

1998

**HOUSE
JUDICIARY I**

MINUTES

North Carolina House of Representatives
JUDICIARY I COMMITTEE
1997



N. Leo Daughtry



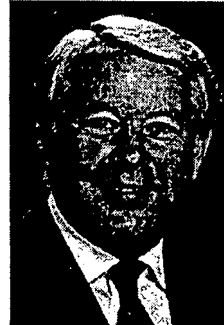
Edwin M. "Sandy" Hardy



Jerry Braswell



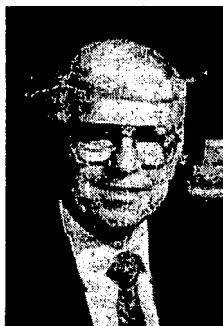
Martha B. Alexander



Gene Arnold



Daniel T. Blue, Jr.



J. Russell Capps



Debbie Clary



James W. Crawford



J. Sam Ellis



Theresa H. Esposito



Milton F. Fitch, Jr.



Bobby Ray Hall



Robert C. Hunter



Lyons Gray



Thomas C. Hardaway



George M. Holmes



John W. Hurley



Margaret M. Jeffus



Larry T. Justus



H.M. Michaux, Jr.



George W. Miller



Richard T. Morgan



Wilma M. Sherrill



Gregory J. Thompson

1998 SESSION

<u>North Carolina House of Representatives JUDICIARY I COMMITTEE</u>			<u>1998</u>
N. Leo Daughtry Bernice Bullard	5-0850	2301	30
Edwin M. "Sandy" Hardy	5-3019	417A	100
Jerry Braswell Dianna Gilmore	3-5809	539	96
Martha B. Alexander Margy Blackmon	3-5605	1209	34
Gene G. Arnold Kara McCoy	3-5747	535	54
Daniel T. Blue, Jr. Lin Threatt	5-2528	1227	80
J. Russell Capps Pamela Ahlin	5-3005	419B	77
Debbie Clary Mary Jamison	5-3011	418B	75
James W. Crawford Linda Winstead	3-5824	1301	24
J. Sam Ellis Allison Phillips	3-5821	1303	78
Theresa Harlow Esposito Melissa Jackson	5-2530	634	5
Milton F. Fitch, Jr. Carolyn Branch	5-2241	1202	91
Lyons Gray Catherine Parsons	3-5995	532	49
Bobby Ray Hall Paula Covington	3-5906	637	87
Thomas C. Hardaway Rita Harris	3-5775	1323	56
George M. Holmes Glenda Jacobs	3-5900	631	6
Robert C. Hunter Ferebee Stainback	3-5987	1201	107
John W. Hurley Dot Anderson	3-5859	1004	71
Margaret M. Jeffus Mary Lee Robinson	3-5191	1013	108
Larry T. Justus Carolyn Justus	3-5956	2204	2
H. M. Michaux, Jr. Clement Scott	3-5609	1409	57
George W. Miller, Jr. Melissa Rickman	3-5878	611	43
Richard T. Morgan Dixie Epps	5-3028	404	17
Wilma M. Sherrill Rosa Kelley	3-5601	2215	51
Gregg Thompson Edna Sykes	3-5828	1002	15



NORTH CAROLINA GENERAL ASSEMBLY
PENDING HOUSE COMMITTEE ON
JUDICIARY I

Date: 11/ 5/98
Time: 1:44 p.m.
Page: 1

1997-98 Biennium

Leg. day: H-223/S-224

<u>BILL</u>	<u>SHORT TITLE</u>		<u>DATE</u>	<u>LATEST ACTION</u>
H 138	DMV ENFORCEMENT AUTHORITY	*H	3- 5-97	RE-REF COM ON JUDICI
H 261=	APA TECHNICAL CHANGES	H	2-17-97	REF TO COM ON JUDICI
H 268	DIVIDE DISTRICT 22	H	2-18-97	REF TO COM ON JUDICI
H 394	DOGFIGHTS/GAMBLING/FELONY	H	3- 4-97	REF TO COM ON JUDICI
H 501	CARTWAYS	H	4-29-97	RE-REF COM ON JUDICI
H 539	COLLATERAL SOURCE EVIDENCE	H	3-20-97	RE-REF COM ON JUDICI
H 616=	STANDARDIZE LAW ENF.DISCIPLINE	H	3-26-97	REF TO COM ON JUDICI
H 674	PERMANENT CURATIVE STATUTE-SEALS	H	3-31-97	REF TO COM ON JUDICI
H 741=	COURT IMPROVEMENT ACT/CONSTITUTIO	H	4- 1-97	REF TO COM ON JUDICI
H 742=	COURT IMPROVEMENT ACT	H	4- 1-97	REF TO COM ON JUDICI
H 795=	ROLLER SKATING RINK LIABILITY	H	4-28-97	RE-REF COM ON JUDICI
H 856	TYRRELL CUMULATIVE VOTING	H	4- 7-97	REF TO COM ON JUDICI
H 927	RABIES VACCINE/DOG OWNER ADMIN.	H	4-14-97	REF TO COM ON JUDICI
H 964	REVISE CODE OF LEGISLATIVE ETHICS	*H	5- 1-97	AMEND PENDING #1
H 981	CIVIL RIGHTS RESTORATION ACT	H	4-17-97	REF TO COM ON JUDICI
H1010=	GOVT. USE/SEIZED GUN PARTS	H	4-21-97	REF TO COM ON JUDICI
H1076	INFRACTIONS TO MAGISTRATES	H	4-21-97	REF TO COM ON JUDICI
H1079	DRUG LAW AMENDMENTS	H	4-21-97	REF TO COM ON JUDICI
H1085	AMEND ETHNIC INTIMIDATION LAW	H	4-21-97	REF TO COM ON JUDICI
H1123	STATE PERSONNEL GRIEVANCE PROCEDU	H	4-28-97	RE-REF COM ON JUDICI
H1393=	CLARIFY INTERMEDIATE PUNISHMENTS	H	5-21-98	REF TO COM ON JUDICI
H1441	RESTITUTION/CIVIL JUDGEMENT	H	5-25-98	REF TO COM ON JUDICI
H1442=	EXEMPT TRANSPORT AGRIC. PRODUCTS	H	6-23-98	RE-REF COM ON JUDICI
H1493=	TRANSIT AUTHORITY PURCHASING OPTI	*H	8- 5-98	RE-REF COM ON JUDICI
H1523	NO STATE FUNDS FOR JURY CONSULTAN	H	6-10-98	RE-REF COM ON JUDICI
H1717	MEDICAL SAVINGS ACCT	H	6- 9-98	RE-REF COM ON JUDICI
S 152=	SERVICE OF ADMIN. SEARCH WARRANTS	H	5-15-97	RE-REF COM ON JUDICI
S 246=	GOVT. USE/SEIZED GUN PARTS	H	3-24-97	REF TO COM ON JUDICI
S 402	DEBTOR PROTECTION/SIMPLE IRAS	H	4-28-97	REF TO COM ON JUDICI

Bolded line indicates bill is an appropriation bill.

* indicates that text of original bill was changed by some action.

= sign indicates that the original bill is identical to another bill.

NORTH CAROLINA GENERAL ASSEMBLY
COMMITTEE SUMMARY REPORT

1997-98 Regular Session

HOUSE: JUDICIARY I

Valid Through 5-NOV-1998

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H 30	BAKER	USE OF MOTORCYCLE HELMETS	HF-REPTD UNFAV	02-04-97	03-20-97
H 88=	PRESTON	STATE BD OF EDUC SUBPOENA	R -CH. SL 97-0325	02-27-97	03-26-97
H 102	BUCHANAN	MITCHELL PRECINCTS	R -CH. SL 97-0183	02-11-97	03-12-97
H 103=	BUCHANAN	AVERY PRECINCTS	*R -CH. SL 97-0217	02-11-97	02-18-97
H 138	JUSTUS	DMV ENFORCEMENT AUTHORITY	*H -RE-REF COM ON JUDICI	03-05-97	
H 139=	JUSTUS	CLARIFY SEX OFFENDER REGISTRATION	*R -CH. SL 97-0015	02-13-97	03-03-97
H 141=	JUSTUS	EMBEZZLEMENT/INCREASE PENALTY	*S -RE-REF COM ON APPROPR	02-13-97	02-26-97
H 142=	JUSTUS	ACCESORY AFTER THE FACT/PENALTY	S -RE-REF COM ON APPROPR	02-13-97	02-25-97
H 144=	JUSTUS	VOL MANSLAUGHTER/CLASS D FELONY	S -RE-REF COM ON APPROPR	02-13-97	02-25-97
H 150	EASTERLING	PROHIBIT SALE OF SOME PYROTECHNICS	HF-REPTD UNFAV	02-13-97	03-27-97
H 162=	CRAWFORD	INCREASE DRUG PENALTIES	HF-POSTPONED INDEFINITELY	02-13-97	03-03-97
H 191	HUNTER R	CERT. COPIES/CUSTODY & WILLS	R -CH. SL 97-0081	02-17-97	03-06-97
H 192	HUNTER R	COURTS COMMISSION MEMBERSHIP	R -CH. SL 97-0082	02-17-97	03-06-97
H 193=	HUNTER R	NO INS. POINTS/15MPH OVER LIMIT	*H -CAL PURSUANT RULE 36 (A)	04-28-97	04-30-97
H 198	SEXTON	SUPERVISION OF PRISONERS	*S -REF TO COM ON ST GVT	02-17-97	03-10-97
H 202=	CULPEPPER	INCREASE MINIMUM UPSET AMOUNT	*R -CH. SL 97-0119	03-25-97	
H 231=	HIATT	DMV MEDICAL INFORMATION IMMUNITY	*R -CH. SL 97-0464	02-17-97	04-02-97
H 248=	CLARY	GRADUATED DRIVERS LICENSES	*R -CH. SL 97-0016	02-17-97	02-19-97
H 258=	TOLSON	SERVICE OF ADM. SEARCH WARRANTS	HF-POSTPONED INDEFINITELY	02-17-97	
H 261=	CREECH	APA TECHNICAL CHANGES	H -REF TO COM ON JUDICI	02-17-97	
H 267	SHERRILL	BOMB THREAT/FELONY-2	*S -REF TO COM ON JUDIC	02-18-97	03-03-97
H 268 BRAWLEY		DIVIDE DISTRICT 22	H -REF TO COM ON JUDICI	02-18-97	
H 309=	ALEXANDER	CHARLOTTE ON-STREET PARKING	*R -CH. SL 97-0045	02-26-97	03-06-97
H 315=	RUSSELL	STATE HIRES MOST QUALIFIED	*S -RE-REF COM ON ST GVT	04-15-97	04-23-97
H 316=	RUSSELL	CHANGE SPA EXEMPTION PROCESS	*S -REF TO COM ON ST GVT	04-23-97	04-30-97
H 321 PRESTON		STUDY HUNTING ON SUNDAY	*HF-POSTPONED INDEFINITELY	02-25-97	04-29-97
H 328	ARNOLD	BAN TOBACCO SALES TO MINORS-2	*S -REC FROM HOUSE	02-26-97	03-26-97
H 336	EDDINS	VICTIM'S FAMILY WITNESS EXECUTION	*R -CH. SL 97-0070	02-26-97	03-12-97
H 344=	CLARY	MOTOR VEHICLE OCCUPANT RESTRAINTS	*HF-POSTPONED INDEFINITELY	04-29-97	04-30-97
H 348	EDDINS	CIDER/VINEGAR MANUFACTURER PERMIT	*R -CH. SL 97-0134	02-27-97	03-19-97

NOTES- = AFTER BILL NUMBER SHOWS THAT BILL IS IDENTICAL, AS INTRODUCED, TO ANOTHER BILL.

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BOLD LINE INDICATES BILL INDEXED AS AFFECTING APPROPRIATIONS.

NORTH CAROLINA GENERAL ASSEMBLY
COMMITTEE SUMMARY REPORT

1997-98 Regular Session

HOUSE: JUDICIARY I

Valid Through 5-NOV-1998

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H 388	NICHOLS	AMEND TRESPASS OFFENSES	*H -CAL PURSUANT RULE 36 (A)	03-04-97	04-29-97
H 389	RAYFIELD	FELONY CHILD ABUSE/INCR. PENALTY	S -REF TO COM ON JUDIC	03-04-97	03-19-97
H 394	JARRELL	DOGFIGHTS/GAMBLING/FELONY	H -REF TO COM ON JUDICI	03-04-97	
H 407=	BADDOUR	UNIFORM FRAUDULENT TRANSFER ACT	*R -CH. SL 97-0291	06-18-97	
H 430	CULP	PERMISSIBLE SALES AT ZOO	*R -CH. SL 97-0258	06-25-97	
H 431=	HOWARD	PUBLIC ASSISTANCE FRAUD	*R -CH. SL 97-0497	04-15-97	04-28-97
H 433=	GULLEY J	CONCEALED HANDGUN EXEMPTION	*R -CH. SL 97-0274	03-10-97	04-24-97
H 468	DECKER	NC DA'S M.V. RECOMMENDATIONS	*S -REF TO COM ON JUDIC	03-10-97	04-29-97
H 470=	TALLENT	MEDICAL INVESTIGATORS	*S -RE-REF COM ON COMMERCE	03-10-97	04-24-97
H 476=	HURLEY	VITAL RECORDS ACCESS	*R -CH. SL 97-0242	06-18-97	
H 482	CULP	HANDICAPPED PERSONS SIGNATURE	R -CH. SL 97-0208	03-10-97	03-26-97
H 483=	IVES	SCHOOL BOARD "QUICK TAKE"	*H -RE-REF COM ON FINANCE	04-24-97	05-01-97
H 484	WEATHERLY	RECORD NOTICES OF OPEN DUMPS	*R -CH. SL 97-0330	04-09-97	04-29-97
H 485	DOCKHAM	FUNERAL ESTABLISHMENTS	*R -CH. SL 97-0399	03-10-97	04-14-97
H 499	THOMPSON	GIS RECORD EXCEPTION	*R -CH. SL 97-0193	04-23-97	04-28-97
H 501	BROWN	CARTWAYS	H -RE-REF COM ON JUDICI	04-29-97	
H 502	ELLIS	AMEND MOTOR VEHICLE DEFINITION	*HF-FAILED 2ND READING	03-12-97	04-28-97
H 507	HUNTER R	MANDATORY JAIL FOR SOME D.W.I.	*S -REF TO COM ON JUDIC	03-12-97	04-24-97
H 513	PRESTON	LRC STUDY WATERCRAFT SAFETY	*HF-POSTPONED INDEFINITELY	03-13-97	04-28-97
H 527=	JUSTUS	OPTOMETRY CHANGES	*R -CH. SL 97-0075	03-18-97	04-09-97
H 538	NEELY	TRUTHFUL EMPLOYMENT REFERENCES	*S -REF TO COM ON RULES &	03-20-97	04-22-97
H 539	NEELY	COLLATERAL SOURCE EVIDENCE	H -RE-REF COM ON JUDICI	03-20-97	
H 560	ALEXANDER	DIVORCE EDUCATION	*H -ASSIGNED TO APP-JPS	04-01-97	04-14-97
H 580	THOMPSON	NONRESIDENT HANDGUN PERMIT	*H -RE-REF COM ON FINANCE	03-24-97	04-28-97
H 584	JARRELL	ATTEMPTING TO ELUDE ARREST	*S -RE-REF COM ON APPROPR	03-24-97	03-25-97
H 615	BONNER	PUBLIC DEFENDER/DISTRICT 16B	R -CH. SL 97-0175	03-26-97	04-17-97
H 616=	SHERRILL	STANDARDIZE LAW ENF.DISCIPLINE	H -REF TO COM ON JUDICI	03-26-97	
H 618	MITCHELL	WORKERS' COMPENSATION FRAUD	*R -CH. SL 97-0353	03-26-97	04-07-97
H 646	DAUGHTRY	REVISE UCC/CROP LIENS	*R -CH. SL 97-0336	03-27-97	04-17-97
H 652	SHERRILL	AUDITS	*R -CH. SL 97-0526	03-27-97	04-28-97

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NORTH CAROLINA GENERAL ASSEMBLY
COMMITTEE SUMMARY REPORT

1997-98 Regular Session

HOUSE: JUDICIARY I

Valid Through 5-NOV-1998

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H 665=	EDDINS	CRIME VICTIMS' RIGHTS ACT	*H -ASSIGNED TO APP-JPS	03-27-97	06-25-97
H 665=	EDDINS	CRIME VICTIMS' RIGHTS ACT	*H -ASSIGNED TO APP-JPS	06-18-98	06-30-98
H 674	ARNOLD	PERMANENT CURATIVE STATUTE-SEALS	H -REF TO COM ON JUDICI	03-31-97	
H 704	THOMPSON	SHERIFF'S REGISTRATION PLATES	*R -CH. SL 97-0158	04-02-97	04-17-97
H 734	FITCH	CLARIFYING G.S.153A-15	*S -REF TO COM ON AGRICUL&	04-01-97	04-29-97
H 739=	DICKSON	MV DEALERS/MANUFACTURERS LIC. LAW	*R -CH. SL 97-0319	04-01-97	04-28-97
H 741=	NEELY	COURT IMPROVEMENT ACT/CONSTITUTION	H -REF TO COM ON JUDICI	04-01-97	
H 742=	BADDOUR	COURT IMPROVEMENT ACT	H -REF TO COM ON JUDICI	04-01-97	
H 790	MICHAUX	NO RACE OR GENDER ON CHECKS	*R -CH. SL 97-0149	04-03-97	04-22-97
H 795=	BAKER	ROLLER SKATING RINK LIABILITY	H -RE-REF COM ON JUDICI	04-28-97	
H 855	HALL	LEE COMMISSIONERS ELECTIONS	S -REF TO COM ON ST GVT	04-07-97	04-24-97
H 856	CULPEPPER	TYRRELL CUMULATIVE VOTING	H -REF TO COM ON JUDICI	04-07-97	
H 869	DAVIS D	SPEED TO ELUDE ARREST	*H -CAL PURSUANT RULE 36 (A)	04-07-97	04-28-97
H 870	ALLRED	LOCAL WORKING OF PRISONERS	*S -REF TO COM ON ST GVT	04-22-97	04-28-97
H 873	HUNTER R	AGE OF UNDISCIPLINED JUVENILES	*S -REF TO COM ON JUDIC	04-07-97	04-28-97
H 891=	MITCHELL	WORKERS COMPENSATION MEDICAL CARE	*S -REF TO COM ON JUDIC	04-28-97	04-29-97
H 902=	MORRIS	AMEND STALKING LAW	HF-POSTPONED INDEFINITELY	04-09-97	04-10-97
H 904	MOSLEY	LIFE PRISON/REPEAT CHILD MOLESTER	*S -RE-REF COM ON APPROPR	04-09-97	04-17-97
H 904	MOSLEY	LIFE PRISON/REPEAT CHILD MOLESTER	*S -RE-REF COM ON APPROPR	04-23-97	04-30-97
H 927	HARDY	RABIES VACCINE/DOG OWNER ADMIN.	H -REF TO COM ON JUDICI	04-14-97	
H 936	BEALL	LIABILITY FOR LLAMA ACTIVITIES	*S -REF TO COM ON JUDIC	04-14-97	04-29-97
H 939	HURLEY	DRUG TAX FOR CRIMESTOPPERS	*H -ASSIGNED TO APP-JPS	04-14-97	04-28-97
H 958	HIGHTOWER	CONCEALED HANDGUN LAWS AMEND.	*R -CH. SL 97-0238	04-16-97	04-30-97
H 964	HOWARD	REVISE CODE OF LEGISLATIVE ETHICS	*H -AMEND PENDING #1	05-01-97	
H 981	HARDY	CIVIL RIGHTS RESTORATION ACT	H -REF TO COM ON JUDICI	04-17-97	
H1008	WATSON	CHIROPRACTIC LICENSURE AMENDMENTS	*R -CH. SL 97-0230	04-21-97	04-28-97
H1010=	WARNER	GOVT. USE/SEIZED GUN PARTS	H -REF TO COM ON JUDICI	04-21-97	
H1012	SEXTON	SHOOTING RANGE PROTECTION	*R -CH. SL 97-0465	04-21-97	04-28-97
H1036	HARDY	STUDY INDIGENT COUNSEL RESTRICTION	*HF-POSTPONED INDEFINITELY	04-21-97	04-30-97
H1042=	BLACK	PUBLICATION OF APPELATE DECISIONS	HF-POSTPONED INDEFINITELY	04-21-97	

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NORTH CAROLINA GENERAL ASSEMBLY
COMMITTEE SUMMARY REPORT

1997-98 Regular Session

HOUSE: JUDICIARY I

Valid Through 5-NOV-1998

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H1071	CAPPS	PAY RENT TO STAY EJECTMENT	*R -CH. SL 98-0125	04-21-97	04-28-97
H1074	HALL	REPRESENTATIONS TO CONSOLIDATE DEBTS	S -REF TO COM ON COMMERCE	04-28-97	04-30-97
H1075	HALL	APPRECIATION OF REVERSE MORTGAGES	*R -CH. SL 98-0116	04-28-97	04-30-97
H1076	CLARY	INFRACTIONS TO MAGISTRATES	H -REF TO COM ON JUDICI	04-21-97	
H1079	WATSON	DRUG LAW AMENDMENTS	H -REF TO COM ON JUDICI	04-21-97	
H1085	LUEBKE	AMEND ETHNIC INTIMIDATION LAW	H -REF TO COM ON JUDICI	04-21-97	
H1086	MILLER G	AMEND OFFER OF JUDGEMENT RULE-2	*S -REF TO COM ON JUDIC	04-21-97	04-30-97
H1091	BRASWELL	CRIM. RECORD CHECK BY PRIVATE BUS.	*S -REF TO COM ON JUDIC	04-28-97	04-30-97
H1097	PRESTON	FISHERIES REFORM ACT-2	*R -CH. SL 97-0400	04-23-97	05-15-97
H1114	EDDINS	SWIFT CREEK MANAGEMENT PLAN	*R -CH. SL 98-0192	04-21-97	05-29-97
H1120=	MCCOMAS	PRESCRIBED BURNING IN FORESTS	*S -REF TO COM ON AGRICUL&	04-22-97	04-28-97
H1122	GULLEY J	ADMIT DRUG/OPTOM. EVID./COURT SITE	*R -CH. SL 97-0304	04-21-97	04-29-97
H1123	SHERRILL	STATE PERSONNEL GRIEVANCE PROCEDURE	H -RE-REF COM ON JUDICI	04-28-97	
H1124	CAPPS	FIRE/RESCUE PERSONNEL RECORDS CHECKS	S -REF TO COM ON JUDIC	04-21-97	04-29-97
H1132	HUNTER R	DATE RAPE DRUGS	*R -CH. SL 97-0501	04-21-97	04-29-97
H1140	HUNTER R	LITTERING/REQUIRE COMM. SERVICES	*R -CH. SL 97-0518	04-21-97	04-28-97
H1144	WOOD	SPEEDING IN SCHOOL ZONES	HF-POSTPONED INDEFINITELY	04-30-97	
H1252	MCCOMBS	CRIMINAL TAX PENALTY TO HOME COUNTY	*S -REF TO COM ON JUDIC	05-12-98	05-19-98
H1314=	ALLRED	CEMETERY CONSUMER PROTECTION	*H -CAL PURSUANT RULE 36 (A)	06-10-98	08-05-98
H1317=	WILSON C	AMEND CONTESTED CASE PROCEDURES	HF-POSTPONED INDEFINITELY	05-19-98	
H1321=	DAUGHTRY	FUTURE OF THE COURTS	*H -CAL PURSUANT RULE 36 (A)	05-19-98	07-08-98
H1342	BRAWLEY	RENUNCIATION FIDUCIARY POWERS	*R -CH. SL 98-0148	08-13-98	08-20-98
H1356=	REYNOLDS	ELECTRONIC COMMERCE ACT	*R -CH. SL 98-0127	05-20-98	06-01-98
H1357=	REYNOLDS	BEST VALUE INFO. TECH. PROCUREMENTS	*R -CH. SL 98-0189	05-20-98	06-02-98
H1357=	REYNOLDS	BEST VALUE INFO. TECH. PROCUREMENTS	*R -CH. SL 98-0189	06-22-98	07-14-98
H1362	PRESTON	MILITARY SERVICE CREDIT	R -CH. SL 98-0214	05-20-98	06-09-98
H1380	HURLEY	COUNTY ABC ENFORCEMENT	*S -REF TO COM ON JUDIC	05-21-98	06-18-98
H1389=	ALLRED	FUNDING FOR LEGAL SERVICES	HF-POSTPONED INDEFINITELY	05-21-98	
H1391=	DAUGHTRY	JUDICIAL APPT./VOTER RETENTION	*HF-POSTPONED INDEFINITELY	05-21-98	07-15-98
H1393=	JUSTUS	CLARIFY INTERMEDIATE PUNISHMENTS	H -REF TO COM ON JUDICI	05-21-98	

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1997-98 Regular Session

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Valid Through 5-NOV-1998

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H1400	HUNTER R	VICTIM AND WITNESS ASSISTANTS	HF-POSTPONED INDEFINITELY	05-21-98	
H1440	MCCRARY	CONFORM WITNESS TRAVEL FEES	*HF-POSTPONED INDEFINITELY	05-25-98	06-15-98
H1441	MCCRARY	RESTITUTION/CIVIL JUDGEMENT	H -REF TO COM ON JUDICI	05-25-98	
H1442=	MITCHELL	EXEMPT TRANSPORT AGRIC. PRODUCTS	H -RE-REF COM ON JUDICI	06-23-98	
H1456=	JUSTUS	DEATH BY LETHAL DRUGS	*S -REF TO COM ON JUDIC	05-25-98	06-08-98
H1493=	MINER	TRANSIT AUTHORITY PURCHASING OPTION	*H -RE-REF COM ON JUDICI	08-05-98	
H1523	EDDINS	NO STATE FUNDS FOR JURY CONSULTANTS	H -RE-REF COM ON JUDICI	06-10-98	
H1544	GARDNER	RAISE COURT FEES	*S -REF TO COM ON FINANCE	05-27-98	06-10-98
H1549	OWENS	CURRITUCK/BEACH DRIVING PENALTY	R -CH. SL 98-0064	06-23-98	07-09-98
H1567	HIGHTOWER	ANSON LEGAL ADVERTISING	*S -REF TO COM ON ST GVT	05-28-98	06-23-98
H1717	HARDY	MEDICAL SAVINGS ACCT	H -RE-REF COM ON JUDICI	06-09-98	
S 3	JENKINS	LOBBYIST WAITING PERIOD	*H -RE-REF COM ON RULES	02-26-97	03-12-97
S 16	BALLANCE	CLARIFY COMMUNITY-BASED CORRECTIONS	*R -CH. SL 97-0057	03-27-97	05-06-97
S 30	JORDAN	SPEEDING IN A WORK ZONE	*R -CH. SL 97-0488	05-05-97	07-14-97
S 78=	BALLANCE	STATE EMPLOYEE WORKPLACE HARASSMENT	*R -CH. SL 98-0135	06-09-98	06-17-98
S 79	HARTSELL	REPEAL MORE ANTIQUATED LAWS	R -CH. SL 97-0014	03-03-97	03-12-97
S 95	RAND	VALIDATE NOTARIAL ACTS	*R -CH. SL 97-0019	03-03-97	03-19-97
S 106	COOPER	SALE OF PROPERTY FOR UNPAID TAXES	*R -CH. SL 97-0121	03-04-97	05-08-97
S 152=	COOPER	SERVICE OF ADMIN. SEARCH WARRANTS	H -RE-REF COM ON JUDICI	03-26-97	05-13-97
S 152=	COOPER	SERVICE OF ADMIN. SEARCH WARRANTS	H -RE-REF COM ON JUDICI	05-15-97	
S 172	ALBERTSON	NO SAFETY COURSE/DISABLED HUNTERS	*R -CH. SL 97-0365	04-16-97	05-06-97
S 187=	KERR	APA TECHNICAL CHANGES	R -CH. SL 97-0034	03-17-97	04-07-97
S 246=	RAND	GOVT. USE/SEIZED GUN PARTS	H -REF TO COM ON JUDICI	03-24-97	
S 250	WELLONS	CLARIFY PERFECTION-SECUR. INTEREST	*R -CH. SL 97-0386	04-17-97	05-06-97
S 251	WELLONS	CREATION OF EASEMENTS BY LANDOWNER	*R -CH. SL 97-0333	04-17-97	05-08-97
S 320	RAND	NURSES' TRAINING	*R -CH. SL 97-0375	04-17-97	06-03-97
S 320	RAND	NURSES' TRAINING	*R -CH. SL 97-0375	06-11-97	06-18-97
S 371	ODOM	INTERNATIONAL COMM. CONCILIATION	*R -CH. SL 97-0368	05-01-97	05-14-97
S 376	WARREN	CAMPUS LAW ENFORCEMENT	R -CH. SL 97-0194	04-28-97	06-03-97
S 393	RAND	FAIL COMM. SERVICE/REVOKE LICENSE	*R -CH. SL 97-0234	04-07-97	06-03-97

