appointed as follows:

(1) One member representing consumers of milk, appointed by the Governor.

(2) One member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives.

(3) One member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate.

(4) Two members appointed by the Commissioner of Agriculture, one of whom shall be a dairy farmer engaged in the production of milk at the time of appointment or reappointment.

(b) Members must be registered to vote in the State.

(c) Members shall serve a term of four years and may be reappointed, but no member shall serve more than three consecutive terms. Members shall serve until their successors are duly appointed. Any appointment to fill an unexpired term shall be for the balance of the unexpired term and shall be made by the appropriate appointing authority. A member may be removed by the appointing authority, in accordance with G.S. 143B-13. The Commissioner of Agriculture shall designate one member of the delegation to serve as chair, at the pleasure of the Commissioner.

(d) Members of the delegation shall receive per diem and necessary travel and subsistence expenses in accordance with G.S. 138-5.

(e) A majority of the delegation shall constitute a quorum for the transaction of business.

(f) All clerical and other services required by the delegation shall be provided by the Commissioner of Agriculture."

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

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 843

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

S843-ARB-8/28.1

Date_____,1997

Comm. Sub. [YES]
Amends Title [YES]
Proposed Committee Substitute S843-PCS1896

Representative_____

moves to amend the bill on page 1, line 8, by inserting a period at the end of that line;

and on page 1, lines 9 and 10, by deleting those lines;

and on page 30, line 11, by rewriting that line to read:
"Notwithstanding G.S. 58-33-25(g), an insurer or service corporation offering managed care products and an HMO";

and on page 30, line 13, by rewriting the line to read:
"inquire about or secure group health coverage for the employer. If coverage is placed, the agent or broker shall receive the same commission as brokers or appointed agents for the same coverage.'";

and on page 31, lines 3 through 16, by deleting those lines;

and on page 31, line 19, by deleting the quotation marks at the end of that line;

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 843

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

S843-ARB-8/28.1 Page 2 of __

and on page 31, lines 19 and 20, by inserting the following between those lines:

"(6) The Commissioner may adopt rules to carry out the provisions of this subsection.'"

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 843
Pensions & Retirement and Insurance Committee Substitute Adopted 4/29/97
House Committee Substitute Favorable 8/18/97
Proposed Committee Substitute S843-PCS1899

Short Title: Insurance Changes. (Public)

Sponsors:

Referred to:

April 15, 1997

A BILL TO BE ENTITLED

AN ACT TO REPEAL OBSOLETE LAWS AND MAKE TECHNICAL AND CLARIFYING AMENDMENTS AND CORRECTIONS IN VARIOUS INSURANCE STATUTES; TO EXTEND THE EXPIRATION DATE OF THE 1986 RISK SHARING PLAN LAW; TO PROVIDE FOR THE LICENSING AND REGULATION OF ENTITIES THAT ADMINISTER WORKERS' COMPENSATION INSURANCE FOR GROUPS OF EMPLOYERS THAT SELF-INSURE; AND TO AMEND THE LAW GOVERNING AGENTS.

The General Assembly of North Carolina enacts:

PART I. REPEALS OF OBSOLETE OR UNNECESSARY PROVISIONS.

Section 1. G.S. 58-3-125, 58-6-10, 58-7-150, 58-41-35, and 58-71-90 are repealed.

Section 2. G.S. 58-2-120 reads as rewritten:

"**§ 58-2-120. Reports of Commissioner to the Governor and General Assembly.**

~~The Commissioner shall biennially submit to the General Assembly, through the Governor, a report of his official acts, including a summary of official rulings and regulations.~~ The Commissioner shall, from time to time, report to the Governor and the General Assembly any change ~~which~~ that in ~~his~~ the Commissioner's opinion should be made in the laws relating to insurance and other subjects pertaining to ~~his department. On or before the first day of February of each year in which the General Assembly is in session he shall make to the Governor the recommendations called for~~

~~in this section, to be transmitted to the General Assembly, with the last annual report of this Department, including receipts and disbursements.~~ the Department."

Section 3. G.S. 58-87-10(e) reads as rewritten:

"(e) Revenue Source. -- Revenue is credited to the Workers' Compensation Fund from appropriations made to the Department of Insurance for this purpose. In addition, every eligible unit that elects to participate shall pay into the Fund an amount set annually by the State Fire and Rescue Commission to ensure that the Fund will be able to meet its payment obligations under this section. The amount shall be set as a per capita fixed dollar amount for each member of the roster of the eligible unit.

The payment shall be made to the State Fire and Rescue Commission on or before July 1 of each year. The Commission shall remit the payments it receives to the State Treasurer, who shall credit the payments to the Fund. ~~If the Commission does not receive an annual payment from an eligible unit by July 1, then that unit shall not receive workers' compensation coverage from the Fund for the fiscal year that begins that July 1.~~"

Section 4. G.S. 120-123(55) and (65) are repealed.

Section 5. G.S. 58-36-15(e) reads as rewritten:

"(e) The Commissioner may require the filing of supporting data including:

(1) The Bureau's interpretation of any statistical data relied upon;
(2) Descriptions of the methods employed in setting the rates;
(3) Analysis of the incurred losses submitted on an accident year or policy year basis into their component parts; to wit, paid losses, reserves for losses and loss expenses, and reserves for losses incurred but not reported;
(4) The total number and dollar amount of paid claims;
(5) The total number and dollar amount of case basis reserve claims;
(6) Earned and written premiums at current rates by rating territory;
(7) Earned premiums and incurred losses according to classification plan categories; and
(8) Income from investment of unearned premiums and loss and loss expense reserves generated by business within this State.

~~Provided, however, that with respect to business written prior to January 1, 1980, the Commissioner shall not require the filing of such supporting data which has not been required to be recorded under statistical plans approved by the Commissioner.~~"

Section 6. G.S. 58-3-115 reads as rewritten:

"**§ 58-3-115. Twisting with respect to insurance policies; penalties.**

No insurer shall make or issue, or cause to be issued, any written or oral statement that willfully misrepresents or willfully makes an incomplete comparison as to the terms, conditions, or benefits contained in any policy of insurance for the purpose of inducing or attempting to induce a policyholder in any way to terminate or surrender, exchange, or convert any insurance policy. Any person who violates this section is subject to the provisions of ~~G.S. 58-2-70, 58-3-90 through 58-3-100, and 58-3-125.~~ G.S. 58-2-70 or G.S. 58-3-100."

Section 7. G.S. 58-30-75(7) reads as rewritten:

"(7) Without first obtaining the written consent of the ~~Commissioner pursuant to G.S. 58-7-150,~~ Commissioner, the insurer has (i) transferred, or attempted to transfer, in a manner contrary to Article 19 of this Chapter, substantially its entire property or business, or (ii) has entered into any transaction, the effect of which is to merge, consolidate, or reinsure substantially its entire property or business in or with the property or business of any other person."

Section 8. G.S. 58-41-40(a) reads as rewritten:

"(a) There is no liability on the part of and no cause of action for defamation or invasion of privacy arises against any insurer or its authorized representatives, agents, or employees, or any licensed insurance agent or broker, for any communication or statement made, unless shown to have been made in bad faith with malice, in any of the following:

(1) A written notice of cancellation under ~~G.S. 58-41-15,~~ G.S. 58-41-15 or of nonrenewal under G.S. 58-41-20, ~~or of cessation of business through an agency under G.S. 58-41-35,~~ specifying the reasons ~~therefor;~~ for cancellation.

(2) Communications providing information pertaining to ~~such cancellation, nonrenewal, or cessation of business through an agency;~~ the cancellation or nonrenewal.

(3) Evidence submitted at any court proceeding, administrative hearing, or informal inquiry in which ~~such cancellation, nonrenewal, or cessation of business through an agency~~ the cancellation or nonrenewal is an issue."

PART II. AMENDMENTS NECESSARY BECAUSE OF 1995 REWRITE OF G.S. 58-2-50.

Section 9. G.S. 58-34-2(j) reads as rewritten:

"(j) The Commissioner shall disapprove any such contract that:

(1) Does not contain the required contract provisions specified in subsection (d) of this section;

(2) Subjects the insurer to excessive charges for expenses or commission;

(3) Vests in the MGA any control over the management of the affairs of the insurer to the exclusion of the board of directors of the insurer;

(4) Is entered into with any person if the person or its officers and directors are of known bad character or have been affiliated directly or indirectly through ownership, control, management, reinsurance transactions, or other insurance or business relationships with any person known to have been involved in the improper manipulation of assets, accounts, or reinsurance; or

(5) Is determined by the Commissioner to contain provisions that are not fair and reasonable to the insurer.

Failure of the Commissioner to disapprove any such contract within 30 days after the contract has been filed with the Commissioner constitutes the Commissioner's approval of the contract. An insurer may continue to accept business from ~~such~~ the person until the Commissioner disapproves the contract. Any disapproval shall be in writing. The Commissioner ~~may, after a hearing held under G.S. 58-2-50,~~ may withdraw approval of any contract the Commissioner has previously approved ~~upon finding~~ if the Commissioner determines that the basis of the original approval no longer exists or that the contract has, in actual operation, shown itself to be subject to disapproval on any of the grounds in this subsection. If the Commissioner withdraws approval of a contract, the Commissioner shall give the insurer notice of, and written reasons for, the withdrawal of approval. The Commissioner shall grant any party to the contract a hearing upon request."

Section 10. G.S. 58-34-15(b) reads as rewritten:

"(b) If the Commissioner disapproves any management contract, ~~notice of such action shall be given to the insurer assigning the reasons therefor in writing.~~ the Commissioner shall give notice of, and written reasons for, the disapproval to the insurer. The Commissioner shall grant any party to the contract a hearing upon ~~request according to G.S. 58-2-50.~~ request."

Section 11. G.S. 58-40-100 reads as rewritten:

"§ 58-40-100. Request for review of rate, rating plan, rating system or underwriting rule.

(a) Any person aggrieved by any rate charged, rating plan, rating system, or underwriting rule followed or adopted by an insurer or rating organization may request in writing that the insurer or rating organization ~~to~~ review the manner in which the rate, plan, system, or rule has been applied with respect to ~~insurance afforded him. Such request may be made by his authorized representative, and shall be in writing.~~ the person's insurance. The person's authorized representative may make the request. If the request is not granted within 30 days after it is made, the requestor may treat it as rejected. Any person aggrieved by the action of an insurer or rating organization in refusing the review requested or in failing or refusing to grant all or part of the relief requested, may file a written complaint and request for hearing with the Commissioner, and shall specify the grounds relied upon. If the Commissioner has information concerning a similar ~~complaint he~~ complaint, the Commissioner may deny the hearing. If the Commissioner believes that probable cause for the complaint does not exist or that the complaint is not made in good faith, ~~he~~ the Commissioner shall deny the hearing. If the Commissioner finds that the complaint charges a violation of this Article and that the complainant would be aggrieved if the violation is proven, ~~he~~ the Commissioner shall proceed as provided in G.S. ~~58-2-50 or~~ 58-2-70.

(b) Repealed by Session Laws 1985 (Regular Session, 1986), c. 1027, s. 15."

Section 12. G.S. 58-42-1 reads as rewritten:

"§ 58-42-1. Establishment of plans.

If the Commissioner finds, after a ~~hearing held in accordance with G.S. 58-2-50,~~ hearing, that in all or any part of this State, any amount or kind of insurance authorized by G.S. 58-7-15(4) through G.S. 58-7-15(22) is not readily available in the voluntary market and that the public interest requires the availability of that insurance, ~~he~~ the Commissioner may either:

(1) Promulgate plans to provide insurance coverage for any risks in this State that are, based on reasonable underwriting standards, entitled to obtain but are otherwise unable to obtain coverage; or

(2) Call upon insurers to prepare plans for ~~his~~ the Commissioner's approval."

Section 13. G.S. 58-45-50 reads as rewritten:

"**§ 58-45-50. Appeal from acts of Association to Commissioner; appeal from Commissioner to superior court.**

Any person or any insurer who may be aggrieved by an act, ruling or decision of the Association other than an act, ruling or decision relating to the cause or amount of a claimed loss, may, within 30 days after ~~such ruling~~ the ruling, appeal to the Commissioner. Any hearings held by the Commissioner ~~pursuant to such an~~ under the appeal shall be in accordance with ~~the procedure set forth in G.S. 58-2-50:~~ rules adopted by the Commissioner: Provided, however, the Commissioner is authorized to appoint a member of ~~his~~ the Commissioner's staff as deputy commissioner for the purpose of hearing ~~such~~ those appeals and a ruling based upon ~~such~~ the hearing ~~shall have~~ has the same effect as if heard by the Commissioner. All persons or insureds aggrieved by any order or decision of the Commissioner may appeal as ~~is~~ provided ~~by the provisions of~~ in G.S. 58-2-75.

No later than 20 days before each hearing, the appellant shall file with the Commissioner or his designated hearing officer and shall serve on the appellee a written statement of ~~his~~ the appellant's case and any evidence ~~he~~ that the appellant intends to offer at the hearing. No later than five days before ~~such~~ the hearing, the appellee shall file with the Commissioner or ~~his~~ the designated hearing officer and shall serve on the appellant a written statement of ~~his~~ the appellant's case and any evidence ~~he~~ that the appellee intends to offer at the hearing. ~~Each such hearing shall be recorded and transcribed. The cost of such recording and transcribing shall be borne equally by the appellant and appellee; provided that upon any final adjudication the prevailing party shall be reimbursed for his share of such costs by the other party.~~ The procedures governing recordings of hearings and, if necessary, transcripts of recordings, as well as the fees for copies of recordings and transcripts, shall be determined by rules adopted by the Commissioner. Each party shall, on a date determined by the Commissioner or his designated hearing officer, but not sooner than 15 days after delivery of the completed transcript to the party, submit to the Commissioner or his designated hearing officer and serve on the other party, a proposed order. The Commissioner or his designated hearing officer shall then issue an order."

Section 14. G.S. 58-45-70 reads as rewritten:

"**§ 58-45-70. Commissioner may examine affairs of Association.**

The Commissioner may from time to time make an examination into the affairs of the Association when ~~he~~ the Commissioner deems it to be ~~prudent and in undertaking such examination he~~ prudent, and as part of the examination the Commissioner may hold a public ~~hearing pursuant to the provisions of G.S. 58-2-50.~~ hearing. ~~The expenses of such examination shall be borne and paid by the Association.~~ The Association shall pay the expenses of the examination."

Section 15. G.S. 58-46-20(c) reads as rewritten:

"(c) The Commissioner may designate the kinds of property insurance policies on principal residences to be offered by the association, including insurance policies under Article 36 of this Chapter, and the commission rates to be paid to agents or brokers for these policies, if ~~he~~ the Commissioner finds, after a ~~hearing held in accordance with G.S. 58-2-50,~~ hearing, that the public interest requires the designation. The provisions of Chapter 150B of the General Statutes do not apply to any procedure under this subsection, except that G.S. 150B-39 and G.S. 150B-41 shall apply to a hearing under this subsection. Within 30 days after the receipt of notification from the Commissioner of a change in designation ~~pursuant to~~ under this subsection, the association shall submit a revised plan and articles of association for approval in accordance with subsection (b) of this section."

Section 16. G.S. 58-46-30 reads as rewritten:

"**§ 58-46-30. Appeals; judicial review.**

The association shall provide reasonable means, to be approved by the Commissioner, whereby any person or insurer affected by any act or decision of the administrators of the Plan or underwriting association, other than an act or decision relating to the cause or amount of a claimed loss, may be heard in person or by an authorized representative, before the governing board of the association or a designated committee. Any person or insurer aggrieved by any decision of the governing board or designated committee, may be appealed to the Commissioner within 30 days from the date of ~~such~~ the ruling or decision. The Commissioner, after hearing held ~~pursuant to the procedure set forth in G.S. 58-2-50,~~ under rules adopted by the Commissioner, shall issue an order approving or disapproving the act or decision with respect to the matter ~~which~~ that is the subject of appeal. The Commissioner ~~is authorized to~~ may appoint a member of ~~his~~ the Commissioner's staff as deputy commissioner for the purpose of hearing ~~such~~ the appeals and a ruling based on ~~such~~ the hearing ~~shall have~~ has the same effect as if heard by the ~~Commissioner personally.~~ Commissioner. All persons or insurers or their representatives aggrieved by any order or decision of the Commissioner may appeal as provided ~~by the provisions of~~ in G.S. 58-2-75.

No later than 20 days before each hearing, the appellant shall file with the Commissioner or ~~his~~ the designated hearing officer and shall serve on the appellee a written statement of ~~his~~ the appellant's case and any evidence ~~he~~ that the appellant intends to offer at the hearing. No later than five days before ~~such~~ the hearing, the appellee shall file with the Commissioner or ~~his~~ the designated hearing officer and shall serve on the appellant a written statement of ~~his~~ the appellee's case and any evidence ~~he~~ that the appellee intends to offer at the hearing. ~~Each such hearing shall~~

~~be recorded and transcribed. The cost of such recording and transcribing shall be borne equally by the appellant and appellee; provided that upon any final adjudication the prevailing party shall be reimbursed for his share of such costs by the other party.~~ The procedures governing recordings of hearings and, if necessary, transcripts of recordings, as well as the fees for copies of recordings and transcripts, shall be determined by rules adopted by the Commissioner. Each party shall, on a date determined by the Commissioner or ~~his~~ the designated hearing officer, but not sooner than 15 days after delivery of the completed transcript to the party, submit to the Commissioner or ~~his~~ the designated hearing officer and serve on the other party, a proposed order. The Commissioner or ~~his~~ the designated hearing officer shall then issue an order."

PART III. CONTINUING CARE RETIREMENT COMMUNITY NAME CORRECTION AND RECEIVERSHIPS.

Section 17. G.S. 58-30-10(14) reads as rewritten:

"(14) 'Insurer' means any entity licensed under Articles 7, 16, 26, 49, 65, or 67 of this Chapter and any employer that has furnished to the Commissioner satisfactory proof of its financial responsibility under G.S. 97-93(a)(2). For purposes of this Article, 'insurer' also includes continuing care retirement ~~centers~~ communities licensed under Article 64 of this Chapter."

Section 18. The title of Article 64 of Chapter 58 of the General Statutes reads as rewritten:

"ARTICLE 64.

~~"Registration, Disclosure, Contract, and Financial Monitoring Requirements for~~ Continuing Care ~~Facilities.~~ Retirement Communities."

Section 19. G.S. 58-64-1 reads as rewritten:

"§ 58-64-1. Definitions.

As used in this Article, unless otherwise specified:

(1) 'Continuing care' means the furnishing to an individual other than an individual related by blood, marriage, or adoption to the person furnishing the care, of lodging together with nursing services, medical services, or other health related services, ~~pursuant to~~ under an agreement effective for the life of the individual or for a period ~~in excess of~~ longer than one year.

(2) 'Entrance fee' means a payment that assures a resident a place in a facility for a term of years or for life.

(3) 'Facility' means the ~~place or places~~ retirement community or communities in which a provider undertakes to provide continuing care to an individual.

(4) 'Health related services' means, at a minimum, nursing home admission or assistance in the activities of daily living, exclusive of the provision of meals or cleaning services.

(5) 'Living unit' means a room, apartment, cottage, or other area within a facility set aside for the exclusive use or control of one or more identified residents.

(6) 'Provider' means the promoter, developer, or owner of a ~~continuing care~~ facility, whether a natural person, partnership, or other unincorporated association, however organized, trust, or corporation, of an institution, building, residence, or other place, whether operated for profit or not, or any other person, that solicits or undertakes to provide continuing care under a continuing care facility contract, or that represents ~~himself~~ himself, herself, or itself as providing continuing care or 'life care.'

(7) 'Resident' means a purchaser of, a nominee of, or a subscriber to, a continuing care contract.

(8) 'Hazardous financial condition' means a provider is insolvent or in eminent danger of becoming insolvent."

Section 20. G.S. 58-64-40(b) reads as rewritten:

"(b) The board of directors or other governing body of a ~~continuing care~~ facility or its designated representative shall hold annual meetings with the residents of the ~~continuing care~~ facility for free discussions of subjects including, but not limited to, income, expenditures, and financial trends and problems as they apply to the facility and discussions of proposed changes in policies, programs, and services. Residents shall be entitled to at least seven days advance notice of each meeting. An agenda and any materials that will be distributed by the governing body at the meetings shall remain available upon request to residents."

Section 21. G.S. 58-64-80 reads as rewritten:

"**§ 58-64-80. Advisory Committee.**

There shall be a nine member Continuing Care Advisory Committee appointed by the Commissioner. The Committee shall consist of at least two residents of ~~continuing care communities,~~ facilities, two representatives of the North Carolina Association of Nonprofit Homes for the Aging, one individual who is a certified public accountant and is licensed to practice in this State, one individual skilled in the field of architecture or engineering, and one individual who is a health care professional."

Section 21.1. Article 64 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-64-46. Receiverships; exception for facility beds.**

When the Commissioner has been appointed as a receiver under Article 30 of this Chapter for a provider or facility subject to this Article, and if it appears to the court, upon petition of the Commissioner or the provider, or on the court's own motion, that the best interests of the facility or the welfare of persons who have previously contracted with the provider or may contract with the facility may be best served by the addition of adult care home beds, the Department of Human Resources may,

notwithstanding any other provision of law, accept and approve the addition of beds for that facility."

PART IV. WORKERS' COMPENSATION LOSS COSTS CONFORMING CHANGES.

Section 22. G.S. 58-36-1(2) reads as rewritten:

"(2) The Bureau shall provide reasonable means to be approved by the Commissioner whereby any person affected by a rate or loss costs made by it may be heard in person or by ~~his~~ the person's authorized representative before the governing committee or other proper executive of the Bureau."

Section 23. G.S. 58-36-1(5)c. reads as rewritten:

"c. Failure or refusal by any assigned employer risk to make full disclosure to the Bureau, servicing carrier, or insurer writing a policy of information regarding the employer's true ownership, change of ownership, operations, or payroll, or any other failure to disclose fully any records pertaining to workers' compensation insurance shall be sufficient grounds for ~~the Bureau to authorize~~ the termination of the policy of that employer."

Section 24. G.S. 58-36-10 reads as rewritten:

"**§ 58-36-10. Method of rate making; factors considered.**

The following standards ~~shall~~ apply to the making and use of ~~rates:~~ rates or loss costs:

(1) Rates or loss costs shall not be excessive, inadequate or unfairly discriminatory.

(2) Due consideration shall be given to actual loss and expense experience within this State for the most recent three-year period for which ~~such~~ that information is available; to prospective loss and expense experience within this State; to the hazards of conflagration and catastrophe; to a reasonable margin for underwriting profit and to contingencies; to dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers; to investment income earned or realized by insurers from their unearned premium, loss, and loss expense reserve funds generated from business within this State; to past and prospective expenses specially applicable to this State; and to all other relevant factors within this State: Provided, however, that countrywide expense and loss experience and other countrywide data may be considered only where credible North Carolina experience or data is not available.

(3) In the case of fire insurance rates, as are subject to the ratemaking authority of the Bureau, consideration may be given to the experience of such fire insurance business during the most recent five-year period for which ~~such~~ that experience is available. In

the case of fire insurance rates that are subject to the ratemaking authority of the Bureau, consideration shall be given to the insurance public protection classifications of rural fire districts based upon standards established by the Commissioner. To the extent credits are provided for proximity to fire hydrants, the Bureau may also provide appropriate credits in public protection classifications for optional water sources, such as ponds, lakes, or other bodies of water, in accordance with standards and procedures filed with and approved by the Commissioner.

(4) Risks may be grouped by classifications and lines of insurance for establishment of ~~rates~~ rates, loss costs, and base premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans ~~which~~ that establish standards for measuring variations in hazards or expense provisions or both. ~~Such~~ Those standards may measure any differences among risks that can be demonstrated to have a probable effect upon losses or expenses. The Bureau ~~is directed to~~ shall establish and implement a comprehensive classification rating plan for motor vehicle insurance under its jurisdiction within 90 days of September 1, 1977. No such classification plans shall base any standard or rating plan for private passenger (nonfleet) motor vehicles, in whole or in part, directly or indirectly, upon the age or sex of the persons insured. The Bureau shall at least once every three years make a complete review of the filed classification rates to determine whether they are proper and supported by statistical evidence, and shall at least once every 10 years make a complete review of the territories for nonfleet private passenger motor vehicle insurance to determine whether they are proper and reasonable.