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NORTH CAROLINA GENERAL ASSEMBLY
COMMITTEE SUMMARY REPORT

HOUSE: JUDICIARY I

Valid Through 5-NOV-1998

1997-98 Regular Session

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
S 402	WEBSTER	DEBTOR PROTECTION/SIMPLE IRAS	H -REF TO COM ON JUDICI	04-28-97	
S 409	SHAW R	AIRPORT LAW ENFORCEMENT	*R -CH. SL 97-0143	05-01-97	05-14-97
S 417	SHAW L	HIGHWAY CONTRACT BONDING REQ'MENTS	*HF-REPTD UNFAV	06-18-97	10-05-98
S 430=	ODOM	INDUSTRIAL HYGIENISTS	*R -CH. SL 97-0195	05-06-97	05-27-97
S 521	CARPENTER R	DOC PILOT/SEXUAL ASSAULT	*R -CH. SL 97-0288	06-11-97	06-23-97
S 561	ODOM	COMPANY POLICE/ CONCEALED HANDGUNS	*R -CH. SL 97-0441	05-01-97	06-04-97
S 561	ODOM	COMPANY POLICE/ CONCEALED HANDGUNS	*R -CH. SL 97-0441	06-19-97	07-08-97
S 571	DALTON	CONTROLLED SUBSTANCE/SCHEDULE II	R -CH. SL 97-0385	04-28-97	07-14-97
S 625	PAGE	SPEEDING ON SCHOOL GROUNDS	*R -CH. SL 97-0341	04-30-97	05-12-97
S 625	PAGE	SPEEDING ON SCHOOL GROUNDS	*R -CH. SL 97-0341	05-14-97	06-18-97
S 699	HORTON	MODIFY VEHICLE DEALER REQUIREMENTS	*R -CH. SL 97-0429	07-09-97	07-23-97
S 861	LEE	DISPENSING OPTICIANS	*R -CH. SL 97-0424	05-19-97	06-10-97
S 875	KERR	REVISE RECORDS LAWS-2	*R -CH. SL 97-0309	06-02-97	06-16-97
S 882	WINNER	CIVIL PENALTIES LAW CLARIFIED	*R -CH. SL 98-0215	07-30-98	08-18-98
S 885	GULLEY W	NOTICE OF EXECUTION	*R -CH. SL 97-0289	05-05-97	06-16-97
S 897	RAND	AMEND ELEC. SURVEILLANCE LAW	*R -CH. SL 97-0435	05-01-97	06-18-97
S 910	DALTON	LIMITATIONS FOR OFFICIAL BONDS	*R -CH. SL 97-0297	04-30-97	06-16-97
S 919	ODOM	UNLAWFUL TELECOMMUNICATIONS	*R -CH. SL 97-0372	05-01-97	07-14-97
S 943	RAND	MEDICAID FALSE CLAIMS ACT	*R -CH. SL 97-0338	05-12-97	07-02-97
S 953	WEBSTER	CORPORATE REINSTATEMENT	R -CH. SL 97-0200	05-01-97	05-27-97

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NORTH CAROLINA GENERAL ASSEMBLY
PENDING HOUSE COMMITTEE ON
JUDICIARY I

Date: 8/25/98
 Time: 3:00 p.m.
 Page: 1
 Leg. day: H-185/S-185

1997-98 Biennium

BILL	SHORT TITLE	DATE	LATEST ACTION
8.25.98 H 138	DMV ENFORCEMENT AUTHORITY <i>rec'd</i>	3- 5-97	RE-REF COM ON JUDICI
8.26.98 H 258=	SERVICE OF ADM. SEARCH WARRANTS	2-17-97	REF TO COM ON JUDICI
8.26.98 H 261=	APA TECHNICAL CHANGES <i>rec'd</i>	2-17-97	REF TO COM ON JUDICI
8.26.98 H 268	DIVIDE DISTRICT 22 <i>rec'd</i>	2-18-97	REF TO COM ON JUDICI
8.26.98 H 394	DOGFIGHTS/GAMBLING/FELONY <i>rec'd</i>	3- 4-97	REF TO COM ON JUDICI
8.26.98 H 501	CARTWAYS <i>rec'd</i>	4-29-97	RE-REF COM ON JUDICI
8.26.98 H 539	COLLATERAL SOURCE EVIDENCE <i>rec'd</i>	3-20-97	RE-REF COM ON JUDICI
8.26.98 H 616=	STANDARDIZE LAW ENF. DISCIPLINE <i>rec'd</i>	3-26-97	REF TO COM ON JUDICI
8.27.98 H 674	PERMANENT CURATIVE STATUTE-SEALS <i>rec'd</i>	3-31-97	REF TO COM ON JUDICI
8.27.98 H 741=	COURT IMPROVEMENT ACT/CONSTITUTION <i>rec'd</i>	4- 1-97	REF TO COM ON JUDICI
8.27.98 H 742=	COURT IMPROVEMENT ACT <i>rec'd</i>	4- 1-97	REF TO COM ON JUDICI
8.27.98 H 795=	ROLLER SKATING RINK LIABILITY <i>rec'd</i>	4-28-97	RE-REF COM ON JUDICI
8.28.98 H 856	TYRRELL CUMULATIVE VOTING <i>rec'd</i>	4- 7-97	REF TO COM ON JUDICI
8.27.98 H 927	RABIES VACCINE/DOG OWNER ADMIN. <i>* rec'd</i>	4-14-97	REF TO COM ON JUDICI
8.27.98 H 964	REVISE CODE OF LEGISLATIVE ETHICS <i>rec'd</i>	5- 1-97	AMEND PENDING #1
8.27.98 H 981	CIVIL RIGHTS RESTORATION ACT <i>* rec'd</i>	4-17-97	REF TO COM ON JUDICI
8.31.98 H1010=	GOVT. USE/SEIZED GUN PARTS <i>rec'd</i>	4-21-97	REF TO COM ON JUDICI
8.31.98 H1042=	PUBLICATION OF APPELATE DECISIONS <i>die?</i>	4-21-97	REF TO COM ON JUDICI
8.31.98 H1076	INFRACTIONS TO MAGISTRATES <i>rec'd</i>	4-21-97	REF TO COM ON JUDICI
8.31.98 H1079	DRUG LAW AMENDMENTS <i>rec'd</i>	4-21-97	REF TO COM ON JUDICI
8.31.98 H1085	AMEND ETHNIC INTIMIDATION LAW <i>rec'd</i>	4-21-97	REF TO COM ON JUDICI
8.31.98 H1123	STATE PERSONNEL GRIEVANCE PROCEDURE <i>rec'd</i>	4-28-97	RE-REF COM ON JUDICI
8.31.98 H1144	SPEEDING IN SCHOOL ZONES <i>Die</i>	5-30-97	RE-REF COM ON JUDICI
8.31.98 H1317=	AMEND CONTESTED CASE PROCEDURES <i>die</i>	5-19-98	REF TO COM ON JUDICI
9.1.98 H1389=	FUNDING FOR LEGAL SERVICES <i>die</i>	5-21-98	REF TO COM ON JUDICI
9.1.98 H1393=	CLARIFY INTERMEDIATE PUNISHMENTS <i>rec'd</i>	5-21-98	REF TO COM ON JUDICI
9.1.98 H1400	VICTIM AND WITNESS ASSISTANTS <i>Die</i>	5-21-98	REF TO COM ON JUDICI
9.1.98 H1441	RESTITUTION/CIVIL JUDGEMENT <i>Rec'd</i>	5-25-98	REF TO COM ON JUDICI
9.1.98 H1442=	EXEMPT TRANSPORT AGRIC. PRODUCTS <i>rec'd</i>	6-23-98	RE-REF COM ON JUDICI
9.1.98 H1493=	TRANSPORT AUTHORITY PURCHASING OPT <i>rec'd</i>	8- 5-98	RE-REF COM ON JUDICI
9.1.98 H1523	NO STATE FUNDS FOR JURY CONSULTAN <i>rec'd</i>	10-98	RE-REF COM ON JUDICI
9.1.98 H1717	MEDICAL SAVINGS ACCT <i>* rec'd</i>	6- 9-98	RE-REF COM ON JUDICI
S 152=	SERVICE OF ADMIN. SEARCH WARRANTS	5-15-97	RE-REF COM ON JUDICI
S 246=	GOVT. USE/SEIZED GUN PARTS	3-24-97	REF TO COM ON JUDICI
S 402	DEBTOR PROTECTION/SIMPLE IRAS	4-28-97	REF TO COM ON JUDICI
S 417	HIGHWAY CONTRACT BONDING REQ'MENT	6-18-97	RE-REF COM ON JUDICI

Bolded line indicates bill is an appropriation bill.

* indicates that text of original bill was changed by some action.

= sign indicates that the original bill is identical to another bill.

25 rec'd

NORTH CAROLINA GENERAL ASSEMBLY
COMMITTEE SUMMARY REPORT

1997-98 Regular Session

HOUSE: JUDICIARY I

Valid Through 25-AUG-1998

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H 30	BAKER	USE OF MOTORCYCLE HELMETS	HF-REPTD UNFAV	02-04-97	03-20-97
H 88=	PRESTON	STATE BD OF EDUC SUBPOENA	R -CH. SL 97-0325	02-27-97	03-26-97
H 102	BUCHANAN	MITCHELL PRECINCTS	R -CH. SL 97-0183	02-11-97	03-12-97
H 103=	BUCHANAN	AVERY PRECINCTS	*R -CH. SL 97-0217	02-11-97	02-18-97
H 138	JUSTUS	DMV ENFORCEMENT AUTHORITY	*H -RE-REF COM ON JUDICI	03-05-97	✓
H 139=	JUSTUS	CLARIFY SEX OFFENDER REGISTRATION	*R -CH. SL 97-0015	02-13-97	03-03-97
H 141=	JUSTUS	EMBEZZLEMENT/INCREASE PENALTY	*S -RE-REF COM ON APPROPR	02-13-97	02-26-97
H 142=	JUSTUS	ACCESORY AFTER THE FACT/PENALTY	S -RE-REF COM ON APPROPR	02-13-97	02-25-97
H 144=	JUSTUS	VOL MANSLAUGHTER/CLASS D FELONY	S -RE-REF COM ON APPROPR	02-13-97	02-25-97
H 150	EASTERLING	PROHIBIT SALE OF SOME PYROTECHNICS	HF-REPTD UNFAV	02-13-97	03-27-97
H 162=	CRAWFORD	INCREASE DRUG PENALTIES	H -REPTD TO APPROPR	02-13-97	03-03-97
H 191	HUNTER R	CERT. COPIES/CUSTODY & WILLS	R -CH. SL 97-0081	02-17-97	03-06-97
H 192	HUNTER R	COURTS COMMISSION MEMBERSHIP	R -CH. SL 97-0082	02-17-97	03-06-97
H 193=	HUNTER R	NO INS. POINTS/15MPH OVER LIMIT	*H -CAL PURSUANT RULE 36 (A)	04-28-97	04-30-97
H 198	SEXTON	SUPERVISION OF PRISONERS	*S -REF TO COM ON ST GVT	02-17-97	03-10-97
H 202=	CULPEPPER	INCREASE MINIMUM UPSET AMOUNT	*R -CH. SL 97-0119	03-25-97	
H 231=	HIATT	DMV MEDICAL INFORMATION IMMUNITY	*R -CH. SL 97-0464	02-17-97	04-02-97
H 248=	CLARY	GRADUATED DRIVERS LICENSES	*R -CH. SL 97-0016	02-17-97	02-19-97
H 258=	TOLSON	SERVICE OF ADM. SEARCH WARRANTS	H -REF TO COM ON JUDICI	02-17-97	✓
H 261=	CREECH	APA TECHNICAL CHANGES	H -REF TO COM ON JUDICI	02-17-97	✓
H 267	SHERRILL	BOMB THREAT/FELONY-2	*S -REF TO COM ON JUDIC	02-18-97	03-03-97
H 268	BRAWLEY	DIVIDE DISTRICT 22	H -REF TO COM ON JUDICI	02-18-97	✓
H 309=	ALEXANDER	CHARLOTTE ON-STREET PARKING	*R -CH. SL 97-0045	02-26-97	03-06-97
H 315=	RUSSELL	STATE HIRES MOST QUALIFIED	*S -RE-REF COM ON ST GVT	04-15-97	04-23-97
H 316=	RUSSELL	CHANGE SPA EXEMPTION PROCESS	*S -REF TO COM ON ST GVT	04-23-97	04-30-97
H 321	PRESTON	STUDY HUNTING ON SUNDAY	*H -RE-REF COM ON RULES	02-25-97	04-29-97
H 328	ARNOLD	BAN TOBACCO SALES TO MINORS-2	*S -REC FROM HOUSE	02-26-97	03-26-97
H 336	EDDINS	VICTIM'S FAMILY WITNESS EXECUTION	*R -CH. SL 97-0070	02-26-97	03-12-97
H 344=	CLARY	MOTOR VEHICLE OCCUPANT RESTRAINTS	*H -RE-REF COM ON TRANSPOR	04-29-97	04-30-97
H 348	EDDINS	CIDER/VINEGAR MANUFACTURER PERMIT	*R -CH. SL 97-0134	02-27-97	03-19-97

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NORTH CAROLINA GENERAL ASSEMBLY
COMMITTEE SUMMARY REPORT

1997-98 Regular Session

HOUSE: JUDICIARY I

Valid Through 25-AUG-1998

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H 388	NICHOLS	AMEND TRESPASS OFFENSES	*H -CAL PURSUANT RULE 36 (A)	03-04-97	04-29-97
H 389	RAYFIELD	FELONY CHILD ABUSE/INCR. PENALTY	S -REF TO COM ON JUDIC	03-04-97	03-19-97
H 394	JARRELL	DOGFIGHTS/GAMBLING/FELONY	H -REF TO COM ON JUDICI	03-04-97	
H 407=	BADDOUR	UNIFORM FRAUDULENT TRANSFER ACT	*R -CH. SL 97-0291	06-18-97	
H 430	CULP	PERMISSIBLE SALES AT ZOO	*R -CH. SL 97-0258	06-25-97	
H 431=	HOWARD	PUBLIC ASSISTANCE FRAUD	*R -CH. SL 97-0497	04-15-97	04-28-97
H 433=	GULLEY J	CONCEALED HANDGUN EXEMPTION	*R -CH. SL 97-0274	03-10-97	04-24-97
H 468	DECKER	NC DA'S M.V. RECOMMENDATIONS	*S -REF TO COM ON JUDIC	03-10-97	04-29-97
H 470=	TALLENT	MEDICAL INVESTIGATORS	*S -RE-REF COM ON COMMERCE	03-10-97	04-24-97
H 476=	HURLEY	VITAL RECORDS ACCESS	*R -CH. SL 97-0242	06-18-97	
H 482	CULP	HANDICAPPED PERSONS SIGNATURE	R -CH. SL 97-0208	03-10-97	03-26-97
H 483=	IVES	SCHOOL BOARD "QUICK TAKE"	*H -RE-REF COM ON FINANCE	04-24-97	05-01-97
H 484	WEATHERLY	RECORD NOTICES OF OPEN DUMPS	*R -CH. SL 97-0330	04-09-97	04-29-97
H 485	DOCKHAM	FUNERAL ESTABLISHMENTS	*R -CH. SL 97-0399	03-10-97	04-14-97
H 499	THOMPSON	GIS RECORD EXCEPTION	*R -CH. SL 97-0193	04-23-97	04-28-97
H 501	BROWN	CARTWAYS	H -RE-REF COM ON JUDICI	04-29-97	
H 502	ELLIS	AMEND MOTOR VEHICLE DEFINITION	*HF-FAILED 2ND READING	03-12-97	04-28-97
H 507	HUNTER R	MANDATORY JAIL FOR SOME D.W.I.	*S -REF TO COM ON JUDIC	03-12-97	04-24-97
H 513	PRESTON	LRC STUDY WATERCRAFT SAFETY	*H -RE-REF COM ON RULES	03-13-97	04-28-97
H 527=	JUSTUS	OPTOMETRY CHANGES	*R -CH. SL 97-0075	03-18-97	04-09-97
H 538	NEELY	TRUTHFUL EMPLOYMENT REFERENCES	*S -REF TO COM ON RULES &	03-20-97	04-22-97
H 539	NEELY	COLLATERAL SOURCE EVIDENCE	H -RE-REF COM ON JUDICI	03-20-97	
H 560	ALEXANDER	DIVORCE EDUCATION	*H -ASSIGNED TO APP-JPS	04-01-97	04-14-97
H 580	THOMPSON	NONRESIDENT HANDGUN PERMIT	*H -RE-REF COM ON FINANCE	03-24-97	04-28-97
H 584	JARRELL	ATTEMPTING TO ELUDE ARREST	*S -RE-REF COM ON APPROPR	03-24-97	03-25-97
H 615	BONNER	PUBLIC DEFENDER/DISTRICT 16B	R -CH. SL 97-0175	03-26-97	04-17-97
H 616=	SHERRILL	STANDARDIZE LAW ENF.DISCIPLINE	H -REF TO COM ON JUDICI	03-26-97	
H 618	MITCHELL	WORKERS' COMPENSATION FRAUD	*R -CH. SL 97-0353	03-26-97	04-07-97
H 646	DAUGHTRY	REVISE UCC/CROP LIENS	*R -CH. SL 97-0336	03-27-97	04-17-97
H 652	SHERRILL	AUDITS	*R -CH. SL 97-0526	03-27-97	04-28-97

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NORTH CAROLINA GENERAL ASSEMBLY
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1997-98 Regular Session

HOUSE: JUDICIARY I

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BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H 665=	EDDINS	CRIME VICTIMS' RIGHTS ACT	*H -ASSIGNED TO APP-JPS	03-27-97	06-25-97
H 665=	EDDINS	CRIME VICTIMS' RIGHTS ACT	*H -ASSIGNED TO APP-JPS	06-18-98	06-30-98
H 674	ARNOLD	PERMANENT CURATIVE STATUTE-SEALS	H -REF TO COM ON JUDICI	03-31-97	
H 704	THOMPSON	SHERIFF'S REGISTRATION PLATES	*R -CH. SL 97-0158	04-02-97	04-17-97
H 734	FITCH	CLARIFYING G.S.153A-15	*S -REF TO COM ON AGRICUL&	04-01-97	04-29-97
H 739=	DICKSON	MV DEALERS/MANUFACTURERS LIC. LAW	*R -CH. SL 97-0319	04-01-97	04-28-97
H 741=	NEELY	COURT IMPROVEMENT ACT/CONSTITUTION	H -REF TO COM ON JUDICI	04-01-97	
H 742=	BADDOUR	COURT IMPROVEMENT ACT	H -REF TO COM ON JUDICI	04-01-97	
H 790	MICHAUX	NO RACE OR GENDER ON CHECKS	*R -CH. SL 97-0149	04-03-97	04-22-97
H 795=	BAKER	ROLLER SKATING RINK LIABILITY	H -RE-REF COM ON JUDICI	04-28-97	
H 855	HALL	LEE COMMISSIONERS ELECTIONS	S -REF TO COM ON ST GVT	04-07-97	04-24-97
H 856	CULPEPPER	TYRRELL CUMULATIVE VOTING	H -REF TO COM ON JUDICI	04-07-97	
H 869	DAVIS D	SPEED TO ELUDE ARREST	*H -CAL PURSUANT RULE 36 (A)	04-07-97	04-28-97
H 870	ALLRED	LOCAL WORKING OF PRISONERS	*S -REF TO COM ON ST GVT	04-22-97	04-28-97
H 873	HUNTER R	AGE OF UNDISCIPLINED JUVENILES	*S -REF TO COM ON JUDIC	04-07-97	04-28-97
H 891=	MITCHELL	WORKERS COMPENSATION MEDICAL CARE	*S -REF TO COM ON JUDIC	04-28-97	04-29-97
H 902=	MORRIS	AMEND STALKING LAW	H -RE-REF COM ON JUDICII	04-09-97	04-10-97
H 904	MOSLEY	LIFE PRISON/REPEAT CHILD MOLESTER	*S -RE-REF COM ON APPROP	04-09-97	04-17-97
H 904	MOSLEY	LIFE PRISON/REPEAT CHILD MOLESTER	*S -RE-REF COM ON APPROP	04-23-97	04-30-97
H 927	HARDY	RABIES VACCINE/DOG OWNER ADMIN.	H -REF TO COM ON JUDICI	04-14-97	
H 936	BEALL	LIABILITY FOR LLAMA ACTIVITIES	*S -REF TO COM ON JUDIC	04-14-97	04-29-97
H 939	HURLEY	DRUG TAX FOR CRIMESTOPPERS	*H -ASSIGNED TO APP-JPS	04-14-97	04-28-97
H 958	HIGHTOWER	CONCEALED HANDGUN LAWS AMEND.	*R -CH. SL 97-0238	04-16-97	04-30-97
H 964	HOWARD	REVISE CODE OF LEGISLATIVE ETHICS	*H -AMEND PENDING #1	05-01-97	
H 981	HARDY	CIVIL RIGHTS RESTORATION ACT	H -REF TO COM ON JUDICI	04-17-97	
H1008	WATSON	CHIROPRACTIC LICENSURE AMENDMENTS	*R -CH. SL 97-0230	04-21-97	04-28-97
H1010=	WARNER	GOVT. USE/SEIZED GUN PARTS	H -REF TO COM ON JUDICI	04-21-97	
H1012	SEXTON	SHOOTING RANGE PROTECTION	*R -CH. SL 97-0465	04-21-97	04-28-97
H1036	HARDY	STUDY INDIGENT COUNSEL RESTRICTION	*H -RE-REF COM ON RULES	04-21-97	04-30-97
H1042=	BLACK	PUBLICATION OF APPELATE DECISIONS	H -REF TO COM ON JUDICI	04-21-97	

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NORTH CAROLINA GENERAL ASSEMBLY
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BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H1071	CAPPS	PAY RENT TO STAY EJECTMENT	*H -PRES. TO GOV. 08-20	04-21-97	04-28-97
H1074	HALL	REPRESENTATIONS TO CONSOLIDATE DEBTS	S -REF TO COM ON COMMERCE	04-28-97	04-30-97
H1075	HALL	APPRECIATION OF REVERSE MORTGAGES	*H -PRES. TO GOV. 08-20	04-28-97	04-30-97
H1076	CLARY	INFRACTIONS TO MAGISTRATES	H -REF TO COM ON JUDICI	04-21-97	
H1079	WATSON	DRUG LAW AMENDMENTS	H -REF TO COM ON JUDICI	04-21-97	
H1085	LUEBKE	AMEND ETHNIC INTIMIDATION LAW	H -REF TO COM ON JUDICI	04-21-97	
H1086	MILLER G	AMEND OFFER OF JUDGEMENT RULE-2	*S -REF TO COM ON JUDIC	04-21-97	04-30-97
H1091	BRASWELL	CRIM. RECORD CHECK BY PRIVATE BUS.	*S -REF TO COM ON JUDIC	04-28-97	04-30-97
H1097	PRESTON	FISHERIES REFORM ACT-2	*R -CH. SL 97-0400	04-23-97	05-15-97
H1114	EDDINS	BAD CHECK COLLECTIONS PILOT	*S -RE-REF COM ON ST GVT	04-21-97	05-29-97
H1120=	MCCOMAS	PRESCRIBED BURNING IN FORESTS	*S -REF TO COM ON AGRICUL&	04-22-97	04-28-97
H1122	GULLEY J	ADMIT DRUG/OPTOM. EVID./COURT SITE	*R -CH. SL 97-0304	04-21-97	04-29-97
H1123	SHERRILL	STATE PERSONNEL GRIEVANCE PROCEDURE	H -RE-REF COM ON JUDICI	04-28-97	
H1124	CAPPS	FIRE/RESCUE PERSONNEL RECORDS CHECKS	S -REF TO COM ON JUDIC	04-21-97	04-29-97
H1132	HUNTER R	DATE RAPE DRUGS	*R -CH. SL 97-0501	04-21-97	04-29-97
H1140	HUNTER R	LITTERING/REQUIRE COMM. SERVICES	*R -CH. SL 97-0518	04-21-97	04-28-97
H1144	WOOD	SPEEDING IN SCHOOL ZONES	H -RE-REF COM ON JUDICI	04-30-97	
H1252	MCCOMBS	CRIMINAL TAX PENALTY TO HOME COUNTY	*S -REF TO COM ON JUDIC	05-12-98	05-19-98
H1314=	ALLRED	CEMETERY CONSUMER PROTECTION	*H -CAL PURSUANT RULE 36(A)	06-10-98	08-05-98
H1317=	WILSON C	AMEND CONTESTED CASE PROCEDURES	H -REF TO COM ON JUDICI	05-19-98	
H1321=	DAUGHTRY	FUTURE OF THE COURTS	*H -RE-REF COM ON APPROP	05-19-98	07-08-98
H1342	BRAWLEY	RENUNCIATION FIDUCIARY POWERS	*H -PLACED ON CAL FOR 08-25	08-13-98	08-20-98
H1356=	REYNOLDS	ELECTRONIC COMMERCE ACT	*H -PRES. TO GOV. 08-21	05-20-98	06-01-98
H1357=	REYNOLDS	BEST VALUE INFO. TECH. PROCUREMENTS	*S -REF TO COM ON COMMERCE	05-20-98	06-02-98
H1357=	REYNOLDS	BEST VALUE INFO. TECH. PROCUREMENTS	*S -REF TO COM ON COMMERCE	06-22-98	07-14-98
H1362	PRESTON	MILITARY SERVICE CREDIT	S -REF TO COM ON PENSIONS	05-20-98	06-09-98
H1380	HURLEY	COUNTY ABC ENFORCEMENT	*S -REF TO COM ON JUDIC	05-21-98	06-18-98
H1389=	ALLRED	FUNDING FOR LEGAL SERVICES	H -REF TO COM ON JUDICI	05-21-98	
H1391=	DAUGHTRY	JUDICIAL APPT./VOTER RETENTION	*H -CAL PURSUANT RULE 36(A)	05-21-98	07-15-98
H1393=	JUSTUS	CLARIFY INTERMEDIATE PUNISHMENTS	H -REF TO COM ON JUDICI	05-21-98	

NOTES- = AFTER BILL NUMBER SHOWS THAT BILL IS IDENTICAL, AS INTRODUCED, TO ANOTHER BILL.

* AFTER NUMBERS INDICATES THAT TEXT OF BILL WAS ALTERED BY ACTION ON THE BILL.

BOLDLED LINE INDICATES BILL INDEXED AS AFFECTING APPROPRIATIONS.

NORTH CAROLINA GENERAL ASSEMBLY
COMMITTEE SUMMARY REPORT

1997-98 Regular Session

HOUSE: JUDICIARY I

Valid Through 25-AUG-1998

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H1400	HUNTER R	VICTIM AND WITNESS ASSISTANTS	H -REF TO COM ON JUDICI	05-21-98	
H1440	MCCRARY	CONFORM WITNESS TRAVEL FEES	*H -RE-REF COM ON APPROP	05-25-98	06-15-98
H1441	MCCRARY	RESTITUTION/CIVIL JUDGEMENT	H -REF TO COM ON JUDICI	05-25-98	
H1442=	MITCHELL	EXEMPT TRANSPORT AGRIC. PRODUCTS	H -RE-REF COM ON JUDICI	06-23-98	
~~H1456~~	JUSTUS	DEATH BY LETHAL DRUGS	*S -REF TO COM ON JUDIC	05-25-98	06-08-98
H1493=	MINER	TRANSIT AUTHORITY PURCHASING OPTION	*H -RE-REF COM ON JUDICI	08-05-98	
H1523	EDDINS	NO STATE FUNDS FOR JURY CONSULTANTS	H -RE-REF COM ON JUDICI	06-10-98	
H1544	GARDNER	RAISE COURT FEES	*S -REF TO COM ON FINANCE	05-27-98	06-10-98
H1549	OWENS	CURRITUCK/BEACH DRIVING PENALTY	R -CH. SL 98-0064	06-23-98	07-09-98
H1567	HIGHTOWER	ANSON LEGAL ADVERTISING	*S -REF TO COM ON ST GVT	05-28-98	06-23-98
H1717	HARDY	MEDICAL SAVINGS ACCT	H -RE-REF COM ON JUDICI	06-09-98	
S 3	JENKINS	LOBBYIST WAITING PERIOD	*H -RE-REF COM ON RULES	02-26-97	03-12-97
S 16	BALLANCE	CLARIFY COMMUNITY-BASED CORRECTIONS	*R -CH. SL 97-0057	03-27-97	05-06-97
S 30	JORDAN	SPEEDING IN A WORK ZONE	*R -CH. SL 97-0488	05-05-97	07-14-97
S 78=	BALLANCE	STATE EMPLOYEE SEXUAL HARASSMENT	*H -CONF COM APPOINTED	06-09-98	06-17-98
S 79	HARTSELL	REPEAL MORE ANTIQUATED LAWS	R -CH. SL 97-0014	03-03-97	03-12-97
S 95	RAND	VALIDATE NOTARIAL ACTS	*R -CH. SL 97-0019	03-03-97	03-19-97
S 106	COOPER	SALE OF PROPERTY FOR UNPAID TAXES	*R -CH. SL 97-0121	03-04-97	05-08-97
S 152=	COOPER	SERVICE OF ADMIN. SEARCH WARRANTS	H -RE-REF COM ON JUDICI	03-26-97	05-13-97
S 152=	COOPER	SERVICE OF ADMIN. SEARCH WARRANTS	H -RE-REF COM ON JUDICI	05-15-97	
S 172	ALBERTSON	NO SAFETY COURSE/DISABLED HUNTERS	*R -CH. SL 97-0365	04-16-97	05-06-97
S 187=	KERR	APA TECHNICAL CHANGES	R -CH. SL 97-0034	03-17-97	04-07-97
S 246=	RAND	GOVT. USE/SEIZED GUN PARTS	H -REF TO COM ON JUDICI	03-24-97	
S 250	WELLONS	CLARIFY PERFECTION-SECUR. INTEREST	*R -CH. SL 97-0386	04-17-97	05-06-97
S 251	WELLONS	CREATION OF EASEMENTS BY LANDOWNER	*R -CH. SL 97-0333	04-17-97	05-08-97
S 320	RAND	NURSES' TRAINING	*R -CH. SL 97-0375	04-17-97	06-03-97
S 320	RAND	NURSES' TRAINING	*R -CH. SL 97-0375	06-11-97	06-18-97
S 371	ODOM	INTERNATIONAL COMM. CONCILIATION	*R -CH. SL 97-0368	05-01-97	05-14-97
S 376	WARREN	CAMPUS LAW ENFORCEMENT	R -CH. SL 97-0194	04-28-97	06-03-97
S 393	RAND	FAIL COMM. SERVICE/REVOKE LICENSE	*R -CH. SL 97-0234	04-07-97	06-03-97

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BOLDED LINE INDICATES BILL INDEXED AS AFFECTING APPROPRIATIONS.