(5) In the case of workers' compensation insurance and employers' liability insurance written in connection therewith, due consideration shall be given to the past and prospective effects of changes in compensation benefits and in legal and medical fees that are provided for in General Statutes Chapter 97."

Section 25. G.S. 58-36-15(a) reads as rewritten:

"(a) The Bureau shall file with the Commissioner copies of the rates, loss costs, classification plans, rating plans and rating systems used by its members. Each rate or loss costs filing shall become effective on the date specified in the filing, but not earlier than 105 days ~~from~~ after the date the filing is received by the Commissioner: Provided that (1) rate or loss costs filings for workers' compensation insurance and employers' liability insurance written in connection therewith shall not become effective earlier than 120 days from the date the filing is received by the Commissioner or on the date ~~as~~ provided ~~under~~ in G.S. 58-36-100, whichever is

earlier; and (2) any filing may become effective on a date earlier than that specified in this subsection upon agreement between the Commissioner and the Bureau."

Section 26. G.S. 58-36-15(f) reads as rewritten:

"(f) On or before September 1 of each calendar ~~year~~ year, or later with the approval of the Commissioner, the Bureau shall submit to the Commissioner the experience, data, statistics, and information referred to in subsection (c) of this section and required under G.S. 58-36-100 and a residual market rate ~~or~~ and prospective loss costs review based on ~~such~~ those data for workers' compensation insurance and employers' liability insurance written in connection therewith. Any rate or loss costs increase for ~~such~~ that insurance that is implemented ~~pursuant to~~ under this Article shall become effective solely to ~~such insurance as is written having~~ insurance with an inception date on or after the effective date of the rate or loss costs increase."

Section 27. G.S. 58-36-15(g) reads as rewritten:

"(g) The following information must be included in policy form, rule, and rate or loss costs filings under this Article and under Article 37 of this Chapter:

(1) A detailed list of the rates, loss costs, rules, and policy forms filed, accompanied by a list of those superseded; and

(2) A detailed description, properly referenced, of all changes in policy forms, rules, prospective loss costs, and rates, including the effect of each change."

Section 28. G.S. 58-36-30(a) reads as rewritten:

"(a) ~~No insurer, officer, agent or representative thereof~~ Except as permitted by G.S. 58-36-100 for workers' compensation loss costs filings, no insurer and no officer, agent, or representative of an insurer shall knowingly issue or deliver or knowingly permit the issuance or delivery of any policy of insurance in this State ~~which~~ that does not conform to the rates, rating plans, classifications, schedules, rules and standards made and filed by the Bureau. ~~However, an~~ An insurer may deviate from the rates ~~promulgated~~ adopted by the Bureau ~~provided~~ if the insurer has filed the proposed deviation ~~to be applied both~~ with the Bureau and the Commissioner, ~~and provided the deviation is uniform in its application to all risks in the State of the class to which the deviation is to apply; and provided such deviation is approved by the Commissioner.~~ if the proposed deviation is based on sound actuarial principles, and if the proposed deviation is approved by the Commissioner. ~~The Commissioner shall approve proposed deviations if they do not render the rates excessive, inadequate or unfairly discriminatory. If approved, the deviation may thereafter be amended, subject to the provisions of this subsection.~~ Amendments to deviations are subject to the same requirements as initial filings. ~~The deviation may be terminated~~ An insurer may terminate a deviation only if the deviation has been in effect for a period of six months before the effective date of the termination and the insurer notifies the Commissioner of the termination no later than 15 days before the effective date of the termination."

Section 29. G.S. 58-36-30(c) reads as rewritten:

"(c) ~~Any deviation with respect to workers' compensation and employers' liability insurance written in connection therewith as filed under subsection (a) of this section shall apply uniformly to all classifications.~~ Any approved rate under subsection (b) of this section with respect to workers' compensation and employers' liability insurance written in connection therewith shall be furnished to the Bureau."

Section 30. Effective September 1, 1997, G.S. 58-36-100(a) reads as rewritten:

"(a) ~~Nothing in this section requires the Bureau or its member insurers to refile rates previously implemented before two years after the effective date of this section. Any member insurer of the Bureau may continue to use all rates and deviations filed and approved for its use until disapproved, or the insurer makes its own filing to change its rates, either by making an independent filing or by filing a reference filing adoption form adopting the Bureau's prospective loss costs, or modification thereof.~~ Except as provided in ~~subsection~~ subsections (k) and (m) of this section, ~~with the initial prospective loss costs reference filing,~~ the Bureau shall no longer develop or file any minimum premiums, minimum premium formulas, or expense constants. If an insurer wishes to amend minimum premium ~~formulas,~~ formulas or expense constants, it must file the minimum premium rules, formulas, or amounts it proposes to use. A copy of each filing submitted to the Commissioner under subsections (e) and (g) of this section shall also be sent to the Bureau."

Section 31. Effective September 1, 1997, G.S. 58-36-100(b)(1) reads as rewritten:

"(1) 'Expenses'. -- That portion of a rate attributable to acquisition, field supervision, collection expenses, any tax levied by the State or by any political subdivision of the State, licensing costs, fees, and general expenses, as determined by the insurer."

Section 32. Effective September 1, 1997, G.S. 58-36-100(c) reads as rewritten:

"(c) Except as provided in subsection (m) of this section, for workers' compensation and employers' liability insurance written in connection with workers' compensation insurance, the Bureau shall no longer develop or file advisory final rates that contain provisions for expenses (other than loss adjustment expenses) and profit. The Bureau shall instead develop and file for approval with the Commissioner, in accordance with this section, reference filings containing advisory prospective loss costs and the underlying loss data and other supporting statistical and actuarial information for any calculations or assumptions underlying these loss costs. Loss-based ~~assessments, any tax levied by the State or any political subdivision of the State, licensing costs, and fees~~ assessments will be included in prospective loss costs."

Section 32.1. Effective September 1, 1997, G.S. 58-36-100(k) reads as rewritten:

"(k) The Bureau shall file with the Commissioner, for approval, filings containing a revision of rules and supplementary rating information. This includes policy-writing rules, rating plans, classification codes and descriptions, and rules that include factors or relativities, such as ~~employers' liability~~ increased limits ~~factors,~~ factors and related

minimum premiums, classification relativities, or similar ~~factors, but excludes minimum premiums.~~ factors. The Bureau may print and distribute manuals of rules and supplementary rating ~~information, excluding minimum premiums.~~ information."

PART V. INSURANCE COMPANY FINANCIAL OPERATIONS.

Section 33. G.S. 58-5-63(a) reads as rewritten:

"(a) All insurance companies making deposits under this Article are entitled to interest on those ~~deposits, which shall remain in the deposit accounts.~~ deposits. The right to interest is subject to a company paying its insurance policy liabilities. If any company fails to pay those liabilities, interest accruing after the failure is payable to the Commissioner for the payment of those liabilities under subsection (b) of this section."

Section 34. G.S. 58-7-21(a) reads as rewritten:

"(a) As used in this section and in G.S. ~~58-7-26, 58-7-30, and 58-7-31.~~ 58-7-26 and G.S. 58-7-30:

(1) 'Reinsurance' means a transfer of insurance risk from a ceding insurer to an assuming insurer.

(2) 'Insurance risk' means an uncertainty regarding the ultimate amount of any claim payment (underwriting risk) or an uncertainty regarding the timing of the payments (timing risk), or both."

Section 35. G.S. 58-7-31(b)(3) reads as rewritten:

"(3) The ceding insurer is required to reimburse the reinsurer for negative experience under the reinsurance agreement; except that neither offsetting experience refunds against current and prior years' losses under the reinsurance agreement nor payment by the ceding insurer of an amount equal to the current and prior years' losses under the reinsurance agreement upon voluntary termination of in-force reinsurance by the ceding insurer are a reimbursement to the reinsurer for negative experience. Voluntary termination does not include situations where termination occurs because of unreasonable provisions that allow the reinsurer to reduce its risk or increase its risk charge under the reinsurance agreement."

Section 36. G.S. 58-7-31(d)(1) reads as rewritten:

"(1) Reinsurance agreements entered into after October 1, 1993, that involve the reinsurance of business issued ~~prior to~~ before the effective date of the reinsurance agreements, along with any subsequent amendments thereto, shall be filed by the ceding company with the Commissioner within 30 days after its date of execution. Each filing shall include data detailing the ~~final impact~~ financial effect of the transaction. The ceding insurer's actuary who signs the financial statement actuarial opinion with respect to valuation of reserves shall consider this ~~statute~~ section and any applicable actuarial standards of practice when determining the

proper credit in financial statements filed with the Commissioner. The actuary ~~should~~ shall maintain adequate documentation and be prepared upon request to describe the actuarial work performed for inclusion in the financial statements and to demonstrate that ~~such~~ that work conforms to this ~~statute.~~ section."

Section 37. G.S. 58-7-173(12) reads as rewritten:

"(12) Secured obligations of duly constituted churches and of church-holding companies; and the cost of investments made under this subdivision shall not exceed the lesser of one percent (1%) of the insurer's admitted assets ~~of~~ or five percent (5%) of the insurer's capital and surplus."

Section 38. The catchline of G.S. 58-7-177 reads as rewritten:

"**§ 58-7-177. Investments in ~~subsidiaries and affiliated corporations.~~ subsidiaries.**"

Section 39. G.S. 58-8-5(a)(3) reads as rewritten:

"(3) ~~Said officers shall cause said certificate to be published once a week for two consecutive weeks in a newspaper in Raleigh and in the county where the company's principal office is located, or posted at the courthouse door if no newspaper be published within the county. Said printed or posted notices shall be in such form and of such size as the Commissioner may approve, and in addition to setting forth in full the certificate required in subdivision (2) shall state that application for amending the company's charter in the manner specified has been proposed by the board of directors, and shall also state the time set for a meeting of policyholders thereby called to be held at the principal office of the company to take action on the proposed amendment. A true copy of such notice shall be filed with the Commissioner, and also with that official who performs the functions of Commissioner in each state where the company is licensed to do business. Such publication and filing of notices shall be completed at least 30 days prior to the date set therein for the meeting of policyholders and due proof thereof shall be filed with the Commissioner at least 15 days prior to the date of such meeting.~~ If the meeting at which the proposed amendment is to be considered is a special meeting, rather than a regular annual meeting of policyholders, ~~such special~~ that meeting can be called only after the Commissioner has given ~~his~~ approval in ~~writing, and the published notice shall show the fact of such approval;~~ writing;"

Section 40. G.S. 58-8-25 reads as rewritten:

"**§ 58-8-25. Dividends to policyholders.**

(a) Any participating or dividend-paying company, stock or mutual or foreign or domestic, that writes other than life insurance or workers' compensation insurance and employers' liability insurance in connection therewith, may declare and pay a

dividend to policyholders from its ~~surplus,~~ unassigned surplus as reflected in the company's most recent annual or quarterly statement filed with the Commissioner, which shall include only its surplus in excess of any required minimum surplus. No such dividend shall be paid unless it is fair and equitable and for the best interest of the company and its policyholders. In declaring any dividend to its policyholders, any such company may make reasonable classifications of policies expiring during a fixed period, upon the basis of each general kind of insurance covered by ~~such~~ those policies and by territorial divisions of the location of risks by states, except that in fixing the amount of dividends to be paid on each general kind of insurance, ~~which~~ the dividends shall be uniform in rate and applicable to the majority of risks within ~~such~~ that general kind of insurance, and exceptions may be made as to any class or classes of risk and a different rate or amount of dividends paid on ~~such~~ the class or classes if the conditions applicable to ~~such~~ the class or classes differ substantially from the condition applicable to the kind of insurance as a whole. Every such company shall have an equal rate of dividend for the same term on all policies insuring risks in the same classification. The payment of dividends to policyholders shall not be contingent upon the maintenance or renewal of the policy. All dividends shall be paid to the policyholder unless a written assignment ~~thereof be~~ of those dividends is executed. Neither the payment of dividends nor the rate ~~thereof~~ of the dividends may be guaranteed by any company, or its agent, ~~prior to~~ before the declaration of the dividend by the board of directors of ~~such~~ the company. The holders of policies of insurance issued by a company in compliance with the orders of any public official, bureau or committee, in conformity with any statutory requirement or voluntary arrangement, for the issuance of insurance to risks not otherwise acceptable to the company, may be established as a separate class of risks.

(b) Any participating or dividend-paying company, stock or mutual or foreign or domestic, that writes workers' compensation insurance and employers' liability insurance in connection therewith may declare and pay a dividend to policyholders from its ~~surplus,~~ unassigned surplus as reflected in the company's most recent statement filed with the Commissioner under G.S. 58-2-165, which shall include only its surplus in excess of any required minimum surplus. No such dividend shall be paid unless it is fair and equitable and for the best interest of the company and its policyholders. In declaring any dividend to its policyholders, any such company may make reasonable classifications of policies expiring during a fixed period. The payment of dividends to policyholders shall not be contingent upon the maintenance or renewal of the policy. All dividends shall be paid to the policyholder unless a written assignment ~~thereof be~~ of those dividends is executed. Neither the payment of dividends nor the rate ~~thereof~~ of the dividends may be guaranteed by any company, or its agent, ~~prior to~~ before the declaration of the dividend by the board of directors of ~~such~~ the company. The holders of policies of insurance issued by a company in compliance with the orders of any public official, bureau, or committee, in conformity with any statutory requirement or voluntary arrangement, for the issuance of insurance to risks not otherwise acceptable to the company, may be established as a separate class of risks."

Section 41. G.S. 58-9-6(a) reads as rewritten:

"(a) The Commissioner shall issue an intermediary license or an exemption from the license, subject to G.S. 58-9-2(b)(2) or G.S. 58-9-2(c)(3), to any person who has complied with the requirements of this Article. A license issued to a noncorporate entity authorizes all of the members of the entity and any designated employees to act as intermediaries under the license, and those persons shall be named in the application and any supplements. A license issued to a corporation authorizes all of the officers and any designated employees and directors of the corporation to act as intermediaries on behalf of the corporation, and those persons shall be named in the application and any supplements."

Section 42. G.S. 58-9-11(b) reads as rewritten:

"(b) An insurer shall not engage the services of any person to act as a broker on its behalf unless the person is licensed ~~under G.S. 58-9-6.~~ or exempted under this Article. An insurer shall not employ an individual who is employed by a broker with which it transacts business, unless the broker is under common control with the insurer under Article 19 of this Chapter."

Section 43. G.S. 58-9-21(a) reads as rewritten:

"(a) A reinsurer shall not engage the services of any person to act as a manager on its behalf unless the person is licensed ~~under G.S. 58-9-6.~~ or exempted under this Article."

Section 44. G.S. 58-12-2(3) reads as rewritten:

"(3) Domestic insurer. -- Any insurance company organized in this State under ~~Article 7~~ Article 7 or Article 15 of this Chapter."

Section 45. G.S. 58-13-10 reads as rewritten:

"**§ 58-13-10. Scope.**

(a) This Article applies to all domestic insurers and to all kinds of insurance written by those insurers ~~under Articles 1 through 66~~ of this Chapter. Foreign insurers ~~are to~~ shall comply in substance with the requirements and limitations of this section. ~~This Article does not apply to variable contracts for which separate accounts are required to be maintained nor to statutory deposits that are required to be maintained by insurance regulatory agencies as a requirement for doing business in such jurisdictions.~~

(b) This Article does not apply to:

(1) Variable contracts for which separate accounts are required to be maintained.

(2) Statutory deposits that are required to be maintained by insurance regulatory agencies as a requirement for doing business.

(3) Real estate authorized under G.S. 58-7-187 and encumbered by a mortgage loan with a first lien."

Section 46. G.S. 58-13-15 reads as rewritten:

"**§ 58-13-15. Definitions.**

As used in this Article:

(1) 'Assets' means all property, real or personal, tangible or intangible, legal or equitable, owned by an insurer.

(2) 'Claimants' means any owners, beneficiaries, assignees, certificate holders, or third-party beneficiaries of any insurance benefit or right arising out of and within the coverage of an insurance policy covered by this Article.

(3) 'Reserve assets' means those assets of an insurer that are authorized investments for policy reserves in accordance with ~~Articles 1 through 64 of this Chapter and G.S. 58-65-95.~~ this Chapter.

(4) 'Policyholder-related liabilities' means those liabilities that are required to be established by an insurer for all of its outstanding insurance policies in accordance with ~~Articles 1 through 64 of this Chapter and G.S. 58-65-95.~~ this Chapter."

Section 47. G.S. 58-13-20(b) reads as rewritten:

"(b) The Commissioner ~~has the right to~~ may examine any of ~~such~~ these assets, reinsurance agreements, or deposit arrangements at any time in accordance with ~~his~~ the Commissioner's authority to make examinations of insurers as conferred by other provisions ~~of Articles 1 through 64~~ of this Chapter."

Section 48. G.S. 58-19-5(5) reads as rewritten:

"(5) 'Person' means an individual, corporation, partnership, limited liability company, association, joint stock company, trust, unincorporated organization, or any similar entity or any combination of the foregoing acting in concert."

Section 49. G.S. 58-19-10(b)(1) reads as rewritten:

"(1) Invest, in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries, amounts that do not exceed the lesser of ten percent (10%) of ~~such~~ the insurer's admitted assets or fifty percent (50%) of ~~such~~ the insurer's surplus as regards policyholders, provided that after ~~such~~ those investments, the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs. In calculating the amount of ~~such~~ the investments, investments in domestic or foreign insurance subsidiaries and health maintenance organizations shall be excluded, and there shall be included: (i) total net monies or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of ~~such~~ the subsidiary whether or not represented by the purchase of capital stock or issuance of other securities; and (ii) all amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities, and all contributions to the capital or surplus, of a subsidiary subsequent to its acquisition or formation;".

PART VI. HANDICAPPED PERSONS.

Section 50. G.S. 168-10 reads as rewritten:

"**§ 168-10. Eliminate discrimination in treatment of handicapped and disabled.**

Each handicapped person shall have the same consideration as any other person for individual accident and health insurance coverage, and no insurer, service corporation, multiple employer welfare arrangement, or health maintenance organization subject to Chapter 58 of the General Statutes solely on the basis of ~~such~~ the person's handicap, shall deny ~~such~~ coverage or benefits. The availability of ~~such insurance~~ coverage or benefits shall not be denied solely ~~due to~~ because of the ~~handicap, provided, however, that no such insurer shall be prohibited from excluding by waiver or otherwise, any pre-existing conditions from such coverage, and further provided that~~ handicap; however, any such insurer may charge the appropriate premiums or fees for the risk insured on the same basis and conditions as insurance issued to other ~~persons.~~ persons, in accordance with actuarial and underwriting principles prescribed in Chapter 58 of the General Statutes. ~~Nothing contained herein or in any other statute shall restrict or preclude any insurer governed by Chapter 58 of the General Statutes from setting and charging a premium or fee based upon the class or classes of risks and on sound actuarial and underwriting principles as determined by such insurer, or from applying its regular underwriting standards applicable to all classes of risks. The provisions of this section shall apply to both corporations governed by Chapter 58 of the General Statutes.~~"

Section 51. G.S. 168-22(b) reads as rewritten:

"(b) A family care home ~~shall be~~ is deemed a residential use of property for the purposes of determining charges or assessments imposed by political subdivisions or businesses for water, sewer, power, telephone service, cable television, garbage and trash collection, repairs or improvements to roads, streets, and sidewalks, and other services, utilities, and ~~improvements, and for purposes of classification for insurance.~~ improvements."

PART VII. AUTOMOBILE INSURANCE.

Section 52. G.S. 58-36-75(c) is repealed.

Section 53. G.S. 58-36-5(c) reads as rewritten:

"(c) The ~~Bureau, when created,~~ Bureau shall adopt ~~such~~ rules ~~and regulations~~ for its orderly procedure ~~as shall be~~ that are necessary for its maintenance and operation. No ~~such~~ rules ~~and regulations~~ shall discriminate against any type of insurer because of its plan of operation, nor shall any insurer be prevented from returning any unused or unabsorbed premium, deposit, savings or earnings to its policyholders or subscribers. ~~The expense of such Bureau shall be borne by its members by quarterly contributions to be made in advance, such contributions to be made in advance by prorating such expense among the members in accordance with the amount of gross premiums derived from the above lines of insurance in North Carolina during the preceding year and members entering the Bureau since that date to advance an amount to be fixed by the governing committee. After the first fiscal year of operation of the Bureau the~~ The necessary expense of the Bureau shall be advanced by the members in accordance with rules ~~and regulations to be~~ established and adopted by the governing committee. The Bureau ~~shall be empowered to~~ may

subscribe for or purchase any necessary service, ~~and~~ employ and fix the salaries of such personnel and assistants as are ~~necessary.~~ necessary, charge reasonable fees for its products and services, and engage in any lawful activities related to the objects, functions, duties, responsibilities, or authority of the Bureau."

Section 53.1. G.S. 58-37-1(7) reads as rewritten:

"(7) 'Motor vehicle insurance' means direct insurance against liability arising out of the ownership, operation, maintenance or use of a motor vehicle for bodily injury including death and property damage and includes medical payments and uninsured and underinsured motorist coverages.

With respect to motor carriers who are subject to the financial responsibility requirements established under the Motor Carrier Act of 1980, the term, 'motor vehicle insurance' includes coverage with respect to environmental restoration. As used in this subsection the term, 'environmental restoration' means restitution for the loss, damage, or destruction of natural resources arising out of the accidental discharge, dispersal, release, or escape into or upon the land, atmosphere, water course, or body of water of any commodity transported by a motor carrier. Environmental restoration includes the cost of removal and the cost of necessary measures taken to minimize or mitigate damage to human health, the natural environment, fish, shellfish, and wildlife."

Section 53.2. G.S. 58-37-35(b)(2) reads as rewritten:

"(2) Additional ceding privileges for motor vehicle insurance shall be provided by the Board of Governors if there is a substantial public demand for a coverage or coverage limit of any component of motor vehicle insurance up to the following:

Bodily injury liability: one hundred thousand dollars ($100,000) each person, three hundred thousand dollars ($300,000) each accident;

Property damage liability: fifty thousand dollars ($50,000) each accident;

Medical payments: two thousand dollars ($2,000) each person;

Underinsured motorist: one ~~hundred thousand~~ million dollars ~~($100,000)~~ ($1,000,000) each person and ~~three hundred thousand dollars ($300,000)~~ each accident for bodily injury liability;

Uninsured motorist: one ~~hundred thousand~~ million dollars ~~($100,000)~~ ($1,000,000) each person and each accident for bodily injury and ~~fifteen~~ fifty thousand dollars ~~($15,000)~~ ($50,000) for property damage (one hundred dollars ($100.00) deductible)."

Section 53.3. G.S. 58-37-35(e) reads as rewritten:

"(e) The Commissioner and member companies shall provide for a Board of ~~Governors within 30 days after May 24, 1973. If any member seat on the initial Board of Governors is not filled in accordance with this Article within such time,~~

~~then, in that event the Commissioner shall appoint natural persons from any of the classifications specified in subsection (d) of this section to serve the initial term on the Board of Governors. As soon as possible after its selection, the Commissioner shall call for the initial meeting of the Board.~~ Governors. ~~After the~~ The Board of Governors ~~have been selected it~~ shall ~~then~~ elect from its membership a chairman and shall ~~then~~ meet ~~thereafter as often as~~ at the call of the chairman ~~shall require~~ or at the request of ~~three~~ four members of the Board of Governors. The chairman shall retain the right to vote on all issues. ~~Five~~ Seven members of the Board of Governors shall constitute a quorum. The same member may not serve as chairman for more than two consecutive ~~years.~~ years; provided, however, that a member may continue to serve as chairman until a successor chairman is elected and qualified."

Section 53.4. G.S. 58-37-40(e) reads as rewritten:

"(e) Upon approval of the Commissioner of the plan so submitted or promulgation of a plan deemed approved by the Commissioner, all insurance companies licensed to write motor vehicle insurance in this State or any component thereof as a prerequisite to further engaging in writing the insurance shall formally subscribe to and participate in the plan so approved.