NORTH CAROLINA GENERAL ASSEMBLY
COMMITTEE SUMMARY REPORT

HOUSE: JUDICIARY I

Valid Through 25-AUG-1998

1997-98 Regular Session

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
S 402	WEBSTER	DEBTOR PROTECTION/SIMPLE IRAS	H -REF TO COM ON JUDICI	04-28-97	
S 409	SHAW R	AIRPORT LAW ENFORCEMENT	*R -CH. SL 97-0143	05-01-97	05-14-97
S 417	SHAW L ✓	HIGHWAY CONTRACT BONDING REQ'MENTS	*H -RE-REF COM ON JUDICI	06-18-97	
S 430=	ODOM	INDUSTRIAL HYGIENISTS	*R -CH. SL 97-0195	05-06-97	05-27-97
S 521	CARPENTER R	DOC PILOT/SEXUAL ASSAULT	*R -CH. SL 97-0288	06-11-97	06-23-97
S 561	ODOM	COMPANY POLICE/ CONCEALED HANDGUNS	*R -CH. SL 97-0441	05-01-97	06-04-97
S 561	ODOM	COMPANY POLICE/ CONCEALED HANDGUNS	*R -CH. SL 97-0441	06-19-97	07-08-97
S 571	DALTON	CONTROLLED SUBSTANCE/SCHEDULE II	R -CH. SL 97-0385	04-28-97	07-14-97
S 625	PAGE	SPEEDING ON SCHOOL GROUNDS	*R -CH. SL 97-0341	04-30-97	05-12-97
S 625	PAGE	SPEEDING ON SCHOOL GROUNDS	*R -CH. SL 97-0341	05-14-97	06-18-97
S 699	HORTON	MODIFY VEHICLE DEALER REQUIREMENTS	*R -CH. SL 97-0429	07-09-97	07-23-97
S 861	LEE	DISPENSING OPTICIANS	*R -CH. SL 97-0424	05-19-97	06-10-97
S 875	KERR	REVISE RECORDS LAWS-2	*R -CH. SL 97-0309	06-02-97	06-16-97
S 882	WINNER	CIVIL PENALTIES LAW CLARIFIED	*H -CAL PURSUANT RULE 36 (A)	07-30-98	08-18-98
S 885	GULLEY W	NOTICE OF EXECUTION	*R -CH. SL 97-0289	05-05-97	06-16-97
S 897	RAND	AMEND ELEC. SURVEILLANCE LAW	*R -CH. SL 97-0435	05-01-97	06-18-97
S 910	DALTON	LIMITATIONS FOR OFFICIAL BONDS	*R -CH. SL 97-0297	04-30-97	06-16-97
S 919	ODOM	UNLAWFUL TELECOMMUNICATIONS	*R -CH. SL 97-0372	05-01-97	07-14-97
S 943	RAND	MEDICAID FALSE CLAIMS ACT	*R -CH. SL 97-0338	05-12-97	07-02-97
S 953	WEBSTER	CORPORATE REINSTATEMENT	R -CH. SL 97-0200	05-01-97	05-27-97

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MINUTES

HOUSE JUDICIARY I COMMITTEE

The House Judiciary I Committee held its first meeting of the 1998 Short Session in Room 1228 of the Legislative Building on Tuesday, May 19, 1998 at 10:00 a.m.

Representative Hardy, Co-Chairman, presided at the meeting and the other members present were: Representative Daughtry, Co-Chairman, and Representative(s) Braswell, Alexander, Arnold, Capps, Crawford, Hall, R. Hunter, Jeffus, Justus, Michaux, Miller, Morgan, and Sherrill. Staff Counsels, Steven Rose and Karen C-Brown were present. The Visitors Registration Sheet is attached as a record to the Minutes.

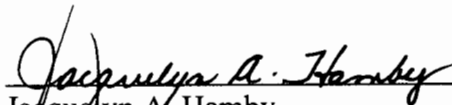
HB 1252, A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT CRIMINAL PENALTIES IN TAX CASES SHALL BE REMITTED TO THE SCHOOL FUND OF THE COUNTY OF THE DEFENDANT'S RESIDENCE, was the only bill before the Committee for consideration.

The staff counsels provided an explanation of HB 1252 and a copy is attached as a record to the Minutes. Discussion followed and upon motion by Representative Arnold, **HB 1252 was given a favorable report.**

The meeting was adjourned at 11:00 a.m.



Representative Edwin Hardy
Co-Chairman



Jacquelyn A. Hamby
Committee Clerk

Attachments

AGENDA

HOUSE COMMITTEE ON JUDICIARY I

May 19, 1998
Room 1228/1327 LB
10:00 AM

OPENING REMARKS

Representative N. Leo Daughtry, Co-Chairman
Representative Edwin (Sandy) Hardy, Co-Chairman

BILLS TO BE CONSIDERED:

HB 1252 CRIMINAL TAX PENALTY TO HOME COUNTY
(Representative Eugene McCombs - Sponsor)

ADJOURNMENT

1998 COMMITTEE REPORT HOUSE OF REPRESENTATIVES

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

By Representative(s) **Daughtry and Hardy** for the Committee on **JUDICIARY I.**

☐ Committee Substitute for

H.B. 1252 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT CRIMINAL PENALTIES IN TAX CASES SHALL BE REMITTED TO THE SCHOOL FUND OF THE COUNTY OF THE DEFENDANT'S RESIDENCE.

☐ 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



**North Carolina General Assembly
Legislative Services Office**

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(919) 733-7044

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May 18, 1998

MEMORANDUM

TO: Rep. Leo Daughtry, Chairman, House Judiciary I Committee

FROM: Karen Cochrane Brown, Committee Co-Counsel *KCB*

RE: House Bill 1252 - CRIMINAL TAX PENALTY TO HOME COUNTY.

House Bill 1252 provides that any criminal fine collected from the prosecution of a tax violation shall be remitted to the county in which the defendant resides rather than the county in which the crime is prosecuted. The bill directs the clerk of superior court, in the county in which the crime is prosecuted, to remit "the clear proceeds of the criminal fine to the finance officer of the county in which the defendant resided when the offense was committed."

In most instances, criminal cases are prosecuted in the county where the crime occurred. Under these circumstances, the clerk of court is authorized to remit any fines collected to the county finance officer who, in turn, distributes the proceeds to the local school administrative units on the basis of average daily membership. However, most criminal tax cases are prosecuted in Wake County and any fines collected are remitted to Wake County schools. This bill directs that, in these cases, if the defendant was a resident of North Carolina when the crime was committed, the Wake County Clerk shall remit the fine to the county in which the defendant resided.

Article IX, Section 7 of the North Carolina Constitution provides that "the clear proceeds of all penalties and forfeitures and of all fines collected in the several counties for any breach of the penal laws of the State, shall belong to and remain in the several counties, and shall be faithfully appropriated and used exclusively for maintaining free public schools." Neither the Constitution nor any statute states which county is to receive the proceeds. The Court of Appeals has held that if a case is transferred from one county to another county for trial, the first county is entitled to the forfeited bail bond. (*In re Dunlap*, 66 N.C. App. 152,155 [1984]). There does not appear to be any constitutional impediment to this bill.

Section 2 of the bill provides that this act becomes effective December 1, 1998.

CRIMINAL INVESTIGATIONS DIVISION
CRIMINAL FINES

May 19, 1998

J-I

COUNTY	1995	1996	1997
Alamance			
Alexander			
Alleghany			
Anson			
Ashe			
Avery			
Beaufort	4,000.00		
Bertie			
Bladen			
Brunswick			
Buncombe	8,000.00		10,000.00
Burke	50.00	15,000.00	3,000.00
Cabarrus			
Caldwell		1,000.00	10,000.00
Camden			
Carteret			
Caswell			
Catawba	500.00		
Chatham			
Cherokee			
Chowan			1,000.00
Clay			
Cleveland			
Columbus		2,500.00	
Craven			400.00
Cumberland	5,000.00	10,000.00	25,000.00
Currituck			
Dare			
Davidson			
Davie			
Duplin		10,000.00	
Durham	1,500.00	350.00	
Edgecombe			
Forsyth		16,000.00	
Franklin			

CRIMINAL INVESTIGATIONS DIVISION
CRIMINAL FINES

<i>COUNTY</i>	<i>1995</i>	<i>1996</i>	<i>1997</i>
Gaston			
Gates	5,000.00		
Graham			
Granville			
Greene			
Guilford			
Halifax			
Harnett			
Haywood	3,000.00		
Henderson			
Hertford			
Hoke			
Hyde			
Iredell	3,500.00		1,500.00
Jackson	2,500.00		
Johnson			
Jones			
Lee			
Lenoir			
Lincoln			
Macon			
Madison			
Martin			
McDowell			
Mecklenburg	30,000.00	8,300.00	13,000.00
Mitchell			
Montgomery			
Moore			
Nash		10,000.00	
New Hanover			
Northampton			
Onslow	1,250.00		
Orange			
Pamlico			
Pasquotank			

CRIMINAL INVESTIGATIONS DIVISION
CRIMINAL FINES

<i>COUNTY</i>	<i>1995</i>	<i>1996</i>	<i>1997</i>
Pender			
Perquimans	9,500.00		
Person			
Pitt			
Polk			
Randolph	11,000.00		
Richmond			
Robeson	4,000.00		
Rockingham			
Rowan			
Rutherford			
Sampson			
Scotland	6,500.00		
Stanley			
Stokes			
Surry			
Swain			
Transylvania			
Tyrrell			
Union			
Vance			
Wake		200.00	37,000.00
Warren			
Washington			
Watauga			
Wayne		6,000.00	
Wilkes		5,000.00	
Wilson			
Yadkin			
Yancey			
Out of State		38,150.00	
<i>TOTALS</i>	<i>95,300.00</i>	<i>122,500.00</i>	<i>100,900.00</i>

May 19, 1998
J-I

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

H

1

HOUSE BILL 1252

Short Title: Criminal Tax Penalty to Home County.

(Public)

Sponsors: Representatives McCombs; Buchanan, Crawford, Decker, Gardner, Hill, Miller, and Mitchell.

Referred to: Judiciary I, if favorable, Finance.

May 12, 1998

- 1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE THAT CRIMINAL PENALTIES IN TAX CASES SHALL
3 BE REMITTED TO THE SCHOOL FUND OF THE COUNTY OF THE
4 DEFENDANT'S RESIDENCE.
5 The General Assembly of North Carolina enacts:
6 Section 1. G.S. 115C-452 reads as rewritten:
7 "**§ 115C-452. Fines and forfeitures.**
8 (a) The clear proceeds of all penalties and forfeitures and of all fines collected in
9 the General Court of Justice in each county shall be remitted by the clerk of the
10 superior court to the county finance officer, ~~who shall forthwith~~ officer. In the case
11 of a criminal violation of Chapter 105 of the General Statutes, if the defendant was a
12 resident of North Carolina when the offense was committed, the clerk shall remit the
13 clear proceeds of the criminal fine to the finance officer of the county in which the
14 defendant resided when the offense was committed.
15 (b) Upon receipt of funds under this section, the county finance officer shall
16 determine what portion of the total is due to each local school administrative unit in
17 the county and remit the appropriate portion of the amount to the finance officer of
18 each local school administrative unit. Fines and forfeitures shall be apportioned
19 according to the projected average daily membership of each local school
20 administrative unit as determined by and certified to the local school administrative
21 units and the board of county commissioners by the State Board of Education
22 pursuant to G.S. 115C-430."
23 Section 2. This act becomes effective December 1, 1998.

VISITOR REGISTRATION SHEET

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME

FIRM OR AGENCY AND ADDRESS

TOM DIXON

NC DEPT OF REVENUE

LEANNE WINTER

NCSBA

M. Osborne

AOC

Pete Powell

AOC

Pamela Weaver Best

AOC

Bill Scoggin

NCBA

JENNIFER KIRK

NCBA

May Carmelia

Mecklenburg County

Katie Adams

Conserv. Council of NC

MINUTES

HOUSE JUDICIARY I COMMITTEE

The House Committee on JUDICIARY I met in Room 1228 of the Legislative Building on May 28 at 10:00 A.M. Representative Hardy, Co-Chairman, presided at the meeting and the other members present were: Representative Daughtry, Co-Chairman, and Representative(s) Alexander, Arnold, Capps, Crawford, Ellis, Esposito, Hall, Hardaway, R. Hunter, Hurley, Jeffus, Justus, Michaux, Miller, Sherrill and Thompson. Staff Counsels Steven J. Rose and Karen C-Brown were present. Jody Zeugner of the information technology staff and Scott Templeton, Deputy Secretary of State, were also present.

HB 1356 AN ACT TO FACILITATE ELECTRONIC COMMERCE WITH AND BY PUBLIC ENTITIES OF THE STATE OF NORTH CAROLINA BY RECOGNIZING THE VALIDITY OF ELECTRONIC SIGNATURES AND BY AUTHORIZING THE SECRETARY OF STATE TO REGULATE ELECTRONIC SIGNATURES AND CERTIFICATION AUTHORITIES was the only bill before the committee for consideration.

House Bill 1356, also known as the "Electronic Commerce Act", was explained by bill sponsor Representative Reynolds. He said that this bill is the foundation for the whole new generation of electronic commerce because it will be necessary to be able to verify a person's computer signature in a court of law. Representative Reynolds said that up to 40 states have considered some type of electronic digital signature legislation. A ten minute movie based on the Washington state model was shown.

Representative Reynolds said this legislation is set up to deal with government to government and private to government transactions. An explanation of this bill is provided in an attachment submitted by Mr. Rose, Committee Counsel. (See Attachment F.) Representative Hardy requested that anyone who wanted to discuss this bill should notify one of the pages to take a note to the presiding chair.

Mr. Zeugner spoke about three broad types of legislation based on the amount of detail found in them -- Utah's which contains all the technical and liability aspects, Massachusetts's which says nothing only that a signature will not be rendered invalid if it is electronic and California's which is somewhere in between. This proposed legislation is most like the California statute.

Representative Alexander asked about the number of certification authorities. Mr. Zeugner said that there were presently four companies and that the people who do business with each other will set up a certain authority for verification of signatures.

Mr. Templeton sees this bill as intersection of commerce, technology and law. He said that one of the main attempts of this bill is to add clarity to existing laws about the acceptability of electronic signatures and to keep our existing statutes from disrupting commerce.

Representative Reynolds demonstrated the use of encryption on his laptop.

Representative Ellis wanted to know what prevents someone from capturing another person's certified signature off of the internet. He was told that separating the public key from the private key is what prevents forgery as long as you are the only person who knows the private key. Representative Reynolds mentioned that later on the digital signature will probably be put on a smart card which will travel with you.

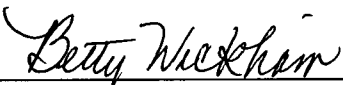
Representative Miller wanted to know how to submit a document that required notarization and Representative Reynolds explained that this was a matter for which not all the details have been worked out. Representative Miller also wanted to know how multiple signatures would be handled and was told this was an application development question. On a related issue, Representative Miller wanted to know if a judge's signature could be used by a clerk and was told that if the judge gave his password out then that could happen. Representative Miller also questioned giving the Secretary of State the authority of a fact finder as well as an enforcer with authority to assess civil monetary penalties for violations of the statute.

Representative Michaux was told that multiple passwords would be needed if a person had dealings with several providers.

Representative Ellis moved a favorable report. Representative Hardy ruled that the bill received a favorable report after a voice vote.

The meeting adjourned at 10:50 A.M.

Representative Edwin M. Hardy
Co-chairman



Betty Wickham
Committee Clerk

ATTACHMENTS:

Exhibit A - REVISED NOTICE OF MEETING
Exhibit B - AGENDA
Exhibit C - VISITOR REGISTRATION

Exhibit D - COMMITTEE REPORT for HB1356
Exhibit E - HB 1356
Exhibit F - STAFF REPORT for HB1356

R E V I S E D N O T I C E
N E W A G E N D A

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE

You are hereby notified that the Committee on **Judiciary I** will meet as follows:

DAY & DATE: **Thursday, May 28, 1998**

TIME: **10:00 AM**

LOCATION: **Room 1228/1327 LB**

The following bill will be considered (Bill # & Short Title):

HB 1356 "Electronic Commerce Act."
Representative Reynolds - Sponsor

Respectfully,

Representatives Daughtry and Hardy
Co-Chairs

I hereby certify this notice was filed by the committee clerk at the following offices at
3:00 P.M. on May 27, 1998.

___Principal Clerk
___Reading Clerk - House Chamber

Jackie Hamby, (Committee Clerk)
Bernice Bullard, (Committee Clerk)

AGENDA

HOUSE COMMITTEE ON JUDICIARY I

May 28, 1998
Room 1228/1327 LB
10:00 AM

Representative N. Leo Daughtry, Co-Chairman
Representative Edwin (Sandy) Hardy, Co-Chairman

BILL TO BE CONSIDERED:

HB 1356 "ELECTRONIC COMMERCE ACT"
SPONSOR - Representative Dennis Reynolds

VISITOR REGISTRATION SHEET

J-I

May 28, 1998

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY
1. <u>Bernard Allen</u>	<u>SOS</u>
2. <u>Scott Templeton</u>	<u>Sec State</u>
3. <u>George Jeter</u>	<u>//</u>
4. <u>Jim Bule</u>	<u>Bob Call / Storage</u>
5. <u>Cam Cox</u>	<u>BPM H L</u>
6. <u>Ken Howell</u>	<u>NCBIT</u>
7. <u>Paul Stock</u>	<u>NC Bankers Assn.</u>
8. <u>Larry Heckner</u>	<u>Household Financial Group</u>
9. <u>Arny Jo Bain</u>	<u>Smith Anderson</u>
10. <u>Matt Osborne</u>	<u>AOC</u>
11. <u>Jeanne Bonds</u>	<u>AOC</u>
22. <u>Imma Amin</u>	<u>NC Health Care Facilities Assn</u>
23. <u>Leigh House</u>	<u>NC Conf. of DA's</u>
24. <u>John Leaston</u>	<u>DOA PIC</u>
25. <u>Ashleigh Seiber</u>	<u>Charlotte Observer</u>
26. <u>Wang Bradley</u>	<u>NCICSD</u>
27. <u>Michelle Cook</u>	<u>Weyenhansen</u>
28. <u>John Polinski</u>	<u>AT&T</u>
29. <u>David Simmons</u>	<u>ZORA, PA</u>
30. <u>SAM JOHNSON</u>	<u>A & T</u>
31. <u>Doug Miskew</u>	<u>IBM</u>

VISITOR REGISTRATION SHEET

J-I

May 28, 1998

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY
1. CURTIS CLARK	IBM
2. Tommy Herndon	Herndon committee
3. Amy H. Fullbright	Huntton & Williams
4. George Westbury	Concurrent Technologies
5. Rodney Maddox	Secretary of State
6. Duane Wright	Research Division
7. Linda Conry	Speaker's office
8. Staslercy	Capital Group
9. W. A. Fuley	NCHIA
10. HUGO TILSON	NCHA
11.	
22.	
23.	
24.	
25.	
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file

**1998 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative(s) **Daughtry and Hardy** for the Committee on **JUDICIARY I.**

☐ Committee Substitute for

H.B. 1356 A BILL TO BE ENTITLED AN ACT TO FACILITATE ELECTRONIC COMMERCE WITH AND BY PUBLIC ENTITIES OF THE STATE OF NORTH CAROLINA BY RECOGNIZING THE VALIDITY OF ELECTRONIC SIGNATURES AND BY AUTHORIZING THE SECRETARY OF STATE TO REGULATE ELECTRONIC SIGNATURES AND CERTIFICATION 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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 1356*

Short Title: Electronic Commerce Act.

(Public)

Sponsors: Representatives Reynolds; Baker, Brawley, Clary, Cole, Dickson, Earle, Eddins, Gray, Hurley, McComas, Rayfield, Sexton, Shubert, Tolson, Weatherly, and G. Wilson.

Referred to: Judiciary I.

May 20, 1998

1 A BILL TO BE ENTITLED
2 AN ACT TO FACILITATE ELECTRONIC COMMERCE WITH AND BY PUBLIC
3 ENTITIES OF THE STATE OF NORTH CAROLINA BY RECOGNIZING THE
4 VALIDITY OF ELECTRONIC SIGNATURES AND BY AUTHORIZING THE
5 SECRETARY OF STATE TO REGULATE ELECTRONIC SIGNATURES AND
6 CERTIFICATION AUTHORITIES.

7 The General Assembly of North Carolina enacts:

8 Section 1. Chapter 66 of the General Statutes is amended by adding a
9 new Article to read:

10 "ARTICLE 11A.
11 "Electronic Commerce in Government.

12 "§ 66-58.1. Title; purpose.

13 (a) This Article shall be known and may be cited as the Electronic Commerce
14 Act. The purpose of this Article is to facilitate electronic commerce with and by
15 public entities of the State by recognizing the validity of electronic signatures, and by
16 providing for the regulation of electronic signatures and certification authorities.

17 (b) Notwithstanding any other provision of law, this Article shall apply to records
18 generated, stored, processed, communicated, or used for any purpose by or with
19 public entities of the State. 'Public entities' as used in this Article shall include but
20 not be limited to State agencies, boards, commissions or institutions and local
21 political subdivisions including cities, counties, school districts or public services
22 districts.

1 "§ 66-58.2. Definitions.

2 The following definitions apply in this Article:

- 3 (1) 'Certification authority' means a person authorized by the
4 Secretary of State to facilitate electronic commerce by vouching for
5 the connection between a person and that person's electronic
6 signature.
7 (2) 'Electronic signature' means any identifier or authentication
8 technique attached to or logically associated with an electronic
9 record which is intended by the party using it to have the same
10 force and effect as the party's manual signature.

11 "§ 66-58.3. Validity of electronic signatures.

12 (a) When a public entity of the State is a party to a contract, transaction or filing,
13 an electronic signature in such contract, transaction or filing is a valid signature for
14 all purposes under North Carolina law, so long as the entity requesting or requiring
15 the signature accepts electronic signatures as a form of signature.

16 (b) An electronic signature shall have the same force and effect as a manual
17 signature if and only if the electronic signature embodies all of the following
18 attributes:

- 19 (1) It is unique to the person using it;
20 (2) It is capable of certification;
21 (3) It is under sole control of the person using it;
22 (4) It is linked to data in such a manner that if the data are changed,
23 the electronic signature is invalidated; and
24 (5) It conforms to rules adopted by the Secretary of State pursuant to
25 this Article.

26 (c) All public entities of the State of North Carolina may accept electronic
27 signatures.

28 (d) A contract between public and private entities is not unenforceable, nor is it
29 inadmissible into evidence, on the sole ground that the contract is evidenced by an
30 electronic record or that it has been signed with an electronic signature.

31 "§ 66-58.4. Rulemaking.

32 (a) The Secretary of State may promulgate rules under this Article. Such rules
33 may include, but are not limited to:

- 34 (1) Definitions, including but not limited to more technical definitions
35 of 'certification authority' and 'electronic signature';
36 (2) The creation, accreditation, licensing, operation, regulation, and
37 sanctioning of certification authorities;
38 (3) The imposition of licensing and renewal fees in amounts
39 reasonably related to the cost of administering this Article; and
40 (4) The imposition of civil monetary penalties for noncompliance with
41 this Article or the rules promulgated thereunder.

42 (b) For purposes of administering this Article, the Secretary of State may at all
43 times promulgate and amend rules under this Article using the procedure for

1 adoption of temporary rules under G.S. 150B-21.1. Such rules shall be deemed to
2 meet the criteria for adoption of temporary rules under G.S. 150B-21.1.

3 **"§ 66-58.5. Enforcement; penalty for violation.**

4 (a) The Secretary of State may investigate complaints or other information
5 indicating violations of rules adopted by the Secretary of State under this Article or
6 otherwise indicating fraudulent or unlawful conduct in violation of this Article.

7 (b) The Secretary of State may assess a civil penalty of not more than one
8 hundred thousand dollars (\$100,000) against any person who violates a provision of
9 this Article or any rule promulgated thereunder. In determining the amount of a
10 penalty under this subsection, the Secretary of State shall give due consideration to
11 each of the following factors:

- 12 (1) The organizational size of the person cited;
- 13 (2) The good faith of the person cited;
- 14 (3) The gravity of the violation;
- 15 (4) The prior record of the violator in complying or failing to comply
16 with this Article or a rule adopted pursuant to this Article; and
- 17 (5) The risk of harm to the public or to individuals caused by the
18 violation.

19 Civil penalties imposed by the Secretary of State under this subsection shall be
20 deposited in the General Fund. Chapter 150B of the General Statutes governs the
21 imposition of a civil penalty under this subsection. A civil penalty owed under this
22 subsection may be recovered in a civil action brought by the Secretary of State or the
23 Attorney General.

24 **"§ 66-58.6. Restraint of violation; legal representation; rights under other law.**

25 (a) The General Court of Justice has jurisdiction and authority upon application
26 of the Secretary of State to enjoin or restrain violations of this Article.

27 (b) It shall be the duty of the Attorney General, when requested, to represent the
28 Secretary of State in actions or proceedings in connection with this Article.

29 (c) Nothing in this Article shall adversely affect any rights or the enforcement of
30 any rights acquired by any person under any other statute or at common law with
31 respect to matters also covered by this Article.

32 **"§ 66-58.7. Exemptions.**

33 Electronic signatures specifically authorized and employed pursuant to other
34 provisions of the General Statutes are exempt from this Article."

35 Section 2. The Secretary of State shall adopt initial rules pursuant to this
36 act not later than October 30, 1998. In developing these rules, the Secretary of State
37 shall incorporate any national standards for ensuring the integrity of electronic
38 signatures and shall seek the advice of public and private entities, including but not
39 limited to the Information Resource Management Commission and the Department of
40 Administration. Before adoption of the rules, the Secretary of State shall hold at
41 least one public hearing to receive comments.

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



**North Carolina General Assembly
Legislative Services Office**

George R. Hall, Legislative Services Officer
(919) 733-7044

May 28, 1998
J.I. mty.

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.
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(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

May 28, 1998

MEMORANDUM

TO: House Judiciary I Committee

FROM:  Steven Rose, Committee Counsel

RE: House Bill 1356; Electronic Commerce Act

House Bill 1356 is intended to facilitate electronic commerce between private and public entities by providing for electronic signatures. It was recommended by the Legislative Research Commission Committee on Information Technology.

House Bill 1356 adds a new Article 11A to Chapter 66 of the General Statutes. It is to be known as the Electronic Commerce Act. It establishes procedures for establishing the validity of electronic signatures when a public entity of the State is a party to a contract, transaction, or filing. Public entities may accept electronic signatures, but are not required to do so.

An electronic signature is valid if it meets the following criteria:

- (1) It is unique to the person using it;
- (2) It is capable of certification;
- (3) It is under sole control of the person using it;
- (4) It is linked to data in such a manner that if the data are changed, the electronic signature is invalidated; and
- (5) It conforms to rules adopted by the Secretary of State.

The act grants authority to the Secretary of State to promulgate rules to carry out the provisions of the act, as well as to impose licensing and renewal fees in amounts reasonably related to the cost of administering the act. The Secretary of State is also given the power to impose civil penalties for noncompliance with the act or rules promulgated under it.

The act gives the Secretary of State the power to investigate violation of the rules and other conduct indicating fraudulent or unlawful activities in violation of this act. The Secretary of State has the authority to assess civil penalties of not more than \$100,000.

The General Court of Justice has jurisdiction to enjoin or restrain violations of the act upon application of the Secretary of State. The Attorney General will represent the Secretary of State in these actions.

The Secretary of State shall adopt and issue rules not later than October 30, 1998. Rules shall incorporate national standards for ensuring the integrity of electronic signatures. The Secretary shall seek the advice of public and private entities including the Information Resource Management Commission and the Department of Administration. The Secretary must hold at least one public hearing to receive comments.

The act is effective when it becomes law.