The plan of operation shall provide for, among other matters, (i) the establishment of necessary facilities; (ii) the management of the Facility; (iii) the preliminary assessment of all members for initial expenses necessary to commence operations; (iv) the assessment of members if necessary to defray losses and expenses; (v) the distribution of gains to defray losses incurred since September 1, 1977; (vi) the distribution of gains by credit or reduction of recoupment ~~or allocation~~ surcharges to policies subject to recoupment ~~or allocation~~ surcharges pursuant to this Article (the Facility may apportion the distribution of gains among the coverages eligible for cession pursuant to this Article); (vii) the recoupment ~~or allocation~~ of losses sustained by the Facility since September 1, 1977, pursuant to this Article, which losses may be recouped by equitable pro rata assessment of member ~~companies;~~ companies or by way of a surcharge on motor vehicle policies issued by member companies or through the Facility; (viii) the standard amount (one hundred percent (100%) or any equitable lesser amount) of coverage afforded on eligible risks which a member company may cede to the Facility; and (ix) the procedure by which reinsurance shall be accepted by the Facility. The plan shall further provide that:

(1) Members of the Board of Governors shall receive reimbursement from the Facility for their actual and necessary expenses incurred on Facility business, en route to perform Facility business, and while returning from Facility business plus a per diem allowance of twenty-five dollars ($25.00) a day which may be waived.

(2) In order to obtain a transfer of business to the Facility effective when the binder or policy or renewal thereof first becomes effective, the company must within 30 days of the binding or policy effective date notify the Facility of the identification of the insured, the coverage and limits afforded, classification data, and premium. The Facility shall accept risks at other times on receipt of

necessary information, but acceptance shall not be retroactive. The Facility shall accept renewal business after the member on underwriting review elects to again cede the business."

Section 54. G.S. 58-37-40(f) reads as rewritten:

"(f) The plan of operation shall provide that every member shall, following payment of any pro rata assessment, ~~commence~~ begin recoupment of that assessment by way of a surcharge on motor vehicle insurance policies issued by the member or through the Facility until the assessment has been recouped. ~~Such~~ Any surcharge under this subsection or under subsection (e) of this section shall be a percentage of premium adopted by the Board of Governors of the Facility; and the charges determined on the basis of the surcharge shall be combined with and displayed as a part of the applicable premium charges. ~~Provided, however, that recoupment~~ Recoupment of losses sustained by the Facility ~~since September 1, 1977,~~ with respect to nonfleet private passenger motor vehicles may be ~~recouped~~ made only by surcharging nonfleet private passenger motor vehicle insurance policies. ~~policies (i) that are subject to the classification plan promulgated pursuant to G.S. 58-36-65 and (ii) to which one or more driving record points have been assigned pursuant to said plan, subject to the provisions of G.S. 58-36-75.~~ If the amount collected during the period of surcharge exceeds assessments paid by the member to the Facility, the member shall pay over the excess to the Facility on a date specified by the Board of Governors. If the amount collected during the period of surcharge is less than the assessments paid by the member to the Facility, the Facility shall pay the difference to the member. Except as ~~hereinafter provided,~~ otherwise provided in this Article, the amount of recoupment shall not be considered or treated as a rate or premium for any purpose. The Board of Governors shall adopt and implement a plan for compensation of agents of Facility members when recoupment surcharges are imposed; ~~such~~ that compensation shall not exceed the compensation or commission rate normally paid to the agent for the issuance or renewal of the automobile liability policy issued through the North Carolina Reinsurance Facility affected by ~~such surcharge; provided, however, that~~ the surcharge. However, the surcharge ~~provided for in this section~~ shall include an amount necessary to recover the amount of the assessment to member companies and the compensation paid by each member, ~~pursuant to~~ under this section, to agents."

Section 55. G.S. 58-37-35(g)(8) reads as rewritten:

"(8) To establish fair and reasonable procedures for the sharing among members of any loss on Facility business ~~which~~ that cannot be recouped ~~pursuant to~~ under G.S. 58-37-40~~(f)~~ (e) ~~or which cannot be recouped or allocated under G.S. 58-37-75,~~ and other costs, charges, expenses, liabilities, income, property and other assets of the Facility and for assessing or distributing to members their appropriate shares. ~~Such~~ The shares may be based on the member's premiums for voluntary business for the appropriate category of motor vehicle insurance or by any other fair and reasonable method."

Section 56. G.S. 58-37-35(l) reads as rewritten:

"(l) The classifications, rules, rates, rating plans and policy forms used on motor vehicle insurance policies reinsured by the Facility may be made by the Facility or by any licensed or statutory rating organization or bureau on its behalf and shall be filed with the Commissioner. The Board of Governors shall establish a separate subclassification within the Facility for 'clean ~~risks' as herein defined.~~ risks'. For the purpose of this Article, a 'clean risk' ~~shall be~~ is any owner of a nonfleet private passenger motor vehicle as defined in G.S. 58-40-10, if the owner, principal operator, and each licensed operator in the owner's household have two years' driving experience as licensed drivers and if none of the persons has been assigned any Safe Driver Incentive Plan points under Article 36 of this Chapter during the three-year period immediately preceding either (i) the date of application for a motor vehicle insurance policy or (ii) the date of preparation of a renewal of a motor vehicle insurance policy. ~~Such~~ The filings may incorporate by reference any other material on file with the Commissioner. Rates shall be neither excessive, inadequate nor unfairly discriminatory. If the Commissioner finds, after a hearing, that a rate is either excessive, inadequate or unfairly discriminatory, ~~he~~ the Commissioner shall issue an order specifying in what respect it is deficient and stating when, within a reasonable period thereafter, ~~such rate shall be deemed~~ the rate is no longer effective. ~~Said~~ The order is subject to judicial review as set out in Article 2 of this Chapter. Pending judicial review of ~~said~~ the order, the filed classification plan and the filed rates may be used, charged and collected in the same manner as set out in G.S. 58-40-45 of this Chapter. ~~Said~~ The order shall not affect any contract or policy made or issued ~~prior to~~ before the expiration of the period set forth in the order. All rates shall be on an actuarially sound basis and shall be calculated, insofar as is possible, to produce neither a profit nor a loss. However, the rates made by or on behalf of the Facility with respect to 'clean ~~risks', as defined above,~~ risks' shall not exceed the rates charged 'clean risks' who are not reinsured in the Facility. The difference between the actual rate charged and the actuarially sound and self-supporting rates for 'clean risks' reinsured in the Facility may be recouped in similar manner as assessments ~~pursuant to G.S. 58-37-40(f) or allocated pursuant to G.S. 58-37-75.~~ under G.S. 58-37-40(f). Rates shall not include any factor for underwriting profit on Facility business, but shall provide an allowance for contingencies. There shall be a strong presumption that the rates and premiums for the business of the Facility are neither unreasonable nor excessive."

Section 57. G.S. 58-37-75 is repealed.

PART VIII. WORKERS' COMPENSATION SELF-INSURANCE.

Section 58. G.S. 58-50-60 reads as rewritten:

"**§ 58-50-60. Rules for precertification practices.**

(a) This section applies to all accident and health insurers under Articles 1 through 64 of this Chapter, all third-party administrators and preferred provider arrangements, all entities subject to Articles 65 through 67 of this Chapter, and all self-funded ~~health benefit~~ workers' compensation insurance plans.

(b) The Commissioner shall adopt reasonable rules governing ~~precertification practices and forms~~ utilization review and utilization review organizations ~~affiliated~~ that do business with the entities subject to this section."

Section 59. G.S. 58-50-65(a) reads as rewritten:

"(a) ~~Nothing~~ Except as provided in this subsection, nothing in Articles 50 through 55 of this Chapter ~~shall apply~~ applies to ~~or affect~~ any ~~policy of~~ liability or workers' compensation ~~insurance, except that~~ insurance policy. Except for G.S. 58-50-55(a), the provisions of ~~G.S. 58-50-50 and subsections (b) and (e) of G.S. 58-50-55 shall~~ this Article and Articles 65 and 67 of this Chapter and any administrative rules adopted under those Articles relating to preferred providers and utilization review apply to ~~policies of~~ workers' compensation ~~insurance.~~ insurance policies and to individual and group self-funded workers' compensation insurance plans. If there is any conflict between managed care rules adopted by the Commissioner under this Chapter and managed care rules adopted by the Industrial Commission under G.S. 97-25.2, the Industrial Commission's rules govern. If there is any conflict between managed care provisions in this Chapter and in Chapter 97 of the General Statutes with respect to workers' compensation, the provisions in Chapter 97 govern."

PART IX. CERTIFICATE OF AUTHORITY CONFORMING NAME CHANGE.

Section 60. The phrase "certificate of authority" is deleted and replaced by the word "license" wherever it occurs in each of the following sections of the General Statutes:

G.S. 58-4-15.	Revocation of certificate of authority.
G.S. 58-7-55.	Exceptions to requirements of G.S. 58-7-50.
G.S. 58-7-70.	Effects of redomestication.
G.S. 58-15-5.	Definitions.
G.S. 58-16-35.	Unauthorized Insurers Process Act.
G.S. 58-24-45.	Organization.
G.S. 58-24-145.	Injunction -- Liquidation -- Receivership of domestic society.
G.S. 58-28-5.	Transacting business without certificate of authority prohibited; exceptions.
G.S. 58-28-15.	Validity of acts or contracts of unauthorized company shall not impair obligation of contract as to the company; maintenance of suits; right to defend.
G.S. 58-28-45.	Uniform Unauthorized Insurers Act.
G.S. 58-30-10.	Definitions.
G.S. 58-30-55.	Condition on release from delinquency proceedings.
G.S. 58-30-260.	Conservation of property of foreign or alien insurers found in this State.
G.S. 58-33-132.	Qualifications of instructors.
G.S. 58-41-55.	Penalties; restitution.
G.S. 58-48-35.	Powers and duties of the Association.
G.S. 58-48-45.	Duties and powers of the Commissioner.
G.S. 58-57-80.	Penalties.

PART X. RISK SHARING PLAN SUNSET EXTENSION.

Section 61. G.S. 58-42-55 reads as rewritten:

"**§ 58-42-55. Expiration.**

This Article ~~shall expire~~ expires on July 1, ~~1997.~~ 1999."

PART XI. HEALTH INSURANCE CLARIFYING CHANGES.

Section 62. G.S. 58-50-130(a), as amended by S.L. 1997-259, is amended by adding the following new subdivision:

"(4b) Late enrollees may only be excluded from coverage for the greater of 18 months or an 18-month preexisting-condition exclusion; however, if both a period of exclusion from coverage and a preexisting-condition exclusion are applicable to a late enrollee, the combined period shall not exceed 18 months. If a period of exclusion from coverage is applied, a late enrollee shall be enrolled at the end of such period in the health benefit plan currently held by the small employer."

Section 63.1. G.S. 58-51-55(d), as amended by S.L. 1997-259, reads as rewritten:

"(d) Applicability. -- Subsection (b1) of this section applies only to group health insurance ~~contracts~~ contracts, other than excepted benefits as defined in G.S. 58-68-25, covering more than 50 employees. The remainder of this section applies only to group health insurance contracts covering 20 or more employees. For purposes of this section, 'group health insurance contracts' include MEWAs, as defined in G.S. 58-49-30(a)."

Section 63.2. G.S. 58-65-90(d), as amended by S.L. 1997-259, reads as rewritten:

"(d) Applicability. -- Subsection (b1) of this section applies only to subscriber ~~contracts~~ contracts, other than excepted benefits as defined in G.S. 58-68-25, covering more than 50 employees. The remainder of this section applies only to group contracts covering 20 or more employees."

Section 63.3. G.S. 58-67-75(d), as amended by S.L. 1997-259, reads as rewritten:

"(d) Applicability. -- Subsection (b1) of this section applies only to group ~~contracts~~ contracts, other than excepted benefits as defined in G.S. 58-68-25, covering more than 50 employees. The remainder of this section applies only to group contracts covering 20 or more employees."

Section 63.4. G.S. 58-51-15(h), as enacted by S.L. 1997-259, reads as rewritten:

"(h) Preexisting Condition Exclusion Clarification. -- Sub-subdivision (a)(2)b. of this section does not apply to:

(1) Policies issued to eligible individuals under G.S. 58-68-60.

(2) Excepted benefits as described in ~~G.S. 58-68-25(b).~~ G.S. 58-68-25(b)(1)."

Section 63.5. G.S. 58-68-40(e), as enacted by S.L. 1997-259, reads as rewritten:

"(e) Exception for ~~Coverage Offered Only to Bona Fide Association Members.~~ Coverage. -- Subsection (a) of this section does not apply to:

(1) Health insurance coverage offered by a health insurer if the coverage is made available in the small group market only through one or more bona fide associations.

(2) A self-employed individual as defined in ~~G.S. 58-50-110(21a).~~ G.S. 58-50-110(21a), except as otherwise provided for the basic and standard health care plans under the North Carolina Small Employer Group Health Coverage Reform Act."

Section 63.6. G.S. 58-68-60(b)(2), as enacted by S.L. 1997-259, reads as rewritten:

"(2) Who is not eligible for coverage under (i) ~~an ERISA~~ a group health plan, (ii) part A or part B of title XVIII of the Social Security Act, or (iii) a State plan under title XIX of the Act (or any successor program), and does not have other health insurance coverage;".

Section 63.7. G.S. 58-50-65(d) reads as rewritten:

"(d) The provisions of G.S. ~~58-51-5(5)~~ 58-51-5(a)(5) and G.S. 58-51-15(a)(1), (4), and (10) may be omitted from railroad ticket policies sold only at railroad stations or at railroad ticket offices by railroad employees."

Section 63.8. G.S. 58-67-74(a), as enacted by S.L. 1997-225, reads as rewritten:

"(a) Every health care plan written by a health maintenance organization ~~and in force,~~ that is issued, renewed, or amended on or after October 1, 1997, and that is subject to this Article, shall provide coverage for medically appropriate and necessary services, including diabetes outpatient self-management training and educational services, and equipment, supplies, medications, and laboratory procedures used to treat diabetes. Diabetes outpatient self-management training and educational services shall be provided by a physician or a health care professional designated by the physician. The health maintenance organization shall determine who shall provide and be reimbursed for the diabetes outpatient self-management training and educational services. The same deductibles, coinsurance, and other limitations ~~as~~ that apply to similar services covered under the ~~policy, contract, or~~ plan shall apply to the diabetes coverage required under this section."

Section 63.9. G.S. 58-67-79(a), as enacted by S.L. 1997-312, reads as rewritten:

"(a) Every health care plan written by a health maintenance organization ~~and in force,~~ that is issued, renewed, or amended on or after January 1, 1998, that is subject to this ~~Article~~ Article, and that provides coverage for mastectomy shall provide coverage for reconstructive breast surgery resulting from a mastectomy. The coverage shall include coverage for all stages and revisions of reconstructive breast surgery performed on a nondiseased breast to establish symmetry when reconstructive surgery on a diseased breast is performed. The same deductibles, coinsurance, and other limitations ~~as~~ that apply to similar services covered under the ~~policy, contract, or~~ plan

shall apply to coverage for reconstructive breast surgery. Reconstruction of the nipple/areolar complex following a mastectomy is covered without regard to the lapse of time between the mastectomy and the reconstruction, subject to the approval of the treating physician."

PART XII. COMMERCIAL INSURANCE FORM DOCUMENT RETENTION.

Section 64. G.S. 58-41-50(g) reads as rewritten:

"(g) An insurer subject to this Article may develop and use an individual form or rate as a result of the uniqueness of a particular risk. The form or rate shall be developed, filed, and used in accordance with rules adopted by the Commissioner. Rules adopted by the Commissioner under this section may provide for retention of certain documents and data by insurers instead of insurers filing those records with the Commissioner."

PART XIII. BAIL BONDS.

Section 65. G.S. 58-71-82 reads as rewritten:

"**§ 58-71-82. Dual license holding.**

If an individual holds a professional bondsman's license or a runner's license and a surety bondsman's license simultaneously, they are considered one license for the purpose of disciplinary actions involving suspension, revocation, or ~~renewal~~ nonrenewal under this Article. Separate renewal fees must be paid for each license, however."

PART XIV. WORKERS' COMPENSATION TPA.

Section 65.1. Article 47 of Chapter 58 of the General Statutes is amended by adding the following new Part:

"Part 3. Third-Party Administrators for Groups.

"**§ 58-47-210. Definitions.**

As used in this Part:

(1) 'Board' means the board of trustees or other governing body of a group.

(2) 'Control' means 'control' as defined in G.S. 58-19-5(2).

(3) 'GAAP financial statement' means a financial statement as defined by generally accepted accounting principles.

(4) 'Group' means a group of employers that is licensed under Part 1 of this Article.

(5) 'Hazardous financial condition' means that, based on its present or reasonably anticipated financial condition, a person is insolvent or, although not yet financially impaired or insolvent, is unlikely to be able to meet obligations with respect to known and reasonably anticipated obligations in the normal course of business.

(6) 'Member' means an employer that participates in a group.

(7) 'Third-party administrator' or 'TPA' means a person engaged by a board to execute the policies established by the board and to provide day-to-day management of the group. 'Third-Party Administrator' and 'TPA' does not mean:

a. An employer acting on behalf of its employees or the employees of one or more of its affiliates.
b. An insurer that is licensed under this Chapter or that is acting as an insurer with respect to a policy lawfully issued and delivered by it and under the laws of a state in which the insurer is licensed to write insurance.
c. An agent or broker who is licensed by the Commissioner under Article 33 of this Chapter whose activities are limited exclusively to the sale of insurance.
d. An adjuster licensed by the Commissioner under Article 33 of this Chapter whose activities are limited to adjustment of claims.
e. An individual who is an officer, a member, or an employee of a board.

"**§ 58-47-215. TPA authority; license, qualification for approval.**

(a) No person shall act as, offer to act as, or hold himself or herself out as a TPA with respect to risks located in this State for a group unless that person is licensed by the Commissioner under this Part.

(b) An applicant for a license shall file with the Commissioner the information required by subsection (c) of this section on a form prescribed by the Commissioner at least 90 days before the proposed licensing date. No application is complete until the Commissioner has received all required information.

(c) The following information shall be included in the license application:

(1) All organizational documents of the TPA, including articles of incorporation, articles of association, a partnership agreement, a trade name certificate, or a trust agreement, any other applicable documents, and all amendments to these documents;
(2) The bylaws, rules, regulations, or similar documents regulating the internal affairs of the TPA;
(3) The names, addresses, official positions, and professional qualifications of the individuals who are responsible for the conduct of affairs of the TPA, including (i) all members of the board of directors, executive committee, or other governing board or committee, (ii) the principal officers in the case of a corporation or the partners or members in the case of a partnership or association, (iii) all shareholders holding directly or indirectly ten percent (10%) or more of the voting securities of the TPA, and (iv) any other person who exercises control or influence over the affairs of the TPA;
(4) The annual audited GAAP financial statements for the two most recent years that demonstrate the applicant is solvent and an ongoing concern and any other information the Commissioner may require in order to review the current financial condition of the applicant;

(5) A general description of the business operations, including information on staffing levels and activities proposed in this State and nationwide. The description shall provide details setting forth the TPA's capability for providing a sufficient number of experienced and qualified personnel in the areas of claims processing, record keeping, and underwriting;

(6) The annual report of the manner and amount of all charges, fees, and direct and indirect compensation received from the group as specified in the service agreement;

(7) All written agreements or contracts with groups; and

(8) Any other pertinent information, including evidence of compliance with other provisions of this Article, as required by the Commissioner.

(d) The information required by subsection (c) of this section, including any trade secrets, shall be kept confidential; provided that the Commissioner may use that information in any judicial or administrative proceeding instituted against the TPA.

(e) TPA licenses shall be renewed annually and applications for renewals of licenses shall include or be accompanied by any changes in the information required by subsection (c) of this section.

(f) A TPA shall notify the Commissioner of any material change in its ownership, control, or other fact or circumstance affecting its qualification for a license in this State, 30 business days before the change. Failure of the Commissioner to disapprove any material changes within 30 days after the changes have been filed with the Commissioner constitutes the Commissioner's approval of the filed changes.

(g) After initial licensing, a TPA shall file with the Commissioner all contracts with a group 60 days before the effective date of the contract.

"§ 58-47-220. TPA license; termination; revocation; restrictions.

(a) The Commissioner may refuse to issue a license if the Commissioner determines that any of the provisions of this section apply to the TPA, or to any individual responsible for the conduct of affairs of the TPA.

(b) The Commissioner shall suspend or revoke automatically the license of a TPA and a request for a hearing shall not stay the effect of the revocation, suspension, or nonrenewal if the Commissioner finds that any of the following apply to the TPA:

(1) The TPA is using methods or practices in the conduct of its business that render its further transaction of business in this State hazardous or injurious to insured persons or the public;

(2) The TPA has failed to pay any judgment rendered against it in this State within 60 days after the judgment has become final;

(3) The TPA has refused to be examined or to produce its accounts, records, and files for examination, or any of its officers have refused to give information with respect to its affairs or have refused to perform any other legal obligation as to that examination, when required by the Commissioner;

(4) The TPA has, without just cause, refused to pay proper claims or perform services arising under its contract, has caused covered members to accept less than the amount due them, or has caused covered members to employ attorneys or bring suit against the TPA to secure full payment or settlement of the claims;

(5) The TPA is an affiliate of or under the same general management, interlocking directorate, or ownership as another TPA or group that unlawfully transacts business in this State;

(6) The TPA, or any principal or affiliate of the TPA, has been convicted of or has entered a plea of guilty or nolo contendere to a felony without regard to whether judgment was withheld;

(7) The TPA or an affiliate is under revocation, suspension, or nonrenewal in another state;

(8) The TPA is in hazardous financial condition;

(9) The TPA has filed for protection under the United States Bankruptcy Code or any state receivership law;

(10) The financial condition or business practices of the TPA otherwise pose an imminent threat to the public health, safety, or welfare of the residents of this State; or

(11) The TPA is found to be in violation of Article 63 of this Chapter.

(c) The Commissioner may, after notice and opportunity for hearing, suspend or revoke the license of a TPA if the Commissioner finds that any of the following apply to the TPA:

(1) The TPA has violated a rule or an order of the Commissioner or any provision of this Chapter or Chapter 97 of the General Statutes; or

(2) The TPA at any time fails to meet any qualification for which issuance of the license could have been refused had the failure then existed and been known to the Commissioner at the time of the application.

(d) If the Commissioner determines that a TPA or any other person has not materially complied with this Article or with any rule adopted or order issued under this Article, after notice and opportunity to be heard, the Commissioner may order:

(1) For each separate violation, a civil penalty pursuant to G.S. 58-2-70(d); or

(2) Revocation, suspension, or nonrenewal of the person's license.

(e) If the Commissioner finds that because of a material noncompliance a group has suffered any loss or damage, the Commissioner may maintain a civil action brought by or on behalf of the group and its policyholders and creditors for recovery of compensatory damages for the benefit of the group and its policyholders and creditors or for other appropriate relief.

(f) Nothing in this Article affects the Commissioner's right to impose any other penalties provided for in this Chapter. Nothing in this Article limits or restricts the rights of policyholders, claimants, and creditors.

(g) If an order of rehabilitation or liquidation of the group has been entered under Article 30 of this Chapter, and the receiver appointed under that order determines that the TPA or any other person has not materially complied with this section, or any order or rule adopted thereunder, and the group suffered any loss or damage therefrom, the receiver may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the group."

PART XV. AGENTS.

Section 65.2. Article 33 of Chapter 58 of the General Statutes is amended by adding the following new section to read:

"**§ 58-33-41. Agent or broker of record; managed care contracts.**

Notwithstanding G.S. 58-33-25(g), an insurer or service corporation offering managed care products and an HMO shall recognize a licensed agent or broker that has been designated by an employer to inquire about or secure group health coverage for the employer. If coverage is placed, the agent or broker shall receive the same commission as brokers or appointed agents for the same coverage."

Section 65.3. G.S. 58-33-25(o) reads as rewritten:

"(o) No license as an agent, broker, or limited representative is required of the following:

(1) Any regular salaried officer or employee of an insurance company, of a licensed agent, of a broker, or of a limited representative, if such officer's or employee's duties and responsibilities do not include the negotiation or solicitation of insurance.

(2) Persons who secure and furnish information on behalf of an employer, where no commission is paid for such service, for the purpose of group or wholesale life insurance, annuities, or group, blanket or franchise health insurance; or for enrolling individuals under such plans or issuing certificates thereunder; or otherwise assisting in administering such plans.

(3) Employers or their officers or employees, or the trustees of any employee trust plan, to the extent that such employers, officers, employees, or trustees are engaged in the administration or operation of any program of employee benefits for their own employees or the employees of their subsidiaries or affiliates involving the use of insurance issued by a licensed insurance company; provided that such employers, officers, employees, or trustees are not in any manner compensated, directly or indirectly, by the insurance company issuing such insurance.