H1356-SMRL-001

MINUTES
HOUSE JUDICIARY I COMMITTEE

May 28, 1998

The House Committee on JUDICIARY I met in Room 1228 of the Legislative Building on May 28 at 10:00 A.M. Representative Hardy, Co-Chairman, presided at the meeting and the other members present were: Representative Daughtry, Co-Chairman, and Representative(s) Alexander, Arnold, Capps, Crawford, Ellis, Esposito, Hall, Hardaway, R. Hunter, Hurley, Jeffus, Justus, Michaux, Miller, Sherrill and Thompson. Staff Counsels Steven J. Rose and Karen C-Brown were present. Jody Zeugner of the information technology staff and Scott Templeton, Deputy Secretary of State, were also present.

HB 1356 AN ACT TO FACILITATE ELECTRONIC COMMERCE WITH AND BY PUBLIC ENTITIES OF THE STATE OF NORTH CAROLINA BY RECOGNIZING THE VALIDITY OF ELECTRONIC SIGNATURES AND BY AUTHORIZING THE SECRETARY OF STATE TO REGULATE ELECTRONIC SIGNATURES AND CERTIFICATION AUTHORITIES was the only bill before the committee for consideration.

House Bill 1356, also known as the "Electronic Commerce Act", was explained by bill sponsor Representative Reynolds. He said that this bill is the foundation for the whole new generation of electronic commerce because it will be necessary to be able to verify a person's computer signature in a court of law. Representative Reynolds said that up to 40 states have considered some type of electronic digital signature legislation. A ten minute movie based on the Washington state model was shown.

Representative Reynolds said this legislation is set up to deal with government to government and private to government transactions. An explanation of this bill is provided in an attachment submitted by Mr. Rose, Committee Counsel. Representative Hardy requested that anyone who wanted to discuss this bill should notify one of the pages to take a note to the presiding chair.

Mr. Zeugner spoke about three broad types of legislation based on the amount of detail found in them -- Utah's which contains all the technical and liability aspects, Massachusetts's which says nothing only that a signature will not be rendered invalid if it is electronic and California's which is somewhere in between. This proposed legislation is most like the California statute.

Representative Alexander asked about the number of certification authorities. Mr. Zeugner said that there were presently four companies and that the people who do business with each other will set up a certain authority for verification of signatures.

Mr. Templeton sees this bill as intersection of commerce, technology and law. He said that one of the main attempts of this bill is to add clarity to existing laws about the acceptability of electronic signatures and to keep our existing statutes from disrupting commerce.

Representative Reynolds demonstrated the use of encryption on his laptop.

Representative Ellis wanted to know what prevents someone from capturing another person's certified signature off of the internet. He was told that separating the public key from the private key is what prevents forgery as long as you are the only person who knows the private key. Representative Reynolds mentioned that later on the digital signature will probably be put on a smart card which will travel with you.

Representative Miller wanted to know how to submit a document that required notarization and Representative Reynolds explained that this was a matter for which not all the details have been worked out. Representative Miller also wanted to know how multiple signatures would be handled and was told this was an application development question. On a related issue, Representative Miller wanted to know if a judge's signature could be used by a clerk and was told that if the judge gave his password out then that could happen. Representative Miller also questioned giving the Secretary of State the authority of a fact finder as well as an enforcer with authority to assess civil monetary penalties for violations of the statute.

Representative Michaux was told that multiple passwords would be needed if a person had dealings with several providers.

Representative Ellis moved a favorable report. Representative Hardy ruled that the bill received a favorable report after a voice vote.

The meeting adjourned at 10:50 A.M.



Representative Edwin M. Hardy
Co-chairman



Betty Wickham
Committee Clerk

ATTACHMENTS:

Exhibit A - REVISED NOTICE OF MEETING
Exhibit B - AGENDA
Exhibit C - VISITOR REGISTRATION

Exhibit D - COMMITTEE REPORT
Exhibit E - STAFF REPORT

MINUTES
HOUSE JUDICIARY I COMMITTEE

June 4, 1998

The House Committee on JUDICIARY I met in Room 1228 of the Legislative Building on June 4 at 10:00 A.M. Representative Hardy, Co-Chairman, presided at the meeting and the other members present were: Representative Daughtry, Co-Chairman, and Representative(s) Alexander, Blue, Capps, Clary, Ellis, Hall, Hardaway, R. Hunter, Hurley, Jeffus, Justus, Michaux, Miller, Morgan, Sherrill and Thompson. Staff Counsels Steven J. Rose and Karen C-Brown were present. Dan Stieneke, Director of Prisons, was also present.

The following bills were considered by the Committee:

HB-1456 AN ACT TO ABOLISH EXECUTION BY LETHAL GAS AND TO PROVIDE THAT A PERSON CONVICTED OF A CRIMINAL OFFENSE WHO IS SENTENCES TO DEATH SHALL BE EXECUTED BY THE ADMINISTRATION OF LETHAL DRUGS

House Bill 1456 was explained by bill sponsor Representative Justus. It is designed as a personal safety matter for the Department of Corrections. The bill originated in the Oversight Committee for Corrections and Crime Control. During the relatively few gas chamber executions the department has to do a practice two time before the execution and then the execution. Some of the gas has escaped into the prison area the last time this happened as they were carrying out the body of the deceased. Gas escaped when some of the equipment failed so it is a very dangerous operation. What HB1456 does is to eliminate the gas chamber as a method of execution in North Carolina and leave us with lethal injection.

Representative Michaux wanted to know if this was going to short circuit the appeal process. Representative Justus answered in the negative.

Representative Hurley asked if we were using both methods now. The response was that lethal injection is the method normally used in North Carolina unless the person being executed asked for the gas chamber. In a followup Representative Hurley asked what other states were doing and the answer was there are all kinds of different methods used depending upon the state.

Representative Hall moved a favorable report and the motion carried.

HB-1317 AN ACT TO MODIFY THE PROCEDURES CONCERNING FINAL ADMINISTRATIVE DECISIONS IN CONTESTED CASES HEARD BY THE OFFICE OF ADMINISTRATIVE HEARINGS

Representative Wilson presented a committee substitute to HB1317 (Amended Contested Case Procedures). See attachments F and G. Representative Clary moved that the committee substitute be adopted for discussion which was agreed to. Representative Wilson stated that the bill comes out of the Administrative Procedure Oversight Commission. In 1995 legislation was passed (Rules Review Commission bill) which regulates how we handle the rules and regulations that come out of the administrative agencies. She explained to the committee the current and proposed situations using flow charts. See attachment I. She described a major problem in the current system which is that when Administrative Law Judges (ALJ's) find in favor of petitioners, over 90% of the time the agency finds in favor of itself and overrules the ALJ. Then in judicial review the court only looks to see whether there was evidence in the record to support the agency decision.

She described that an important element of the committee substitute is to take Certificate of Need (CON) decisions granted by the Division of Faculty Services in DHHS entirely out of the contested administrative hearing process. They would go directly to the Superior Court. The important differences in the administrative contested hearing process are that the agency must adopt the ALJ's findings of fact but may adopt or reject the ALJ's conclusions of law. If the matter is appealed to Superior Court the judge looks at the substantial evidence to support the ALJ's decision rather than the agency's final decision.

Representative Michaux wondered why it is necessary under this proposed committee substitute to have administrative law judges if nobody will pay attention to them. Representative Wilson answered that before 1985 we used to have agencies with their own hearing officers but it was hard for an agency to decide against itself. In a followup example, Representative Michaux saw a need to make the ALJ's decision final. He said if either party doesn't like the ALJ's decision, they ought to be able to appeal directly to the Superior Court. Representative Wilson said that under this proposal the agency must adopt the ALJ's findings of fact, but Representative Michaux said that there are qualifications that make this new proposal basically the same as we have now. Representative Wilson said that this bill is asking the Superior Court to look at substantial evidence for the ALJ's decision which is different from the current procedure where the judge looks at substantial evidence for the agency's decision. She said this would be an improvement, but it gives the agency leeway if the ALJ has made a final decision because it can go through the appeal process.

Representative Miller asked about the Section 105B-22 involving the decisions of the Division of Facility Services. Staff Counsel Karen C-Brown said that we are taking a particular class of cases out of the administrative review process and letting them go directly to civil court. It would be a regular civil action governed by the rules of civil procedure. Representative Miller wanted to know what the scope of the trial would be and what would be the standards of fact finding. She answered that it would be a regular

civil action and would be a full trial. In a followup representative Miller asked what standard would the court use. He said he wondered just what the judge would do in such cases.

Referring to Section 131E-187, Representative Miller again said we are mingling the general practice of law with administrative law and they don't combine. He sees no right of appeal and says the bill is flawed.

Staff said that it was intended for the normal rules of civil procedure to cover this situation. Representative Miller said the bigger issue is that if we exempt the Division of Facility Services then tomorrow we will have a request for the exemption of every other agency. Representative Wilson said that in the last six months of hearings there was an attempt to take the Division of Facility Services out of this bill and that this was a compromise.

Representative Blue asked if there was any discontent about the way CON cases are handled now. Representative Wilson said that she had been contacted by several hospital associations who said that since the ALJ's decision is not final they are forced into trying to settle it outside of the due process procedure because the ALJ's decision is really meaningless. Representative Blue asked if they supported the bill in its initial form and Representative Wilson said that the Hospital Association has taken a stand against the bill.

In a followup Representative Blue said it seemed that we are changing the whole direction about who finds the facts in the CON cases. Representative Wilson said the way Superior Court would look at it is from the preponderance of the evidence just as the ALJ would look at it. In a followup, Representative Blue asked if they have given any thought that part of the rationale for making these administrative decisions is to get them out of the clutter of the courts. He asked if they have thought about the additional court resources that we will be required to address the additional burden.

Mr. John Bode of the NC Radiologists said that people who are required to get Certificates of Need (CON) to get new linear accelerators, new MRI's, etc, are opposed to this legislation. They don't want to be taken out of CON and the Administrative Law Judge system. Every time a doctor wants to get a new MRI machine he will have to go to court to do it. His association likes the system as it is.

Representative Capps asked Mr. Bode if he was talking about only the cases that are rejected by an agency. Mr. Bode said he read the new proposed substitute legislation as saying that everything goes to Superior Court. Representative Wilson said there have been so many complaints about the ALJ decisions and their lack of expertise that the committee chose to put these cases in Superior Court right off the bat.

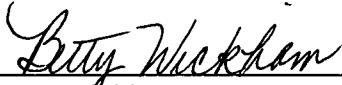
Mr. Noah Huffstetler, a lawyer, agreed with Representative Capps that the doctors would not have to go directly to Superior Court. Mr. Huffstetler does not believe that our current system is in accordance with fairness and common sense. Mr. Huffstetler said that Representative Michaux's question represents the problem. He said he has clients who are forced to apply for a CON to build a facility or obtain some equipment. The agency has months to review and make their decision. They then tell the person who has been rejected that he cannot go directly to Superior Court but must go through a series of hoops first. He is not getting his due process rights.

Representative Daughtry answered that due to the controversy of this bill HB 1317 would be placed in a subcommittee for study. The subcommittee members are Representatives Morgan, Blue, Clary, Arnold, Braswell and Sherrill and Representative Arnold, Chairman.

The meeting adjourned at 10:50 A.M.



Representative Edwin M. Hardy
Co-Chairman



Betty Wickham
Committee Clerk

ATTACHMENTS:

- Exhibit A - NOTICE OF MEETING
- Exhibit B - AGENDA
- Exhibit C - VISITOR REGISTRATION
- Exhibit D - COMMITTEE REPORT for HB 1456
- Exhibit E - STAFF REPORT for HB 1456
- Exhibit F- HB 1317
- Exhibit G - PROPOSED COMMITTEE SUBSTITUTE for HB 1317
- Exhibit H - STAFF REPORT for HB 1317
- Exhibit I - TWO FLOW CHARTS
- Exhibit J - MISCELLANEOUS INFORMATION ON PREVIOUS CASES

**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE**

You are hereby notified that the Committee on **JUDICIARY I** will meet as follows:

DAY & DATE: **Thursday, June 4, 1998**

TIME: **10:00 AM**

LOCATION: **Room 1228/1327 LB**

The following bills will be considered:

✓ **HB 1317 Amend Contested Case Procedures**
 Sponsor - Representative C. Wilson

HB 1321 Future of the Courts
HB 1391 Judicial Appt./Voter Retention
 Sponsor - Representative L. Daughtry

HB 1440 Conform Witness Travel Fees
HB 1441 Restitution/Civil Judgement
 Sponsor - Representative McCrary

✓ **HB 1456 Death by Lethal Drugs**
 Sponsor - Representative Justus

Respectfully,

Representative N. Leo Daughtry, Co-Chairman
Representative Edwin Hardy, Co-Chairman

I hereby certify this notice was filed by the committee clerk at the following offices at
1:00 P.M., June 2, 1998.

____Principal Clerk
____Reading Clerk - House Chamber

Jackie Hamby, Committee Clerk
Bernice Bullard, Committee Clerk
Betty Wickham, Committee Clerk

AGENDA

HOUSE COMMITTEE ON JUDICIARY I

June 4, 1998
Room 1228/1327 LB
10:00 AM

Representative N. Leo Daughtry, Co-Chairman
Representative Edwin (Sandy) Hardy, Co-Chairman

BILLS TO BE CONSIDERED:

HB 1321	FUTURE OF THE COURTS	Sponsor- Representative Daughtry
HB 1391	JUDICIAL APPT./VOTER RETENTION	Sponsor-Representative Daughtry

HB 1440	CONFORM WITNESS TRAVEL FEES	Sponsor-Representative McCrary

1 st ✓ HB 1456	DEATH BY LETHAL DRUGS	Sponsor-Representative Justus <i>Law not.</i>

2 nd ✓ HB 1317	AMEND CONTESTED CASE PROCEDURES	Sponsor-Representative C. Wilson <i>P.C. b. adopted</i>

ADJOURNMENT

VISITOR REGISTRATION SHEET

JUDICIARY 1, JUNE 4, 1998

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

	NAME	FIRM OR AGENCY
1.	William H. Potka, Jr.	DISCUS
2.	Noel Haffelt	Kilpatrick Stodden LLP
3.	Mike	Bode Call & Stroup
4.	Ann Fulten	ABC Commission
5.	Jesse Goodman	DHHS - DFS
6.	Bob Fitzgerald	DHHS/DFS
7.	James Duggan	Clerk of Court Cumberland Co.
8.	B. Powell	Asst
9.	John Kennedy	Walt Co - Clerk of Court
10.	Charles Cromer	NCATL
11.	Daniel Stineko	NC DOC
12.	Bill Scobbin	NC BAR ASSOC
13.	Alan Miles	Baily & Dixon
14.	Kim Smith	NCLM
15.	Carmen Hooker Buell	Carolina's Health Care System
16.	Tommy Work	"
17.	Mari A. Luita	NESA
18.	John Bowditch	Zeb Alley P.A.
19.	Tommy Harrison	Harrison Consulting
20.	Michael Conder	Interw
21.	Ruth Sappie	NC DOT

VISITOR REGISTRATION SHEET

June 4, 1998

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

	NAME	FIRM OR AGENCY
1.	R. ROCKS	~~DEPT~~ DENR
2.	June Winner	NCAOCK
3.	Jan P. Gray	DOJ
4.	Anna Lamm	NCHFA
5.	Craig Sauer	NCHFA
6.	Not used	CCNC
7.	Stacie Haskins	Charlotte Chamber
8.	Amey Bain	Smith Anderson
9.	Bud Skinner	AOC
10.	Tom Keith	Conf of DAs
11.	Peg Doran	NC Conference of DAs
22.	Ray Gore	Conference of DAs
23.	~~Jack Doran~~	WCSR
24.	~~Jack Doran~~	WCSR
25.	Carl Goodwin	OSP
26.	Charles Case	Hunter & Williams
27.	Jackie Benjamin	NCCBT
28.	Billy Bryan	RRC
29.	Jackie Atkinson	DHHS - VIR
30.	HUGH TILSON	NCHA
31.	Jack Gunt	PPAB

VISITOR REGISTRATION SHEET

June 4, 1998

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY
1. <i>Melissa C. Orlund</i>	<i>OAH</i>
2. <i>Joe Morrison Jr.</i>	<i>OAH</i>
3. <i>Ed J. Smith</i>	<i>OAH</i>
4. <i>Beecher R. May</i>	<i>OAH</i>
5. <i>Brenda Becht</i>	<i>OAL</i>
6. _____	_____
7. <i>James</i>	<i>OAH</i>
8. <i>Paul J. Montgomery</i>	<i>Park Pae Colomb & Bernstein</i>
9. <i>JOE DELUCA</i>	<i>RULES REVIEW COM</i>
10. <i>John M. May</i>	<i>HC GLA</i>
11. <i>Lynda McDaniel</i>	<i>DHHS/DFS</i>
22. <i>Soreen Schmidt</i>	<i>NCJ CDC</i>
23. <i>Nancy Bradley</i>	<i>VCCBA</i>
24. <i>Luke Barber</i>	<i>CSPC</i>
25. _____	_____
26. _____	_____
27. _____	_____
28. _____	_____
29. _____	_____
30. _____	_____
31. _____	_____

file

**1998 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative(s) **Daughtry and Hardy** for the Committee on **JUDICIARY I.**

- ☐ Committee Substitute for
H.B. 1456 A BILL TO BE ENTITLED AN ACT TO ABOLISH EXECUTION BY
LETHAL GAS AND TO PROVIDE THAT A PERSON CONVICTED OF A CRIMINAL
OFFENSE WHO IS SENTENCED TO DEATH SHALL BE EXECUTED BY THE
ADMINISTRATION OF LETHAL 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 (#), ☐ 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



**North Carolina General Assembly
Legislative Services Office**

George R. Hall, Legislative Services Officer
(919) 733-7044

*June 4, 1998
J-I*

Ernest 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
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Fiscal Research Division
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(919) 733-6834

Terrence D. Sullivan, Director
Research Division
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300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

June 3, 1998

MEMORANDUM

TO: House Judiciary I Committee

FROM:  Steven Rose, Committee Counsel *Law*

RE: House Bill 1456; Death by administration of lethal drugs

House Bill 1456 is recommended by the Joint Legislative Corrections and Crime Control Oversight Committee. The bill makes execution by lethal injection the sole form of execution in North Carolina. Present law allows the person sentenced to death to choose either lethal injection or lethal gas.

The act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 1456

Short Title: Death by Administration of Lethal Drugs.

(Public)

Sponsors: Representatives Justus; and Sexton.

Referred to: Judiciary I.

May 25, 1998

1 A BILL TO BE ENTITLED
2 AN ACT TO ABOLISH EXECUTION BY LETHAL GAS AND TO PROVIDE
3 THAT A PERSON CONVICTED OF A CRIMINAL OFFENSE WHO IS
4 SENTENCED TO DEATH SHALL BE EXECUTED BY THE
5 ADMINISTRATION OF LETHAL DRUGS.

6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 15-187 reads as rewritten:

8 "**§ 15-187. Death by administration of lethal gas or drugs.**

9 Death by electrocution under sentence of law is hereby abolished and death by the
10 administration of lethal gas substituted therefor, except that if any person sentenced
11 to death so chooses, he may at least five days prior to his execution date, elect in
12 writing to be executed by the administration of a lethal quantity of an
13 ultrashort-acting barbiturate in combination with a chemical paralytic agent. under
14 sentence of law are abolished. Any person convicted of a criminal offense and
15 sentenced to death shall be executed only by the administration of a lethal quantity of
16 an ultrashort-acting barbiturate in combination with a chemical paralytic agent."

17 Section 2. G.S. 15-188 reads as rewritten:

18 "**§ 15-188. Manner and place of execution.**

19 ~~Except as otherwise provided in~~ In accordance with G.S. 15-187, the mode of
20 executing a death sentence must in every case be by ~~causing~~ administering to the
21 convict or felon ~~to inhale lethal gas of sufficient quantity to cause death, and the~~
22 ~~administration of such lethal gas must be continued until such~~ a lethal quantity of an
23 ultrashort-acting barbiturate in combination with a chemical paralytic agent until the
24 convict or felon is dead; and when any person, convict or felon shall be sentenced by

1 any court of the State having competent jurisdiction to be so executed, ~~such~~ the
2 punishment shall only be inflicted within a permanent death chamber which the
3 superintendent of the State penitentiary is hereby authorized and directed to provide
4 within the walls of the North Carolina penitentiary at Raleigh, North Carolina. The
5 superintendent of the State penitentiary shall also cause to be provided, in conformity
6 with this Article and approved by the Governor and Council of State, the necessary
7 appliances for the infliction of the punishment of death in accordance with the
8 requirements of this Article."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 1317*

Short Title: Amend Contested Case Proc.

(Public)

Sponsors: Representative C. Wilson.

Referred to: Judiciary I.

May 19, 1998

1 A BILL TO BE ENTITLED
2 AN ACT TO MODIFY THE PROCEDURES CONCERNING FINAL
3 ADMINISTRATIVE DECISIONS IN CONTESTED CASES HEARD BY THE
4 OFFICE OF ADMINISTRATIVE HEARINGS.

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 150B-2(5) reads as rewritten:

7 "(5) "Party" means any person or agency named or admitted as a party
8 or properly seeking as of right to be admitted as a party and
9 includes the agency as appropriate. This subdivision does not
10 permit an agency that makes a final decision, or an officer or
11 employee of the agency, to petition for initial judicial review of
12 that ~~decision.~~ decision, except as provided by G.S. 150B-43(b)."

13 Section 2. G.S. 150B-29(a) reads as rewritten:

14 "(a) In all contested cases, irrelevant, immaterial and unduly repetitious evidence
15 shall be excluded. Except as otherwise provided, the rules of evidence as applied in
16 the trial division of the General Court of Justice shall be followed; but, when
17 evidence is not reasonably available under the rules to show relevant facts, then the
18 most reliable and substantial evidence available shall be admitted. On the judge's
19 own motion, an administrative law judge may exclude evidence that is inadmissible
20 under this section. The party with the burden of proof in a contested case must
21 establish the facts required by G.S. 150B-23(a) by a preponderance of the evidence.
22 It shall not be necessary for a party or his attorney to object at the hearing to
23 evidence in order to preserve the right to object to its consideration by the

1 administrative law judge in making a recommended decision, by the agency in
2 making a final decision, or by the court on judicial review."

3 Section 3. G.S. 150B-34 reads as rewritten:

4 **"§ 150B-34. Recommended decision or order of administrative law judge.**

5 (a) Except as provided in G.S. 150B-36(c), in each contested case the
6 administrative law judge shall make a recommended decision or order that contains
7 findings of fact and conclusions of law. The findings of fact shall be supported by a
8 preponderance of the evidence admissible under G.S. 150B-29, 150B-30, or 150B-31."

9 Section 4. G.S. 150B-36 reads as rewritten:

10 **"§ 150B-36. Final decision.**

11 (a) (1) ~~Before the agency makes a final decision, it shall~~ After an agency
12 receives the official record in a contested case, the agency must
13 give each party an opportunity to the contested case 15 days to file
14 exceptions to the decision or order recommended by the
15 administrative law judge, judge and to present written arguments to
16 those in the agency who will make the final decision or order. If
17 none of the parties files exceptions to the recommended decision
18 or order within the 15-day period, the agency is considered to have
19 adopted the administrative law judge's recommended decision or
20 order as the agency's final decision or order.

21 (2) If a party files in good faith a timely and sufficient affidavit of
22 personal bias or other reason for disqualification of a member of
23 the agency making the final decision, the agency shall determine
24 the matter as a part of the record in the ~~case, and the case.~~ case. The
25 determination is subject to judicial review at the conclusion of the
26 case.

27 (b) (1) A final decision or order in a contested case shall be made by the
28 agency ~~in writing after review of~~ within the time set by G.S. 150B-
29 44. If the agency does not adopt as its final decision or order the
30 recommended decision or order made in the contested case under
31 subsection (a) of this section, it must make a written final decision
32 or order. In making its final decision or order, the agency may
33 consider only the official record as defined in G.S. 150B-37(a) and
34 the exceptions filed by a party. The final decision or order shall
35 include findings of fact and conclusions of law. The findings of
36 fact made in the contested case by the administrative law judge are
37 binding on the agency in making its final decision or order if they
38 are supported by substantial evidence admissible under G.S. 150B-
39 29, 150B-30, or 150B-31 in view of the entire record. Nothing in
40 this subdivision shall affect the policies and need determinations in
41 the State Medical Facilities Plan which have been adopted in
42 accordance with law and shall have the effect of law for this
43 purpose.

1 (2) If the agency does not adopt the administrative law judge's
2 recommended decision or order as its final ~~decision~~, decision or
3 order, the agency shall state in its decision or order the specific
4 reasons why it did not adopt the administrative law judge's
5 recommended decision. ~~The agency may consider only the official~~
6 ~~record prepared pursuant to G.S. 150B-37 in making a final~~
7 ~~decision or order, and the final decision or order shall be~~
8 ~~supported by substantial evidence admissible under G.S.~~
9 ~~150B-29(a), 150B-30, or 150B-31.~~ decision or order. A copy of the
10 agency's decision or order shall be served upon each party
11 personally or by certified mail addressed to the party at the latest
12 address given by the party to the agency, and a copy shall be
13 furnished to ~~his~~ each party's attorney of record and the Office of
14 Administrative Hearings.

15 (c) The following decisions made by administrative law judges in contested cases
16 are final decisions:

- 17 (1) A determination that the Office of Administrative Hearings lacks
18 jurisdiction.
19 (2) An order entered pursuant to the authority in G.S. 7A-759(e).
20 (3) An order entered pursuant to a written prehearing motion that
21 either dismisses the contested case for failure of the petitioner to
22 prosecute or grants the relief requested when a party does not
23 comply with procedural requirements.
24 (4) An order entered pursuant to a prehearing motion to dismiss the
25 contested case in accordance with G.S. 1A-1, Rule 12(b) when the
26 order disposes of all issues in the contested case."

27 Section 5. G.S. 150B-37(c) reads as rewritten:

28 "(c) The Office of Administrative Hearings shall forward a copy of the official
29 record to the agency making the final ~~decision and shall forward a copy of the~~
30 ~~recommended decision to each party.~~ decision."

31 Section 6. G.S. 150B-43 reads as rewritten:

32 "**§ 150B-43. Right to judicial review.**

33 (a) Any person who is aggrieved by the final decision in a contested case, and
34 who has exhausted all administrative remedies made available to him by statute or
35 agency rule, is entitled to judicial review of the decision under this Article, unless
36 adequate procedure for judicial review is provided by another statute, in which case
37 the review shall be under such other statute. Nothing in this Chapter shall prevent
38 any person from invoking any judicial remedy available to him under the law to test
39 the validity of any administrative action not made reviewable under this Article.

40 (b) An agency may seek judicial review of procedural errors made by the
41 administrative law judge in the contested case if the agency was required to adopt the
42 administrative law judge's findings of fact and the agency concludes that, although
43 the findings are supported by substantial evidence, the record contains significant
44 evidentiary errors."

Section 7. 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 8. 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~~ 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~~ If the agency did not adopt the recommended decision, the court shall determine whether the administrative law judge's findings of fact are supported by substantial evidence admissible under G.S. 150B-29, 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 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) If the agency did not adopt the recommended decision, the court shall determine whether the agency's decision states the specific

1 reasons why the agency did not adopt the recommended decision.
2 If the court determines that the agency did not state specific
3 reasons why it did not adopt a recommended decision, the court
4 shall reverse the decision or remand the case to the agency to enter
5 the specific reasons.

6 (b) Standard of Review. After making the determinations, if any, required by
7 subsection (a), the court reviewing a final decision may affirm the decision of the
8 agency or remand the case for further proceedings. It may also reverse or modify the
9 agency's decision if the substantial rights of the petitioners may have been prejudiced
10 because the agency's findings, inferences, conclusions, or decisions are:

- 11 (1) In violation of constitutional provisions;
- 12 (2) In excess of the statutory authority or jurisdiction of the agency;
- 13 (3) Made upon unlawful procedure;
- 14 (4) Affected by other error of law;
- 15 (5) Unsupported by substantial evidence admissible under G.S. 150B-
16 29(a), 150B-30, or 150B-31 in view of the entire record as
17 submitted; or
- 18 (6) Arbitrary or capricious."

19 Section 9. This act is effective when it becomes law. Sections 1, 4, 5, 6,
20 7, and 8 of this act apply to any recommended decision or order made by an
21 administrative law judge on or after the effective date. The remainder of the act
22 applies to contested cases commenced on or after the effective date.

*placed in subcommittee study June 4 1998
on June 1st Rep. Linnell, Ch. J-I
Blue
Braswell
Clary, Morgan & Sherrill Rep. C. Wilson*

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 1317*
Proposed Committee Substitute
H1317-CSRO-001

ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION.

Short Title: Amend Contested Case Proc.

(Public)

Sponsors:

Referred to:

May 19, 1998

- 1 A BILL TO BE ENTITLED
2 AN ACT TO MODIFY THE PROCEDURES CONCERNING FINAL ADMINISTRATIVE
3 DECISIONS IN CONTESTED CASES HEARD BY THE OFFICE OF
4 ADMINISTRATIVE HEARINGS AND TO EXEMPT THE DEPARTMENT OF HEALTH
5 AND HUMAN SERVICES FROM THE CONTESTED CASE PROVISIONS OF THE
6 ADMINISTRATIVE PROCEDURE ACT IN CASES INVOLVING CERTIFICATE OF
7 NEED.
8 The General Assembly of North Carolina enacts:
9 Section 1. G.S. 150B-1(e) reads as rewritten:
10 "(e) Exemptions From Contested Case Provisions. -- The
11 contested case provisions of this Chapter apply to all agencies
12 and all proceedings not expressly exempted from the Chapter. The
13 contested case provisions of this Chapter do not apply to the
14 following:
15 (1) The Department of Health and Human Services and the
16 Department of Environment and Natural Resources in
17 complying with the procedural safeguards mandated
18 by Section 680 of Part H of Public Law 99-457 as
19 amended (Education of the Handicapped Act
20 Amendments of 1986).

- 1 (2) Repealed by Session Laws 1993, c. 501, s. 29.
- 2 (3) The North Carolina Low-Level Radioactive Waste
- 3 Management Authority in administering the
- 4 provisions of G.S. 104G-9, 104G-10, and 104G-11.
- 5 (4) The North Carolina Hazardous Waste Management
- 6 Commission in administering the provisions of G.S.
- 7 130B-11, 130B-13, and 130B-14.
- 8 (5) Hearings required pursuant to the Rehabilitation
- 9 Act of 1973, (Public Law 93-122), as amended and
- 10 federal regulations promulgated thereunder. G.S.
- 11 150B-51(a) is considered a contested case hearing
- 12 provision that does not apply to these hearings.
- 13 (6) The Department of Revenue.
- 14 (7) The Department of Correction.
- 15 (8) The Department of Transportation, except as
- 16 provided in G.S. 136-29.
- 17 (9) The Occupational Safety and Health Review Board.
- 18 (10) The North Carolina Global TransPark Authority with
- 19 respect to the acquisition, construction,
- 20 operation, or use, including fees or charges, of
- 21 any portion of a cargo airport complex.
- 22 (11) Hearings that are provided by the Department of
- 23 Health and Human Services regarding the eligibility
- 24 and provision of services for eligible assaultive
- 25 and violent children, as defined in G.S. 122C-
- 26 3(13a), shall be conducted pursuant to the
- 27 provisions outlined in G.S. 122C, Article 4, Part
- 28 7.
- 29 (12) The Division of Facility Services in the Department
- 30 of Health and Human Services in cases involving
- 31 decisions made in accordance with G.S. 131E-186."

32 Section 2. G.S. 150B-2(5) reads as rewritten:

33 "(5) "Party" means any person or agency named or

34 admitted as a party or properly seeking as of right

35 to be admitted as a party and includes the agency

36 as appropriate. This subdivision does not permit an

37 agency that makes a final decision, or an officer

38 or employee of the agency, to petition for initial

39 judicial review of that ~~decision~~ decision, except

40 as provided by G.S. 150B-43(b)."

41 Section 3. G.S. 150B-29(a) reads as rewritten:

42 "(a) In all contested cases, irrelevant, immaterial and unduly

43 repetitious evidence shall be excluded. Except as otherwise

44 provided, the rules of evidence as applied in the trial division

1 of the General Court of Justice shall be followed; but, when
2 evidence is not reasonably available under the rules to show
3 relevant facts, then the most reliable and substantial evidence
4 available shall be admitted. On the judge's own motion, an
5 administrative law judge may exclude evidence that is
6 inadmissible under this section. The party with the burden of
7 proof in a contested case must establish the facts required by
8 G.S. 150B-23(a) by a preponderance of the evidence. It shall not
9 be necessary for a party or his attorney to object at the hearing
10 to evidence in order to preserve the right to object to its
11 consideration by the administrative law judge in making a
12 recommended decision, by the agency in making a final decision,
13 or by the court on judicial review."

14 Section 4. G.S. 150B-34 reads as rewritten:

15 "§ 150B-34. Recommended decision or order of administrative law
16 judge.

17 (a) Except as provided in G.S. 150B-36(c), in each contested
18 case the administrative law judge shall make a recommended
19 decision or order that contains findings of fact and conclusions
20 of law. The findings of fact shall be supported by a
21 preponderance of the evidence admissible under G.S. 150B-29,
22 150B-30, or 150B-31."

23 Section 5. G.S. 150B-36 reads as rewritten:

24 "§ 150B-36. Final decision.

25 (a) (1) Before the agency makes a final decision, it shall
26 After an agency receives the official record in a
27 contested case, the agency must give each party an
28 opportunity to the contested case 15 days to file
29 exceptions to the decision or order recommended by
30 the administrative law judge, judge and to present
31 written arguments to those in the agency who will
32 make the final decision or order. If none of the
33 parties files exceptions to the recommended
34 decision or order within the 15-day period, the
35 agency is considered to have adopted the
36 administrative law judge's recommended decision or
37 order as the agency's final decision or order.

38 (2) If a party files in good faith a timely and
39 sufficient affidavit of personal bias or other
40 reason for disqualification of a member of the
41 agency making the final decision, the agency shall
42 determine the matter as a part of the record in the
43 case, and the case. The determination is subject
44 to judicial review at the conclusion of the case.

- 1 (b) (1) A final decision or order in a contested case shall
2 be made by the agency ~~in writing after review of~~
3 ~~within the time set by G.S. 150B-44. If the agency~~
4 ~~does not adopt as its final decision or order the~~
5 ~~recommended decision or order made in the contested~~
6 ~~case under subsection (a) of this section, it must~~
7 ~~make a written final decision or order. In making~~
8 ~~its final decision or order, the agency may~~
9 ~~consider only the official record as defined in~~
10 ~~G.S. 150B-37(a) and the exceptions filed by a~~
11 ~~party. The final decision or order shall include~~
12 ~~findings of fact and conclusions of law. The~~
13 ~~findings of fact made in the contested case by the~~
14 ~~administrative law judge are binding on the agency~~
15 ~~in making its final decision or order if they are~~
16 ~~supported by substantial evidence admissible under~~
17 ~~G.S. 150B-29, 150B-30, or 150B-31 in view of the~~
18 ~~entire record.~~
- 19 (2) If the agency does not adopt the administrative law
20 judge's recommended decision or order as its final
21 ~~decision, decision or order,~~ the agency shall state
22 in its decision or order the specific reasons why
23 it did not adopt the administrative law judge's
24 recommended decision. ~~The agency may consider only~~
25 ~~the official record prepared pursuant to G.S.~~
26 ~~150B-37 in making a final decision or order, and~~
27 ~~the final decision or order shall be supported by~~
28 ~~substantial evidence admissible under G.S.~~
29 ~~150B-29(a), 150B-30, or 150B-31.~~ decision or order.
30 A copy of the agency's decision or order shall be
31 served upon each party personally or by certified
32 mail addressed to the party at the latest address
33 given by the party to the agency, and a copy shall
34 be furnished to ~~his~~ each party's attorney of record
35 and the Office of Administrative Hearings.
- 36 (c) The following decisions made by administrative law judges
37 in contested cases are final decisions:
- 38 (1) A determination that the Office of Administrative
39 Hearings lacks jurisdiction.
- 40 (2) An order entered pursuant to the authority in G.S.
41 7A-759(e).
- 42 (3) An order entered pursuant to a written prehearing
43 motion ~~that~~ either dismisses the contested case for
44 failure of the petitioner to prosecute or grants

1 the relief requested when a party does not comply
2 with procedural requirements.

3 (4) An order entered pursuant to a prehearing motion to
4 dismiss the contested case in accordance with G.S.
5 1A-1, Rule 12(b) when the order disposes of all
6 issues in the contested case."

7 Section 6. G.S. 150B-37(c) reads as rewritten:

8 "(c) The Office of Administrative Hearings shall forward a copy
9 of the official record to the agency making the final decision
10 ~~and shall forward a copy of the recommended decision to each~~
11 ~~party- decision.~~"

12 Section 7. G.S. 150B-43 reads as rewritten:

13 "\$ 150B-43. Right to judicial review.

14 (a) Any person who is aggrieved by the final decision in a
15 contested case, and who has exhausted all administrative remedies
16 made available to him by statute or agency rule, is entitled to
17 judicial review of the decision under this Article, unless
18 adequate procedure for judicial review is provided by another
19 statute, in which case the review shall be under such other
20 statute. Nothing in this Chapter shall prevent any person from
21 invoking any judicial remedy available to him under the law to
22 test the validity of any administrative action not made
23 reviewable under this Article.

24 (b) An agency may seek judicial review of procedural errors
25 made by the administrative law judge in the contested case if the
26 agency was required to adopt the administrative law judge's
27 findings of fact and the agency concludes that, although the
28 findings are supported by substantial evidence, the record
29 contains significant evidentiary errors."

30 Section 8. G.S. 150B-44 reads as rewritten:

31 "\$ 150B-44. Right to judicial intervention when decision
32 unreasonably delayed.

33 Unreasonable delay on the part of any agency or administrative
34 law judge in taking any required action shall be justification
35 for any person whose rights, duties, or privileges are adversely
36 affected by such delay to seek a court order compelling action by
37 the agency or administrative law judge. An agency that is
38 subject to Article 3 of this Chapter and is not a board or
39 commission has ~~90~~ 45 days from the day it receives the official
40 record in a contested case from the Office of Administrative
41 Hearings to make a final decision in the case. This time limit
42 may be extended by the parties or, for good cause shown, by the
43 agency for an additional period of up to ~~90~~ 30 days. An agency
44 that is subject to Article 3 of this Chapter and is a board or

1 commission has ~~90~~ 45 days from the day it receives the official
2 record in a contested case from the Office of Administrative
3 Hearings or ~~90~~ 45 days after its next regularly scheduled
4 meeting, whichever is longer, to make a final decision in the
5 case. This time limit may be extended by the parties or, for
6 good cause shown, by the agency for an additional period of up to
7 ~~90~~ 30 days. If an agency subject to Article 3 of this Chapter
8 has not made a final decision within these time limits, the
9 agency is considered to have adopted the administrative law
10 judge's recommended decision as the agency's final decision.
11 Failure of an agency subject to Article 3A of this Chapter to
12 make a final decision within ~~180~~ 75 days of the close of the
13 contested case hearing is justification for a person whose
14 rights, duties, or privileges are adversely affected by the delay
15 to seek a court order compelling action by the agency or, if the
16 case was heard by an administrative law judge, by the
17 administrative law judge."

18 Section 9. G.S. 150B-51 reads as rewritten:

19 "§ 150B-51. Scope of review.

20 (a) Initial Determination in Certain Cases. In reviewing a
21 final decision in a contested case in which an administrative law
22 judge made a recommended decision, the court shall make ~~two~~ three
23 ~~initial determinations.~~ determinations as follows:

24 (1) First, the The court shall determine whether the
25 agency heard new evidence after receiving the
26 recommended decision. If the court determines that
27 the agency heard new evidence, the court shall
28 reverse the decision or remand the case to the
29 agency to enter a decision in accordance with the
30 evidence in the official record.

31 (2) Second, if If the agency did not adopt the
32 recommended decision, the court shall determine
33 whether the administrative law judge's findings of
34 fact are supported by substantial evidence
35 admissible under G.S. 150B-29, 150B-30, or 150B-31
36 in view of the entire record. If the court
37 determines that the agency failed to adhere to the
38 administrative law judge's findings of fact that
39 are supported by substantial evidence, the court
40 shall reverse the decision or remand the case to
41 the agency to enter a decision in accordance with
42 the evidence in the official record.

43 (3) If the agency did not adopt the recommended
44 decision, the court shall determine whether the

1 agency's decision states the specific reasons why
2 the agency did not adopt the recommended decision.
3 If the court determines that the agency did not
4 state specific reasons why it did not adopt a
5 recommended decision, the court shall reverse the
6 decision or remand the case to the agency to enter
7 the specific reasons.

8 (b) Standard of Review. After making the determinations, if
9 any, required by subsection (a), the court reviewing a final
10 decision may affirm the decision of the agency or remand the case
11 for further proceedings. It may also reverse or modify the
12 agency's decision if the substantial rights of the petitioners
13 may have been prejudiced because the agency's findings,
14 inferences, conclusions, or decisions are:

- 15 (1) In violation of constitutional provisions;
- 16 (2) In excess of the statutory authority or
17 jurisdiction of the agency;
- 18 (3) Made upon unlawful procedure;
- 19 (4) Affected by other error of law;
- 20 (5) Unsupported by substantial evidence admissible
21 under G.S. 150B-29(a), 150B-30, or 150B-31 in view
22 of the entire record as submitted; or
- 23 (6) Arbitrary or capricious."

24 Section 10. G.S. 150B-22 reads as rewritten:

25 "§ 150B-22. Settlement; contested case.

26 (a) It is the policy of this State that any dispute between an
27 agency and another person that involves the person's rights,
28 duties, or privileges, including licensing or the levy of a
29 monetary penalty, should be settled through informal procedures.
30 In trying to reach a settlement through informal procedures, the
31 agency may not conduct a proceeding at which sworn testimony is
32 taken and witnesses may be cross-examined. If the agency and the
33 other person do not agree to a resolution of the dispute through
34 informal procedures, either the agency or the person may commence
35 an administrative proceeding to determine the person's rights,
36 duties, or privileges, at which time the dispute becomes a
37 "contested case."

38 (b) In disputes involving decisions of the Division of
39 Facility Services in the Department of Health and Human Services
40 made in accordance with G.S. 131E-186, a party to the dispute may
41 commence a civil action in the General Court of Justice, Superior
42 Court Division, without commencing a contested case as provided
43 in this Article."

44 Section 11. G.S. 131E-187 reads as rewritten:

1 § 131E-187. Issuance of a certificate of need.

2 (a) The Department shall issue a certificate of need within 35
3 days of the date of the decision referenced in G.S. 131E-186,
4 ~~when no request for a contested case hearing has been filed in~~
5 ~~accordance with G.S. 131E-188, civil action is filed, within 30~~
6 ~~days of the Department's decision, in the General Court of~~
7 ~~Justice, Superior Court Division, challenging a certificate of~~
8 ~~need, and all applicable conditions of approval that can be~~
9 ~~satisfied before issuance of the certificate of need have been~~
10 ~~met.~~

11 (b) The Department shall issue a certificate of need within
12 five days after a ~~request for a contested case hearing~~ complaint
13 in a civil action has been withdrawn or the final agency decision
14 has been made following a contested case hearing, dismissed, or
15 a final decision by the Superior Court, and all applicable
16 conditions of approval that can be satisfied before issuance of
17 the certificate of need have been met.

18 Section 12. G.S. 131E-188 is repealed.

19 Section 13. This act is effective when it becomes law.
20 Sections 1, 10, 11, and 12 of this act apply to decisions made by
21 the Division of Facility Services in the Department of Health and
22 Human Services on or after the effective date. Sections 2, 5, 6,
23 7, 8, and 9 of this act apply to any recommended decision or
24 order made by an administrative law judge on or after the
25 effective date. The remainder of the act applies to contested
26 cases commenced on or after the effective date.



North Carolina General Assembly
Legislative Services Office

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June 4, 1998
J-I

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June 3, 1998

MEMORANDUM

TO: Representative Leo Daughtry and Representative Edwin Hardy, Co-Chairs,
House Judiciary I Committee

FROM: Karen Cochrane Brown, Committee Co-Counsel *KCB*

RE: House Bill 1317 - Amend Contested Case Proc.

House Bill 1317 is a recommendation of the Joint Legislative Administrative Procedure Oversight Committee. It amends the contested case procedures for agencies subject to Article 3 of Chapter 150B, the Administrative Procedure Act.

Section 1.

This section amends the APA's definition of the term "Party" to allow an agency to obtain judicial review of its own final decision in certain instances. Under present law, in making its final decision, an agency is free to accept or reject the recommended decision of an ALJ if the decision differs from the agency's initial determination. Article 4 of the APA allows a person who is aggrieved by the agency's final decision to obtain judicial review. Obviously, under current law, an agency cannot be aggrieved by its own final decision, and therefore, may not seek judicial review. However, inasmuch as this bill would change the law to require the agency to accept the ALJ's findings of fact in most cases, the agencies are given limited authority to seek review of certain rulings of the ALJ.

Section 2.

This section amends the provision relating to the Rules of Evidence as applied to contested cases. The law, presently, requires ALJs to follow the rules of evidence as applied in the trial division of the General Court of Justice, in most cases. This amendment clarifies that the party with the burden of proof (usually the petitioner) must establish the facts by a preponderance of the evidence, which means that the ALJ must be persuaded, considering all the evidence, that the necessary facts are more likely than not to exist.

Section 3.

This section amends the provision relating to the recommended decision or order of the administrative law judge to clarify that the ALJ's findings of fact must be supported by a preponderance of the admissible evidence.

Section 4.

This section amends the procedure used by agencies when making final decisions. It gives each party to the contested case 15 days to file exceptions to the recommended decision of the ALJ. If no one files exceptions within the 15-day period the agency is considered to have adopted the ALJ's recommended decision as the agency's final decision. Under current law, there is no requirement that exceptions to the recommended decision be filed within a specific time period, and the agency is never considered to have adopted the recommended decision.

This section further provides that the findings of fact made in the contested case by the ALJ are binding on the agency in making its final decision if such findings are supported by substantial admissible evidence. The agencies continue to be able to reach their own conclusions of law, and this section clarifies that the policies and need determinations in the State Medical Facilities Plan, which have been properly adopted, are to have the effect of law for this purpose.

Section 5.

This section directs the Office of Administrative Hearings to forward a copy of the official record in the contested case to the agency making the final decision. It deletes the requirement that OAH send a copy of the recommended decision to each party.

Section 6.

This section adds a new subsection to the provision which authorizes judicial review of final agency decisions. The new subsection allows agencies to seek judicial review of procedural errors made by the administrative law judge in the contested case if the agency was required to adopt the ALJ's findings of fact and the agency concludes that the record contains significant evidentiary errors. This is the provision referred to in Section 1 of the bill. It gives agencies the right to seek judicial review only when they are required to reach a particular result because there is substantial evidence in the record, but the record is affected by significant errors. In all other situations, the agency still has the ability to make its own final decision.

Section 7.

This section reduces the time within which agencies must make final decisions. Currently, an agency has 90 days the date it receives the record to make a final decision, with the possibility of an additional 90 extension. This time limit is reduced to 45 days with a possible 30 day extension. If the final decision is not made within this time limit, the agency is deemed to have adopted the ALJ's recommended decision as its final decision. The time limit for Article 3A agencies to make a final decision is reduced from 180 days to 75 days from the completion of the contested case.

Section 8.

This section amends the provision relating to the Court's scope of review. In addition to determining whether the agency heard new evidence after receiving the recommended decision and whether the agency's decision states the specific reasons why the agency did not adopt the recommended decision, the Court must also determine whether the ALJ's findings of fact are supported by substantial evidence. If the Court determines that the agency failed to adhere to the ALJ's findings of fact that are supported by substantial evidence, the court must reverse the decision or remand the case to the agency.

Section 9.

Sections 1, 4, 5, 6, 7, and 8 of this act are effective when the act becomes law, and apply to any recommended decision or order made by an administrative law judge on or after that date. The remainder of the act is effective when it becomes law, and applies to contested cases commenced on or after that date.

**CURRENT CONTESTED CASE SYSTEM
UNDER THE ADMINISTRATIVE PROCEDURE ACT**

June 4, 1998
J-I
HB1317

AGENCY DECIDES AGAINST PETITIONER



Petitioner Appeals Agency Decision to
Office of Administrative Hearing (OAH).



ADMINISTRATIVE LAW JUDGE

ALJ in OAH decides the case based on a preponderance of the evidence and makes a *recommended* decision.



AGENCY

- reviews ALJ's recommended decision with *no standard of review*;
- can *change* the ALJ's findings of fact, and conclusions of law; and
- can reach its own decision, *regardless of the ALJ's recommendation*.



ALJ RECOMMENDED DECISIONS

AGAINST THE AGENCY/FOR THE PETITIONER
Approximately 25% of the time, the ALJ finds *against* the Agency. Of the recommended decisions *against* the agency, *approximately 90% of the time, the agency reverses* the ALJ's recommended decision.



**APPEAL TO SUPERIOR COURT; OR
COURT OF APPEALS**

Petitioner must then appeal to either the

- Superior Court; or
- Court of Appeals if the decision involves a Certificate of Need granted by the Division of Facility Services in DHHS.



Judge looks at substantial evidence in the record.
This standard of review requires the court to uphold the agency's final decision if there is any reasonable evidence in the record to support the agency's final decision.



ALJ RECOMMENDED DECISIONS

FOR THE AGENCY/AGAINST THE PETITIONER
Approximately 75% of the time, the ALJ finds *in favor* of the agency. Of the recommended decisions *in favor* of the agency, *almost 100% of the time, the agency adopts* the ALJ's recommended decision.



**APPEAL TO SUPERIOR COURT; OR
COURT OF APPEALS**

Petitioner must then appeal to either the

- Superior Court; or
- Court of Appeals if the decision involves a Certificate of Need granted by the Division of Facility Services in DHHS.



Judge looks at substantial evidence in the record.
This standard of review requires the court to uphold the agency's final decision if there is any reasonable evidence in the record to support the agency's final decision.

June 4, 1998

PROPOSED COMMITTEE SUBSTITUTE
HB 1317 - Amend Contested Case Procedures

June 4, 1998
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HB 1317

AGENCY DECIDES AGAINST PETITIONER



MOST AGENCY DECISIONS

Petitioner Appeals Agency Decision to
Office of Administrative Hearings (OAH).

CERTIFICATES OF NEED (CON) DECISIONS

For decisions involving Certificates of Need
granted by the Division of Facility Services in
DHHS:



ADMINISTRATIVE LAW JUDGE

ALJ decides the case based on a preponderance of
the evidence and makes recommended decision.

SUPERIOR COURT

Petitioner goes *directly* to Superior Court.



AGENCY

- *must* adopt the ALJ's findings of fact; and
- *may* adopt or reject ALJ's conclusions of law.

Case is heard by Superior Court Judge, as with any
other civil case.



SUPERIOR COURT

- Petitioner may appeal to Superior Court.
- Agency may appeal to Superior Court, in
certain circumstances.

AGENCY & PETITIONER

- Petitioner and agency are *both* bound by the
Superior Court's decision.
- Either party can appeal to the Court of
Appeals.



Judge looks at substantial evidence to support the
ALJ's decision, rather than the agency's final
decision.

June 4, 1998
J-I
HB1317

**DISPOSITION
OF OAH
CONTESTED CASE PETITIONS**

	1989	1990	1991	1992	1993	1994	1995	1996
Files Pending as of January 1	546	756	778	875	1067	1097	1138	686
Total New Petitions Filed	1266	1317	1330	1610	1649	1668	1342	2000
Total Files Closed	1056	1295	1233	1418	1619	1628	1794	1435
Recommended Decisions	---	388	339	336	384	332	441	369
Final Decisions	---	73	89	158	246	350	530	302
Total Closed by Decision	326	461	428	494	630	682	971	671
Withdrawn by Parties	315	487	612	799	906	870	737	702
Settled	300	257	92	79	53	41	33	26
Dismissed	82	32	26	16	18	10	10	7
Other	34	58	75	30	12	24	43	29
Files Pending as of December 31	756	778	875	1067	1097	1138	686	1251

These figures do not include EEO petitions

**DISPOSITION OF
OFFICE OF ADMINISTRATIVE HEARINGS
FILES
(includes EEO charges & petitions)**

	1989	1990	1991	1992	1993	1994	1995	1996
Files Pending as of January 1	791	1010	990	1037	1295	1335	1406	972
Total New Petitions/Charges Filed	1423	1438	1458	1809	1808	1828	1490	2116
Total Files Closed	1204	1458	1411	1551	1768	1757	1924	1555
*Recommended Decisions	---	388	339	336	384	332	441	369
*Final Decisions	---	73	89	158	246	350	530	302
*Total Closed by Decision	326	461	428	494	630	682	971	671
*Withdrawn by Parties	315	487	612	799	906	870	737	702
*Settled	300	257	92	79	53	41	33	26
*Dismissed	82	32	26	16	18	10	10	7
Other	182	221	253	163	161	154	173	149
Files Pending as of December 31	1010	990	1037	1295	1335	1406	972	1533

* Figures for contested cases only

FILES OPENED
(by agency designation)

AGENCY	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996
ABC Comm'n (ABC)	204	348	433	428	297	265	322	310	221	215	344
Commerce (COM)	1	0	1	1	4	1	2	3	0	0	1
Crime Control (CPS)	0	0	2	37	40	45	27	49	64	69	38
Child Support (CRA/CSE/DCS)	0	25	50	191	221	266	373	468	521	207	657
Agriculture (DAG)	0	0	0	0	0	3	6	0	0	1	0
Comm. Colleges (DCC)	0	1	1	0	0	0	0	1	0	0	1
Cultural Resources (DCR)	0	0	1	0	0	0	0	0	0	0	1
Human Resources (DHR)	117	157	191	151	171	192	188	185	165	148	165
Administration (DOA)	1	1	6	2	5	3	6	5	8	3	14
Correction (DOC)	0	0	0	0	0	0	0	0	1	1	2
Justice (DOJ)	6	64	65	51	59	38	47	45	47	68	75
Labor (DOL)	0	3	10	14	12	21	12	9	4	5	1
Transportation (DOT)	0	0	1	1	0	0	2	3	1	3	2
Auditor (DSA)	0	0	0	0	1	2	0	0	0	0	0
State Treasurer (DST)	4	2	8	13	14	30	22	17	15	11	13
Education (EDC)	0	1	14	30	16	19	24	34	34	53	73
EEOC (EEO) - charges & contested case petitions	0	151	173	157	121	128	201	167	172	148	116
EHNR (EHR)	0	0	0	86	281	241	333	286	310	294	313
Emp't Sec Comm'n (ESC)	0	0	0	0	0	2	0	0	0	0	0
Insurance (INS)	109	4	5	5	2	8	9	16	15	12	12
Natural Resources (NRC)	61	106	100	69	0	0	0	0	0	0	0
Admin. Hearings (OAH)	0	0	0	0	1	0	1	0	0	2	1
State Controller (OSC)	0	0	0	0	0	0	0	0	0	1	0
State Personnel (OSP)	98	156	146	172	179	185	221	195	237	225	270
Revenue (REV)	0	0	0	0	0	0	4	0	0		0
Secretary of State (SOS)	2	0	0	0	0	0	3	0	1	0	0
Univ. of NC (UNC)	0	0	0	0	0	0	1	8	5	10	5
Misc. Boards & Comm'ns	7	223	251	15	14	9	5	7	7	14	12
TOTAL	612	1282	1454	1423	1438	1458	1809	1808	1828	1490	2116

FINAL AGENCY DECISIONS

	1989	1990	1991	1992	1993	1994	1995
TOTAL NUMBER OF RECOMMENDED DECISIONS FORWARDED TO AGENCIES FROM OAH (listed by the year in which OAH closed the file)	326	388	339	336	384	332	441
(Less Final Agency Decisions not yet rendered, unaccounted for, or where agency did not act in time)	(44)	(111)	(89)	(85)	(5)	(4)	(3)
(Less Recommended Decisions settled or withdrawn after Recommended Decision but prior to Final Agency Decision)	(31)	(9)	(4)	(11)	(15)	(10)	(14)
TOTAL NUMBER OF FINAL AGENCY DECISIONS RECEIVED BY OAH	251	268	246	240	364	318	424

	1989		1990		1991		1992		1993		1994		1995	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
ALJ Recommended Decision Adopted by Agency*	172	68%	214	80%	202	82%	178	74%	281	77%	261	82%	351	83%
ALJ Recommended Decision Partially Adopted by Agency**	27	11%	24	9%	21	9%	24	10%	48	13%	30	9%	20	5%
ALJ Recommended Decision Rejected by Agency***	52	21%	30	11%	23	9%	38	16%	35	10%	27	9%	53	12%
TOTAL NUMBER OF FINAL AGENCY DECISIONS RECEIVED BY OAH	251	100%	268	100%	246	100%	240	100%	364	100%	318	100%	424	100%

FINAL AGENCY DECISIONS

1989

*Of the 172 Recommended Decisions which were adopted by the agency as their Final Agency Decision, the Administrative Law Judge ruled in favor of the agency in 137 (80%) of these cases.

**Of the 27 Recommended Decisions which were partially adopted by the agency as their Final Agency Decision, the Administrative Law Judge ruled in favor of the agency in 22 (81%) of these cases.

***Of the 52 Recommended Decisions which were rejected by the agency, the Administrative Law Judge ruled against the agency in 48 (92%) of these cases.

1990

*Of the 214 Recommended Decisions which were adopted by the agency as their Final Agency Decision, the Administrative Law Judge ruled in favor of the agency in 180 (84%) of these cases.

**Of the 24 Recommended Decisions which were partially adopted by the agency as their Final Agency Decision, the Administrative Law Judge ruled in favor of the agency in 15 (63%) of these cases.

***Of the 30 Recommended Decisions which were rejected by the agency, the Administrative Law Judge ruled against the agency in 26 (87%) of these cases.

1991

*Of the 202 Recommended Decisions which were adopted by the agency as their Final Agency Decision, the Administrative Law Judge ruled in favor of the agency in 180 (89%) of these cases.

**Of the 21 Recommended Decisions which were partially adopted by the agency as their Final Agency Decision, the Administrative Law Judge ruled in favor of the agency in 12 (57%) of these cases.