(4) Agency office employees acting within the confines of the agent's office, under the direction and personal supervision of the duly licensed agent and within the scope of the agent's license, in the acceptance of applications, personally underwritten by the agent, payment of premiums, and the performance of clerical, stenographic, and similar office duties; provided that the activity does not amount to the interpretation of insurance policies,

provisions or coverage, to sales or negotiation of insurance policies, to any underwriting function, or to the signing or verification of applications for insurance.

(5) Licensed insurers authorized to write the kinds of insurance described in G.S. 58-7-15(1) through G.S. 58-7-15(3) that do business without the involvement of a licensed agent.

(6) The Commissioner may adopt rules to carry out the provisions of this subsection."

PART XVI. EFFECT OF HEADINGS.

Section 66. The headings to the parts of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act.

PART XVII. EFFECTIVE DATE.

Section 67. Sections 30 through 32.1 of this act become effective September 1, 1997. Section 61 of this act is effective retroactively to June 30, 1997. Sections 62, 63.4, 63.5, and 63.6 of this act are effective retroactively July 1, 1997. Section 63.8 is effective retroactively to June 26, 1997. Section 63.9 is effective retroactively to July 17, 1997. Sections 63.1, 63.2, and 63.3 become effective January 1, 1998. Section 65.1 of this act becomes effective July 1, 1998. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 843
Pensions & Retirement and Insurance Committee Substitute Adopted 4/29/97
House Committee Substitute Favorable 8/18/97
Proposed Committee Substitute S843-PCS1896

Short Title: Insurance Changes. (Public)

Sponsors:

Referred to:

April 15, 1997

A BILL TO BE ENTITLED

AN ACT TO REPEAL OBSOLETE LAWS AND MAKE TECHNICAL AND CLARIFYING AMENDMENTS AND CORRECTIONS IN VARIOUS INSURANCE STATUTES; TO EXTEND THE EXPIRATION DATE OF THE 1986 RISK SHARING PLAN LAW; TO PROVIDE FOR THE LICENSING AND REGULATION OF ENTITIES THAT ADMINISTER WORKERS' COMPENSATION INSURANCE FOR GROUPS OF EMPLOYERS THAT SELF-INSURE; AND TO AMEND THE LAW GOVERNING AGENTS INCLUDING AUTHORIZING PERSONS IN AGENTS' OFFICES TO CALL FOR POLICY EXPIRATIONS.

The General Assembly of North Carolina enacts:

PART I. REPEALS OF OBSOLETE OR UNNECESSARY PROVISIONS.

Section 1. G.S. 58-3-125, 58-6-10, 58-7-150, 58-41-35, and 58-71-90 are repealed.

Section 2. G.S. 58-2-120 reads as rewritten:

"**§ 58-2-120. Reports of Commissioner to the Governor and General Assembly.**

~~The Commissioner shall biennially submit to the General Assembly, through the Governor, a report of his official acts, including a summary of official rulings and regulations.~~ The Commissioner shall, from time to time, report to the Governor and the General Assembly any change ~~which~~ that in ~~his~~ the Commissioner's opinion should be made in the laws relating to insurance and other subjects pertaining to ~~his~~

~~department. On or before the first day of February of each year in which the General Assembly is in session he shall make to the Governor the recommendations called for in this section, to be transmitted to the General Assembly, with the last annual report of this Department, including receipts and disbursements.~~ the Department."

Section 3. G.S. 58-87-10(e) reads as rewritten:

"(e) Revenue Source. -- Revenue is credited to the Workers' Compensation Fund from appropriations made to the Department of Insurance for this purpose. In addition, every eligible unit that elects to participate shall pay into the Fund an amount set annually by the State Fire and Rescue Commission to ensure that the Fund will be able to meet its payment obligations under this section. The amount shall be set as a per capita fixed dollar amount for each member of the roster of the eligible unit.

The payment shall be made to the State Fire and Rescue Commission on or before July 1 of each year. The Commission shall remit the payments it receives to the State Treasurer, who shall credit the payments to the Fund. ~~If the Commission does not receive an annual payment from an eligible unit by July 1, then that unit shall not receive workers' compensation coverage from the Fund for the fiscal year that begins that July 1.~~"

Section 4. G.S. 120-123(55) and (65) are repealed.

Section 5. G.S. 58-36-15(e) reads as rewritten:

"(e) The Commissioner may require the filing of supporting data including:

(1) The Bureau's interpretation of any statistical data relied upon;
(2) Descriptions of the methods employed in setting the rates;
(3) Analysis of the incurred losses submitted on an accident year or policy year basis into their component parts; to wit, paid losses, reserves for losses and loss expenses, and reserves for losses incurred but not reported;
(4) The total number and dollar amount of paid claims;
(5) The total number and dollar amount of case basis reserve claims;
(6) Earned and written premiums at current rates by rating territory;
(7) Earned premiums and incurred losses according to classification plan categories; and
(8) Income from investment of unearned premiums and loss and loss expense reserves generated by business within this State.

~~Provided, however, that with respect to business written prior to January 1, 1980, the Commissioner shall not require the filing of such supporting data which has not been required to be recorded under statistical plans approved by the Commissioner.~~"

Section 6. G.S. 58-3-115 reads as rewritten:

"**§ 58-3-115. Twisting with respect to insurance policies; penalties.**

No insurer shall make or issue, or cause to be issued, any written or oral statement that willfully misrepresents or willfully makes an incomplete comparison as to the terms, conditions, or benefits contained in any policy of insurance for the purpose of inducing or attempting to induce a policyholder in any way to terminate or surrender, exchange, or convert any insurance policy. Any person who violates this

section is subject to the provisions of ~~G.S. 58-2-70, 58-3-90 through 58-3-100, and 58-3-125.~~ G.S. 58-2-70 or G.S. 58-3-100."

Section 7. G.S. 58-30-75(7) reads as rewritten:

"(7) Without first obtaining the written consent of the ~~Commissioner pursuant to G.S. 58-7-150,~~ Commissioner, the insurer has (i) transferred, or attempted to transfer, in a manner contrary to Article 19 of this Chapter, substantially its entire property or business, or (ii) has entered into any transaction, the effect of which is to merge, consolidate, or reinsure substantially its entire property or business in or with the property or business of any other person."

Section 8. G.S. 58-41-40(a) reads as rewritten:

"(a) There is no liability on the part of and no cause of action for defamation or invasion of privacy arises against any insurer or its authorized representatives, agents, or employees, or any licensed insurance agent or broker, for any communication or statement made, unless shown to have been made in bad faith with malice, in any of the following:

(1) A written notice of cancellation under ~~G.S. 58-41-15,~~ G.S. 58-41-15 or of nonrenewal under G.S. 58-41-20, ~~or of cessation of business through an agency under G.S. 58-41-35,~~ specifying the reasons ~~therefor;~~ for cancellation.

(2) Communications providing information pertaining to ~~such cancellation, nonrenewal, or cessation of business through an agency;~~ the cancellation or nonrenewal.

(3) Evidence submitted at any court proceeding, administrative hearing, or informal inquiry in which ~~such cancellation, nonrenewal, or cessation of business through an agency~~ the cancellation or nonrenewal is an issue."

PART II. AMENDMENTS NECESSARY BECAUSE OF 1995 REWRITE OF G.S. 58-2-50.

Section 9. G.S. 58-34-2(j) reads as rewritten:

"(j) The Commissioner shall disapprove any such contract that:

(1) Does not contain the required contract provisions specified in subsection (d) of this section;

(2) Subjects the insurer to excessive charges for expenses or commission;

(3) Vests in the MGA any control over the management of the affairs of the insurer to the exclusion of the board of directors of the insurer;

(4) Is entered into with any person if the person or its officers and directors are of known bad character or have been affiliated directly or indirectly through ownership, control, management, reinsurance transactions, or other insurance or business

relationships with any person known to have been involved in the improper manipulation of assets, accounts, or reinsurance; or

(5) Is determined by the Commissioner to contain provisions that are not fair and reasonable to the insurer.

Failure of the Commissioner to disapprove any such contract within 30 days after the contract has been filed with the Commissioner constitutes the Commissioner's approval of the contract. An insurer may continue to accept business from ~~such~~ the person until the Commissioner disapproves the contract. Any disapproval shall be in writing. The Commissioner ~~may, after a hearing held under G.S. 58-2-50,~~ may withdraw approval of any contract the Commissioner has previously approved ~~upon finding~~ if the Commissioner determines that the basis of the original approval no longer exists or that the contract has, in actual operation, shown itself to be subject to disapproval on any of the grounds in this subsection. If the Commissioner withdraws approval of a contract, the Commissioner shall give the insurer notice of, and written reasons for, the withdrawal of approval. The Commissioner shall grant any party to the contract a hearing upon request."

Section 10. G.S. 58-34-15(b) reads as rewritten:

"(b) If the Commissioner disapproves any management contract, ~~notice of such action shall be given to the insurer assigning the reasons therefor in writing.~~ the Commissioner shall give notice of, and written reasons for, the disapproval to the insurer. The Commissioner shall grant any party to the contract a hearing upon ~~request according to G.S. 58-2-50.~~ request."

Section 11. G.S. 58-40-100 reads as rewritten:

"**§ 58-40-100. Request for review of rate, rating plan, rating system or underwriting rule.**

(a) Any person aggrieved by any rate charged, rating plan, rating system, or underwriting rule followed or adopted by an insurer or rating organization may request in writing that the insurer or rating organization ~~to~~ review the manner in which the rate, plan, system, or rule has been applied with respect to ~~insurance afforded him. Such request may be made by his authorized representative, and shall be in writing.~~ the person's insurance. The person's authorized representative may make the request. If the request is not granted within 30 days after it is made, the requestor may treat it as rejected. Any person aggrieved by the action of an insurer or rating organization in refusing the review requested or in failing or refusing to grant all or part of the relief requested, may file a written complaint and request for hearing with the Commissioner, and shall specify the grounds relied upon. If the Commissioner has information concerning a similar ~~complaint he~~ complaint, the Commissioner may deny the hearing. If the Commissioner believes that probable cause for the complaint does not exist or that the complaint is not made in good faith, ~~he~~ the Commissioner shall deny the hearing. If the Commissioner finds that the complaint charges a violation of this Article and that the complainant would be aggrieved if the violation is proven, ~~he~~ the Commissioner shall proceed as provided in G.S. ~~58-2-50 or~~ 58-2-70.

(b) Repealed by Session Laws 1985 (Regular Session, 1986), c. 1027, s. 15."

Section 12. G.S. 58-42-1 reads as rewritten:

"**§ 58-42-1. Establishment of plans.**

If the Commissioner finds, after a ~~hearing held in accordance with G.S. 58-2-50.~~ hearing, that in all or any part of this State, any amount or kind of insurance authorized by G.S. 58-7-15(4) through G.S. 58-7-15(22) is not readily available in the voluntary market and that the public interest requires the availability of that insurance, ~~he~~ the Commissioner may either:

(1) Promulgate plans to provide insurance coverage for any risks in this State that are, based on reasonable underwriting standards, entitled to obtain but are otherwise unable to obtain coverage; or

(2) Call upon insurers to prepare plans for ~~his~~ the Commissioner's approval."

Section 13. G.S. 58-45-50 reads as rewritten:

"**§ 58-45-50. Appeal from acts of Association to Commissioner; appeal from Commissioner to superior court.**

Any person or any insurer who may be aggrieved by an act, ruling or decision of the Association other than an act, ruling or decision relating to the cause or amount of a claimed loss, may, within 30 days after ~~such ruling~~ the ruling, appeal to the Commissioner. Any hearings held by the Commissioner ~~pursuant to such an~~ under the appeal shall be in accordance with ~~the procedure set forth in G.S. 58-2-50.~~ rules adopted by the Commissioner: Provided, however, the Commissioner is authorized to appoint a member of ~~his~~ the Commissioner's staff as deputy commissioner for the purpose of hearing ~~such~~ those appeals and a ruling based upon ~~such~~ the hearing ~~shall have~~ has the same effect as if heard by the Commissioner. All persons or insureds aggrieved by any order or decision of the Commissioner may appeal as ~~is~~ provided ~~by the provisions of~~ in G.S. 58-2-75.

No later than 20 days before each hearing, the appellant shall file with the Commissioner or his designated hearing officer and shall serve on the appellee a written statement of ~~his~~ the appellant's case and any evidence ~~he~~ that the appellant intends to offer at the hearing. No later than five days before ~~such~~ the hearing, the appellee shall file with the Commissioner or ~~his~~ the designated hearing officer and shall serve on the appellant a written statement of ~~his~~ the appellant's case and any evidence ~~he~~ that the appellee intends to offer at the hearing. ~~Each such hearing shall be recorded and transcribed. The cost of such recording and transcribing shall be borne equally by the appellant and appellee; provided that upon any final adjudication the prevailing party shall be reimbursed for his share of such costs by the other party.~~ The procedures governing recordings of hearings and, if necessary, transcripts of recordings, as well as the fees for copies of recordings and transcripts, shall be determined by rules adopted by the Commissioner. Each party shall, on a date determined by the Commissioner or his designated hearing officer, but not sooner than 15 days after delivery of the completed transcript to the party, submit to the Commissioner or his designated hearing officer and serve on the other party, a proposed order. The Commissioner or his designated hearing officer shall then issue an order."

Section 14. G.S. 58-45-70 reads as rewritten:

"**§ 58-45-70. Commissioner may examine affairs of Association.**

The Commissioner may from time to time make an examination into the affairs of the Association when ~~he~~ the Commissioner deems it to be ~~prudent and in undertaking such examination he~~ prudent, and as part of the examination the Commissioner may hold a public ~~hearing pursuant to the provisions of G.S. 58-2-50.~~ hearing. ~~The expenses of such examination shall be borne and paid by the Association.~~ The Association shall pay the expenses of the examination."

Section 15. G.S. 58-46-20(c) reads as rewritten:

"(c) The Commissioner may designate the kinds of property insurance policies on principal residences to be offered by the association, including insurance policies under Article 36 of this Chapter, and the commission rates to be paid to agents or brokers for these policies, if ~~he~~ the Commissioner finds, after a ~~hearing held in accordance with G.S. 58-2-50,~~ hearing, that the public interest requires the designation. The provisions of Chapter 150B of the General Statutes do not apply to any procedure under this subsection, except that G.S. 150B-39 and G.S. 150B-41 shall apply to a hearing under this subsection. Within 30 days after the receipt of notification from the Commissioner of a change in designation ~~pursuant to~~ under this subsection, the association shall submit a revised plan and articles of association for approval in accordance with subsection (b) of this section."

Section 16. G.S. 58-46-30 reads as rewritten:

"**§ 58-46-30. Appeals; judicial review.**

The association shall provide reasonable means, to be approved by the Commissioner, whereby any person or insurer affected by any act or decision of the administrators of the Plan or underwriting association, other than an act or decision relating to the cause or amount of a claimed loss, may be heard in person or by an authorized representative, before the governing board of the association or a designated committee. Any person or insurer aggrieved by any decision of the governing board or designated committee, may be appealed to the Commissioner within 30 days from the date of ~~such~~ the ruling or decision. The Commissioner, after hearing held ~~pursuant to the procedure set forth in G.S. 58-2-50,~~ under rules adopted by the Commissioner, shall issue an order approving or disapproving the act or decision with respect to the matter ~~which~~ that is the subject of appeal. The Commissioner ~~is authorized to~~ may appoint a member of ~~his~~ the Commissioner's staff as deputy commissioner for the purpose of hearing ~~such~~ the appeals and a ruling based on ~~such~~ the hearing ~~shall have~~ has the same effect as if heard by the ~~Commissioner personally.~~ Commissioner. All persons or insurers or their representatives aggrieved by any order or decision of the Commissioner may appeal as provided ~~by the provisions of~~ in G.S. 58-2-75.

No later than 20 days before each hearing, the appellant shall file with the Commissioner or ~~his~~ the designated hearing officer and shall serve on the appellee a written statement of ~~his~~ the appellant's case and any evidence ~~he~~ that the appellant intends to offer at the hearing. No later than five days before ~~such~~ the hearing, the appellee shall file with the Commissioner or ~~his~~ the designated hearing officer and

shall serve on the appellant a written statement of ~~his~~ the appellee's case and any evidence ~~he~~ that the appellee intends to offer at the hearing. ~~Each such hearing shall be recorded and transcribed. The cost of such recording and transcribing shall be borne equally by the appellant and appellee; provided that upon any final adjudication the prevailing party shall be reimbursed for his share of such costs by the other party.~~ The procedures governing recordings of hearings and, if necessary, transcripts of recordings, as well as the fees for copies of recordings and transcripts, shall be determined by rules adopted by the Commissioner. Each party shall, on a date determined by the Commissioner or ~~his~~ the designated hearing officer, but not sooner than 15 days after delivery of the completed transcript to the party, submit to the Commissioner or ~~his~~ the designated hearing officer and serve on the other party, a proposed order. The Commissioner or ~~his~~ the designated hearing officer shall then issue an order."

PART III. CONTINUING CARE RETIREMENT COMMUNITY NAME CORRECTION AND RECEIVERSHIPS.

Section 17. G.S. 58-30-10(14) reads as rewritten:

"(14) 'Insurer' means any entity licensed under Articles 7, 16, 26, 49, 65, or 67 of this Chapter and any employer that has furnished to the Commissioner satisfactory proof of its financial responsibility under G.S. 97-93(a)(2). For purposes of this Article, 'insurer' also includes continuing care retirement ~~centers~~ communities licensed under Article 64 of this Chapter."

Section 18. The title of Article 64 of Chapter 58 of the General Statutes reads as rewritten:

"ARTICLE 64.

~~"Registration, Disclosure, Contract, and Financial Monitoring Requirements for~~ Continuing Care ~~Facilities.~~ Retirement Communities."

Section 19. G.S. 58-64-1 reads as rewritten:

"**§ 58-64-1. Definitions.**

As used in this Article, unless otherwise specified:

(1) 'Continuing care' means the furnishing to an individual other than an individual related by blood, marriage, or adoption to the person furnishing the care, of lodging together with nursing services, medical services, or other health related services, ~~pursuant to~~ under an agreement effective for the life of the individual or for a period ~~in excess of~~ longer than one year.

(2) 'Entrance fee' means a payment that assures a resident a place in a facility for a term of years or for life.

(3) 'Facility' means the ~~place or places~~ retirement community or communities in which a provider undertakes to provide continuing care to an individual.

(4) 'Health related services' means, at a minimum, nursing home admission or assistance in the activities of daily living, exclusive of the provision of meals or cleaning services.

(5) 'Living unit' means a room, apartment, cottage, or other area within a facility set aside for the exclusive use or control of one or more identified residents.

(6) 'Provider' means the promoter, developer, or owner of a ~~continuing care~~ facility, whether a natural person, partnership, or other unincorporated association, however organized, trust, or corporation, of an institution, building, residence, or other place, whether operated for profit or not, or any other person, that solicits or undertakes to provide continuing care under a continuing care facility contract, or that represents ~~himself~~ himself, herself, or itself as providing continuing care or 'life care.'

(7) 'Resident' means a purchaser of, a nominee of, or a subscriber to, a continuing care contract.

(8) 'Hazardous financial condition' means a provider is insolvent or in eminent danger of becoming insolvent."

Section 20. G.S. 58-64-40(b) reads as rewritten:

"(b) The board of directors or other governing body of a ~~continuing care~~ facility or its designated representative shall hold annual meetings with the residents of the ~~continuing care~~ facility for free discussions of subjects including, but not limited to, income, expenditures, and financial trends and problems as they apply to the facility and discussions of proposed changes in policies, programs, and services. Residents shall be entitled to at least seven days advance notice of each meeting. An agenda and any materials that will be distributed by the governing body at the meetings shall remain available upon request to residents."

Section 21. G.S. 58-64-80 reads as rewritten:

"**§ 58-64-80. Advisory Committee.**

There shall be a nine member Continuing Care Advisory Committee appointed by the Commissioner. The Committee shall consist of at least two residents of ~~continuing care communities,~~ facilities, two representatives of the North Carolina Association of Nonprofit Homes for the Aging, one individual who is a certified public accountant and is licensed to practice in this State, one individual skilled in the field of architecture or engineering, and one individual who is a health care professional."

Section 21.1. Article 64 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-64-46. Receiverships; exception for facility beds.**

When the Commissioner has been appointed as a receiver under Article 30 of this Chapter for a provider or facility subject to this Article, and if it appears to the court, upon petition of the Commissioner or the provider, or on the court's own motion, that the best interests of the facility or the welfare of persons who have previously contracted with the provider or may contract with the facility may be best served by the addition of adult care home beds, the Department of Human Resources may,

notwithstanding any other provision of law, accept and approve the addition of beds for that facility."

PART IV. WORKERS' COMPENSATION LOSS COSTS CONFORMING CHANGES.

Section 22. G.S. 58-36-1(2) reads as rewritten:

"(2) The Bureau shall provide reasonable means to be approved by the Commissioner whereby any person affected by a rate or loss costs made by it may be heard in person or by ~~his~~ the person's authorized representative before the governing committee or other proper executive of the Bureau."

Section 23. G.S. 58-36-1(5)c. reads as rewritten:

"c. Failure or refusal by any assigned employer risk to make full disclosure to the Bureau, servicing carrier, or insurer writing a policy of information regarding the employer's true ownership, change of ownership, operations, or payroll, or any other failure to disclose fully any records pertaining to workers' compensation insurance shall be sufficient grounds for ~~the Bureau to authorize~~ the termination of the policy of that employer."

Section 24. G.S. 58-36-10 reads as rewritten:

"**§ 58-36-10. Method of rate making; factors considered.**

The following standards ~~shall~~ apply to the making and use of ~~rates.~~ rates or loss costs:

(1) Rates or loss costs shall not be excessive, inadequate or unfairly discriminatory.

(2) Due consideration shall be given to actual loss and expense experience within this State for the most recent three-year period for which ~~such~~ that information is available; to prospective loss and expense experience within this State; to the hazards of conflagration and catastrophe; to a reasonable margin for underwriting profit and to contingencies; to dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers; to investment income earned or realized by insurers from their unearned premium, loss, and loss expense reserve funds generated from business within this State; to past and prospective expenses specially applicable to this State; and to all other relevant factors within this State: Provided, however, that countrywide expense and loss experience and other countrywide data may be considered only where credible North Carolina experience or data is not available.

(3) In the case of fire insurance rates, as are subject to the ratemaking authority of the Bureau, consideration may be given to the experience of such fire insurance business during the most recent five-year period for which ~~such~~ that experience is available. In

the case of fire insurance rates that are subject to the ratemaking authority of the Bureau, consideration shall be given to the insurance public protection classifications of rural fire districts based upon standards established by the Commissioner. To the extent credits are provided for proximity to fire hydrants, the Bureau may also provide appropriate credits in public protection classifications for optional water sources, such as ponds, lakes, or other bodies of water, in accordance with standards and procedures filed with and approved by the Commissioner.

(4) Risks may be grouped by classifications and lines of insurance for establishment of ~~rates~~ rates, loss costs, and base premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans ~~which~~ that establish standards for measuring variations in hazards or expense provisions or both. ~~Such~~ Those standards may measure any differences among risks that can be demonstrated to have a probable effect upon losses or expenses. The Bureau ~~is directed to~~ shall establish and implement a comprehensive classification rating plan for motor vehicle insurance under its jurisdiction within 90 days of September 1, 1977. No such classification plans shall base any standard or rating plan for private passenger (nonfleet) motor vehicles, in whole or in part, directly or indirectly, upon the age or sex of the persons insured. The Bureau shall at least once every three years make a complete review of the filed classification rates to determine whether they are proper and supported by statistical evidence, and shall at least once every 10 years make a complete review of the territories for nonfleet private passenger motor vehicle insurance to determine whether they are proper and reasonable.

(5) In the case of workers' compensation insurance and employers' liability insurance written in connection therewith, due consideration shall be given to the past and prospective effects of changes in compensation benefits and in legal and medical fees that are provided for in General Statutes Chapter 97."

Section 25. G.S. 58-36-15(a) reads as rewritten:

"(a) The Bureau shall file with the Commissioner copies of the rates, loss costs, classification plans, rating plans and rating systems used by its members. Each rate or loss costs filing shall become effective on the date specified in the filing, but not earlier than 105 days ~~from~~ after the date the filing is received by the Commissioner: Provided that (1) rate or loss costs filings for workers' compensation insurance and employers' liability insurance written in connection therewith shall not become effective earlier than 120 days from the date the filing is received by the Commissioner or on the date ~~as~~ provided ~~under~~ in G.S. 58-36-100, whichever is

earlier; and (2) any filing may become effective on a date earlier than that specified in this subsection upon agreement between the Commissioner and the Bureau."