***Of the 23 Recommended Decisions which were rejected by the agency, the Administrative Law Judge ruled against the agency in 20 (87%) of these cases.

1992

*Of the 178 Recommended Decisions which were adopted by the agency as their Final Agency Decision, the Administrative Law Judge ruled in favor of the agency in 159 (89%) of these cases.

**Of the 24 Recommended Decisions which were partially adopted by the agency as their Final Agency Decision, the Administrative Law Judge ruled in favor of the agency in 18 (75%) of these cases.

***Of the 38 Recommended Decisions which were rejected by the agency, the Administrative Law Judge ruled against the agency in 36 (95%) of these cases.

1993

*Of the 281 Recommended Decisions which were adopted by the agency as their Final Agency Decision, the Administrative Law Judge ruled in favor of the agency in 238 (85%) of these cases.

**Of the 48 Recommended Decisions which were partially adopted by the agency as their Final Agency Decision, the Administrative Law Judge ruled in favor of the agency in 37 (77%) of these cases.

***Of the 35 Recommended Decisions which were rejected by the agency, the Administrative Law Judge ruled against the agency in 28 (80%) of these cases.

1994

*Of the 261 Recommended Decisions which were adopted by the agency as their Final Agency Decision, the Administrative Law Judge ruled in favor of the agency in 226 (87%) of these cases.

**Of the 30 Recommended Decisions which were partially adopted by the agency as their Final Agency Decision, the Administrative Law Judge ruled in favor of the agency in 21 (70%) of these cases.

***Of the 27 Recommended Decisions which were rejected by the agency, the Administrative Law Judge ruled against the agency in 22 (81%) of these cases.

1995

*Of the 351 Recommended Decisions which were adopted by the agency as their Final Agency Decision, the Administrative Law Judge ruled in favor of the agency in 293 (83%) of these cases.

**Of the 20 Recommended Decisions which were partially adopted by the agency as their Final Agency Decision, the Administrative Law Judge ruled in favor of the agency in 14 (70%) of these cases.

***Of the 53 Recommended Decisions which were rejected by the agency, the Administrative Law Judge ruled against the agency in 52 (98%) of these cases.

Betty Wickham (Rep. Hardy)

From: Jackie Hamby (House Committee Clerks Office)
Sent: Thursday, June 04, 1998 2:24 PM
To: Kara McKoy (Rep. Arnold); Lin Threath (Rep. Blue); Dixie Epps (Rep. Morgan); Rosa Kelley (Rep. Sherrill); Dianna Gilmore (Rep. Braswell); Mary Jamison (Rep. Clary)
Cc: Bernice Bullard (Rep. Daughtry); Betty Wickham (Rep. Hardy)
Subject: JUDICIARY I pcs subcommittee assignment/membership

Representative(s) Daughtry and Hardy, Co-Chairmen of Judiciary I Committee assigned PCS for House Bill 1317, AMEND CONTESTED CASE PROCEDURES, to a study subcommittee today. The subcommittee membership is as follows:

Representative Arnold, Chairman
Representative Blue
Representative Braswell
Representative Clary
Representative Morgan
Representative Sherrill

Jackie Hamby
House Committee Clerks
733 .5977

MINUTES
HOUSE JUDICIARY I COMMITTEE

June 9, 1998

The House Committee on JUDICIARY I met in Room 1228/1327 of the Legislative Building on June 9, 1998 at 10:00 A.M. Representative Hardy, Co-Chairman, presided at the meeting and the other members present were: Representative Daughtry, Co-Chairman, and Representative(s) Arnold, Blue, Capps, Clary, Crawford, Ellis, Esposito, Hall, Hardaway, R. Hunter, Hurley, Jeffus, Justus, Michaux, Miller, Sherrill and Thompson. Staff Counsels Steven J. Rose and Karen C-Brown were present.

The following bills were considered by the Committee:

HB-1362 AN ACT TO PROVIDE THAT TRANSFERRED SERVICE CREDITS MAY BE INCLUDED IN DETERMINING WHETHER A MEMBER OF THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM OR THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM MAY PURCHASE MILITARY SERVICE

House Bill 1362 was explained by bill sponsor Representative Preston. This bill would allow state (local) employees who have worked for the local (state) government not only to transfer their time to the state government but also to use that time in order to qualify for eligibility to purchase military service credit. That is, membership service may include transferred service credits. Actuarial notes from the General Assembly staff and from the Treasurer's Office are included. See Attachment F. Representative Preston said that this bill does not affect the Retirement System.

Representative Jeffus asked about the present policy. Representative Preston said employees are able to transfer their service from local to state and state to local but it does not make them eligible to be able to buy their retirement time.

Representative Daughtry asked what it costs. Mr. Stanley Moore of the Fiscal Research Division said there should be no cost to the state because the members pay the full cost.

Representative Justus asked for an average cost per year purchased. Mr. Moore said that it normally runs 16%-17% of salary because they are paying their cost and the state's cost. He said that this bill does not affect the legislative system at all.

Rep Miller wanted to know about the event that arose to prompt this legislation. Mr. Jack Pruitt, Deputy Treasurer and Director of the Retirement System, said that they have had a long standing practice of allowing transferred credit to count for benefits and purchases. In the Worrell case, the plaintiff claimed that the retirement system made him

eligible too early because he missed the deadline for the most desirable purchase period. The Supreme Court decided in his favor.

Representative Capps moved a favorable report and the motion passed. The bill was re-referred to Pensions and Retirement.

HB-1544 AN ACT TO INCREASE THE PROCESS AND FACILITIES FEES
IN CRIMINAL CASES IN THE GENERAL COURT OF JUSTICE

Representative Gardner said she believes House Bill 1544 responds an emergency situation for counties. She said that facility fees that go to the counties have only been raised by \$1 since 1983. In a spot survey done by county commissioners using a sample of seven counties it was found that her county was getting only 6% its operating and capital costs from the existing facility fees and that other counties were similarly underfunded. The problem comes about when we do a good thing such as increasing the number of parole officers but do not provide the funding for them. She said that about every piece of the juvenile crime bill under consideration adds additional strains on the counties. One way to fund these programs is to increase fees as proposed in this bill.

Representative Michaux asked if this bill would raise the court costs from \$80 to \$97. Representative Gardner answered in the affirmative. Representative Michaux suggested that this increase would be paid for by people with speeding tickets and other non-hardened criminals. He wondered why we couldn't reallocate what we already have.

Staff informed the Chair that at the District Court level the increase in cost would be \$11 and at the Superior Court level the increase would be \$17.

Representative Hall reaffirmed what Representative Michaux said. He suggested that a subcommittee be formed to see if reallocation is possible.

Representative Sherrill asked if a person who gets a speeding ticket and agrees to pay the fine must still pay the \$100 court fee whether they go to court or not. Representative Michaux answered in the affirmative.

Representative Hunter said that over the years we tried to finance court improvements with a combination of about 1/3 fees and 2/3 appropriations. In the last session we increased court fees by \$15 and about 75%-80% of these fees are paid by people with speeding tickets and the like. He said we need to get back to appropriating the major part of the money.

Todd Keith of the District Attorney's Association in Winston Salem responded to Representative Hunter. He said his office needs better court facilities but they would cost more than can be generated from increased court costs. He said he hoped they would

look at the idea of "half court" costs which has been before the legislature in the past. These would be paid by people who come through but do not actually go to court.

Representative Arnold said that it sounds like we are operating a business where we negotiate a deal to pay half the fee and not process the case. He has a problem with this. Representative Arnold asked where Representative Michaux would reallocate the money from. Representative Michaux said that more than reallocated funds would be needed.

Representative Ellis spoke in favor of the bill because it increases fees to the users of the court system and not to the general public.

Representative Hall said the penalty to the violator should be reasonable and \$100 is not reasonable. He believes Representative Michaux has made a good point. He moved a substitute motion that the chair appoint a subcommittee to study the bill. The motion passed.

Representative Gardner indicated that the problem was not going away and that somehow we needed to find relief.

Representative Hardy announced that Representative Hall would chair the subcommittee with Representative(s) Ellis, Clary, Michaux and R. Hunter as members.

**HB-1400 AN ACT TO RESTORE PROVISIONS THAT VICTIM AND
WITNESS ASSISTANTS SHALL ONLY PROVIDE SERVICES FOR VICTIMS OF
CRIME AND WITNESSES IN CRIMINAL CASES**

HB 1400 was presented by bill sponsor Representative R. Hunter. He said that this bill comes from the North Carolina Courts Commission. He said there was a lot of discussion in 1983 when the Fair Treatment For Victims and Witnesses Bill was passed about where to put that program. He said they finally decided to put the program in the DA's office and to stipulate that those people were to be used exclusively for the purpose of assisting victims and witnesses. He said that in the last session a provision was added to the budget that said these people could be assigned administrative duties.

The North Carolina Victim Assistance Network (NC-VAN) submitted a statement of concerns following the change in status of victim witness assistants and the Court's Commission report is also included in the minutes. (Attachments J and K)

Representative Blue wanted to know if it was correct to say that the victim's assistance advocates support the change and the DA's do not.

Mr. Tom Keith said that was correct.

Representative Miller wanted to know who the victim witness assistants are answerable to now. Representative Hunter said they answer to the DA's but the statute sets out what they can be used for.

Ms. Catherine Smith of the NC Victim Assistance Network explained the nature of their work. She said she has been working with Representative Justus to pass a bill in the short session which would provide victims with constitutional rights. If that bill becomes law there will be an even greater need to reestablish the status of the victim witness assistants.

Representative Arnold observed that if the DA's are not able to assign these people on the basis of need then there is a chance that they will decide to use a purely volunteer operation to help victims and it is possible that NC VAN might end up losing people by not having cooperated with the DA's office.

Ms. Smith said that the change last year did not change the number of victim assistants. She said they do not currently have the ability to provide enough information to the local people about the resources NC VAN offers.

Representative Justus said that the budget bill did change the victim witness assistants status. Looking at many of the DA's offices and courts across the state it came to their attention that these people were not doing anything about 1/2 of the time and that these people were resources that the DA was not utilizing. He believes this bill allows the DA to run his office as he should. We thought we had done the right thing with this bill. He would like more time to study the problem and moved to adjourn the meeting.

The meeting adjourned at 10:45 A.M.



Representative Edwin M. Hardy
Co-chairman



Betty Wickham
Committee Clerk

ATTACHMENTS:

Exhibit A - NOTICE OF THE MEETING

Exhibit B - AGENDA

Exhibit C - VISITOR REGISTRATION

Exhibit D - COMMITTEE REPORT for HB 1362

Exhibit E - HB 1362

Exhibit F - STAFF REPORT for HB 1362

Exhibit G - HB 1544

Exhibit H - HB 1400

Exhibit I - STAFF REPORT for HB 1400

Exhibit J - STATEMENT FROM NC VAN

Exhibit K - COMMISSION RECOMMENDATION

NORTH CAROLINA HOUSE OF REPRESENTATIVES COMMITTEE MEETING NOTICE

You are hereby notified that the Committee on JUDICIARY I will meet as follows:

DAY & DATE: **Tuesday, June 9, 1998**

TIME: **10:00 A.M.**

LOCATION: **Room 1228/1327 LB**

The following bills will be considered (Bill # & Short Title):

~~HB 1393 Clarify Intermediate Punishments-Sponsor-Representative Justus~~

✓ **HB 1362 Military Service Credit Sponsor - Representative Preston**

✓ **HB 1400 Victim and Witness Assistants Sponsor - Representative R. Hunter**

~~HB 1380 Cumberland ABC Enforcement-Sponsor-Representative Hurley~~

~~HB 1440 Conform Witness Travel Fees-Sponsor-Representative McCrary~~

~~HB 1321 Future of the Courts-Sponsor-Representative Daughtry~~

~~HB 1391 Judicial Appt./Voter Retention-Sponsor-Representative Daughtry~~

✓ **HB 1544 Raise Criminal Court Fees Sponsor - Representative Gardner**

Respectfully,

Representative N. Leo Daughtry, Co-Chairman
Representative Edwin Hardy, Co-Chairman

I hereby certify this notice was filed by the committee clerk at the following offices at
12:05 p.m. on June 4, 1998.

____Principal Clerk
____Reading Clerk - House Chamber

Betty Wickham, Committee Clerk

AGENDA

HOUSE COMMITTEE ON JUDICIARY I

June 9, 1998
Room 1228/1327 LB
10:00 AM

Representative N. Leo Daughtry, Co-Chairman
Representative Edwin (Sandy) Hardy, Co-Chairman

BILLS TO BE CONSIDERED:)

HB 1393	CLARIFY INTERMEDIATE PUNISHMENTS	Sponsor- Representative Justus
✓ HB 1362	MILITARY SERVICE CREDIT	Sponsor- Representative Preston
✓ HB 1400	VICTIM AND WITNESS ASSISTANTS	Sponsor- Representative R. Hunter
HB 1380	CUMBERLAND ABC ENFORCEMENT	Sponsor- Representative Hurley
HB 1440	CONFORM WITNESS TRAVEL FEES	Sponsor-Representative McCrary
HB 1321	FUTURE OF THE COURTS	Sponsor- Representative Daughtry
✓ HB 1391	JUDICIAL APPT./VOTER RETENTION	Sponsor-Representative Daughtry
✓ HB 1544	RAISE CRIMINAL COURT FEES	Sponsor-Representative Gardner

(*Proposed House Committee Substitute for HB 1317 AMEND CONTESTED CASE*
PROCEDURES/Sponsor-Representative C. Wilson, was placed in a subcommittee at June 4th MEETING for
member study [Rep. Arnold, Chr.; Blue, Braswell, Clary, Morgan & Sherrill])

ADJOURNMENT

VISITOR REGISTRATION SHEET

Judiciary I, June 9, 1998

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY
1. <u>John McMillan</u>	<u>Manning, Fultz + Thomas PA.</u>
2. <u>Patricia Leeder</u>	<u>NCAAC</u>
3. <u>Tom Keith</u>	<u>CONFERENCE OF DIST. ATTYS.</u>
4. <u>Tom Lock</u>	<u>Conf of DA's</u>
5. <u>Bryan J. J. J.</u>	<u>JB</u>
6. <u>Michael Crowell</u>	<u>NCAAC</u>
7. <u>Michael Crowell</u>	<u>COURTS FUTURES COMM'N</u>
8. <u>Lao Rubent</u>	<u>CYM</u>
9. <u>Robert</u>	<u>AOC</u>
10. <u>Anna Fuctor</u>	<u>ABC Commission</u>
11. <u>Amie Jo Bain</u>	<u>Smith Anderson</u>
22. <u>Natalie Skins</u>	<u>Charlotte Chamber</u>
23. <u>Jennifer Knox</u>	<u>NCBA</u>
24. <u>Jay Rouse</u>	<u>NCBentley</u>
25. <u>Suzanne Jones</u>	<u>Representative Eposito's intern</u>
26. <u>Henry Bradley</u>	<u>NCCBd</u>
27. <u>Will Hottel</u>	<u>DISC - NCK</u>
28. _____	_____
29. _____	_____
30. _____	_____
31. _____	_____

Jul

**1998 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative(s) **Daughtry and Hardy** for the Committee on **JUDICIARY I.**

☐ Committee Substitute for

H.B. 1362 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT TRANSFERRED SERVICE CREDITS MAY BE INCLUDED IN DETERMINING WHETHER A MEMBER OF THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM OR THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM MAY PURCHASE MILITARY SERVICE.

☐ With a favorable report.

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

☐ 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 1362

Short Title: Military Service Credit.

(Public)

Sponsors: Representatives Preston; Capps, Davis, Hall, Hardy, Hurley, Morris, Nichols, Sexton, Shubert, Smith, and Warner.

Referred to: Judiciary I, if favorable, Pensions and Retirement.

May 20, 1998

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE THAT TRANSFERRED SERVICE CREDITS MAY BE
3 INCLUDED IN DETERMINING WHETHER A MEMBER OF THE
4 TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM OR THE
5 LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM MAY
6 PURCHASE MILITARY SERVICE.

7 The General Assembly of North Carolina enacts:

8 Section 1. G.S. 128-26(j1) reads as rewritten:

9 "(j1) Notwithstanding any other provision of this Chapter, any member and any
10 retired member as herein described may purchase creditable service for service in the
11 Armed Forces of the United States, not otherwise allowed, by paying a total lump
12 sum payment determined as follows:

13 (1) For members who completed 10 years of membership service, and
14 retired members who completed 10 years of membership service
15 prior to retirement, and whose current membership began on or
16 prior to January 1, 1988, and who make such purchase within
17 three years after first becoming eligible, the cost shall be an
18 amount equal to the monthly compensation the member earned
19 when he first entered current membership service times the
20 employee contribution rate at that time times the months of service
21 to be purchased with sufficient interest added thereto so as to
22 equal one-half of the cost of allowing such service, plus an
23 administrative fee to be set by the Board of Trustees.

(2) For members who complete five years of membership service, and retired members who complete five years of membership service prior to retirement, and eligible members and retired members covered by paragraph (1) of this subdivision, whose current membership began on or before January 1, 1988, but who did not or do not make such purchase within three years after first becoming eligible, the cost shall be an amount equal to the full liability of the service credits calculated on the basis of the assumptions used for the purposes of the actuarial valuation of the System's liabilities and shall take into account the retirement allowance arising on account of the additional service credits commencing at the earliest age at which the member could retire on an unreduced allowance, as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the term "full liability" includes assumed post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service retirement allowance.

Creditable service allowed under this subdivision shall be only for the initial period of active duty in the Armed Forces of the United States up to the date the member was first eligible to be separated and released and for subsequent periods of active duty as required by the Armed Forces of the United States up to the date of first eligibility for separation or release, but shall not include periods of active duty in the Armed Forces of the United States creditable in any other retirement system except the national guard or any reserve component of the Armed Forces of the United States. Provided, creditable service may be allowed only for active duty in the Armed Forces of the United States of a member that resulted in a general or honorable discharge from duty. The member shall submit satisfactory evidence of the service claimed. For purposes of this subsection, membership service may include any membership or prior service credits transferred to this Retirement System pursuant to G.S. 128-24."

Section 2. G.S. 135-4(f)(7) reads as rewritten:

"(7) Notwithstanding any other provision of this Chapter, any member and any retired member as herein described may purchase creditable service in the Armed Forces of the United States, not otherwise allowed, by paying a total lump sum payment determined as follows:

a. For members who completed 10 years of membership service, and retired members who completed 10 years of membership service prior to retirement, whose current membership began on or prior to July 1, 1981, and who

1 make this purchase within three years after first becoming
2 eligible, the cost shall be an amount equal to the monthly
3 compensation the member earned when he first entered
4 current membership service times the employee contribution
5 rate at that time times the months of service to be
6 purchased, with sufficient interest added thereto so as to
7 equal one-half of the cost of allowing this service, plus an
8 administrative fee to be set by the Board of Trustees.

- 9 b. For members who complete five years of membership
10 service, and retired members who complete five years of
11 membership service prior to retirement, and eligible
12 members and retired members covered by paragraph a. of
13 this subdivision, whose current membership began on or
14 before July 1, 1981, but who did not or do not make this
15 purchase within three years after first becoming eligible, the
16 cost shall be an amount equal to the full liability of the
17 service credits calculated on the basis of the assumptions
18 used for the purposes of the actuarial valuation of the
19 System's liabilities and shall take into account the retirement
20 allowance arising on account of the additional service
21 credits commencing at the earliest age at which the member
22 could retire on an unreduced allowance, as determined by
23 the Board of Trustees upon the advice of the consulting
24 actuary, plus an administrative fee to be set by the Board of
25 Trustees. Notwithstanding the foregoing provisions of this
26 subsection that provide for the purchase of service credits,
27 the term "full liability" includes assumed post-retirement
28 allowance increases, as determined by the Board of Trustees,
29 from the earliest age at which a member could retire on an
30 unreduced service retirement allowance.

31 Creditable service allowed under this subdivision shall be only for the initial period
32 of active duty in the Armed Forces of the United States up to the date the member
33 was first eligible to be separated and released and for subsequent periods of active
34 duty as required by the Armed Forces of the United States up to the date of first
35 eligibility for separation or release, but shall not include periods of active duty in the
36 Armed Forces of the United States creditable in any other retirement system except
37 the national guard or any reserve component of the Armed Forces of the United
38 States. Provided, creditable service may be allowed only for active duty in the Armed
39 Forces of the United States of a member that resulted in a general or honorable
40 discharge from duty. The member shall submit satisfactory evidence of the service
41 claimed. For purposes of this subsection, membership service may include any
42 membership or prior service credits transferred to this Retirement System pursuant to
43 G.S. 135-18.1."

1 Section 3. This act is effective when it becomes law and applies to
2 persons retiring on or after that date.



North Carolina General Assembly
Legislative Services Office

George R. Hall, Legislative Services Officer
(919) 733-7044

J-I
June 9, 1998

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 8, 1998

MEMORANDUM

TO: Representatives Leo Daughtry and Edwin Hardy, Co-Chairs,
House Judiciary I Committee

FROM: Karen Cochrane Brown, Committee Co-Counsel *KCB*

RE: House Bill 1362 - Military Service Credit.

House Bill 1362 amends the laws governing the Local Governmental Employees' Retirement System and the Teachers' and State Employees' Retirement System, to allow members of both Systems to include transferred service credit in determining eligibility to purchase military service credit.

Under present law, a member who has completed at least five years of *membership service* is eligible to purchase service credit for periods of active duty service in the Armed Forces, at a cost equal to the full liability of the service credit. *Membership service* is defined in the law, as service as a teacher or State employee rendered while a member of the Retirement System. Thus, under present law, a person who transfers service from one system to the other is not entitled to have that service counted in the determination of eligibility to purchase military service credit.

This bill amends the military service provision to specifically state that, for this purpose, membership service may include transferred service credits. An actuarial note has been obtained by the Fiscal Research Division, as required by law, and is attached to this memorandum.

This act would become effective when it becomes law and apply to persons retiring on or after that date.

Attachment D



North Carolina General Assembly
Legislative Services Office

George R. Hall, Legislative Services Officer
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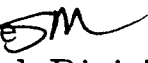
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(919) 733-6834

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Research Division
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300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

June 5, 1998

MEMORANDUM

TO: Representative Jean Preston

FROM: Stanley Moore 
Fiscal Research Division

SUBJECT: Actuarial Note House Bill 1362

Re: Allows transferred service to be included in determining whether a member of the Teachers' and State Employees' Retirement System or the Local Governmental Employees' Retirement System can purchase military service.

In accordance with North Carolina General Statute 120-114 and applicable Rules of the North Carolina Senate and House of Representatives, attached is a certified copy of an original actuarial note on the above subject as prepared by the General Assembly's Consulting Actuary. A certified copy of an original actuarial note on the same subject from the Plan Administrator's Consulting Actuary is also attached for your review.

cc: Chairman, House Committee on Pensions & Retirement
House Principal Clerk

Attachment(s):

- (1) Legislative Actuarial Note
- (2) Actuarial Note, Buck Consultants, June 5, 1998
- (3) Actuarial Note, Hartman & Associates, June 4, 1998

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE ACTUARIAL NOTE**

BILL NUMBER: House Bill 1362

SHORT TITLE: Military Service Credit

SPONSOR(S): Representative Preston

SYSTEM AFFECTED: Teachers' and State Employees' Retirement System and Local Governmental Employees' Retirement System

BILL SUMMARY: : Allows transferred service to be included in determining whether a member of the Teachers' and State Employees' Retirement System or the Local Governmental Employees' Retirement System can purchase military service.

EFFECTIVE DATE: When it becomes law.

ESTIMATED IMPACT

Retirement System Actuary: Buck Consultants estimates that there should be no cost to the Teachers' and State Employees' Retirement System or the Local Governmental Employees' Retirement System.

General Assembly Actuary: Hartman & Associates estimates that there should be no cost to the Teachers' and State Employees' Retirement System or the Local Governmental Employees' Retirement System.

ASSUMPTIONS AND METHODOLOGY: **Teacher's & State Employees' Retirement System** The cost estimates of the System's Actuary are based on the employee data, actuarial assumptions and actuarial methods used to prepare the December 31, 1996 actuarial valuation of the fund. The data included 263,920 active members with an annual payroll of \$6.845 billion and 88,605 retired members in receipt of annual pensions totaling \$1.096 billion. Significant actuarial assumptions used include (a) an investment return rate of 7.5%, (b) salary increase rate of 6.25%, (c) the George B. Buck Mortality Tables for deaths in service and after retirement and (d) rates of separation from active service based on System experience. The actuarial cost method used was the entry age normal method with open-end unfunded accrued liability and an frozen unfunded liquidation period of nine years. Detailed information concerning these assumptions and methods is shown in the actuary's report which is available upon request from Stanley Moore.

Local Governmental Employees' Retirement System: The cost estimates of the System's Actuary are based on the employee data, actuarial assumptions and actuarial methods used to prepare the December 31, 1996 actuarial valuation of the fund. The data included 104,454 active members with an annual payroll of \$2.594 billion and 24,028 retired members in receipt of annual pensions totaling \$227.7 million. Significant actuarial assumptions used include (a) an investment return rate of 7.5%, (b) salary increase rate of 6.25%, (c) the 1979 George B. Buck Mortality Tables for deaths in service and after retirement and (d) rates of separation from active service based on System experience. The actuarial cost method used was the projected benefit method with aggregate level normal cost and frozen accrued liability. Detailed information concerning these assumptions and methods is shown in the actuary's report which is available upon request from Stanley Moore.

SOURCES OF DATA: : Retirement System Actuary - Buck Consultant, Inc.
General Assembly Actuary - Hartman & Associates, LLC

FISCAL RESEARCH DIVISION: The above information is provided in accordance with North Carolina General Statute 120-114 and applicable Rules of the North Carolina Senate and House of Representatives.

(919) 733-4910

PREPARED BY: Stanley Moore *Stanley Moore*

APPROVED BY: Tom Covington

DATE: June 2, 1998

June 4, 1998

Mr. Mr. Jack Pruitt
Deputy Treasurer and Director
Retirement Systems Division
Department of State Treasurer
325 North Salisbury Street
Raleigh, North Carolina 27603-1385

Re: **House Bill 1362**

Dear Mr. Pruitt:

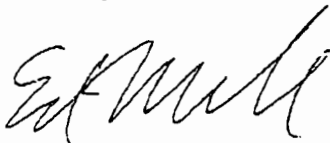
We have received your letter of May 27 regarding House Bill 1362 which affects the Teachers' and State Employees' Retirement System.

This legislation causes the military purchase provisions of G.S. 128-26(jl) and 135-4(f)(7) to comport with the withdrawn account purchase provisions of G.S. 128-26(i) and 135-4(k), and the out-of-state purchase provisions of G.S. 128-26(j2) and 135-4(11).

Inasmuch as this re-establishes a long-standing practice of the Retirement Systems Division, no additional liability would accrue against the Retirement System.

If we can be of further assistance with regard to this legislation, please do not hesitate to contact us.

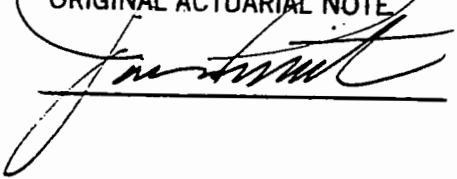
Sincerely,



Edward A. Macdonald
Principal and Consulting Actuary

EAM:mt
H:\HOME\ACT\NCTE\HB1362.DOC
JC 387 BC A33

THIS IS TO CERTIFY THAT THIS IS A
TRUE AND EXACT COPY OF AN
ORIGINAL ACTUARIAL NOTE



HARTMAN & ASSOCIATES, LLC

ACTUARIAL CONSULTING

MARK V. HARTMAN, FSA, MAAA, MCA, EA

Phone: (336) 731-4038
Fax: (336) 731-2583

668 Link Road
Lexington, NC 27295

May 26, 1998

Mr. Stanley Moore
Fiscal Research Division
North Carolina General Assembly
300 N. Salisbury Street
Raleigh, NC 27603-5925

Re: House Bill 1362: An Act to Provide that Transferred Service Credits May Be Included in Determining Whether a Member of the TSERS or LGERS May Purchase Military Service

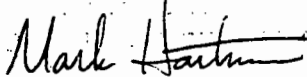
Dear Mr. Moore:

This bill amends G.S. 128-26(j1) and G.S. 135-4(f)(7) regarding purchase of creditable service for service in the Armed Forces of the United States. These amendments allow members of the Teachers' and State Employees' Retirement System and the Local Governmental Employees' Retirement System to include transferred service credits in determining eligibility to purchase military service credit.

To purchase this service, the member must make a lump-sum payment into the Annuity Savings Fund for the system of which the employee is currently a member. The inclusion of transferred service credits may allow additional members to purchase military service credits or other members to purchase credits sooner than otherwise available. The cost for purchasing this service will be the full actuarial cost of providing credit for such service, based on the assumptions used in the actuarial valuation of the retirement system liabilities, plus an administrative fee determined by the Board of Trustees. Based on this methodology, there should be no additional cost to either the Teachers' and State Employees' Retirement System or the Local Governmental Employees' Retirement System.

If you have any questions, please let me know.

Sincerely,



Mark V. Hartman, FSA, MAAA, MCA, EA
Consulting Actuary

MVH/jj

ACTUARIAL NOTE
True & Exact Copy of Original
Certified By: Stanley Moore Date: 6-5-98
Legislative Fiscal Research

J. I.
June 9, 1998

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 1544*

Short Title: Raise Criminal Court Fees.