Section 26. G.S. 58-36-15(f) reads as rewritten:

"(f) On or before September 1 of each calendar ~~year~~ year, or later with the approval of the Commissioner, the Bureau shall submit to the Commissioner the experience, data, statistics, and information referred to in subsection (c) of this section and required under G.S. 58-36-100 and a residual market rate ~~or~~ and prospective loss costs review based on ~~such~~ those data for workers' compensation insurance and employers' liability insurance written in connection therewith. Any rate or loss costs increase for ~~such~~ that insurance that is implemented ~~pursuant to~~ under this Article shall become effective solely to ~~such insurance as is written having~~ insurance with an inception date on or after the effective date of the rate or loss costs increase."

Section 27. G.S. 58-36-15(g) reads as rewritten:

"(g) The following information must be included in policy form, rule, and rate or loss costs filings under this Article and under Article 37 of this Chapter:

(1) A detailed list of the rates, loss costs, rules, and policy forms filed, accompanied by a list of those superseded; and

(2) A detailed description, properly referenced, of all changes in policy forms, rules, prospective loss costs, and rates, including the effect of each change."

Section 28. G.S. 58-36-30(a) reads as rewritten:

"(a) ~~No insurer, officer, agent or representative thereof~~ Except as permitted by G.S. 58-36-100 for workers' compensation loss costs filings, no insurer and no officer, agent, or representative of an insurer shall knowingly issue or deliver or knowingly permit the issuance or delivery of any policy of insurance in this State ~~which~~ that does not conform to the rates, rating plans, classifications, schedules, rules and standards made and filed by the Bureau. ~~However, an~~ An insurer may deviate from the rates ~~promulgated~~ adopted by the Bureau ~~provided~~ if the insurer has filed the proposed deviation ~~to be applied both~~ with the Bureau and the Commissioner, ~~and provided the deviation is uniform in its application to all risks in the State of the class to which the deviation is to apply; and provided such deviation is approved by the Commissioner.~~ if the proposed deviation is based on sound actuarial principles, and if the proposed deviation is approved by the Commissioner. ~~The Commissioner shall approve proposed deviations if they do not render the rates excessive, inadequate or unfairly discriminatory. If approved, the deviation may thereafter be amended, subject to the provisions of this subsection.~~ Amendments to deviations are subject to the same requirements as initial filings. ~~The deviation may be terminated~~ An insurer may terminate a deviation only if the deviation has been in effect for a period of six months before the effective date of the termination and the insurer notifies the Commissioner of the termination no later than 15 days before the effective date of the termination."

Section 29. G.S. 58-36-30(c) reads as rewritten:

"(c) ~~Any deviation with respect to workers' compensation and employers' liability insurance written in connection therewith as filed under subsection (a) of this section shall apply uniformly to all classifications.~~ Any approved rate under subsection (b) of this section with respect to workers' compensation and employers' liability insurance written in connection therewith shall be furnished to the Bureau."

Section 30. Effective September 1, 1997, G.S. 58-36-100(a) reads as rewritten:

"(a) ~~Nothing in this section requires the Bureau or its member insurers to refile rates previously implemented before two years after the effective date of this section. Any member insurer of the Bureau may continue to use all rates and deviations filed and approved for its use until disapproved, or the insurer makes its own filing to change its rates, either by making an independent filing or by filing a reference filing adoption form adopting the Bureau's prospective loss costs, or modification thereof.~~ Except as provided in ~~subsection~~ subsections (k) and (m) of this section, ~~with the initial prospective loss costs reference filing,~~ the Bureau shall no longer develop or file any minimum premiums, minimum premium formulas, or expense constants. If an insurer wishes to amend minimum premium ~~formulas,~~ formulas or expense constants, it must file the minimum premium rules, formulas, or amounts it proposes to use. A copy of each filing submitted to the Commissioner under subsections (e) and (g) of this section shall also be sent to the Bureau."

Section 31. Effective September 1, 1997, G.S. 58-36-100(b)(1) reads as rewritten:

"(1) 'Expenses'. -- That portion of a rate attributable to acquisition, field supervision, collection expenses, any tax levied by the State or by any political subdivision of the State, licensing costs, fees, and general expenses, as determined by the insurer."

Section 32. Effective September 1, 1997, G.S. 58-36-100(c) reads as rewritten:

"(c) Except as provided in subsection (m) of this section, for workers' compensation and employers' liability insurance written in connection with workers' compensation insurance, the Bureau shall no longer develop or file advisory final rates that contain provisions for expenses (other than loss adjustment expenses) and profit. The Bureau shall instead develop and file for approval with the Commissioner, in accordance with this section, reference filings containing advisory prospective loss costs and the underlying loss data and other supporting statistical and actuarial information for any calculations or assumptions underlying these loss costs. Loss-based ~~assessments, any tax levied by the State or any political subdivision of the State, licensing costs, and fees~~ assessments will be included in prospective loss costs."

Section 32.1. Effective September 1, 1997, G.S. 58-36-100(k) reads as rewritten:

"(k) The Bureau shall file with the Commissioner, for approval, filings containing a revision of rules and supplementary rating information. This includes policy-writing rules, rating plans, classification codes and descriptions, and rules that include factors or relativities, such as ~~employers' liability~~ increased limits ~~factors,~~ factors and related

minimum premiums, classification relativities, or similar ~~factors, but excludes minimum premiums.~~ factors. The Bureau may print and distribute manuals of rules and supplementary rating ~~information, excluding minimum premiums.~~ information."

PART V. INSURANCE COMPANY FINANCIAL OPERATIONS.

Section 33. G.S. 58-5-63(a) reads as rewritten:

"(a) All insurance companies making deposits under this Article are entitled to interest on those ~~deposits, which shall remain in the deposit accounts.~~ deposits. The right to interest is subject to a company paying its insurance policy liabilities. If any company fails to pay those liabilities, interest accruing after the failure is payable to the Commissioner for the payment of those liabilities under subsection (b) of this section."

Section 34. G.S. 58-7-21(a) reads as rewritten:

"(a) As used in this section and in G.S. ~~58-7-26, 58-7-30, and 58-7-31:~~ 58-7-26 and G.S. 58-7-30:

(1) 'Reinsurance' means a transfer of insurance risk from a ceding insurer to an assuming insurer.

(2) 'Insurance risk' means an uncertainty regarding the ultimate amount of any claim payment (underwriting risk) or an uncertainty regarding the timing of the payments (timing risk), or both."

Section 35. G.S. 58-7-31(b)(3) reads as rewritten:

"(3) The ceding insurer is required to reimburse the reinsurer for negative experience under the reinsurance agreement; except that neither offsetting experience refunds against current and prior years' losses under the reinsurance agreement nor payment by the ceding insurer of an amount equal to the current and prior years' losses under the reinsurance agreement upon voluntary termination of in-force reinsurance by the ceding insurer are a reimbursement to the reinsurer for negative experience. Voluntary termination does not include situations where termination occurs because of unreasonable provisions that allow the reinsurer to reduce its risk or increase its risk charge under the reinsurance agreement."

Section 36. G.S. 58-7-31(d)(1) reads as rewritten:

"(1) Reinsurance agreements entered into after October 1, 1993, that involve the reinsurance of business issued ~~prior to~~ before the effective date of the reinsurance agreements, along with any subsequent amendments thereto, shall be filed by the ceding company with the Commissioner within 30 days after its date of execution. Each filing shall include data detailing the ~~final impact~~ financial effect of the transaction. The ceding insurer's actuary who signs the financial statement actuarial opinion with respect to valuation of reserves shall consider this ~~statute~~ section and any applicable actuarial standards of practice when determining the

proper credit in financial statements filed with the Commissioner. The actuary ~~should~~ shall maintain adequate documentation and be prepared upon request to describe the actuarial work performed for inclusion in the financial statements and to demonstrate that ~~such~~ that work conforms to this ~~statute.~~ section."

Section 37. G.S. 58-7-173(12) reads as rewritten:

"(12) Secured obligations of duly constituted churches and of church-holding companies; and the cost of investments made under this subdivision shall not exceed the lesser of one percent (1%) of the insurer's admitted assets ~~of~~ or five percent (5%) of the insurer's capital and surplus."

Section 38. The catchline of G.S. 58-7-177 reads as rewritten:

"**§ 58-7-177. Investments in ~~subsidiaries and affiliated corporations.~~ subsidiaries.**"

Section 39. G.S. 58-8-5(a)(3) reads as rewritten:

"(3) ~~Said officers shall cause said certificate to be published once a week for two consecutive weeks in a newspaper in Raleigh and in the county where the company's principal office is located, or posted at the courthouse door if no newspaper be published within the county. Said printed or posted notices shall be in such form and of such size as the Commissioner may approve, and in addition to setting forth in full the certificate required in subdivision (2) shall state that application for amending the company's charter in the manner specified has been proposed by the board of directors, and shall also state the time set for a meeting of policyholders thereby called to be held at the principal office of the company to take action on the proposed amendment. A true copy of such notice shall be filed with the Commissioner, and also with that official who performs the functions of Commissioner in each state where the company is licensed to do business. Such publication and filing of notices shall be completed at least 30 days prior to the date set therein for the meeting of policyholders and due proof thereof shall be filed with the Commissioner at least 15 days prior to the date of such meeting.~~ If the meeting at which the proposed amendment is to be considered is a special meeting, rather than a regular annual meeting of policyholders, ~~such special~~ that meeting can be called only after the Commissioner has given ~~his~~ approval in ~~writing, and the published notice shall show the fact of such approval;~~ writing;"

Section 40. G.S. 58-8-25 reads as rewritten:

"**§ 58-8-25. Dividends to policyholders.**

(a) Any participating or dividend-paying company, stock or mutual or foreign or domestic, that writes other than life insurance or workers' compensation insurance and employers' liability insurance in connection therewith, may declare and pay a

dividend to policyholders from its ~~surplus,~~ unassigned surplus as reflected in the company's most recent annual or quarterly statement filed with the Commissioner, which shall include only its surplus in excess of any required minimum surplus. No such dividend shall be paid unless it is fair and equitable and for the best interest of the company and its policyholders. In declaring any dividend to its policyholders, any such company may make reasonable classifications of policies expiring during a fixed period, upon the basis of each general kind of insurance covered by ~~such~~ those policies and by territorial divisions of the location of risks by states, except that in fixing the amount of dividends to be paid on each general kind of insurance, ~~which~~ the dividends shall be uniform in rate and applicable to the majority of risks within ~~such~~ that general kind of insurance, and exceptions may be made as to any class or classes of risk and a different rate or amount of dividends paid on ~~such~~ the class or classes if the conditions applicable to ~~such~~ the class or classes differ substantially from the condition applicable to the kind of insurance as a whole. Every such company shall have an equal rate of dividend for the same term on all policies insuring risks in the same classification. The payment of dividends to policyholders shall not be contingent upon the maintenance or renewal of the policy. All dividends shall be paid to the policyholder unless a written assignment ~~thereof be~~ of those dividends is executed. Neither the payment of dividends nor the rate ~~thereof~~ of the dividends may be guaranteed by any company, or its agent, ~~prior to~~ before the declaration of the dividend by the board of directors of ~~such~~ the company. The holders of policies of insurance issued by a company in compliance with the orders of any public official, bureau or committee, in conformity with any statutory requirement or voluntary arrangement, for the issuance of insurance to risks not otherwise acceptable to the company, may be established as a separate class of risks.

(b) Any participating or dividend-paying company, stock or mutual or foreign or domestic, that writes workers' compensation insurance and employers' liability insurance in connection therewith may declare and pay a dividend to policyholders from its ~~surplus,~~ unassigned surplus as reflected in the company's most recent statement filed with the Commissioner under G.S. 58-2-165, which shall include only its surplus in excess of any required minimum surplus. No such dividend shall be paid unless it is fair and equitable and for the best interest of the company and its policyholders. In declaring any dividend to its policyholders, any such company may make reasonable classifications of policies expiring during a fixed period. The payment of dividends to policyholders shall not be contingent upon the maintenance or renewal of the policy. All dividends shall be paid to the policyholder unless a written assignment ~~thereof be~~ of those dividends is executed. Neither the payment of dividends nor the rate ~~thereof~~ of the dividends may be guaranteed by any company, or its agent, ~~prior to~~ before the declaration of the dividend by the board of directors of ~~such~~ the company. The holders of policies of insurance issued by a company in compliance with the orders of any public official, bureau, or committee, in conformity with any statutory requirement or voluntary arrangement, for the issuance of insurance to risks not otherwise acceptable to the company, may be established as a separate class of risks."

Section 41. G.S. 58-9-6(a) reads as rewritten:

"(a) The Commissioner shall issue an intermediary license or an exemption from the license, subject to G.S. 58-9-2(b)(2) or G.S. 58-9-2(c)(3), to any person who has complied with the requirements of this Article. A license issued to a noncorporate entity authorizes all of the members of the entity and any designated employees to act as intermediaries under the license, and those persons shall be named in the application and any supplements. A license issued to a corporation authorizes all of the officers and any designated employees and directors of the corporation to act as intermediaries on behalf of the corporation, and those persons shall be named in the application and any supplements."

Section 42. G.S. 58-9-11(b) reads as rewritten:

"(b) An insurer shall not engage the services of any person to act as a broker on its behalf unless the person is licensed ~~under G.S. 58-9-6.~~ or exempted under this Article. An insurer shall not employ an individual who is employed by a broker with which it transacts business, unless the broker is under common control with the insurer under Article 19 of this Chapter."

Section 43. G.S. 58-9-21(a) reads as rewritten:

"(a) A reinsurer shall not engage the services of any person to act as a manager on its behalf unless the person is licensed ~~under G.S. 58-9-6.~~ or exempted under this Article."

Section 44. G.S. 58-12-2(3) reads as rewritten:

"(3) Domestic insurer. -- Any insurance company organized in this State under ~~Article 7~~ Article 7 or Article 15 of this Chapter."

Section 45. G.S. 58-13-10 reads as rewritten:

"**§ 58-13-10. Scope.**

(a) This Article applies to all domestic insurers and to all kinds of insurance written by those insurers ~~under Articles 1 through 66~~ of this Chapter. Foreign insurers ~~are to~~ shall comply in substance with the requirements and limitations of this section. ~~This Article does not apply to variable contracts for which separate accounts are required to be maintained nor to statutory deposits that are required to be maintained by insurance regulatory agencies as a requirement for doing business in such jurisdictions.~~

(b) This Article does not apply to:

(1) Variable contracts for which separate accounts are required to be maintained.

(2) Statutory deposits that are required to be maintained by insurance regulatory agencies as a requirement for doing business.

(3) Real estate authorized under G.S. 58-7-187 and encumbered by a mortgage loan with a first lien."

Section 46. G.S. 58-13-15 reads as rewritten:

"**§ 58-13-15. Definitions.**

As used in this Article:

(1) 'Assets' means all property, real or personal, tangible or intangible, legal or equitable, owned by an insurer.

(2) 'Claimants' means any owners, beneficiaries, assignees, certificate holders, or third-party beneficiaries of any insurance benefit or right arising out of and within the coverage of an insurance policy covered by this Article.

(3) 'Reserve assets' means those assets of an insurer that are authorized investments for policy reserves in accordance with ~~Articles 1 through 64 of this Chapter and G.S. 58-65-95.~~ this Chapter.

(4) 'Policyholder-related liabilities' means those liabilities that are required to be established by an insurer for all of its outstanding insurance policies in accordance with ~~Articles 1 through 64 of this Chapter and G.S. 58-65-95.~~ this Chapter."

Section 47. G.S. 58-13-20(b) reads as rewritten:

"(b) The Commissioner ~~has the right to~~ may examine any of ~~such~~ these assets, reinsurance agreements, or deposit arrangements at any time in accordance with ~~his~~ the Commissioner's authority to make examinations of insurers as conferred by other provisions ~~of Articles 1 through 64~~ of this Chapter."

Section 48. G.S. 58-19-5(5) reads as rewritten:

"(5) 'Person' means an individual, corporation, partnership, limited liability company, association, joint stock company, trust, unincorporated organization, or any similar entity or any combination of the foregoing acting in concert."

Section 49. G.S. 58-19-10(b)(1) reads as rewritten:

"(1) Invest, in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries, amounts that do not exceed the lesser of ten percent (10%) of ~~such~~ the insurer's admitted assets or fifty percent (50%) of ~~such~~ the insurer's surplus as regards policyholders, provided that after ~~such~~ those investments, the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs. In calculating the amount of ~~such~~ the investments, investments in domestic or foreign insurance subsidiaries and health maintenance organizations shall be excluded, and there shall be included: (i) total net monies or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of ~~such~~ the subsidiary whether or not represented by the purchase of capital stock or issuance of other securities; and (ii) all amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities, and all contributions to the capital or surplus, of a subsidiary subsequent to its acquisition or formation;".

PART VI. HANDICAPPED PERSONS.

Section 50. G.S. 168-10 reads as rewritten:

"**§ 168-10. Eliminate discrimination in treatment of handicapped and disabled.**

Each handicapped person shall have the same consideration as any other person for individual accident and health insurance coverage, and no insurer, service corporation, multiple employer welfare arrangement, or health maintenance organization subject to Chapter 58 of the General Statutes solely on the basis of ~~such~~ the person's handicap, shall deny ~~such~~ coverage or benefits. The availability of ~~such insurance~~ coverage or benefits shall not be denied solely ~~due to~~ because of the ~~handicap, provided, however, that no such insurer shall be prohibited from excluding by waiver or otherwise, any pre-existing conditions from such coverage, and further provided that~~ handicap; however, any such insurer may charge the appropriate premiums or fees for the risk insured on the same basis and conditions as insurance issued to other ~~persons.~~ persons, in accordance with actuarial and underwriting principles prescribed in Chapter 58 of the General Statutes. ~~Nothing contained herein or in any other statute shall restrict or preclude any insurer governed by Chapter 58 of the General Statutes from setting and charging a premium or fee based upon the class or classes of risks and on sound actuarial and underwriting principles as determined by such insurer, or from applying its regular underwriting standards applicable to all classes of risks. The provisions of this section shall apply to both corporations governed by Chapter 58 of the General Statutes.~~"

Section 51. G.S. 168-22(b) reads as rewritten:

"(b) A family care home ~~shall be~~ is deemed a residential use of property for the purposes of determining charges or assessments imposed by political subdivisions or businesses for water, sewer, power, telephone service, cable television, garbage and trash collection, repairs or improvements to roads, streets, and sidewalks, and other services, utilities, and ~~improvements, and for purposes of classification for insurance.~~ improvements."

PART VII. AUTOMOBILE INSURANCE.

Section 52. G.S. 58-36-75(e) is repealed.

Section 53. G.S. 58-36-5(c) reads as rewritten:

"(c) The ~~Bureau, when created,~~ Bureau shall adopt ~~such~~ rules ~~and regulations~~ for its orderly procedure ~~as shall be~~ that are necessary for its maintenance and operation. No ~~such~~ rules ~~and regulations~~ shall discriminate against any type of insurer because of its plan of operation, nor shall any insurer be prevented from returning any unused or unabsorbed premium, deposit, savings or earnings to its policyholders or subscribers. ~~The expense of such Bureau shall be borne by its members by quarterly contributions to be made in advance, such contributions to be made in advance by prorating such expense among the members in accordance with the amount of gross premiums derived from the above lines of insurance in North Carolina during the preceding year and members entering the Bureau since that date to advance an amount to be fixed by the governing committee. After the first fiscal year of operation of the Bureau the~~ The necessary expense of the Bureau shall be advanced by the members in accordance with rules ~~and regulations to be~~ established and adopted by the governing committee. The Bureau ~~shall be empowered to~~ may

subscribe for or purchase any necessary service, ~~and~~ employ and fix the salaries of such personnel and assistants as are ~~necessary.~~ necessary, charge reasonable fees for its products and services, and engage in any lawful activities related to the objects, functions, duties, responsibilities, or authority of the Bureau."

Section 53.1. G.S. 58-37-1(7) reads as rewritten:

"(7) 'Motor vehicle insurance' means direct insurance against liability arising out of the ownership, operation, maintenance or use of a motor vehicle for bodily injury including death and property damage and includes medical payments and uninsured and underinsured motorist coverages.

With respect to motor carriers who are subject to the financial responsibility requirements established under the Motor Carrier Act of 1980, the term, 'motor vehicle insurance' includes coverage with respect to environmental restoration. As used in this subsection the term, 'environmental restoration' means restitution for the loss, damage, or destruction of natural resources arising out of the accidental discharge, dispersal, release, or escape into or upon the land, atmosphere, water course, or body of water of any commodity transported by a motor carrier. Environmental restoration includes the cost of removal and the cost of necessary measures taken to minimize or mitigate damage to human health, the natural environment, fish, shellfish, and wildlife."

Section 53.2. G.S. 58-37-35(b)(2) reads as rewritten:

"(2) Additional ceding privileges for motor vehicle insurance shall be provided by the Board of Governors if there is a substantial public demand for a coverage or coverage limit of any component of motor vehicle insurance up to the following:

Bodily injury liability: one hundred thousand dollars ($100,000) each person, three hundred thousand dollars ($300,000) each accident;

Property damage liability: fifty thousand dollars ($50,000) each accident;

Medical payments: two thousand dollars ($2,000) each person;

Underinsured motorist: one ~~hundred thousand~~ million dollars ~~($100,000)~~ ($1,000,000) each person and ~~three hundred thousand dollars ($300,000)~~ each accident for bodily injury liability;

Uninsured motorist: one ~~hundred thousand~~ million dollars ~~($100,000)~~ ($1,000,000) each person and each accident for bodily injury and ~~fifteen~~ fifty thousand dollars ~~($15,000)~~ ($50,000) for property damage (one hundred dollars ($100.00) deductible)."

Section 53.3. G.S. 58-37-35(e) reads as rewritten:

"(e) The Commissioner and member companies shall provide for a Board of ~~Governors within 30 days after May 24, 1973. If any member seat on the initial Board of Governors is not filled in accordance with this Article within such time,~~

~~then, in that event the Commissioner shall appoint natural persons from any of the classifications specified in subsection (d) of this section to serve the initial term on the Board of Governors. As soon as possible after its selection, the Commissioner shall call for the initial meeting of the Board.~~ Governors. ~~After the~~ The Board of Governors ~~have been selected it~~ shall ~~then~~ elect from its membership a chairman and shall ~~then~~ meet ~~thereafter as often as~~ at the call of the chairman ~~shall require~~ or at the request of ~~three~~ four members of the Board of Governors. The chairman shall retain the right to vote on all issues. ~~Five~~ Seven members of the Board of Governors shall constitute a quorum. The same member may not serve as chairman for more than two consecutive ~~years.~~ years; provided, however, that a member may continue to serve as chairman until a successor chairman is elected and qualified."

Section 53.4. G.S. 58-37-40(e) reads as rewritten:

"(e) Upon approval of the Commissioner of the plan so submitted or promulgation of a plan deemed approved by the Commissioner, all insurance companies licensed to write motor vehicle insurance in this State or any component thereof as a prerequisite to further engaging in writing the insurance shall formally subscribe to and participate in the plan so approved.

The plan of operation shall provide for, among other matters, (i) the establishment of necessary facilities; (ii) the management of the Facility; (iii) the preliminary assessment of all members for initial expenses necessary to commence operations; (iv) the assessment of members if necessary to defray losses and expenses; (v) the distribution of gains to defray losses incurred since September 1, 1977; (vi) the distribution of gains by credit or reduction of recoupment ~~or allocation~~ surcharges to policies subject to recoupment ~~or allocation~~ surcharges pursuant to this Article (the Facility may apportion the distribution of gains among the coverages eligible for cession pursuant to this Article); (vii) the recoupment ~~or allocation~~ of losses sustained by the Facility since September 1, 1977, pursuant to this Article, which losses may be recouped by equitable pro rata assessment of member ~~companies;~~ companies or by way of a surcharge on motor vehicle policies issued by member companies or through the Facility; (viii) the standard amount (one hundred percent (100%) or any equitable lesser amount) of coverage afforded on eligible risks which a member company may cede to the Facility; and (ix) the procedure by which reinsurance shall be accepted by the Facility. The plan shall further provide that:

(1) Members of the Board of Governors shall receive reimbursement from the Facility for their actual and necessary expenses incurred on Facility business, en route to perform Facility business, and while returning from Facility business plus a per diem allowance of twenty-five dollars ($25.00) a day which may be waived.

(2) In order to obtain a transfer of business to the Facility effective when the binder or policy or renewal thereof first becomes effective, the company must within 30 days of the binding or policy effective date notify the Facility of the identification of the insured, the coverage and limits afforded, classification data, and premium. The Facility shall accept risks at other times on receipt of

necessary information, but acceptance shall not be retroactive. The Facility shall accept renewal business after the member on underwriting review elects to again cede the business."

Section 54. G.S. 58-37-40(f) reads as rewritten:

"(f) The plan of operation shall provide that every member shall, following payment of any pro rata assessment, ~~commence~~ begin recoupment of that assessment by way of a surcharge on motor vehicle insurance policies issued by the member or through the Facility until the assessment has been recouped. ~~Such~~ Any surcharge under this subsection or under subsection (e) of this section shall be a percentage of premium adopted by the Board of Governors of the Facility; and the charges determined on the basis of the surcharge shall be combined with and displayed as a part of the applicable premium charges. ~~Provided, however, that recoupment~~ Recoupment of losses sustained by the Facility ~~since September 1, 1977,~~ with respect to nonfleet private passenger motor vehicles may be ~~recouped~~ made only by surcharging nonfleet private passenger motor vehicle insurance policies. ~~policies (i) that are subject to the classification plan promulgated pursuant to G.S. 58-36-65 and (ii) to which one or more driving record points have been assigned pursuant to said plan, subject to the provisions of G.S. 58-36-75.~~ If the amount collected during the period of surcharge exceeds assessments paid by the member to the Facility, the member shall pay over the excess to the Facility on a date specified by the Board of Governors. If the amount collected during the period of surcharge is less than the assessments paid by the member to the Facility, the Facility shall pay the difference to the member. Except as ~~hereinafter provided,~~ otherwise provided in this Article, the amount of recoupment shall not be considered or treated as a rate or premium for any purpose. The Board of Governors shall adopt and implement a plan for compensation of agents of Facility members when recoupment surcharges are imposed; ~~such~~ that compensation shall not exceed the compensation or commission rate normally paid to the agent for the issuance or renewal of the automobile liability policy issued through the North Carolina Reinsurance Facility affected by ~~such surcharge; provided, however, that~~ the surcharge. However, the surcharge ~~provided for in this section~~ shall include an amount necessary to recover the amount of the assessment to member companies and the compensation paid by each member, ~~pursuant to~~ under this section, to agents."

Section 55. G.S. 58-37-35(g)(8) reads as rewritten:

"(8) To establish fair and reasonable procedures for the sharing among members of any loss on Facility business ~~which~~ that cannot be recouped ~~pursuant to~~ under G.S. 58-37-40~~(f)~~ (e) ~~or which cannot be recouped or allocated under G.S. 58-37-75,~~ and other costs, charges, expenses, liabilities, income, property and other assets of the Facility and for assessing or distributing to members their appropriate shares. ~~Such~~ The shares may be based on the member's premiums for voluntary business for the appropriate category of motor vehicle insurance or by any other fair and reasonable method."

Section 56. G.S. 58-37-35(l) reads as rewritten:

"(l) The classifications, rules, rates, rating plans and policy forms used on motor vehicle insurance policies reinsured by the Facility may be made by the Facility or by any licensed or statutory rating organization or bureau on its behalf and shall be filed with the Commissioner. The Board of Governors shall establish a separate subclassification within the Facility for 'clean ~~risks' as herein defined.~~ risks'. For the purpose of this Article, a 'clean risk' ~~shall be~~ is any owner of a nonfleet private passenger motor vehicle as defined in G.S. 58-40-10, if the owner, principal operator, and each licensed operator in the owner's household have two years' driving experience as licensed drivers and if none of the persons has been assigned any Safe Driver Incentive Plan points under Article 36 of this Chapter during the three-year period immediately preceding either (i) the date of application for a motor vehicle insurance policy or (ii) the date of preparation of a renewal of a motor vehicle insurance policy. ~~Such~~ The filings may incorporate by reference any other material on file with the Commissioner. Rates shall be neither excessive, inadequate nor unfairly discriminatory. If the Commissioner finds, after a hearing, that a rate is either excessive, inadequate or unfairly discriminatory, ~~he~~ the Commissioner shall issue an order specifying in what respect it is deficient and stating when, within a reasonable period thereafter, ~~such rate shall be deemed~~ the rate is no longer effective. ~~Said~~ The order is subject to judicial review as set out in Article 2 of this Chapter. Pending judicial review of ~~said~~ the order, the filed classification plan and the filed rates may be used, charged and collected in the same manner as set out in G.S. 58-40-45 of this Chapter. ~~Said~~ The order shall not affect any contract or policy made or issued ~~prior to~~ before the expiration of the period set forth in the order. All rates shall be on an actuarially sound basis and shall be calculated, insofar as is possible, to produce neither a profit nor a loss. However, the rates made by or on behalf of the Facility with respect to 'clean ~~risks', as defined above,~~ risks' shall not exceed the rates charged 'clean risks' who are not reinsured in the Facility. The difference between the actual rate charged and the actuarially sound and self-supporting rates for 'clean risks' reinsured in the Facility may be recouped in similar manner as assessments ~~pursuant to G.S. 58-37-40(f) or allocated pursuant to G.S. 58-37-75.~~ under G.S. 58-37-40(f). Rates shall not include any factor for underwriting profit on Facility business, but shall provide an allowance for contingencies. There shall be a strong presumption that the rates and premiums for the business of the Facility are neither unreasonable nor excessive."

Section 57. G.S. 58-37-75 is repealed.

PART VIII. WORKERS' COMPENSATION SELF-INSURANCE.

Section 58. G.S. 58-50-60 reads as rewritten:

"**§ 58-50-60. Rules for precertification practices.**

(a) This section applies to all accident and health insurers under Articles 1 through 64 of this Chapter, all third-party administrators and preferred provider arrangements, all entities subject to Articles 65 through 67 of this Chapter, and all self-funded ~~health benefit~~ workers' compensation insurance plans.

(b) The Commissioner shall adopt reasonable rules governing ~~precertification practices and forms~~ utilization review and utilization review organizations ~~affiliated~~ that do business with the entities subject to this section."

Section 59. G.S. 58-50-65(a) reads as rewritten:

"(a) ~~Nothing~~ Except as provided in this subsection, nothing in Articles 50 through 55 of this Chapter ~~shall apply~~ applies to ~~or affect~~ any ~~policy of~~ liability or workers' compensation ~~insurance, except that~~ insurance policy. Except for G.S. 58-50-55(a), the provisions of ~~G.S. 58-50-50 and subsections (b) and (e) of G.S. 58-50-55 shall~~ this Article and Articles 65 and 67 of this Chapter and any administrative rules adopted under those Articles relating to preferred providers and utilization review apply to ~~policies of~~ workers' compensation ~~insurance.~~ insurance policies and to individual and group self-funded workers' compensation insurance plans. If there is any conflict between managed care rules adopted by the Commissioner under this Chapter and managed care rules adopted by the Industrial Commission under G.S. 97-25.2, the Industrial Commission's rules govern. If there is any conflict between managed care provisions in this Chapter and in Chapter 97 of the General Statutes with respect to workers' compensation, the provisions in Chapter 97 govern."

PART IX. CERTIFICATE OF AUTHORITY CONFORMING NAME CHANGE.

Section 60. The phrase "certificate of authority" is deleted and replaced by the word "license" wherever it occurs in each of the following sections of the General Statutes:

G.S. 58-4-15.	Revocation of certificate of authority.
G.S. 58-7-55.	Exceptions to requirements of G.S. 58-7-50.
G.S. 58-7-70.	Effects of redomestication.
G.S. 58-15-5.	Definitions.
G.S. 58-16-35.	Unauthorized Insurers Process Act.
G.S. 58-24-45.	Organization.
G.S. 58-24-145.	Injunction -- Liquidation -- Receivership of domestic society.
G.S. 58-28-5.	Transacting business without certificate of authority prohibited; exceptions.
G.S. 58-28-15.	Validity of acts or contracts of unauthorized company shall not impair obligation of contract as to the company; maintenance of suits; right to defend.
G.S. 58-28-45.	Uniform Unauthorized Insurers Act.
G.S. 58-30-10.	Definitions.
G.S. 58-30-55.	Condition on release from delinquency proceedings.
G.S. 58-30-260.	Conservation of property of foreign or alien insurers found in this State.
G.S. 58-33-132.	Qualifications of instructors.
G.S. 58-41-55.	Penalties; restitution.
G.S. 58-48-35.	Powers and duties of the Association.
G.S. 58-48-45.	Duties and powers of the Commissioner.
G.S. 58-57-80.	Penalties.

PART X. RISK SHARING PLAN SUNSET EXTENSION.

Section 61. G.S. 58-42-55 reads as rewritten:

"**§ 58-42-55. Expiration.**

This Article ~~shall expire~~ expires on July 1, ~~1997.~~ 1999."

PART XI. HEALTH INSURANCE CLARIFYING CHANGES.

Section 62. G.S. 58-50-130(a), as amended by S.L. 1997-259, is amended by adding the following new subdivision:

"(4b) Late enrollees may only be excluded from coverage for the greater of 18 months or an 18-month preexisting-condition exclusion; however, if both a period of exclusion from coverage and a preexisting-condition exclusion are applicable to a late enrollee, the combined period shall not exceed 18 months. If a period of exclusion from coverage is applied, a late enrollee shall be enrolled at the end of such period in the health benefit plan currently held by the small employer."

Section 63.1. G.S. 58-51-55(d), as amended by S.L. 1997-259, reads as rewritten:

"(d) Applicability. -- Subsection (b1) of this section applies only to group health insurance ~~contracts~~ contracts, other than excepted benefits as defined in G.S. 58-68-25, covering more than 50 employees. The remainder of this section applies only to group health insurance contracts covering 20 or more employees. For purposes of this section, 'group health insurance contracts' include MEWAs, as defined in G.S. 58-49-30(a)."

Section 63.2. G.S. 58-65-90(d), as amended by S.L. 1997-259, reads as rewritten:

"(d) Applicability. -- Subsection (b1) of this section applies only to subscriber ~~contracts~~ contracts, other than excepted benefits as defined in G.S. 58-68-25, covering more than 50 employees. The remainder of this section applies only to group contracts covering 20 or more employees."

Section 63.3. G.S. 58-67-75(d), as amended by S.L. 1997-259, reads as rewritten:

"(d) Applicability. -- Subsection (b1) of this section applies only to group ~~contracts~~ contracts, other than excepted benefits as defined in G.S. 58-68-25, covering more than 50 employees. The remainder of this section applies only to group contracts covering 20 or more employees."

Section 63.4. G.S. 58-51-15(h), as enacted by S.L. 1997-259, reads as rewritten:

"(h) Preexisting Condition Exclusion Clarification. -- Sub-subdivision (a)(2)b. of this section does not apply to:

(1) Policies issued to eligible individuals under G.S. 58-68-60.

(2) Excepted benefits as described in ~~G.S. 58-68-25(b).~~ G.S. 58-68-25(b)(1)."

Section 63.5. G.S. 58-68-40(e), as enacted by S.L. 1997-259, reads as rewritten:

"(e) Exception for ~~Coverage Offered Only to Bona Fide Association Members.~~ Coverage. -- Subsection (a) of this section does not apply to:

(1) Health insurance coverage offered by a health insurer if the coverage is made available in the small group market only through one or more bona fide associations.

(2) A self-employed individual as defined in ~~G.S. 58-50-110(21a).~~ G.S. 58-50-110(21a), except as otherwise provided for the basic and standard health care plans under the North Carolina Small Employer Group Health Coverage Reform Act."

Section 63.6. G.S. 58-68-60(b)(2), as enacted by S.L. 1997-259, reads as rewritten:

"(2) Who is not eligible for coverage under (i) ~~an ERISA~~ a group health plan, (ii) part A or part B of title XVIII of the Social Security Act, or (iii) a State plan under title XIX of the Act (or any successor program), and does not have other health insurance coverage;".

Section 63.7. G.S. 58-50-65(d) reads as rewritten:

"(d) The provisions of G.S. ~~58-51-5(5)~~ 58-51-5(a)(5) and G.S. 58-51-15(a)(1), (4), and (10) may be omitted from railroad ticket policies sold only at railroad stations or at railroad ticket offices by railroad employees."

Section 63.8. G.S. 58-67-74(a), as enacted by S.L. 1997-225, reads as rewritten:

"(a) Every health care plan written by a health maintenance organization ~~and in force,~~ that is issued, renewed, or amended on or after October 1, 1997, and that is subject to this Article, shall provide coverage for medically appropriate and necessary services, including diabetes outpatient self-management training and educational services, and equipment, supplies, medications, and laboratory procedures used to treat diabetes. Diabetes outpatient self-management training and educational services shall be provided by a physician or a health care professional designated by the physician. The health maintenance organization shall determine who shall provide and be reimbursed for the diabetes outpatient self-management training and educational services. The same deductibles, coinsurance, and other limitations ~~as~~ that apply to similar services covered under the ~~policy, contract, or~~ plan shall apply to the diabetes coverage required under this section."

Section 63.9. G.S. 58-67-79(a), as enacted by S.L. 1997-312, reads as rewritten:

"(a) Every health care plan written by a health maintenance organization ~~and in force,~~ that is issued, renewed, or amended on or after January 1, 1998, that is subject to this ~~Article~~ Article, and that provides coverage for mastectomy shall provide coverage for reconstructive breast surgery resulting from a mastectomy. The coverage shall include coverage for all stages and revisions of reconstructive breast surgery performed on a nondiseased breast to establish symmetry when reconstructive surgery on a diseased breast is performed. The same deductibles, coinsurance, and other limitations ~~as~~ that apply to similar services covered under the ~~policy, contract, or~~ plan

shall apply to coverage for reconstructive breast surgery. Reconstruction of the nipple/areolar complex following a mastectomy is covered without regard to the lapse of time between the mastectomy and the reconstruction, subject to the approval of the treating physician."

PART XII. COMMERCIAL INSURANCE FORM DOCUMENT RETENTION.

Section 64. G.S. 58-41-50(g) reads as rewritten:

"(g) An insurer subject to this Article may develop and use an individual form or rate as a result of the uniqueness of a particular risk. The form or rate shall be developed, filed, and used in accordance with rules adopted by the Commissioner. Rules adopted by the Commissioner under this section may provide for retention of certain documents and data by insurers instead of insurers filing those records with the Commissioner."

PART XIII. BAIL BONDS.

Section 65. G.S. 58-71-82 reads as rewritten:

"**§ 58-71-82. Dual license holding.**

If an individual holds a professional bondsman's license or a runner's license and a surety bondsman's license simultaneously, they are considered one license for the purpose of disciplinary actions involving suspension, revocation, or ~~renewal~~ nonrenewal under this Article. Separate renewal fees must be paid for each license, however."

PART XIV. WORKERS' COMPENSATION TPA.

Section 65.1. Article 47 of Chapter 58 of the General Statutes is amended by adding the following new Part:

"Part 3. Third-Party Administrators for Groups.

"**§ 58-47-210. Definitions.**

As used in this Part:

(1) 'Board' means the board of trustees or other governing body of a group.

(2) 'Control' means 'control' as defined in G.S. 58-19-5(2).

(3) 'GAAP financial statement' means a financial statement as defined by generally accepted accounting principles.

(4) 'Group' means a group of employers that is licensed under Part 1 of this Article.

(5) 'Hazardous financial condition' means that, based on its present or reasonably anticipated financial condition, a person is insolvent or, although not yet financially impaired or insolvent, is unlikely to be able to meet obligations with respect to known and reasonably anticipated obligations in the normal course of business.

(6) 'Member' means an employer that participates in a group.

(7) 'Third-party administrator' or 'TPA' means a person engaged by a board to execute the policies established by the board and to provide day-to-day management of the group. 'Third-Party Administrator' and 'TPA' does not mean:

a. An employer acting on behalf of its employees or the employees of one or more of its affiliates.
b. An insurer that is licensed under this Chapter or that is acting as an insurer with respect to a policy lawfully issued and delivered by it and under the laws of a state in which the insurer is licensed to write insurance.
c. An agent or broker who is licensed by the Commissioner under Article 33 of this Chapter whose activities are limited exclusively to the sale of insurance.
d. An adjuster licensed by the Commissioner under Article 33 of this Chapter whose activities are limited to adjustment of claims.
e. An individual who is an officer, a member, or an employee of a board.

"**§ 58-47-215. TPA authority; license, qualification for approval.**

(a) No person shall act as, offer to act as, or hold himself or herself out as a TPA with respect to risks located in this State for a group unless that person is licensed by the Commissioner under this Part.

(b) An applicant for a license shall file with the Commissioner the information required by subsection (c) of this section on a form prescribed by the Commissioner at least 90 days before the proposed licensing date. No application is complete until the Commissioner has received all required information.

(c) The following information shall be included in the license application:

(1) All organizational documents of the TPA, including articles of incorporation, articles of association, a partnership agreement, a trade name certificate, or a trust agreement, any other applicable documents, and all amendments to these documents;
(2) The bylaws, rules, regulations, or similar documents regulating the internal affairs of the TPA;
(3) The names, addresses, official positions, and professional qualifications of the individuals who are responsible for the conduct of affairs of the TPA, including (i) all members of the board of directors, executive committee, or other governing board or committee, (ii) the principal officers in the case of a corporation or the partners or members in the case of a partnership or association, (iii) all shareholders holding directly or indirectly ten percent (10%) or more of the voting securities of the TPA, and (iv) any other person who exercises control or influence over the affairs of the TPA;
(4) The annual audited GAAP financial statements for the two most recent years that demonstrate the applicant is solvent and an ongoing concern and any other information the Commissioner may require in order to review the current financial condition of the applicant;

(5) A general description of the business operations, including information on staffing levels and activities proposed in this State and nationwide. The description shall provide details setting forth the TPA's capability for providing a sufficient number of experienced and qualified personnel in the areas of claims processing, record keeping, and underwriting;

(6) The annual report of the manner and amount of all charges, fees, and direct and indirect compensation received from the group as specified in the service agreement;

(7) All written agreements or contracts with groups; and

(8) Any other pertinent information, including evidence of compliance with other provisions of this Article, as required by the Commissioner.

(d) The information required by subsection (c) of this section, including any trade secrets, shall be kept confidential; provided that the Commissioner may use that information in any judicial or administrative proceeding instituted against the TPA.

(e) TPA licenses shall be renewed annually and applications for renewals of licenses shall include or be accompanied by any changes in the information required by subsection (c) of this section.

(f) A TPA shall notify the Commissioner of any material change in its ownership, control, or other fact or circumstance affecting its qualification for a license in this State, 30 business days before the change. Failure of the Commissioner to disapprove any material changes within 30 days after the changes have been filed with the Commissioner constitutes the Commissioner's approval of the filed changes.

(g) After initial licensing, a TPA shall file with the Commissioner all contracts with a group 60 days before the effective date of the contract.

"**§ 58-47-220. TPA license; termination; revocation; restrictions.**

(a) The Commissioner may refuse to issue a license if the Commissioner determines that any of the provisions of this section apply to the TPA, or to any individual responsible for the conduct of affairs of the TPA.

(b) The Commissioner shall suspend or revoke automatically the license of a TPA and a request for a hearing shall not stay the effect of the revocation, suspension, or nonrenewal if the Commissioner finds that any of the following apply to the TPA:

(1) The TPA is using methods or practices in the conduct of its business that render its further transaction of business in this State hazardous or injurious to insured persons or the public;

(2) The TPA has failed to pay any judgment rendered against it in this State within 60 days after the judgment has become final;

(3) The TPA has refused to be examined or to produce its accounts, records, and files for examination, or any of its officers have refused to give information with respect to its affairs or have refused to perform any other legal obligation as to that examination, when required by the Commissioner;

(4) The TPA has, without just cause, refused to pay proper claims or perform services arising under its contract, has caused covered members to accept less than the amount due them, or has caused covered members to employ attorneys or bring suit against the TPA to secure full payment or settlement of the claims;

(5) The TPA is an affiliate of or under the same general management, interlocking directorate, or ownership as another TPA or group that unlawfully transacts business in this State;

(6) The TPA, or any principal or affiliate of the TPA, has been convicted of or has entered a plea of guilty or nolo contendere to a felony without regard to whether judgment was withheld;

(7) The TPA or an affiliate is under revocation, suspension, or nonrenewal in another state;

(8) The TPA is in hazardous financial condition;

(9) The TPA has filed for protection under the United States Bankruptcy Code or any state receivership law;

(10) The financial condition or business practices of the TPA otherwise pose an imminent threat to the public health, safety, or welfare of the residents of this State; or

(11) The TPA is found to be in violation of Article 63 of this Chapter.

(c) The Commissioner may, after notice and opportunity for hearing, suspend or revoke the license of a TPA if the Commissioner finds that any of the following apply to the TPA:

(1) The TPA has violated a rule or an order of the Commissioner or any provision of this Chapter or Chapter 97 of the General Statutes; or

(2) The TPA at any time fails to meet any qualification for which issuance of the license could have been refused had the failure then existed and been known to the Commissioner at the time of the application.

(d) If the Commissioner determines that a TPA or any other person has not materially complied with this Article or with any rule adopted or order issued under this Article, after notice and opportunity to be heard, the Commissioner may order:

(1) For each separate violation, a civil penalty pursuant to G.S. 58-2-70(d); or

(2) Revocation, suspension, or nonrenewal of the person's license.

(e) If the Commissioner finds that because of a material noncompliance a group has suffered any loss or damage, the Commissioner may maintain a civil action brought by or on behalf of the group and its policyholders and creditors for recovery of compensatory damages for the benefit of the group and its policyholders and creditors or for other appropriate relief.

(f) Nothing in this Article affects the Commissioner's right to impose any other penalties provided for in this Chapter. Nothing in this Article limits or restricts the rights of policyholders, claimants, and creditors.

(g) If an order of rehabilitation or liquidation of the group has been entered under Article 30 of this Chapter, and the receiver appointed under that order determines that the TPA or any other person has not materially complied with this section, or any order or rule adopted thereunder, and the group suffered any loss or damage therefrom, the receiver may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the group."

PART XV. AGENTS.

Section 65.2. Article 33 of Chapter 58 of the General Statutes is amended by adding the following new section to read:

"**§ 58-33-41. Agent or broker of record; managed care contracts.**

An insurer or service corporation offering managed care products and an HMO shall recognize a licensed agent or broker that has been designated by an employer to inquire about or secure group health coverage for the employer."

Section 65.3. G.S. 58-33-25(o) reads as rewritten:

"(o) No license as an agent, broker, or limited representative is required of the following:

(1) Any regular salaried officer or employee of an insurance company, of a licensed agent, of a broker, or of a limited representative, if such officer's or employee's duties and responsibilities do not include the negotiation or solicitation of insurance.

(2) Persons who secure and furnish information on behalf of an employer, where no commission is paid for such service, for the purpose of group or wholesale life insurance, annuities, or group, blanket or franchise health insurance; or for enrolling individuals under such plans or issuing certificates thereunder; or otherwise assisting in administering such plans.

(3) Employers or their officers or employees, or the trustees of any employee trust plan, to the extent that such employers, officers, employees, or trustees are engaged in the administration or operation of any program of employee benefits for their own employees or the employees of their subsidiaries or affiliates involving the use of insurance issued by a licensed insurance company; provided that such employers, officers, employees, or trustees are not in any manner compensated, directly or indirectly, by the insurance company issuing such insurance.

(4) Agency office employees acting within the confines of the agent's office, under the direction and personal supervision of the duly licensed agent and within the scope of the agent's license, in the acceptance of applications, personally underwritten by the agent, payment of premiums, and the performance of clerical, stenographic, and similar office duties; provided that the activity does not amount to the interpretation of insurance policies, provisions or coverage, to sales or negotiation of insurance policies,

to any underwriting function, or to the signing or verification of applications for insurance.

(4a) Agency office employees, acting within the confines of an agent's office, under the direct and personal supervision of an agent licensed under this Article and within the scope of the agent's license, who only obtain policy expiration or renewal dates from persons or who only obtain the names of insurance companies with which those persons have coverage; provided, that these activities by these employees are not the primary function of the agent's office, and provided further that these activities do not amount to the interpretation of insurance policies, provisions, or coverage, to sales or negotiation of insurance policies, to any underwriting function, or to the signing or verification of applications for insurance. The Commissioner may adopt rules to govern methods and manners of communications made by employees under this subdivision.