(Public)

Sponsors: Representatives Gardner; Aldridge, Allen, Baker, Beall, Berry, Buchanan, Church, Crawford, Culpepper, Dickson, Fox, Goodwin, Howard, Hurley, Jarrell, Jeffus, McCombs, McCrary, Mitchell, Redwine, Russell, and Shubert.

Referred to: Judiciary I, if favorable, Finance.

May 27, 1998

1 A BILL TO BE ENTITLED
2 AN ACT TO INCREASE THE PROCESS AND FACILITIES FEES IN CRIMINAL
3 CASES IN THE GENERAL COURT OF JUSTICE.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 7A-304(a) reads as rewritten:

6 "(a) In every criminal case in the superior or district court, wherein the defendant
7 is convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed
8 against the prosecuting witness, the following costs shall be assessed and collected,
9 except that when the judgment imposes an active prison sentence, costs shall be
10 assessed and collected only when the judgment specifically so provides, and that no
11 costs may be assessed when a case is dismissed.

12 (1) For each arrest or personal service of criminal process, including
13 citations and subpoenas, the sum of ~~five dollars (\$5.00)~~, ten dollars
14 (\$10.00), to be remitted to the county wherein the arrest was made
15 or process was served, except that in those cases in which the
16 arrest was made or process served by a law-enforcement officer
17 employed by a municipality, the fee shall be paid to the
18 municipality employing the officer.

19 (2) For the use of the courtroom and related judicial facilities, the sum
20 of ~~six dollars (\$6.00)~~ twelve dollars (\$12.00) in the district court,
21 including cases before a magistrate, and the sum of ~~twenty-four~~

~~dollars (\$24.00)~~ thirty dollars (\$30.00) in superior court, to be remitted to the county in which the judgment is rendered. In all cases where the judgment is rendered in facilities provided by a municipality, the facilities fee shall be paid to the municipality. Funds derived from the facilities fees shall be used exclusively by the county or municipality for providing, maintaining, and constructing adequate courtroom and related judicial facilities, including: adequate space and furniture for judges, district attorneys, public defenders, magistrates, juries, and other court related personnel; office space, furniture and vaults for the clerk; jail and juvenile detention facilities; free parking for jurors; and a law library (including books) if one has heretofore been established or if the governing body hereafter decides to establish one. In the event the funds derived from the facilities fees exceed what is needed for these purposes, the county or municipality may, with the approval of the Administrative Officer of the Courts as to the amount, use any or all of the excess to retire outstanding indebtedness incurred in the construction of the facilities, or to reimburse the county or municipality for funds expended in constructing or renovating the facilities (without incurring any indebtedness) within a period of two years before or after the date a district court is established in such county, or to supplement the operations of the General Court of Justice in the county.

(3) For the retirement and insurance benefits of both State and local government law-enforcement officers, the sum of seven dollars and twenty-five cents (\$7.25), to be remitted to the State Treasurer. Fifty cents (50¢) of this sum shall be administered as is provided in Article 12C of Chapter 143 of the General Statutes. Five dollars and seventy-five cents (\$5.75) of this sum shall be administered as is provided in Article 12E of Chapter 143 of the General Statutes, with one dollar and twenty-five cents (\$1.25) being administered in accordance with the provisions of G.S. 143-166.50(e). One dollar (\$1.00) of this sum shall be administered as is provided in Article 12F of Chapter 143 of the General Statutes.

(3a) For the supplemental pension benefits of sheriffs, the sum of seventy-five cents (75¢) to be remitted to the Department of Justice and administered under the provisions of Article 12G of Chapter 143 of the General Statutes.

(4) For support of the General Court of Justice, the sum of sixty-one dollars (\$61.00) in the district court, including cases before a magistrate, and the sum of sixty-eight dollars (\$68.00) in the superior court, to be remitted to the State Treasurer.

(5) For using pretrial release services, the district or superior court judge shall, upon conviction, impose a fee of fifteen dollars

- 1 (\$15.00) to be remitted to the county providing the pretrial release
2 services. This cost shall be assessed and collected only if the
3 defendant had been accepted and released to the supervision of the
4 agency providing the pretrial release services.
- 5 (6) For support of the General Court of Justice, for the issuance by the
6 clerk of a report to the Division of Motor Vehicles pursuant to
7 G.S. 20-24.2, the sum of fifty dollars (\$50.00), to be remitted to the
8 State Treasurer. Upon a showing to the court that the defendant
9 failed to appear because of an error or omission of a judicial
10 official, a prosecutor, or a law-enforcement officer, the court shall
11 waive this fee."
- 12 Section 2. This act becomes effective July 1, 1998, and applies to fees
13 assessed or paid on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 1400

Short Title: Victim and Witness Assistants.

(Public)

Sponsors: Representatives R. Hunter; Baddour, Culpepper, Hardy, McCrary, Rayfield, and Sexton.

Referred to: Judiciary I.

May 21, 1998

1 A BILL TO BE ENTITLED
2 AN ACT TO RESTORE PROVISIONS THAT VICTIM AND WITNESS
3 ASSISTANTS SHALL ONLY PROVIDE SERVICES FOR VICTIMS OF CRIME
4 AND WITNESSES IN CRIMINAL CASES.

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 7A-347 reads as rewritten:

7 "~~§ 7A-347. Assistants for administrative and victim and witness services.~~ Victim and
8 witness assistants.

9 ~~Assistant for administrative and victim and witness services~~ Victim and witness
10 assistant positions are established under the district attorneys' offices. Each
11 prosecutorial district is allocated at least one ~~assistant for administrative and victim~~
12 ~~and witness services~~ victim and witness assistant to be employed by the district
13 attorney. The Administrative Office of the Courts shall allocate additional assistants
14 to prosecutorial districts on the basis of need and within available appropriations.
15 Each district attorney may also use any volunteer or other personnel to assist the
16 assistant. The assistant is responsible for coordinating efforts of the law-enforcement
17 and judicial systems to assure that each victim and witness is provided fair treatment
18 under Article 45 of Chapter 15A, Fair Treatment for Victims and Witnesses and shall
19 ~~also provide administrative and legal support to the district attorney's office.~~ be used
20 for no other purpose, except as may be approved pursuant to G.S. 7A-348."

21 Section 2. G.S. 7A-348 reads as rewritten:

22 "~~§ 7A-348. Training and supervision of assistants for administrative and victim and~~
23 ~~witness services.~~ victim and witness assistants.

1 Pursuant to the provisions of G.S. 7A-413, the Conference of District Attorneys
2 shall:

- 3 (1) Assist in establishing uniform statewide training for ~~assistants for~~
4 ~~administrative and victim and witness services; victim and witness~~
5 ~~services;~~
6 (2) Assist in the implementation and supervision of this program; and
7 (3) With the Director of the Administrative Office of the Courts,
8 report annually to the Joint Legislative Commission on
9 Governmental Operations on the implementation and effectiveness
10 of this act, beginning on or before February 1, 1987."

11 Section 3. G.S. 15A-826 reads as rewritten:

12 "~~§ 15A-826. Assistants for administrative and victim and witness services. Victim and~~
13 ~~witness assistants.~~

14 ~~In addition to providing administrative and legal support to the district attorney's~~
15 ~~office, assistants for administrative and victim and witness services Victim and witness~~
16 ~~assistants~~ are responsible for coordinating efforts within the law-enforcement and
17 judicial systems to assure that each victim and witness is treated in accordance with
18 this Article."

19 Section 4. This act becomes effective July 1, 1998.



North Carolina General Assembly
Legislative Services Office

George R. Hall, Legislative Services Officer
(919) 733-7044

*Judiciary I
June 9, 1998*

W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones Street
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Gerry F. Cohen, Director
Bill Drafting Division
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June 8, 1998

MEMORANDUM

TO: Representatives Leo Daughtry and Edwin Hardy, Co-Chairs,
House Judiciary I Committee

FROM: Karen Cochrane Brown, Committee Co-Counsel *KCB*

RE: House Bill 1400 - Victim and Witness Assistants.

House Bill 1400 is a recommendation of the North Carolina Courts Commission. This bill restores the law to its pre-1997 status to provide that victim and witness assistants shall only provide services for victims of crime and witnesses in criminal cases.

During the 1997 Session, the General Assembly amended the law to provide that victim and witness assistants would provide administrative and legal support to the district attorney's office, in addition to the assistants' duties to assure fair treatment for victims and witnesses. The Courts Commission found that the service provided by victim and witness assistants is invaluable to victims frustrated by an unfamiliar and often intimidating legal process. The Commission recognized the tremendous workload of district attorneys across the State, but found that victim and witness assistants should not be asked to serve as administrative staff to district attorneys. These additional administrative duties would only weaken the ability of victim and witness assistants to provide the necessary services to the State's crime victims.

This act would become effective July 1, 1998.

Attachment F

Judiciary I
June 9, 1998

Motion – Ange/Purvis: Moved to support the following resolution:

WHEREAS, over 265,000 North Carolinians are victimized by crime each year, and of that number, over 45,700 are victims of violent crime;

WHEREAS, on November 5, 1996, North Carolinians voted in overwhelming majority to amend the state constitution to provide for basic protections for crime victims; and

WHEREAS, the rights addressed in the proposed enabling legislation HB665/SB763 include: Victims of crime shall be entitled to right to be informed of and be present at all public hearings relating to their case, to be heard at sentencing, to receive restitution, to confer with the prosecution, and to be informed of any change of the status of the offender; and

WHEREAS, at the end of this past session of the General Assembly, a provision was put in the budget that changed the status of victim witness assistants from being dedicated staff for victim and witness services to support staff; and

WHEREAS, although NC-VAN recognizes the tremendous workload the District Attorneys have in administrative matters, this change is viewed as step backward for victims and victim services in North Carolina; and

WHEREAS, in light of the passage of Victim Constitutional Amendment, not having these dedicated positions in the district attorney's offices is detrimental to victim services; and

WHEREAS, not having these dedicated positions with specific contact persons will cause further frustration and confusion to violent crime victims; and

WHEREAS, this change in the status of victim witness assistants was not fully thought through, nor was it discussed in any committee of the General Assembly;

RESOLVED, by NC-VAN to re-establish the definition of the victim witness assistants as dedicated providers for victim services; and

FURTHER RESOLVED, NC-VAN requests the General Assembly in the short session convening in May amend the statutes to re-establish victim witness assistants as dedicated individuals providing victim services in North Carolina.

Motion carried unanimously.

Life without Parole

Eddins reported that he has not found a bill that has relevance to change the current instruction to the jury about review by a judge in 20 years. Therefore, "life" doesn't mean life, and the jury is not made

Attachment 6

aware of this when deliberating on a sentence. Coman cautioned the board that we should meet with Bill Farrell, Chief Deputy, Special Litigation section in the Attorney General's Office. He noted that we do not want to create Federal Habeas relief for death penalty defendants. Coman suggested before the Board takes any action that a meeting should take place with Ferrell, Eddins, Smith and himself.

Future of the Courts

Hodgin opened the discussion on the recommendations of the Future of the Courts Commission and listed a number of concerns with some of the recommendations relating to appointment of judges and the reduction in the number of district attorneys offices from 39 to 16. Following discussion on the issue, Eddins suggested that NC-VAN keep close eye on the development of this committee and its recommendations and if there was any movement, the board should reconvene to discuss steps NC-VAN should take.

Without further business, the meeting was adjourned at 3:00 PM.

Respectfully submitted,

Retha J. Lee, Secretary

Judiciary I
June 9, 1998

of the various components of the court system. It is a reasonable request. The Commission recognizes the competing demands for resources inherent in the appropriations process, but it knows of no function of government that is more basic to a civilized society than its justice system.

RECOMENDATION 3: The Commission recommends that the 1998 Regular Session of the General Assembly enact "A BILL TO BE ENTITLED AN ACT TO RESTORE PROVISIONS THAT VICTIM AND WITNESS ASSISTANTS SHALL ONLY PROVIDE SERVICES FOR VICTIMS OF CRIME AND WITNESSES IN CRIMINAL CASES" (Appendix C)

During the 1997 Session of the General Assembly, Section 18.7 of Senate Bill 352 (the Budget Bill) provided that victim and witness assistants would provide administrative and legal support to the district attorney's office, in addition to the assistants' duties to assure fair treatment for victims and witnesses. In fact, victim and witness assistants were renamed "assistants for administrative and victim and witness services." Prior to this change, victim and witness assistants provide services solely for crime victims and witnesses in criminal cases. Ms. Catherine Smith, Executive Director, North Carolina Victim Assistance Network (NC-VAN), presented a resolution adopted by VAN requesting the General Assembly to "re-establish victim and witness assistants as dedicated individuals providing victim services in North Carolina." As noted in the resolution, not having dedicated positions for victim and witness services will cause further confusion for victims of violent crime. The service provided by victim and witness assistants is invaluable to victims frustrated by an unfamiliar and often intimidating legal process. The Commission recognizes the tremendous workload of district attorneys across this State. However, the Commission agrees that victim and witness assistants should not be asked to serve as administrative staff to district attorneys. These additional administrative duties would only weaken the ability of victim and witness assistants to provide necessary services to the State's crime victims.

RECOMMENDATION 4: The Commission recommends that the 1998 Regular Session of the General Assembly enact "A BILL TO BE ENTITLED AN ACT TO AMEND THE SMALL CLAIMS PROCEDURE TO CLARIFY THAT THE DISTRICT COURT HAS AUTHORITY TO HEAR CERTAIN MOTIONS FOR RELIEF FROM MAGISTRATES' JUDGMENTS." (Appendix D)

Rule 60(b)(1) of the Rules of Civil Procedure authorizes the court to set aside a judgment or order for mistake, inadvertence, surprise, or excusable neglect. Rule 60(b)(2) through (6) authorizes the court to set aside a judgment or order for newly discovered evidence, fraud, a void judgment, a satisfied or discharged judgment, or for any other reason justifying relief. G.S. 7A-228 provides that "with the consent of the chief district court judge, a magistrate may set aside the order or judgment [of another magistrate] for mistake or excusable neglect pursuant to Rule 60(b)(1) and order a new trial before a magistrate." The common understanding was that district court judges could also hear a motion under Rule 60(b)(1) whether or not the chief judge had authorized magistrates to hear these motions. However, in Stephens v. Koenig, 119 N.C. App. 323 (1995), the North Carolina Court of Appeals construed the statute as excluding district court judges from hearing any Rule 60(b) motions to set aside a magistrate's judgment. Since, under G.S. 7A-228, a magistrate may only be authorized to hear a motion pursuant to subsection (1) of Rule 60(b), this ruling effectively leaves no judicial official who is authorized to hear a motion pursuant to Rule 60(b)(2) through (6) to set aside a magistrate's judgment. For a judgment that is void under Rule 60(b)(2) through (6), the defendant's sole remedy would be to appeal. If the ten day period to appeal a magistrate's judgment has expired, the defendant may be left without recourse. For example, a defendant who was never properly served in a small claims case and, therefore, never aware of the magistrate's judgment may be unable to challenge the judgment after the expiration of ten days.

The Commission recommends that, in light of the decision by the Court of Appeals, G.S. 7A-228 be clarified to authorize district court judges to hear any Rule 60(b) motion, whether or not magistrates are authorized to hear a motion under Rule 60(b)(1).

Attachment 14

MINUTES
HOUSE JUDICIARY I COMMITTEE

June 11, 1998

The House Committee on JUDICIARY I met in Room 1228/1327 of the Legislative Building on June 11, 1998 at 10:00 A.M. Representative Daughtry, Co-Chairman, presided at the meeting. Other members present were: Representative Hardy, Co-Chairman, and Representative(s) Braswell, Alexander, Arnold, Blue, Capps, Clary, Crawford, Hall, Hardaway, Hurley, Jeffus, Justus, Michaux, Miller, Sherrill and Thompson. Staff Counsels Steven J. Rose and Karen C-Brown were present.

The following bills were considered by the Committee:

HB-1440 AN ACT TO RECONFORM THE MILEAGE REIMBURSEMENT FOR OUT-OF-STATE WITNESSES TO THAT RECEIVED BY IN-STATE WITNESSES AND STATE EMPLOYEES.

Representative Clary moved the adoption of an amendment for purposes of discussion. Motion passed.

Ms. C-Brown said this bill was a recommendation of the Courts Commission and it provides that out-of-state witnesses will be compensated for travel and for overnight stays at the rate which is authorized for state employees. Prior to 1971 this had been the case.

She said the amendment clarifies the bill so that out-of-state witnesses will be compensated at the rate of 25 cents a mile. (See Attachment F.)

Representative Michaux asked if this applies to any out-of-state witness in a criminal trial. Ms. C-Brown answered in the affirmative.

The amendment passed. Representative Arnold moved that the amendment be rolled into a Committee Substitute and re-referred to Appropriations. The motion passed.

HB-1380 AN ACT TO AUTHORIZE LOCAL LAW ENFORCEMENT OFFICERS' ENTRY INTO ABC-LICENSED PREMISES IN CUMBERLAND COUNTY.

Representative Capps presented an amendment to add Wake Country to the bill. (See Attachment K.)

Representative Hurley explained that the original bill has the unanimous support of the Cumberland County delegation. Presently, ALE agents have authority to enter and

remain in private clubs with ABC permits. The bill enables local law enforcement officers to pass through those establishments which have ABC permits on their regular beat. The exemptions are listed in part (b) of the bill. The bill excludes residential private clubs, restaurants, and sports clubs as defined in the statutes.

Representative Michaux asked what authority this bill gives to local police. Mr. Ross said it gives the authority to enforce statutes but not regulations. Currently, by statute, ABC officers have the right to enter and remain on the premises but law enforcement officers can be asked to leave unless they have a search warrant or have reason to believe a crime is being committed.

Representative Michaux wondered if a club owner might bring an action against the local police officers for disparate treatment. Mr. Ross said this was a valid question.

Ann Fulton, attorney for the ABC Commission, said when the ABC laws were rewritten in 1981 there was a provision which authorized any local law enforcement officer to inspect the operation of any ABC licensed business. She has heard that the primary difficulty is that law enforcement officers can be asked to leave by the owner.

Representative Capps said he talked to an ALE enforcement officer in Wake County yesterday who said he had no problems with the bill. The problem for Raleigh police is that they can go into an establishment but have to have something to show that there is a complaint before they could make a charge. Otherwise, a charge may not stand.

Representative Arnold said that he thought the bill was a good one and wondered if it could be extended statewide. Representative Hurley had no problem with that. Representative Arnold suggested that the bill be revisited at a later date.

Representative Braswell wanted to know why it was important to exclude residential private clubs and sports clubs. Representative Hurley thought the reason was that they were trying to target places where criminal activity is likely to occur. In a followup question Representative Braswell asked about the difference between a residential private club and a private club.

Ann Fulton said that a residential private club is one that is open only to nearby residents and their guests and a sports club has a sports facility as well.

Representative Hall wanted to know what evidence there is of criminal activity. Representative Hurley enumerated some examples.

Representative Daughtry wondered if an ALE officer can go into a club and stay all night if he wants to but a regular officer can only stay if he has reason to believe that there is probable cause of criminal activity.

Ms. Fulton said that a local law enforcement would have more trouble entering if not in an undercover capacity. She said that under this bill the local enforcement officers could not be asked to leave. They would have authority to enforce the statutes but not the rules.

Representative Daughtry asked if they would have the same authority as the ALE officers as to the criminal but not the civil laws. The answer was in the affirmative.

Representative Clary presented an amendment to delete the word "officer" on page 1, line 10, and substitute the word "officers". (See Attachment L.) The motion passed.

Representative Blue stated that if they put Wake County in the bill it will be subject to all the rules that apply to local bills in the short session and he thought that the Wake County delegation needed to meet on this.

Representative Capps said he had talked with a couple members but had not been able to get the delegation together. He said Raleigh has had a lot of trouble with a couple of clubs. He said he faxed the bill to the Raleigh police chief and the police attorney. The Chief requested that Wake County be added to the bill. Representative Capps withdrew his amendment, pending the decision of the Wake County delegation.

Mr. William Potter, representing a group of private clubs, said the bill allows local law enforcement officers to pass through establishments that have regular ABC permits and stay there, even though they have no knowledge of anything going on. He was told that the Wake County ABC law enforcement officers are opposed to this bill.

Representative Arnold asked if any of these clubs hire off duty police officers. Mr. Potter said they did but these officers usually stayed outside.

Representative Capps said that because of the limited number of police officers their goal is to go to places where they know there are problems.

Reverend Johnny Henderson of the Christian Action League spoke in favor of the bill. He said there are over 15,000 alcohol license sales outlets but there are only 114 ALE agents across North Carolina. Because of the limited number of ALE agents he would like to see qualified police officers be able to go in and monitor the situation.

Representative Clary spoke in favor of the bill and made a motion favorable to the committee substitute and unfavorable to the original bill. The motion carried.

The meeting adjourned at 10:50 A.M.

Representative N. Leo Daughtry
Co-chairman



Betty Wickham
Committee Clerk

ATTACHMENTS

Exhibit A - NOTICE OF THE MEETING

Exhibit B - AGENDA

Exhibit C - VISITOR Registration

Exhibit D - COMMITTEE REPORT for HB1440

Exhibit E - PROPOSED COMMITTEE SUBSTITUTE for HB1440

Exhibit F - PROPOSED AMENDMENT for HB1440

Exhibit G - HB1440

Exhibit H - STAFF REPORT for HB1440

Exhibit I - COMMITTEE REPORT for HB1380

Exhibit J - PROPOSED COMMITTEE SUBSTITUTE for HB1380

Exhibit K - PROPOSED AMENDMENT for HB1380 (Capps)

Exhibit L - PROPOSED AMENDMENT for HB1380 (Clary)

Exhibit M - HB1380

Exhibit N - STAFF REPORT for HB1380

Exhibit O - MISCELLANEOUS INFORMATION FROM STAFF

NORTH CAROLINA HOUSE OF REPRESENTATIVES COMMITTEE MEETING NOTICE

You are hereby notified that the Committee on **JUDICIARY I** will meet as follows:

DAY & DATE: **Thursday, June 11, 1998**

TIME: **10:00 AM**

LOCATION: **Room 1228/1327 LB**

The following bills will be considered:

✓ HB 1380	Cumberland ABC Enforcement	Sponsor-Rep. Hurley
HB 1393	Clarify Intermediate Punishments	Sponsor-Rep. Justus
✓ HB 1400	Victim and Witness Assistants	Sponsor-Rep. R. Hunter
✓ HB 1440	Conform Witness Travel Fees	Sponsor-Rep. McCrary

Respectfully,

Representative N. Leo Daughtry, Co-Chairman
Representative Edwin Hardy, Co-Chairman

I hereby certify this notice was filed by the committee clerk at the following offices at
2:30 P.M., June 9, 1998.

____Principal Clerk
____Reading Clerk - House Chamber

Jackie Hamby, Committee Clerk
Bernice Bullard, Committee Clerk
Betty Wickham, Committee Clerk

AGENDA

HOUSE COMMITTEE ON JUDICIARY I

June 11, 1998
Room 1228/1327 LB
10:00 AM

Representative N. Leo Daughtry, Co-Chairman
Representative Edwin (Sandy) Hardy, Co-Chairman

BILLS TO BE CONSIDERED:)

HB 1400 **VICTIM AND WITNESS ASSISTANTS** Sponsor- Representative R. Hunter
(HB 1400 was discussed at June 9th Meeting)

✓ HB 1440 **CONFORM WITNESS TRAVEL FEES** Sponsor-Representative McCrary

HB 1393 **CLARIFY INTERMEDIATE PUNISHMENTS** Sponsor- Representative Justus

✓ HB 1380 **CUMBERLAND ABC ENFORCEMENT** Sponsor- Representative Hurlley

*(Proposed House Committee Substitute for HB 1317 **AMEND CONTESTED CASE PROCEDURES**/Sponsor-Representative C. Wilson, was placed in a subcommittee at June 4th Meeting for member study [Rep. Arnold, Chr.; Blue, Braswell, Clary, Morgan & Sherrill])*

*(HB 1544 - **RAISE CRIMINAL COURT FEES** / Sponsor-Representative Preston, was placed in a subcommittee for study at June 9th Meeting [Rep. Hall, Chr.; Clary, Ellis, R. Hunter, Michaux].)*

ADJOURNMENT

VISITOR REGISTRATION SHEET

Judiciary I. June 11, 1998

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY
1. <u>MICHAEL CROWELL</u>	<u>NC BEER & WINE WHOLESALERS</u>
2. <u>John Miller</u>	<u>Manning Feltus & Smith PA</u>
3. <u>Ann Fultox</u>	<u>ABC Commission</u>
4. <u>WH POTTER JR</u>	<u>ATSEUS</u>
5. <u>PE Powell</u>	<u>ABC</u>
6. <u>Bill Scoggin</u>	<u>NC BAK ASSOC</u>
7. <u>Joseph Lutz</u>	<u>NCBA</u>
8. <u>Charles Cromer</u>	<u>NC Academy of Trial Lawyers</u>
9. <u>Lynda B. Allen</u>	<u>Clerk of Court, Randolph Co.</u>
10. <u>Richard E Hunt</u>	<u>Clerk of Court - Warren Co.</u>
11. <u>Katherine Pruitt</u>	<u>NC-VAN - Pitt County</u>
22. <u>Ann Chambo</u>	<u>NC-VAN Pitt Co.</u>
23. <u>Sandra Spell</u>	<u>NC-VAN - Pitt County</u>
24. <u>Michelle SLOH</u>	<u>NC-VAN - PITH CO.</u>
25. _____	_____
26. _____	_____
27. _____	_____
28. _____	_____
29. _____	_____
30. _____	_____
31. _____	_____

J. I
free copy

**1998 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative(s) **Daughtry and Hardy** for the Committee on **JUDICIARY I.**

☐ Committee Substitute for

H.B. 1440 A BILL TO BE ENTITLED AN ACT TO RECONFORM THE MILEAGE
REIMBURSEMENT FOR OUT-OF-STATE WITNESSES TO THAT RECEIVED BY IN-
STATE WITNESSES AND 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, unfavorable as to original bill, and *be re-referred to Comm. 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 1440
Proposed Committee Substitute H1440-PCS6448

Short Title: Conform Witness Travel Fees.

(Public)

Sponsors:

Referred to:

May 25, 1998

- 1 A BILL TO BE ENTITLED
2 AN ACT TO RECONFORM THE MILEAGE REIMBURSEMENT FOR OUT-OF-
3 STATE WITNESSES TO THAT RECEIVED BY IN-STATE WITNESSES AND
4 STATE EMPLOYEES.
5 The General Assembly of North Carolina enacts:
6 Section 1. G.S. 7A-314(c) reads as rewritten:
7 "(c) A witness who resides in a state other than North Carolina and who appears
8 for the purpose of testifying in a criminal action and proves his attendance may be
9 compensated at the rate of ~~ten cents (10¢) a mile~~ allowed to State officers and
10 employees by subdivisions (1) and (2) of G.S. 138-6(a) for one round-trip from his
11 place of residence to the place of appearance, and five dollars (\$5.00) for each day
12 that he is required to travel and attend as a witness, upon order of the court based
13 upon a finding that the person was a necessary witness. If such a witness is required
14 to appear more than one day, he is also entitled to reimbursement for actual expenses
15 incurred for lodging and meals, not to exceed the maximum currently authorized for
16 State employees."
17 Section 2. G.S. 15A-813 reads as rewritten:
18 "§ 15A-813. Witness from another state summoned to testify in this State.
19 If a person in any state which by its laws has made provision for commanding
20 persons within its borders to attend and testify in criminal prosecutions, or grand jury
21 investigations commenced or about to commence in this State, is a material witness in
22 a prosecution pending in a court of record in this State, or in a grand jury
23 investigation which has commenced or is about to commence, a judge of such court

1 may issue a certificate under the seal of the court, stating these facts and specifying
2 the number of days the witness will be required. Said certificate may include a
3 recommendation that the witness be taken into immediate custody and delivered to
4 an officer of this State to assure his attendance in this State. This certificate shall be
5 presented to a judge of a court of record in the county in which the witness is found.

6 If the witness is summoned to attend and testify in this State he shall be ~~tendered~~
7 ~~the sum of ten cents (10¢) a mile~~ compensated at the rate allowed to State officers
8 and employees by subdivisions (1) and (2) of G.S. 138-6(a) for each mile by the
9 ordinary traveled route to and from the court where the prosecution is pending, and
10 five dollars (\$5.00) for each day that he is required to travel and attend as a witness.
11 A witness who has appeared in accordance with the provisions of the summons shall
12 not be required to remain within this State a longer period of time than the period
13 mentioned in the certificate unless otherwise ordered by the court. If such a witness
14 is required to appear more than one day, he is also entitled to reimbursement for
15 actual expenses incurred for lodging and meals, not to exceed the maximum currently
16 authorized for State employees when traveling in the State. If such witness, after
17 coming into this State, fails without good cause to attend and testify as directed in the
18 summons, he shall be punished in the manner provided for the punishment of any
19 witness who disobeys a summons issued from a court of record in this State."

20 Section 3. This act is effective when it becomes law and applies to all
21 out-of-state witness travel expenses incurred on or after that date.