(5) Licensed insurers authorized to write the kinds of insurance described in G.S. 58-7-15(1) through G.S. 58-7-15(3) that do business without the involvement of a licensed agent."

PART XVI. EFFECT OF HEADINGS.

Section 66. The headings to the parts of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act.

PART XVII. EFFECTIVE DATE.

Section 67. Sections 30 through 32.1 of this act become effective September 1, 1997. Section 61 of this act is effective retroactively to June 30, 1997. Sections 62, 63.4, 63.5, and 63.6 of this act are effective retroactively July 1, 1997. Section 63.8 is effective retroactively to June 26, 1997. Section 63.9 is effective retroactively to July 17, 1997. Sections 63.1, 63.2, and 63.3 become effective January 1, 1998. Section 65.1 of this act becomes effective July 1, 1998. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 32*
Corrected Copy 2/4/97
Proposed House Committee Substitute S32-PCS7878

Short Title: Studies Act. (Public)

Sponsors:

Referred to:

February 3, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, TO CREATE VARIOUS COMMISSIONS, TO CONTINUE A COUNCIL, TO DIRECT STATE AGENCIES AND LEGISLATIVE OVERSIGHT COMMITTEES AND COMMISSIONS TO STUDY SPECIFIED ISSUES, AND TO IMPOSE A MORATORIUM ON SERVICE CORPORATION CONVERSIONS.

The General Assembly of North Carolina enacts:

PART I.-----TITLE

Section 1. This act shall be known as "The Studies Act of 1997".

PART II.-----LEGISLATIVE RESEARCH COMMISSION

Section 2.1. The Legislative Research Commission may study the topics listed below. When applicable, the bill or resolution that originally proposed the issue or study and the name of the sponsor is listed. Unless otherwise specified, the listed bill or resolution refers to the measure introduced in the 1997 Regular Session of the 1997 General Assembly. The Commission may consider the original bill or resolution in determining the nature, scope, and aspects of the study.

(1) Bingo regulation (Weinstein; H.B. 951 - Baker).

(2) Building code issues (S.B. 820 - Shaw of Cumberland; H.B. 47 - Davis); State construction (Ives); Downtown revitalization (H.B. 50

- Davis, S. B. 823 - Shaw of Cumberland); Housing Trust Fund allocations to downtown areas.

(3) Coastal beach movement issues including, but not limited to:
  a. Beach renourishment; the value cost, level of need, return on investment, and eligible participants.
  b. Storm hazard mitigation (S.B. 432 - Odom and Horton).

(4) Dispute Resolution Commission revision and expansion of authority (S.B. 1021 - Rand).

(5) Domestic Violence (S.B. 753 - Lucas; H.B. 909 - Bowie).

(6) Financial institutions including, but not limited to:
  a. Branch banking law in North Carolina (S.B. 901 - Warren).
  b. Consumer finance industry issues (S.B. 777 - Lee; H.B. 356 - Tallent).
  c. Robbery witness protection (S.B. 384 - Dalton).
  d. Allowing mortgage bankers to make loans and charge related fees (H.B. 1125 - Miner)

(7) Future of the courts (Ballance; H.B. 1192 - Daughtry, Neely, and Baddour).

(8) Guardian Ad Litem Program (S.J.R. 24 - Ballance; H.J.R. 107 - Hiatt).

(9) Health care information privacy issues (S.B. 1005 - Gulley; H.B. 925 - Reynolds).

(10) Lien issues including, but not limited to:
  a. Laws related to liens due medical providers for medical services provided and to the assignment of proceeds (S.B. 156 - Hartsell; H.B. 199 - Culpepper).
  b. Allowing statutory liens for fees owed to commercial real estate brokers (S.B. 923 - Odom).

(11) Lobbying and conflict issues including, but not limited to:
  a. Lobbyists waiting period for former legislators, former members of the Council of State, or other officers or employees of State government (S.B. 3 - Jenkins).
  b. No State agency contract lobbying (Section 7.17, 5th Edition of S.B. 352).
  c. No State funds for lobbying (Section 11.73, 5th Edition of S.B. 352).
  d. Governor's Highway Safety Program is not to hire paid lobbyists (Section 29.29, 5th Edition of S.B. 352).
  e. Conflicts of interest; issues for public officials (H.B. 1165 - Bowie)

(12) Municipalities annexation and incorporation issues including, but not limited to:

a. Incorporation process and requirements for new municipalities (S.J.R. 61 - Hartsell; H.B. 93 - Ellis; H.J.R. 163 - Cole).
b. Annexation, incorporation, and land-use planning (S.B. 903 - Hartsell).

(13) Coastal insurance issues (H.B. 452 - Redwine; H.B. 1119 - McComas).
(14) Division of 30th District Court District and 30th Prosecutorial District (Section 15.11A, 5th edition, S.B. 352 - Carpenter)
(15) Cemetery Commission and Cemetery regulation (H.B. 98 - Hill)
(16) Consumer Protection (H.J.R. 25 - Thompson; S.J.R. 28 - Jordon)
(17) Cooperative Extension Service (H.B. 1018 - Smith)
(18) Health care issues (H.B. 1207 - Bowie; H.B. 1204- Brawley; H.B. 985 - Insko)
(19) Rail service to State Ports (H.B. 257 - McComas)
(20) DHR Schools (H.B. 1002 - Arnold)
(21) Watercraft safety (H.B. 513 - Preston)
(22) Storm hazard mitigation (H.B. 572 - Mitchell; S.B. 432 - Odom) and wastewater systems permits (H.B. 1021 - Hardy)
(23) Community colleges (Rayfield; Shubert)
(24) Information technology (H.B. 290, 925, 970, 973, 1034, 1047)
(25) Victims rights (H.B. 665 - Eddins)
(26) Dental hygienist regulation, supervision, and scope of practice (Gardner)
(27) National Guard buy-in to State Health Plan (S.B. 434 - Forrester)
(28) Small business development (H.B. 1177 - Shubert)
(29) Venture Capital and business financing (S.B. 956 - Hoyle and Kerr)
(30) Adoption registry (H.B. 1206 - Allred)

Section 2.2. Administration of Rabies Vaccine (Kerr; Morgan). The Legislative Research Commission may study issues related to the administration of the rabies vaccine to dogs, including whether owners of dogs who are not veterinarians or certified rabies vaccinators should be authorized to administer vaccines to their own dogs and, if so, pursuant to what statutory or administrative guidelines, conditions, and authority.

Section 2.3. Competition to Improve State Government Services. The Legislative Research Commission may study methods and initiatives to cause the use of competition to improve the delivery of State government services, to make State government more effective and efficient, and to reduce the costs of government to taxpayers.

Section 2.4. Dedicated Sources of Revenue (Rand). The Legislative Research Commission may study the use of dedicated funding including the establishment of dedicated sources of revenue for the North Carolina Housing Trust Fund and other sources of low-income housing, Legal Services of North Carolina,

and professional firefighter retirement benefits including the appropriate length of service required to receive such benefits.

Section 2.5. Garnishment of Wages (S.B. 740 - Rand). The Legislative Research Commission may study issues relating to garnishment of wages to satisfy debts for which garnishment is not currently an option including the impact general wage garnishment would have on employers, employees, personal bankruptcies, credit, and the judicial system, and the extent to which out-of-state creditors would seek wage garnishment. The Commission may consider appointing to the committee a representative from each of the following groups: (i) employers; (ii) employees; (iii) clerks of court; (iv) creditors; and (v) a business-related section of the North Carolina Bar Association.

Section 2.6. State and Local Government Fiscal Reform and Intergovernmental Relations (Perdue). The Legislative Research Commission may study emerging issues in fiscal reform and intergovernmental relations including the fiscal relationship between the State and its local governments by examining State revenue sources and the allocation of responsibility among the State and its local governments for financing and performing government services. The Commission may study and examine the following:

(1) Issues related to urban development, including comprehensive land-use planning, annexation and incorporation of new municipalities, and the development of municipalities in an environmentally sound manner.

(2) Whether State and local responsibilities for providing government services should be reallocated, including an evaluation of the current means of delivering education and health care services to the citizens of the State and the desirability and feasibility of developing new methods for providing citizens in the rural as well as the urban areas of the State with a quality, competitive education and comprehensive, state-of-the-art health care.

(3) Whether the State should provide local governments with additional revenue options.

(4) The most efficient and effective means for financing local government tax sharing and tax reimbursements and for providing local government services.

(5) Whether taxes should be earmarked for specific purposes.

(6) The desirability of developing a long-term, structured, strategic planning process that will focus on the economic development needs and goals of the rural and urban local governments located across the State.

(7) Whether certain State services and programs should be privatized and, if so, the proper criteria for determining which services and programs should be privatized and in what manner.

(8) Any other issues related to the desirability of reorganizing, restructuring, and downsizing State government.

(9) The extent to which State policy on the financing of water supply and sewage infrastructure through grant and loan programs promotes orderly development that optimizes the expenditure of these State revenues.

(10) The extent to which local governments have employed long-range planning to guide and encourage cost-efficient development patterns.

(11) The extent to which local governments have utilized subdivision regulation, zoning ordinances, and other statutory powers to promote orderly development.

(12) The feasibility of using positive State incentives to encourage greater utilization of land-use management by local governments.

(13) The impact land transfer taxes and impact fees have had on development and on the financing of infrastructure to sustain rational growth.

(14) The desirability of the legislature authorizing counties to enact certain optional local taxes and fees, such as land transfer taxes and impact fees, to fund capital needs.

(15) The extent to which environmental regulatory programs administered by State agencies might be delegated in whole or in part to local governments.

Section 2.7. Pharmacy Practice Act Revision (S.B. 1039 - Perdue; Rand; Crawford). The Legislative Research Commission may study revising and updating the Pharmacy Practice Act including the following: (i) whether a pharmacist should be allowed to monitor drug therapy under specific guidelines established by a physician; (ii) designing a process for the electronic transmission of prescriptions between doctors and pharmacists; and establishing procedures for the distribution of prescriptions during an emergency or natural disaster; and (iv) prescription drug competition (S.B. 866 - Rand; H.B. 996 - Crawford). The Commission may consider appointing to the Committee a representative from each of the following groups: (i) the North Carolina Medical Association; (ii) the North Carolina Hospital Association; (iii) the North Carolina Pharmacy Association; (iv) the North Carolina Health Care Facilities Association; and (v) the North Carolina HMO Association.

Section 2.8. Public Transit (Gulley). The Legislative Research Commission may study public transit in the State including the following: (i) review and validate present and future public transit funding needs; (ii) evaluate the economic impact of public transit on the State and its various regions; (iii) evaluate the appropriate roles of local, regional, State, and federal governments in funding public transit; and (iv) short- and long-range funding solutions.

Section 2.9. Relationship of the Open Meetings Law and the Public Records Law to Institutions of The University of North Carolina (Lee; H.B. 898 - Daughtry). The Legislative Research Commission may study the relationship of the Open Meetings Law, as set forth in Article 33C of Chapter 143 of the General Statutes, and the Public Records Law, as set forth in Chapter 132 of the General

Statutes, to The University of North Carolina and its constituent institutions. The study shall include at least the following:

(1) Whether to exclude from the definition of public records, attorney work product, certain donor and alumni records, and drafts of certain documents;

(2) Whether to include faculty as professional staff under the Open Meetings Law; and

(3) Other ways to assist the University system to best serve its educational purposes within the public purposes of the Open Meetings Law and the Public Records Law.

Section 2.10. Substance Abuse Aftercare (Martin of Guilford). The Legislative Research Commission may study substance abuse aftercare. The study may include the following:

(1) The underlying issues relative to substance abuse, such as the economic, social, psychological, and cultural reasons for obstacles to success in remaining drug free;

(2) Approaches to overcoming those obstacles to success;

(3) Better processes and methods for aftercare, rehabilitation, and readjustment to societal norms and expectations; and

(4) Review of programs that have proven to be successful over the long-term in working with recovering addicts in nonclinical settings.

Section 2.11. Committee Membership. For each Legislative Research Commission committee created during the 1997-98 biennium, the cochairs of the Legislative Research Commission shall appoint the committee membership.

Section 2.12. Reporting Date. For each of the topics the Legislative Research Commission decides to study under this Part or pursuant to G.S. 120-30.17(1), the Commission may report its findings, together with any recommended legislation, to the 1997 General Assembly, 1998 Regular Session, or the 1999 General Assembly.

Section 2.13. Funding. From the funds available to the General Assembly, the Legislative Services Commission may allocate additional monies to fund the work of the Legislative Research Commission.

PART III.-----LEGISLATIVE STUDY COMMISSION ON CHILDREN AND YOUTH MEMBERSHIP CHANGE (Rand; Gardner)

Section 3.1. Effective August 13, 1997, G.S. 120-210(a), as is found in Section 11 of S.L. 1997-390, reads as rewritten:

"(a) The Commission shall consist of ~~23~~ 25 members, as follows:

(1) ~~Ten~~ Eleven members appointed by the Speaker of the House of Representatives, ~~as follows:~~ among them:

a. Four shall be members of the House of Representatives at the time of their appointment,

b. One shall be the director of a local health department,

c. One shall be the director of a county department of social services,
d. One shall be a representative of the general public who has knowledge of issues relating to children and youth,
e. One shall be a licensed physician who is knowledgeable about the health needs of children and youth, and
f. One shall be a chief district court judge recommended by the Council of Chief District Judges.
g. One shall be a representative from the Covenant with North Carolina Children.

(2) ~~Ten~~ Eleven members appointed by the President Pro Tempore of the Senate, as follows:
a. Four shall be members of the Senate at the time of their appointment,
b. One shall be the director of a mental health area authority,
c. One shall be a representative of the Association of County Commissioners,
d. One shall be a representative of the general public who has knowledge of issues relating to children and youth,
e. One shall be a licensed attorney whose practice includes the representation of parents accused of criminal or civil abuse or neglect, and
f. One shall be a chief district court judge recommended by the Council of Chief District Judges.
g. One shall be a representative from the North Carolina Child Advocacy Institute.
h. One shall be a representative from the North Carolina Child Fatality Task Force.

(3) The following shall serve ex officio as nonvoting members of the Commission:
a. The Secretary of Human Resources, or the Secretary's designee,
b. The State Superintendent of Public Instruction, or the Superintendent's designee, ~~and~~
c. The Secretary of Administration, or the Secretary's ~~designee.~~ designee, and
d. The Director of the Administrative Office of the Courts, or the Director's designee."

PART IV.-----JOINT LEGISLATIVE CORRECTIONS OVERSIGHT COMMITTEE TO STUDY CORRECTION ENTERPRISES SIGN SHOP (S.B. 860 - Lee)

Section 4.1. The Joint Legislative Corrections Oversight Committee shall study the operation of Correction Enterprises industries, including the sign shop and furniture and upholstery plants, with a review of, among other issues, the (i) pricing

structure in relation to private companies and (ii) job placement opportunities for prison apprentices upon release.

Section 4.2. The Committee may file an interim report with the 1997 General Assembly, 1998 Regular Session, and shall file a final report with the 1999 General Assembly upon its convening. The reports shall be filed no later than the dates on which those sessions respectively convene.

PART V.-----GOVERNOR'S CRIME COMMISSION TO STUDY DOMESTIC VIOLENCE CRIME CATEGORIES (Rand; Bowie; Morris)

Section 5.1. The Governor's Crime Commission of the Department of Crime Control and Public Safety shall coordinate a study of the incidence of domestic violence and identify the felonies and misdemeanors that may be categorized as domestic violence. The study shall include participation by the North Carolina Conference of District Attorneys and the seven prosecutorial districts that are currently receiving funds from the Violence Against Women Act, administered through the Governor's Crime Commission. The study shall also include participation of other prosecutorial districts which volunteer their participation in providing necessary information. The Commission shall recommend a statutory definition of domestic violence crimes that will be sufficiently clear so that it can be used by law enforcement officers and prosecutors to determine eligibility of victims of these crimes for victims' assistance services. The Commission shall also recommend whether any crimes that are currently misdemeanors should be reclassified as felonies when committed as crimes of domestic violence. The Commission shall forward its recommendations to the North Carolina Sentencing and Policy Advisory Commission. The Sentencing and Policy Advisory Commission shall analyze the recommendations for impact on the length of time for which persons are incarcerated and the number of persons incarcerated. The Commission shall report the findings of its study and its recommendations, including the analyses from the Sentencing and Policy Advisory Commission, to the 1997 General Assembly, 1998 Regular Session, on or before its convening date.

Section 5.2. The Governor's Crime Commission shall conduct this study within available funds.

PART VI.-----EDUCATION OVERSIGHT STUDIES

Section 6.1. The Joint Legislative Education Oversight Committee may study the following matters:

(1) The issue of the gap in student academic achievement between racial and socioeconomic groups (S.B. 640 - Rucho). To assist the Education Oversight Committee in this study, the Committee's cochairs may appoint an advisory subcommittee on this matter. The subcommittee shall consist of equal numbers of members appointed by the Senate cochair and the House cochair. Either cochair may appoint to the subcommittee members, including public members who are not also members of the Committee.

Members of the subcommittee who are not members of the Committee may participate fully in all subcommittee business, including all deliberations and votes; however, these members are not members of the Committee for any other purpose. The subcommittee members shall receive no salary for serving. All subcommittee members shall receive necessary subsistence and travel expenses in accordance with the provisions of G.S. 120-3.1, 138-5, and 138-6 as applicable. In particular, the Committee may examine:

a. Whether student assignment plans increase, decrease, or have no effect on the academic achievement gap.

b. The effect of increased parental and community involvement on the academic achievement gap.

c. The relationship, if any, between the distribution of resources and student achievement.

d. Mechanisms to distribute personnel and financial resources to provide a quality educational opportunity for all students.

e. The relationship, if any, between student achievement and factors such as teacher turnover, teacher attendance, and teacher assignment outside the teacher's area of certification.

f. The extent to which preservice and continued professional development for educational personnel should be modified in order to address the needs of students who are not making adequate academic progress.

g. The extent to which curriculum content and delivery should be modified in order to address the needs of students who are not making adequate academic progress.

h. The relationship between kindergarten readiness and subsequent academic success.

i. Proven and proposed mechanisms for decreasing the academic achievement gap.

(1a) Pupil assignment options (H.B. 707 - Gulley)

(2) The issue of developing a child welfare training institute in the university and community college system (Perdue).

(3) The issues of recruiting, training, and retaining qualified child welfare staff (Perdue).

(4) Adding additional paid days when considering teachers' salaries (H.B. 1026 - Arnold).

(5) Noninstructional duties of teachers. The study may include, but not be limited to, noninstructional duties during the workday, noninstructional duties outside of the workday, pay for noninstructional duties, and the relationship between athletic duties and other duties such as club advisors' pay and equitable pay. (H.B. 1182 - Moore).

(6) The role of the student member of the Board of Governors of The University of North Carolina and real and perceived conflicts of interests by members of the Board of Governors (S.B. 1058 - Kinnaird).

(7) Salary schedules for noncertified public school employees. In the course of the study, the Committee may consider the current salary schedules and salary ranges for noncertified public school employees, the need for minimum salary schedules for noncertified public school employees, and the cost of implementing minimum salary schedules. In its review of salary schedules, the Committee may consider years of experience and levels of training and education.

(8) The impact on small school systems of large losses of administration due to increases in charter school enrollment.

(9) Student discipline (H.B. 1072 - Cole).

Section 6.2. The Joint Legislative Education Oversight Committee may report its findings and recommendations on each of the studies authorized by this Part to the 1997 General Assembly, 1998 Regular Session, or the 1999 General Assembly. The reports may be filed no later than the dates on which those sessions respectively convene.

PART VII.-----LEGISLATIVE STUDY COMMISSION ON PUBLIC SCHOOLS (Lee and Arnold)

Section 7.1. The Legislative Study Commission on Public Schools is established. The Commission shall consist of 16 members: eight Senators appointed by the President Pro Tempore of the Senate and eight Representatives appointed by the Speaker of the House of Representatives.

Vacancies shall be filled by the person who made the initial appointment.

Section 7.2. The Commission shall study issues relating to equity for public school systems, including, but not limited to, small school and low-wealth schools funding, equity funding systems of the UNC and community colleges and results of ABC and safe schools programs, personnel distribution, distribution of Teaching Fellows Scholarship recipients, uneven distribution of the children with special needs population, the need of further resources for English as a second language, university scholarship resources and needs for public school students, and funding and programs for the schools for the deaf.

Section 7.3. The Speaker of the House of Representatives and the President Pro Tempore of the Senate shall each designate a cochair of the Commission. The Commission shall meet upon the call of the cochairs. A quorum of the Commission is nine members. While in the discharge of its official duties, the Commission may exercise all the powers provided under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4.

Section 7.4. Members of the Commission shall receive subsistence and travel allowances in accordance with G.S. 120-3.1.

Section 7.5. Upon approval of the Legislative Services Commission, the Legislative Services Officer shall assign appropriate professional staff from the Legislative Services Office of the General Assembly to assist with the study. The House of Representatives' and the Senate's Supervisors of Clerks shall assign clerical staff to the Commission, upon the direction of the Legislative Services Commission. The Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission.

Section 7.6. The Commission shall submit an interim report to the 1997 General Assembly, 1998 Regular Session, upon its convening. The Commission shall submit a final report to the General Assembly upon the convening of the 1999 General Assembly. The Commission shall terminate upon filing its final report.

Section 7.7. From appropriations to the General Assembly, the Legislative Services Commission may allocate funds for the expenses of the Legislative Study Commission on Public Schools Equity.

PART VIII.-----ENVIRONMENTAL REVIEW COMMISSION STUDIES

Section 8.1. The Environmental Review Commission may study the following matters:

(1) The impact of air pollutant emissions from asphalt plants on public health and the environment (S.B. 1022 - Kinnaird and Foxx).

(2) The remediation and reuse of brownfields property, as defined in G.S. 130A-310.31(b)(3), as enacted by the Brownfields Property Reuse Act of 1997, S.L. 1997-357. To assist the Environmental Review Commission in this study, the Commission's cochairs may appoint an advisory subcommittee on this matter. Members of the advisory subcommittee who are State employees shall receive per diem and necessary travel and subsistence expenses in accordance with G.S. 138-6. Members of the advisory subcommittee who are not State employees shall receive per diem and necessary travel and subsistence expenses in accordance with G.S. 138-5.

(3) The administration of the emissions inspection and maintenance program for motor vehicles under G.S. 20-128.2 and Part 2 of Article 3A of Chapter 20 of the General Statutes and whether that program should be transferred from the Division of Motor Vehicles of the Department of Transportation to the Environmental Management Commission and the Division of Air Quality in the Department of Environment, Health, and Natural Resources (S.B. 845 - Odom; S.B. 671 - Albertson).

(4) The transfer of surface waters between river basins in the State (S.B. 947 - Cochrane). As a part of this study, the Environmental Review Commission may consider whether, and on what basis, the total volume of water that may be transferred from any river basin should be limited and whether the Environmental Management

Commission should be authorized to issue special orders to remedy violations of laws or rules regulating transfers.

(5) The feasibility and desirability of establishing a voluntary education program designed to educate members of the public who maintain residential lawns or gardens concerning the impact nutrients and pesticides have on the environment of the State, the responsible use of nutrients and pesticides, and ways to reduce excessive inputs of nutrients and pesticides into the surface and groundwaters of the State (Albertson). In conjunction with this study, the Environmental Review Commission may study the feasibility and desirability of directing the North Carolina Cooperative Extension Service to develop and implement such a voluntary education program.

(6) The preliminary evaluation of proposed sites for wastewater systems (S.B. 671 - Albertson). The study may address whether local health departments should conduct preliminary evaluations of proposed sites for wastewater systems; how preliminary evaluations conducted by local health departments might be made more reliable; the extent to which an applicant may rely on a preliminary evaluation; and liability in instances where the State fails to issue an improvement permit for a site for which a local health department has concluded that the site is appropriate for construction of a wastewater system.

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

Section 8.2. Upon request, all State departments, agencies, commissions, and councils shall cooperate with the Commission on the studies authorized by this Part.

Section 8.3. The Environmental Review Commission may report its findings and recommendations on each of the studies authorized by this Part to the 1997 General Assembly, 1998 Regular Session, or the 1999 General Assembly.

PART IX.-----ENVIRONMENTAL MANAGEMENT COMMISSION AND DEHNR TO STUDY EMISSIONS INSPECTION AND MAINTENANCE (S.B. 845 - Odom; S.B. 671 - Albertson)

Section 9.1. The Environmental Management Commission and the Division of Air Quality of the Department of Environment, Health, and Natural Resources, with the assistance and cooperation of the Division of Motor Vehicles of the Department of Transportation, shall study whether the emissions inspection and maintenance program for motor vehicles administered under G.S. 20-128.2 and Part 2 of Article 3A of Chapter 20 of the General Statutes should be expanded to include all metropolitan counties. The study shall evaluate the costs and benefits of expanding the program, including the benefits resulting from a reduction in the likelihood that those counties will not meet the national ambient air quality standards

for ozone and carbon monoxide in the future, thereby incurring the restrictions on industries, power plants, vehicles, and other activities that apply to nonattainment counties. Beginning 1 January 1998, the Environmental Management Commission shall report its findings, recommendations, and any legislative proposals regarding the matters to be evaluated pursuant to this section to the Environmental Review Commission as part of the quarterly report the Environmental Management Commission is required to make to the Environmental Review Commission by G.S. 143B-282(b).

Section 9.2. The Environmental Management Commission, the Division of Air Quality of the Department of Environment, Health, and Natural Resources, and the Division of Motor Vehicles of the Department of Transportation shall take appropriate steps to ensure that the current emissions inspection and maintenance program for motor vehicles administered under G.S. 20-128.2 and Part 2 of Article 3A of Chapter 20 of the General Statutes is effectively implemented and enforced. Beginning 1 October 1997, the Environmental Management Commission shall report its findings, recommendations, and any legislative proposals regarding the implementation and enforcement of the emissions inspection and maintenance program to the Environmental Review Commission as part of the quarterly report the Environmental Management Commission is required to make to the Environmental Review Commission by G.S. 143B-282(b). The Division of Motor Vehicles shall report on its progress in meeting the requirements of this section to the Environmental Review Commission on a quarterly basis beginning 1 October 1997.

PART X.-----STUDY COMMISSION ON THE FUTURE OF ELECTRIC SERVICE IN NORTH CAROLINA REIMBURSEMENT OF EXPENSES (Rand; Dickson)

Section 10.1. Notwithstanding G.S. 62-302(d), all expenses during the 1997-98 and the 1998-99 fiscal years of the Study Commission on the Future of Electric Service in North Carolina, established in S.L. 1997-40, shall be reimbursed from funds in the Utilities Commission and Public Staff Fund. There is allocated initially one hundred thousand dollars ($100,000) from the Utilities Commission and Public Staff Fund to the General Assembly for the purpose of enabling the Study Commission on the Future of Electric Service in North Carolina to organize and begin its work. Upon the certification of the need for additional funds by the cochairs of the Study Commission on the Future of Electric Service in North Carolina for the work of the Commission, the Utilities Commission shall transfer the additional funds from the Utilities Commission and Public Staff Fund to the General Assembly for that purpose.

PART XI.-----HOSPITAL, MEDICAL, AND DENTAL SERVICE CORPORATION CHARTER CONVERSION STUDY COMMISSION (S.B. 993 - Rand)

Section 11.1. (a) There is established the Hospital, Medical, and Dental Service Corporation Charter Conversion Study Commission. The Commission shall consist of 14 members appointed as follows:

(1) Six members appointed by the Speaker of the House of Representatives, four of whom shall be members of the House of Representatives. Of the remaining two members:
   a. One shall be a representative of the North Carolina Citizens for Business and Industry; and
   b. One shall be a representative of the hospital or medical community; and

(2) Six members appointed by the President Pro Tempore of the Senate, four of whom shall be members of the Senate. Of the remaining two members:
   a. One shall be a representative of Blue Cross Blue Shield of North Carolina, Incorporated; and
   b. One shall be a representative of a philanthropic organization, incorporated in North Carolina.

(3) The following ex officio, nonvoting members:
   a. The Attorney General, or the Attorney General's designee; and
   b. The Insurance Commissioner, or the Commissioner's designee.

Vacancies shall be filled by the person making the initial appointment.

(b) The Commission shall conduct a study of all aspects of conversion of a hospital, medical, and dental service corporation to a mutual nonstock or stock accident and health insurance company or life insurance company subject to Articles 1 through 64 of Chapter 58 of the General Statutes. The study shall include, but is not limited to, the following:

(1) The status, results, and public or private ownership interests, as may exist, in conversions by medical, hospital, and dental service corporations or similar entities in North Carolina and other states;

(2) The direct and indirect effects of any change in the structure of the hospital, medical, and dental service corporations on State health programs, such as Medicaid, payment programs within the Department of Human Resources, and the North Carolina Teachers' and State Employees' Major Medical Plan;

(3) The charitable trust obligations, if any, of nonprofit medical, hospital, and dental service corporations upon conversion and their obligations to their members and subscribers; and

(4) Anti-inurement restrictions on officers and directors involved in conversions.

(c) The Speaker of the House of Representatives and the President Pro Tempore of the Senate shall each designate a cochair of the Commission. The Commission shall meet upon the call of the cochairs. A quorum of the Commission is nine members. While in the discharge of its official duties, the Commission has the powers of a joint committee under G.S. 120-19 and G.S. 120-19.1.

Members of the Commission shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate.

Upon approval of the Legislative Services Commission, the Legislative Services Officer shall assign appropriate professional staff of the General Assembly to assist the Commission. Clerical staff shall be assigned to the Commission through the Offices of the Supervisor of Clerks of the Senate and Supervisor of Clerks of the House of Representatives.

(d) The Commission shall make its final report to the 1997 General Assembly, 1998 Regular Session, upon its convening. The Commission shall terminate upon filing its final report.

Section 11.2. From appropriations to the General Assembly, the Legislative Services Commission may allocate funds for the expenses of the Hospital, Medical, and Dental Service Corporation Charter Conversion Study Commission under this Part.

PART XII.-----MORATORIUM ON CONVERSION OF HOSPITAL, MEDICAL, AND DENTAL SERVICE CORPORATION CHARTERS (Rand)

Section 12.1. Notwithstanding any other provision of law, no hospital, medical, and dental service corporation may convert to a mutual nonstock or stock accident and health insurance company or life insurance company prior to August 1, 1998. For the purposes of this section, "convert to a mutual nonstock or stock accident and health insurance company or life insurance company" includes a restructuring that is determined by the Commissioner of Insurance to constitute the disposition of a substantial amount of the corporation's assets to an entity other than a nonprofit entity, except for the disposition of assets in the ordinary course of business.

PART XIII.-----INDUSTRIAL COMMISSION ADVISORY COUNCIL EXTENDED (Kerr)

Section 13.1. Section 11.1 of Chapter 679 of the 1993 Session Laws (1994 Regular Session) reads as rewritten:

"Sec. 11.1. This act is effective upon ratification, except as follows:

(a) Sections 3.6, 4.1, and G.S. 97-79(d), as contained in Section 5.2, become effective October 1, 1994, and apply to claims pending on or filed after that date.

(b) G.S. 97-26(b) and G.S. 97-26(f), as enacted in Section 2.3, become effective October 1, 1994. G.S. 97-26(a), as enacted in Section 2.3, is effective upon ratification but the provisions of the third paragraph of said subsection shall not apply to the fee schedule in effect as of the date of ratification of this act.

(c) Sections 7.1, 7.2, and 8.1 become effective October 1, 1994, and apply to violations occurring on or after that date.

(d) Sections 2.1, 2.2, 2.4, 3.7, and 5.5 become effective September 1, 1994, and apply to claims pending on or filed after that date.

(e) Section 6.1 and G.S. 97-79(f), as contained in Section 5.2, become effective July 1, 1994.

(f) Sections 3.2, 3.3, 3.4, 3.5, subsections (b), (c), (d), (f), and (g), and the catch line of G.S. 97-18, as contained in Section 3.1, and Section 10.9 become effective January 1, 1995, and apply to claims pending on or filed after that date.

(g) Section 2.5 is effective upon ratification and applies to injuries by accident occurring on or after that date.

(h) Section 2.6 is effective upon ratification and applies to claims pending on or filed after the date of ratification.

(i) Section 8.5 becomes effective September 1, 1994.

Section 5.1 expires ~~July 1, 1997.~~ July 1, 2001."

PART XIV.-----REVENUE LAWS STUDY COMMITTEE (S.B. 35 - Kerr; Cansler)

Section 14.1. Chapter 120 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 12L.

"Revenue Laws Study Committee.

"§ 120-70.105. Creation and membership of the Revenue Laws Study Committee.

The Revenue Laws Study Committee is established. The Committee consists of 16 members as follows:

(1) Eight members appointed by the President Pro Tempore of the Senate; the persons appointed may be members of the Senate or public members.

(2) Eight members appointed by the Speaker of the House of Representatives; the persons appointed may be members of the House of Representatives or public members.

Terms on the Committee are for two years and begin on January 15 of each odd-numbered year, except the terms of the initial members, which begin on appointment. Legislative members may complete a term of service on the Committee even if they do not seek reelection or are not reelected to the General Assembly, but resignation or removal from service in the General Assembly constitutes resignation or removal from service on the Committee.

A member continues to serve until his successor is appointed. A vacancy shall be filled within 30 days by the officer who made the original appointment.

"§ 120-70.106. Purpose and powers of Committee.

(a) The Revenue Laws Study Committee may:

(1) Study the revenue laws of North Carolina and the administration of those laws.

(2) Review the State's revenue laws to determine which laws need clarification, technical amendment, repeal, or other change to make the laws concise, intelligible, easy to administer, and equitable.

(3) Call upon the Department of Revenue to cooperate with it in the study of the revenue laws.

(4) Report to the General Assembly at the beginning of each regular session concerning its determinations of needed changes in the State's revenue laws.

These powers, which are enumerated by way of illustration, shall be liberally construed to provide for the maximum review by the Committee of all revenue law matters in this State.

(b) The Committee may make interim reports to the General Assembly on matters for which it may report to a regular session of the General Assembly. A report to the General Assembly may contain any legislation needed to implement a recommendation of the Committee. When a recommendation of the Committee, if enacted, would result in an increase or decrease in State revenues, the report of the Committee must include an estimate of the amount of the increase or decrease.

"**§ 120-70.107. Organization of Committee.**

(a) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Revenue Laws Study Committee. The Committee shall meet upon the joint call of the cochairs.

(b) A quorum of the Committee is nine members. No action may be taken except by a majority vote at a meeting at which a quorum is present. While in the discharge of its official duties, the Committee has the powers of a joint committee under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4.

(c) The Committee shall be funded by the Legislative Services Commission from appropriations made to the General Assembly for that purpose. Members of the Committee receive subsistence and travel expenses as provided in G.S. 120-3.1 and G.S. 138-5. The Committee may contract for consultants or hire employees in accordance with G.S. 120-32.02. Upon approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional staff to assist the Committee in its work. Upon the direction of the Legislative Services Commission, the Supervisors of Clerks of the Senate and of the House of Representatives shall assign clerical staff to the Committee. The expenses for clerical employees shall be borne by the Committee."

Section 16.2. The Revenue Laws Study Committee shall study the following matters:

(1) The structure of the franchise tax and the feasibility of removing its inventory component;

(2) Income tax deductions for health insurance costs of self-employed individuals (S.B. 971 - Reeves);

(3) Whether tax credits and other forms of economic development incentives achieve the desired effects and reflect the State's priorities;

(4) Property tax issues including the assessment and collection of ad valorem taxes under the Machinery Act (H.B. 514 - McMahan; S.B. 365 - Rucho); and

(5) Effectiveness of long-term care tax credit (H.B. 74 - Cansler).

Section 16.3. From appropriations to the General Assembly, the Legislative Services Commission may allocate funds for the expenses of the Revenue Laws Study Committee under this Part.

PART XV.-----JOINT LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE STUDIES

Section 15.1. The Joint Legislative Transportation Oversight Committee may study the following issues:

(1) Truck width and length, including the effect on highway safety and traffic engineering (H.B. 142 - Transportation Committee). The Committee may consider all potential effects of allowing industry standard tractor/single trailer combinations of up to 68 feet in total length on additional highways of the State.

(2) Ways to improve the safety of the operation of trucks in North Carolina and to increase the safety of tires on all motor vehicles (H.B. 142 - Transportation Committee). The study shall include the following:

a. Truck inspection violations, including operation of a truck without a required inspection sticker;

b. Increased penalties for brake safety violations, including strengthening penalties for second or subsequent offenses;

c. The need for additional inspectors to follow up on truck safety violations;

d. Measures necessary to ensure that trucks and other vehicles are equipped with tires that are safe for the operation of the motor vehicle and that do not expose the public to needless hazard;

e. The potential benefit of a commercial graduated drivers license to ensure that a person would have both instruction and experience before obtaining a commercial drivers license;

f. Effective enforcement of existing highway safety laws regarding speeding in highway work zones and properly securing loads of gravel, rock, or similar substances on trucks, trailers, or other vehicles;

g. The use and potential effectiveness of water and physical element deflectors in reducing truck accidents; and

h. The methods of removing unsafe vehicles from the public roads, including authorizing law enforcement officers to order that a vehicle be towed from the highway if the officer determines that the continued operation of the vehicle would constitute a hazard to the motoring public.

(3) Encouraging the growth of the trucking industry in North Carolina through increased truck registrations (S.B. 886 - Jordan; H.B. 1096 - Hiatt). The study may include:
a. The feasibility of removing the highway use tax on vehicles with a gross weight rating of more than 26,000 pounds;
b. The replacement of the revenue from the removal of the highway use tax studied in sub-subdivision a. of this subdivision by an increase in registration fees for the same vehicles by ten cents (10¢) per 100 pounds of registered weight; and
c. Eliminate the stacking of overweight penalties by restricting the penalties so that they do not exceed the highest axle-group weight that exceeds the allowable limits rather than assessing separate penalties for each axle-group and stacking those penalties for the same weight violations.

(4) Unpaved secondary roads in North Carolina (S.B. 431 - Odom). The Committee may study the history, the current paving and maintenance programs, and any plans for the future paving and maintenance of secondary roads on the State secondary road system and those not currently on the State system or provided for in existing statutory or administrative programs.

(5) Vehicle safety inspections (H.B. 9 - Carpenter)

(6) Motorcycle helmets (Baker)

Section 15.2. The Joint Legislative Transportation Oversight Committee may report on these studies to the 1997 General Assembly, 1998 Regular Session, upon its convening, or to the 1999 General Assembly, upon its convening.

PART XVI.-----BILL AND RESOLUTIONS REFERENCES

Section 16.1. The listing of the original bill or resolution in this act is for reference purposes only and shall not be deemed to have incorporated by reference any of the substantive provisions contained in the original bill or resolution.

PART XVII.-----EFFECTIVE DATE AND APPLICABILITY

Section 17.1. Except as otherwise specifically provided, this act becomes effective July 1, 1997. If a study is authorized both in this act and the Current Operations Appropriations Act of 1997, the study shall be implemented in accordance with the Current Operations Appropriations Act of 1997 as ratified.

MINUTES
COMMITTEE ON RULES, CALENDAR, AND OPERATIONS OF THE HOUSE
August 28, 1997
6:30 P.M.

The Committee on Rules, Calendar, and Operations of the House met again August 28, 1997, at 6:30 p.m. in the Members' Conference Room in the Legislative Building. Representative Morgan, Committee Chair, called the meeting to order and asked the clerk to call the roll. The following members were present: Representative Bowie, Vice Chair; and Representatives Culp, Dockham, Gulley, Hill, Miner, Mitchell, Neely and Thompson.

The following bills were considered:

Senate Bill 552 - TO PROHIBIT DISCHARGE OF FIREARMS FROM THE RIGHT-OF-WAY IN HUNTING BIG GAME. The Chair recognized Representative Thompson to explain the local bill which prevents hunting from the right-of-way in McDowell County. Representative Thompson submitted an amendment which would exempt a portion of NC Highway #105 in McDowell County where there are game lands on both sides of the highway. He moved for the adoption of the amendment. Motion carried. He then moved that the amendment be incorporated into a committee substitute for Senate Bill 552 and given a favorable report; unfavorable to original bill. Motion carried.

Committee Substitute for House Joint Resolution 306 - A RESOLUTION SETTING THE TIME FOR THE 1997 GENERAL ASSEMBLY TO MEET IN 1998 AND LIMITING THE SUBJECTS THAT MAY BE CONSIDERED IN THAT SESSION. Representative Neely moved to reconsider the vote by which the committee substitute for House Joint Resolution 306 was given a favorable report. Motion carried. He further moved that proposed committee substitute for HJR 306-PCS7373 be adopted for the purpose of discussion. Motion carried. Linwood Jones, Committee Staff Counsel, was recognized to explain the committee substitute. It was identical to the adjournment resolution passed earlier with the exceptions that an adjourning time was not set for today and an ending date was not set for 1998. The Chair recognized Representative Hill who moved that the committee substitute be given a favorable report; unfavorable to the original bill. Motion carried.

There being no further business, the meeting adjourned.

Representative Richard T. Morgan
Committee Chair

Anne M. Cole
Acting Committee Clerk

Attachments: Committee Reports
Bills and Amendments
Visitor's Sheet

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE.**

☐ Committee Substitute for
S.B. 552 A BILL TO BE ENTITLED AN ACT TO PROHIBIT DISCHARGE OF FIREARMS FROM THE RIGHT-OF-WAY IN HUNTING BIG GAME.

☐ 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 House 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)

4/24/97

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Morgan** for the Committee on **RULES, CALENDAR AND OPERATIONS OF THE HOUSE.**

☐ Committee Substitute for
H.B. 306 A BILL TO BE ENTITLED AN ACT TO DIRECTLY AFFECT THE STATE BUDGET AND AMEND THE PUBLIC LAWS.

☐ 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 ☐

HOUSE JOINT RESOLUTION

☒ 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)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 552
Corrected Copy 3/27/97
Proposed House Committee Substitute S552-PCS1900

Short Title: McDowell Road Hunting. (Local)

Sponsors:

Referred to:

March 27, 1997

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT DISCHARGE OF FIREARMS FROM THE RIGHT-OF-WAY IN HUNTING BIG GAME.

The General Assembly of North Carolina enacts:

Section 1. It is unlawful to discharge a firearm from the right-of-way of a State-numbered road for the purpose of taking big game animals.

Section 2. Violation of this act is a Class 3 misdemeanor.

Section 3. This act is enforceable by law enforcement officers of the Wildlife Resources Commission, by sheriffs and deputy sheriffs, and by other peace officers with general subject matter jurisdiction.

Section 4. This act applies only to McDowell County, but shall not apply to those portions of the county along NC Highway 105 where there are game lands on both sides of the road.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 552
Corrected Copy 3/27/97

Short Title: McDowell Road Hunting. (Local)

Sponsors: Senator Ledbetter (By Request).

Referred to: State Government, Local Government and Personnel.

March 27, 1997

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT DISCHARGE OF FIREARMS FROM THE RIGHT-OF-WAY IN HUNTING BIG GAME.

The General Assembly of North Carolina enacts:

Section 1. It is unlawful to discharge a firearm from the right-of-way of a State-numbered road for the purpose of taking big game animals.

Section 2. Violation of this act is a Class 3 misdemeanor.

Section 3. This act is enforceable by law enforcement officers of the Wildlife Resources Commission, by sheriffs and deputy sheriffs, and by other peace officers with general subject matter jurisdiction.

Section 4. This act applies only to McDowell County.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE JOINT RESOLUTION 306
Proposed Committee Substitute H306-PCS7373

Sponsors:

Referred to:

February 24, 1997

A BILL TO BE ENTITLED

A JOINT RESOLUTION SETTING THE TIME FOR ADJOURNMENT OF THE 1997 GENERAL ASSEMBLY TO MEET IN 1998 AND LIMITING THE SUBJECTS THAT MAY BE CONSIDERED IN THAT SESSION.

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

Section 1. When they adjourn on Thursday, August 28, 1997, the House of Representatives and the Senate shall adjourn to reconvene at noon on Monday, May 11, 1998. During that session only the following matters may be considered:

(1) Bills directly and primarily affecting the State budget for fiscal year 1998-99, provided that no such bill may be introduced in the House of Representatives or filed for introduction in the Senate after 4:00 p.m. Thursday, May 28, 1998, and any such measure must have been submitted to the Bill Drafting Division of the Legislative Services Office by 4:00 p.m. Thursday, May 21, 1998.

(2) Bills and resolutions introduced in 1997 and having passed third reading in 1997 in the house in which introduced, received in the other house in accordance with Senate Rule 41 or House Rule 31.1(d) as appropriate, and not disposed of in the other house by tabling, unfavorable committee report, indefinite postponement, or failure to pass any reading, and which do not violate the rules of either body.

(3) Bills and resolutions implementing the recommendations of:

a. Study commissions authorized or directed to report to the 1998 Session;

b. The House Ethics Committee; or
c. The Joint Legislative Ethics Committee or its Advisory Subcommittee.

Any bills authorized by this subdivision must be filed for introduction in the Senate or introduced in the House of Representatives no later than 4:00 p.m. Thursday, May 21, 1998, and any such measure must have been submitted to the Bill Drafting Division of the Legislative Services Office by 4:00 p.m. Thursday, May 14, 1998.

(4) Any local bill introduced in the House of Representatives or filed for introduction in the Senate by 4:00 p.m. Wednesday, May 27, 1998, and any such measure must have been submitted to the Bill Drafting Division of the Legislative Services Office by 4:00 p.m. Wednesday, May 20, 1996, and accompanied by a certificate signed by the principal sponsor stating that no public hearing will be required or asked for by a member on the bill, the bill is noncontroversial, and the bill is approved for introduction by each member of the House of Representatives and Senate whose district includes the area to which the bill applies.

(5) Selection, appointment, or confirmation of members of State boards and commissions as required by law, including the filling of vacancies of positions for which the appointees were elected by the General Assembly upon recommendation of the Speaker of the House of Representatives, President of the Senate, or President Pro Tempore of the Senate.

(6) Any matter authorized by joint resolution passed during the 1998 Session by two-thirds majority of the members of the House of Representatives present and voting and by two-thirds majority of the members of the Senate present and voting. A bill or resolution filed in either house under the provisions of this subdivision shall have a copy of the ratified enabling resolution attached to the jacket before filing for introduction in the Senate or introduction in the House of Representatives.

(7) Any bills primarily affecting any State or local pension or retirement system, introduced in the House of Representatives or filed for introduction in the Senate by 4:00 p.m. Wednesday, May 27, 1998, and any such measure must have been submitted to the Bill Drafting Division of the Legislative Services Office by 4:00 p.m. Wednesday, May 20, 1998.

(8) Joint resolutions, House resolutions, and Senate resolutions pertaining to Section 5(10) of Article III of the Constitution of North Carolina.

(9) A joint resolution adjourning the 1997 Regular Session, sine die on a date earlier than provided by Section 3 of this resolution.

(10) Bills to disapprove rules under G.S. 150B-21.3.

Section 2. The Speaker of the House of Representatives or the President Pro Tempore of the Senate may authorize appropriate committees or subcommittees of their respective houses to meet during the interim between sessions to:

(1) Review matters related to the State budget for the 1997-99 biennium,

(2) Prepare reports, including revised budgets, or

(3) Consider any other matters as the Speaker of the House of Representatives or the President Pro Tempore of the Senate deems appropriate,

except that no committee or subcommittee of a house may consider, after the date of adjournment provided in Section 1 of this resolution and before the date of reconvening provided in Section 1 of this resolution, any bill, or proposed committee substitute for such bill, which originated in the other house. A conference committee may meet in the interim upon approval by the Speaker of the House of Representatives or the President Pro Tempore of the Senate.

Section 3. This resolution is effective upon ratification.

6:00

VISITOR REGISTRATION SHEET

RULES, CALENDAR, AND OPERATIONS OF THE HOUSE **AUGUST 28, 1997**

Name of Committee Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kim Smith	NCLM
Mike Carpenter	NCHBA
Chris Fitzsimon	Common Sense Foundation
Adam Searing	NCHAC.
Amy Anderson	Hunton & Williams
Sandra Long	Martin Marietta
[illegible]	NCRA
Paul Moore	NFIB
Evelyn Hawthorne	NCHA
Frank Freeman	Gov.'s office
Suzanne Williams	Bode & Assoc.
[illegible]	DEHNR
Linda Jo Barr	Smith Anderson
Bill Holman	Chicago Bridge
Curt Williams	Gov's Office
John Palumbo	AT&T
Tommy Webb	CHS
David Simmons	ZDA, PA