*File record
entered into a
P.C.B. for HB 1440*

*J-1
June 11, 1998*

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1440

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)
Page 1 of ____

H1440-ARO-001

Date _____, 1998

Comm. Sub. []
Amends Title []

1 moves to amend the bill on page 1, line 9-10,
2 by rewriting the lines to read:
3
4 "compensated at the rate of ~~ten cents (10c)~~ a mile allowed to State
5 officers and employees by subdivisions (1) and (2) of G.S. 138-6(a)
6 for one round trip from his place of residence to the place of
7 appearance,"
8
9

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 1440

Short Title: Conform Witness Travel Fees.

(Public)

Sponsors: Representatives McCrary and R. Hunter.

Referred to: Judiciary I.

May 25, 1998

1 A BILL TO BE ENTITLED
2 AN ACT TO RECONFORM THE MILEAGE REIMBURSEMENT FOR OUT-OF-
3 STATE WITNESSES TO THAT RECEIVED BY IN-STATE WITNESSES AND
4 STATE EMPLOYEES.

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 7A-314(c) reads as rewritten:

7 "(c) A witness who resides in a state other than North Carolina and who appears
8 for the purpose of testifying in a criminal action and proves his attendance may be
9 compensated at the rate of ~~ten cents (10¢)~~ a mile currently authorized for State
10 employees for one round-trip from his place of residence to the place of appearance,
11 and five dollars (\$5.00) for each day that he is required to travel and attend as a
12 witness, upon order of the court based upon a finding that the person was a necessary
13 witness. If such a witness is required to appear more than one day, he is also entitled
14 to reimbursement for actual expenses incurred for lodging and meals, not to exceed
15 the maximum currently authorized for State employees."

16 Section 2. G.S. 15A-813 reads as rewritten:

17 "§ 15A-813. Witness from another state summoned to testify in this State.

18 If a person in any state which by its laws has made provision for commanding
19 persons within its borders to attend and testify in criminal prosecutions, or grand jury
20 investigations commenced or about to commence in this State, is a material witness in
21 a prosecution pending in a court of record in this State, or in a grand jury
22 investigation which has commenced or is about to commence, a judge of such court
23 may issue a certificate under the seal of the court, stating these facts and specifying
24 the number of days the witness will be required. Said certificate may include a

1 recommendation that the witness be taken into immediate custody and delivered to
2 an officer of this State to assure his attendance in this State. This certificate shall be
3 presented to a judge of a court of record in the county in which the witness is found.

4 If the witness is summoned to attend and testify in this State he shall be ~~tendered~~
5 ~~the sum of ten cents (10¢) a mile~~ compensated at the rate currently authorized for
6 State employees for each mile by the ordinary traveled route to and from the court
7 where the prosecution is pending, and five dollars (\$5.00) for each day that he is
8 required to travel and attend as a witness. A witness who has appeared in accordance
9 with the provisions of the summons shall not be required to remain within this State
10 a longer period of time than the period mentioned in the certificate unless otherwise
11 ordered by the court. If such a witness is required to appear more than one day, he
12 is also entitled to reimbursement for actual expenses incurred for lodging and meals,
13 not to exceed the maximum currently authorized for State employees when traveling
14 in the State. If such witness, after coming into this State, fails without good cause to
15 attend and testify as directed in the summons, he shall be punished in the manner
16 provided for the punishment of any witness who disobeys a summons issued from a
17 court of record in this State."

18 Section 3. This act is effective when it becomes law and applies to all
19 out-of-state witness travel expenses incurred on or after that date.



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June 3, 1998

MEMORANDUM

TO: Representatives Leo Daughtry and Edwin Hardy, Co-Chairs,
House Judiciary I Committee

FROM: Karen Cochrane Brown, Committee Co-Counsel *KCB*

RE: House Bill 1440 - Conform Witness Travel Fees.

This bill is a recommendation of the North Carolina Courts Commission. The bill amends G.S. 7A-314(c) to provide that out-of-state witnesses may be compensated for travel at the rate authorized for State employees. It also amends G.S. 15A-813 to make the same change and to provide that an out-of-state witness who is required to appear more than one day is entitled to reimbursement for actual expenditures incurred for lodging and meals, not to exceed the rate authorized for State employees.

The Courts Commission found that before 1971, G.S. 7A-314 made no distinction in mileage reimbursement between in-state and out-of-state witnesses, as all witnesses were reimbursed at the same rate as State employees. Since then the mileage rate has been increased for State employees and by extension, in-state witnesses. By inadvertence, the out-of-state witness rate had not increased accordingly. The Commission recommended that the rate of reimbursement for out-of-state witnesses who testify in North Carolina cases be returned to a rate equivalent to that paid to in-state witnesses and State employees.

The act would become effective when it becomes law and apply to all out-of-state witness travel expenses incurred on or after that date.

**1998 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative(s) **Daughtry and Hardy** for the Committee on **JUDICIARY I.**

- ☐ Committee Substitute for
H.B. 1380 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE LOCAL LAW
ENFORCEMENT OFFICERS' ENTRY INTO ABC-LICENSED PREMISES IN
CUMBERLAND 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)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 1380
Proposed Committee Substitute H1380-PCSA490-RL

Short Title: Cumberland ABC Enforcement.

(Local)

Sponsors:

Referred to:

May 21, 1998

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE LOCAL LAW ENFORCEMENT OFFICERS' ENTRY
3 INTO ABC-LICENSED PREMISES IN CUMBERLAND COUNTY.

4 The General Assembly of North Carolina enacts:

5 Section 1. Article 5 of Chapter 18B of the General Statutes is amended
6 by adding a new section to read:

7 "**§ 18B-506. Entry by other local officers.**

8 (a) Notwithstanding any other provision of this Article, local law enforcement
9 officers may enter any licensed premises for which an ABC permit has been issued.
10 Officers may, pursuant to this section, enter at any time that the premises are open
11 for business and may take enforcement action for any violation of law observed while
12 on the premises.

13 (b) An entry by officers of a local law enforcement agency made pursuant to this
14 section shall not include any of the following:

15 (1) An examination of the books or records of the permittee.

16 (2) Enforcement of ABC administrative regulations.

17 (3) The premises of a residential private club as defined in G.S. 18B-
18 1000(5a), a restaurant as defined in G.S. 18B-1000(6), or a sports
19 club as defined in G.S. 18B-1000(8).

20 (c) Refusal by a permittee or by any employee of a permittee, to allow officers to
21 enter the premises as authorized by subsection (a) of this section shall be cause for
22 revocation, suspension, or other action against the permit of the permittee as

1 provided in G.S. 18B-104. It shall be a Class 2 misdemeanor by any person to resist
2 or obstruct an officer attempting to make a lawful entry pursuant to this section."

3 Section 2. This act applies to Cumberland County only.

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



file record
amend #12

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1380

AMENDMENT NO. 2
(to be filled in by
Principal Clerk)
Page 1 of 1

H1380-ARL-001

Date _____, 1998

Comm. Sub. []
Amends Title []

Representative

- 1 moves to amend the bill on page 1, line 10,
2 by deleting the word "Officer" and substituting the word "Officers".
3

SIGNED Clary
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 1380

Short Title: Cumberland ABC Enforcement.

(Local)

Sponsors: Representatives Hurley; Capps, Davis, Kinney, McAllister, Morris, Nye, Warner, C. Wilson, and Yongue.

Referred to: Judiciary I.

May 21, 1998

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE LOCAL LAW ENFORCEMENT OFFICERS' ENTRY
3 INTO ABC-LICENSED PREMISES IN CUMBERLAND COUNTY.

4 The General Assembly of North Carolina enacts:

5 Section 1. Article 5 of Chapter 18B of the General Statutes is amended
6 by adding a new section to read:

7 "**§ 18B-506. Entry by other local officers.**

8 (a) Notwithstanding any other provision of this Article, local law enforcement
9 officers may enter any licensed premises for which an ABC permit has been issued.
10 Officer may, pursuant to this section, enter at any time that the premises are open for
11 business and may take enforcement action for any violation of law observed while on
12 the premises.

13 (b) An entry by officers of a local law enforcement agency made pursuant to this
14 section shall not include any of the following:

15 (1) An examination of the books or records of the permittee.
16 (2) Enforcement of ABC administrative regulations.
17 (3) The premises of a residential private club as defined in G.S. 18B-
18 1000(5a), a restaurant as defined in G.S. 18B-1000(6), or a sports
19 club as defined in G.S. 18B-1000(8).

20 (c) Refusal by a permittee or by any employee of a permittee, to allow officers to
21 enter the premises as authorized by subsection (a) of this section shall be cause for
22 revocation, suspension, or other action against the permit of the permittee as

1 provided in G.S. 18B-104. It shall be a Class 2 misdemeanor by any person to resist
2 or obstruct an officer attempting to make a lawful entry pursuant to this section."

3 Section 2. This act applies to Cumberland County only.

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



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June 8, 1998

MEMORANDUM

TO: House Judiciary I Committee

FROM:  Steven Rose, Committee Counsel

RE: House Bill 1380; Cumberland law enforcement entry into ABC licensed premises

House Bill 1380 is a local bill that provides authority for local law enforcement officers in Cumberland County to enter any Alcoholic Beverage Control Commission permitted premises and take enforcement action for any violation of law observed on the premises.

The authority does not include examination of books and records, enforcement of ABC administrative regulations, or entry onto premises of residential private clubs, restaurants, or sports clubs.

Refusal by a permittee or an employee to allow law enforcement officers to enter premises under this statute is cause for revocation, suspension, or other action against the permit. It is a Class 2 misdemeanor to resist or obstruct an officer attempting to make a lawful entry pursuant to this act.

The act applies only in Cumberland County and is effective when it become law

H1380-SMRL-001

§§ 18B-407 through 18B-499: Reserved for future codification purposes.

ARTICLE 5.

Law Enforcement.

§ 18B-500. Alcohol law-enforcement agents.

(a) Appointment. — The Secretary of Crime Control and Public Safety shall appoint alcohol law-enforcement agents and other enforcement personnel. The Secretary of Crime Control and Public Safety may also appoint regular employees of the Commission as alcohol law-enforcement agents. Alcohol law-enforcement agents shall be designated as "alcohol law-enforcement agents".

(b) **Subject Matter Jurisdiction.** — After taking the oath prescribed for a peace officer, an alcohol law-enforcement agent shall have authority to arrest and take other investigatory and enforcement actions for any criminal offense. The primary responsibility of an agent shall be enforcement of the ABC laws and Article 5 of Chapter 90 (The Controlled Substances Act); however, an agent may perform any law-enforcement duty assigned by the Secretary of Crime Control and Public Safety or the Governor.

(c) Territorial Jurisdiction. — An alcohol law-enforcement agent is a State officer with jurisdiction throughout the State.

(d) Service of Commission Orders. — Alcohol law-enforcement agents may serve and execute notices, orders, or demands issued by the Commission for the surrender of permits or relating to any administrative proceeding. While serving and executing such notices, orders, or demands, alcohol law-enforcement agents shall have all the power and authority possessed by law-enforcement officers when executing an arrest warrant.

(e) Discharge. — Alcohol law-enforcement agents are subject to the discharge provisions of G.S. 18B-202.

(f) Repealed by Session Laws 1995, c. 507, s. 6.2(a), effective July 1, 1995. (1939, c. 158, s. 514; 1943, c. 400, s. 6; 1949, c. 974, ss. 11, 14; c. 1251, s. 4; 1951, c. 1056, s. 1; c. 1186, ss. 1, 2; 1953, c. 1207, ss. 2-4; 1957, c. 1440; 1961, c. 645; 1963, c. 426, ss. 1, 2, 4, 5, 12; 1967, c. 868; 1971, c. 872, s. 1; 1977, c. 70, s. 17; 1981, c. 412, s. 2; 1983, c. 629, s. 1; c. 768, ss. 25.1, 25.2; 1995, c. 466, s. 2; c. 507, s. 6.2(a).)

Editor's Note. — Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability cause.

Effect of Amendments. — Session Laws 1995, c. 466, s. 2, effective October 1, 1995, added the last sentence of subsection (a).

Session Laws 1995, c. 507, s. 6.2(a), effective July 1, 1995, repealed subsection (f), regarding cooperation with the Division of Motor Vehicles to provide alcohol law enforcement agents on undercover assignments with motor vehicle operator's licenses and registration plates under assumed names.

Cited in North Carolina
Bds. v. Hunt, 76 N.
S.E.2d 693 (1985); Fo

§ 18B-501. L

(a) Appointme
local board shall
ABC enforcement
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(b) Subject M...
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(c) Territorial
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in G.S. 15A-402(

(d) "Assisting" means employed by a person or agency" for purposes of the same author or cooperation between

(e) Assisting S
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following conditi

- (1) The location application under which
- (2) The State assistant investigator assistant
- (3) The local request
- (4) As soon as acknowledged the local

A local ABC chapter in North Carolina is being considered a worker's compensation agency.

(f) Contracts
officers, a local

CASE NOTES

Cited in North Carolina Ass'n of ABC Crime Control & Pub. Safety, 115 N.C. Bds. v. Hunt, 76 N.C. App. 290, 332 App. 556, 445 S.E.2d 425 (1994). S.E.2d 693 (1985); Ford v. State, Dep't of

§ 18B-501. Local ABC officers.

(a) Appointment. — Except as provided in subsection (f), each local board shall hire one or more ABC enforcement officers. Local ABC enforcement officers shall be designated as "ABC Officers". The local board may designate one officer as the chief ABC officer for that board.

(b) Subject Matter Jurisdiction. — After taking the oath prescribed for a peace officer, a local ABC officer may arrest and take other investigatory and enforcement actions for any criminal offense; however, the primary responsibility of a local ABC officer is enforcement of the ABC laws and Article 5 of Chapter 90 (The Controlled Substances Act).

(c) Territorial Jurisdiction. — A local ABC officer has jurisdiction anywhere in the county in which he is employed except that a city ABC officer's territorial jurisdiction is subject to any limitation included in any local act governing that city ABC system. A local ABC officer may pursue outside his normal territorial jurisdiction anyone who commits an offense within that jurisdiction, as provided in G.S. 15A-402(d).

(d) Assisting Other Local Agencies. — The local ABC officers employed by a local board shall constitute a "law-enforcement agency" for purposes of G.S. 160A-288, and a local board shall have the same authority as a city or county governing body to approve cooperation between law-enforcement agencies under that section.

(e) Assisting State and Federal Enforcement. — A local ABC officer may assist State and federal law-enforcement agencies in the investigation of criminal offenses in North Carolina, under the following conditions:

- (1) The local board employing the officer has adopted a resolution approving such assistance and stating the conditions under which it may be provided;
- (2) The State or federal agency has made a written request for assistance from that local board, either for a particular investigation or for any investigation that might require assistance within a certain period of time;
- (3) The local ABC officer is supervised by someone in the requesting agency; and
- (4) As soon as practical after the assistance begins, an acknowledgement of the action is placed in the records of the local board.

A local ABC officer shall have territorial jurisdiction throughout North Carolina while assisting a State or federal agency under this section. While providing that assistance the officer shall continue to be considered an employee of the local board for purposes of salary, worker's compensation, and other benefits, unless a different arrangement is negotiated between the local board and the requesting agency.

(f) Contracts with Other Agencies. — Instead of hiring local ABC officers, a local board may contract to pay its enforcement funds to a

Chapter
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20

sheriff's department, city police department, or other local law-enforcement agency for enforcement of the ABC laws within the law-enforcement agency's territorial jurisdiction. Enforcement agreements may be made with more than one agency at the same time. When such a contract for enforcement exists, the officers of the contracting law-enforcement agency shall have the same authority to inspect under G.S. 18B-502 that an ABC officer employed by that local board would have. If a city located in two or more counties approves the sale of some type of alcoholic beverage pursuant to the provisions of G.S. 18B-600(e4), and there are no local ABC boards established in the city and one of the counties in which the city is located, the local ABC board of any county in which the city is located may enter into an enforcement agreement with the city's police department for enforcement of the ABC laws within the entire city, including that portion of the city located in the county of the ABC board entering into the enforcement agreement.

(g) Discharge. — Local ABC officers are subject to the discharge provisions of G.S. 18B-202. (1949, c. 1251, s. 4; 1961, c. 645; 1963, c. 426, s. 2; 1967, c. 868; 1971, c. 872, s. 1; 1973, c. 29; 1977, c. 908; 1981, c. 412, s. 2; 1993, c. 193, s. 2; 1995, c. 466, ss. 3, 4.)

Local Modification. — Town of Chadbourn: 1989 (Reg. Sess., 1990), c. 895, s. 5; town of Lake Lure: 1979, c. 353, s. 5; 1987, c. 194, s. 5; Greensboro Alcoholic Beverage Control Board: 1985 (Reg. Sess., 1986), c. 886.

Effect of Amendments. — Session Laws 1995, c. 466, ss. 3 and 4, effective October 1, 1995, added the second sentence of subsection (a); and added "law-enforcement" preceding "agency's territorial jurisdiction" in subsection (f).

CASE NOTES

Editor's Note. — Many of the cases below were decided under similar provisions of former Chapter 18A.

Consent to Search. — By seeking liquor licenses, licensees (here permittees) waive their rights under U.S. Const., Amend. IV and consent to administrative searches. *Greensboro Elks Lodge v. North Carolina Bd. of Alcoholic Control*, 26 N.C. App. 594, 220 S.E.2d 106 (1975), appeal dismissed, 289 N.C. 296, 222 S.E.2d 696 (1976).

Local law-enforcement officers are not required to request and obtain permis-

sion to enter the premises of an alcoholic beverage permittee before entering such premises for the purpose of checking for violations of the alcoholic beverage control laws. *Greensboro Elks Lodge v. North Carolina Bd. of Alcoholic Control*, 27 N.C. App. 594, 220 S.E.2d 106 (1975), appeal dismissed, 289 N.C. 296, 222 S.E.2d 696 (1976).

Cited in *North Carolina Ass'n of ABC Bds. v. Hunt*, 76 N.C. App. 290, 332 S.E.2d 693 (1985); *State v. Hair*, 114 N.C. App. 464, 442 S.E.2d 163 (1994).

§ 18B-502. Inspection of licensed premises.

(a) Authority. — To procure evidence of violations of the ABC law, alcohol law-enforcement agents, employees of the Commission, local ABC officers, and officers of local law-enforcement agencies that have contracted to provide ABC enforcement under G.S. 18B-501(f) shall have authority to investigate the operation of each licensed premises for which an ABC permit has been issued, to make inspections that include viewing the entire premises, and to examine the books and records of the permittee. The inspection authorized by this section may be made at any time it reasonably appears that someone is on the premises.

(b) Interfere with any employee to make an inspection, revocation, permittee a misdemeanor, making to make 514; 1943, c. 1056, s. 1; c. 645; 1963, 1977, c. 70, Sess., c. 24,

Editor's Note. — c. 539, which amended 1359, as amended Extra Session, "This act becomes 1994, and applies on or after the date of this act by this act, and be applicable

Scope of Waiver. — Although defense permit, waived rights as to search officers incident to regulations, this a warrantless

An agent may detect — detection does during a routine of Attorney General Sweat, — N.C.

§ 18B-50

(a) Storage of beverages a storage of trial or administrative disposal

(b) Disposition, to arrest, may order seized as evidence

(1) The ne

(b) Interference with Inspection. — Refusal by a permittee or by any employee of a permittee to permit officers to enter the premises to make an inspection authorized by subsection (a) shall be cause for revocation, suspension or other action against the permit of the permittee as provided in G.S. 18B-104. It shall be a Class 2 misdemeanor for any person to resist or obstruct an officer attempting to make a lawful inspection under this section. (1939, c. 158, s. 514; 1943, c. 400, s. 6; 1949, c. 974, ss. 11, 14; c. 1251, s. 4; 1951, c. 1056, s. 1; c. 1186, ss. 1, 2; 1953, c. 1207, ss. 2-4; 1957, c. 1440; 1961, c. 645; 1963, c. 426, ss. 1, 2, 4, 5, 12; 1967, c. 868; 1971, c. 872, s. 1; 1977, c. 70, s. 17; 1981, c. 412, s. 2; 1993, c. 539, s. 313; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain

applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, in the last sentence of subsection (b) substituted "Class 2 misdemeanor" for "misdemeanor punishable by a fine of up to five hundred dollars (\$500.00), imprisonment for up to six months, or both".

CASE NOTES

Scope of Waiver as to Searches. — Although defendant, as holder of an ABC permit, waived his Fourth Amendment rights as to searches and seizures by officers incident to enforcement of ABC regulations, this waiver did not extend to a warrantless search of items uncon-

nected with the ABC regulatory scheme, such as closed film canisters. *State v. Sapatch*, 108 N.C. App. 321, 423 S.E.2d 510 (1992).

Cited in *Ford v. State*, Dep't of Crime Control & Pub. Safety, 115 N.C. App. 556, 445 S.E.2d 425 (1994).

OPINIONS OF ATTORNEY GENERAL

An agent may utilize a narcotics detection dog from another agency during a routine inspection. See opinion of Attorney General to Chief George L. Sweat, — N.C.A.G. — (July 19, 1994).

Officer may use force to gain entry into property to conduct an inspection if the business manager denies entry. See opinion of Attorney General to Chief George L. Sweat, — N.C.A.G. — (July 19, 1994).

§ 18B-503. Disposition of seized alcoholic beverages.

(a) Storage. — A law-enforcement officer who seizes alcoholic beverages as evidence of an ABC law violation shall provide for the storage of those alcoholic beverages until the commencement of the trial or administrative hearing relating to the violation, unless some other disposition is authorized under this section.

(b) Disposition Before Trial. — After giving notice to each defendant, to any other known owner, and to the Commission, a judge may order any of the following dispositions of alcoholic beverages seized as evidence of an ABC law violation:

- (1) The destruction of any malt beverages except that amount needed for evidence at trial.

GENERAL ASSEMBLY OF NORTH CAROLINA
1997 SESSION

S.L. 1997-224
HOUSE BILL 587

AN ACT TO ALLOW THE MECKLENBURG COUNTY ALCOHOLIC BEVERAGE CONTROL BOARD TO PROVIDE ITS OWN LAW ENFORCEMENT PERSONNEL AND TO CONTRACT FOR ADDITIONAL LAW ENFORCEMENT SERVICES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 18B-501(f) reads as rewritten:

"(f) Contracts with Other Agencies. -- Instead of ~~of, or in addition to~~, hiring local ABC officers, a local board may contract ~~to pay its enforcement funds to~~ with a sheriff's department, city police department, or other local law-enforcement agency for enforcement of the ABC laws within the law-enforcement agency's territorial jurisdiction. Enforcement agreements may be made with more than one agency at the same time. When such a contract for enforcement exists, ~~the~~ those officers of the contracting law-enforcement agency designated in the contract shall have the same authority to inspect under G.S. 18B-502 that an ABC officer employed by that local board would ~~have~~. once the designated officers of the contracting law enforcement agency have been certified by the chief ABC officer as having been trained. In order to be certified, the designated officers shall receive the same training in the enforcement of the ABC laws as is provided to local ABC officers. If a city located in two or more counties approves the sale of some type of alcoholic beverage pursuant to the provisions of G.S. 18B-600(e4), and there are no local ABC boards established in the city and one of the counties in which the city is located, the local ABC board of any county in which the city is located may enter into an enforcement agreement with the city's police department for enforcement of the ABC laws within the entire city, including that portion of the city located in the county of the ABC board entering into the enforcement agreement. Enforcement agreements authorized by this section may be cancelled by the local ABC board upon 20 days' written notice.

Payments, if any, received by a contracting agency for furnishing law enforcement services shall be in addition to any profits allocated to local governments derived from the sale of alcoholic beverages."

Section 2. This act applies to the Mecklenburg County Alcoholic Beverage Control Board only.

Section 3. This act is effective when it becomes law.
In the General Assembly read three times and ratified this the 26th day of
June, 1997.

s/ Dennis A. Wicker
President of the Senate

s/ Harold J. Brubaker
Speaker of the House of Representatives

App. 492, 227 S.E.2d 298, cert. denied, 291 N.C. 175, 229 S.E.2d 689 (1976).

Function of Court on Judicial Review. — On appeal to the court for judicial review of the Commission's decision, it is the duty of the court to review the evidence and determine whether the Commission had before it any material and substantial evidence sufficient to support its findings. *C'est Bon, Inc. v. North Carolina Bd. of Alcoholic Control*, 279 N.C. 140, 181 S.E.2d 448 (1971).

Petition for Review of Permit's Denial. — Where application for an ABC permit was initially denied by commission on Dec. 9, 1985, this denial was

clearly a commission action on "issuance" of an ABC permit, and, pursuant to the provisions of this section, the ruling on the application became a "contested case" for purposes of the Administrative Procedure Act on Dec. 9, 1985. Therefore, former § 150A-45, which required petitions for review to be filed in Wake County, was applicable, rather than § 150B-45, and the trial court properly dismissed petition for judicial review, which had been filed in Craven County. *In re Melkonian*, 85 N.C. App. 715, 355 S.E.2d 798, cert. denied, 320 N.C. 793, 361 S.E.2d 78 (1987).

OPINIONS OF ATTORNEY GENERAL

Whether a Hearing Is Required in All Cases Before Revocation of a Permit. — See opinion of Attorney General to Mr. Lee P. Phillips, State Board of

Alcoholic Control, 40 N.C.A.G. 10 (1970) (decided under similar provisions of former Chapter 18).

§§ 18B-907 through 18B-999: Reserved for future codification purposes.

ARTICLE 10.

Retail Activity.

§ 18B-1000. Definitions concerning establishments.

The following requirements and definitions shall apply to this Chapter:

- (1) Community theatre. — An establishment owned and operated by a bona fide nonprofit organization that is engaged solely in the business of sponsoring or presenting amateur or professional theatrical events to the public. A permit issued for a community theatre is valid only during regularly scheduled theatrical events sponsored by such nonprofit organization.
- (1a) Convention center. — A publicly owned or operated establishment that is engaged in the business of sponsoring or hosting conventions and similar large gatherings. Convention centers shall include auditoriums, armories, civic centers, convention centers, and coliseums. A permit issued for a convention center shall be valid only for those parts of the building used for conventions and banquets and only during regularly scheduled conventions and banquets.
- (1b) Cooking school. — An establishment substantially engaged in the business of operating a school in which cooking techniques are taught for a fee.
- (2) Eating establishment. — An establishment engaged in the business of regularly and customarily selling food, prima-

- c. Eating establishments;
- d. Food businesses;
- e. Retail businesses;
- f. Private clubs;
- g. Convention centers;
- h. Community theatres.

The permit may also be issued to certain breweries as authorized by G.S. 18B-1104(7).

- (2) Off-Premises Malt Beverage Permit. — An off-premises malt beverage permit authorizes the retail sale of malt beverages in the manufacturer's original container for consumption off the premises and it authorizes the holder of the permit to ship malt beverages in closed containers to individual purchasers inside and outside the State. The permit may be issued for any of the following:
 - a. Restaurants;
 - b. Hotels;
 - c. Eating establishments;
 - d. Food businesses;
 - e. Retail businesses.
- (3) On-Premises Unfortified Wine Permit. — An on-premises unfortified wine permit authorizes the retail sale of unfortified wine for consumption on the premises, either alone or mixed with other beverages, and the retail sale of unfortified wine in the manufacturer's original container for consumption off the premises. It also authorizes the holder of the permit to ship unfortified wine in closed containers to individual purchasers inside and outside the State. The permit may be issued for any of the following:
 - a. Restaurants;
 - b. Hotels;
 - c. Eating establishments;
 - d. Private clubs;
 - e. Convention centers;
 - f. Cooking schools;
 - g. Community theatres;
 - h. Wineries.
- (4) Off-Premises Unfortified Wine Permit. — An off-premises unfortified wine permit authorizes the retail sale of unfortified wine in the manufacturer's original container for consumption off the premises and it authorizes the holder of the permit to ship unfortified wine in closed containers to individual purchasers inside and outside the State. The permit may be issued for retail businesses. The permit may also be issued for a winery for sale of its own unfortified wine.
- (5) On-Premises Fortified Wine Permit. — An on-premises fortified wine permit authorizes the retail sale of fortified wine for consumption on the premises, either alone or mixed with other beverages, and the retail sale of fortified wine in the manufacturer's original container for consumption off the premises. It also authorizes the holder of the permit to ship fortified wine in closed containers to individual purchasers inside and outside the State. The permit may be issued for any of the following:
 - a. Restaurants;

- b. Hotels;
- c. Private clubs;
- d. Community t
- e. Wineries;
- f. Convention ce
- (6) Off-Premises Fo
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- (7) Brown-Bagging
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- any of the follow
- a. Restaurants;
- b. Hotels;
- c. Private clubs;
- d. Community t
- e. Congressiona
- (8) Special Occasion
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- b. Hotels;
- c. Eating establ
- d. Private clubs
- e. Convention c
- (9) Limited Special
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- (10) Mixed Beverag
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- of the following:
- a. Restaurants;

- b. Hotels;
 - c. Private clubs;
 - d. Community theatres;
 - e. Wineries;
 - f. Convention centers.
- (6) Off-Premises Fortified Wine Permit. — An off-premises fortified wine permit authorizes the retail sale of fortified wine in the manufacturer's original container for consumption off the premises and it authorizes the holder of the permit to ship fortified wine in closed containers to individual purchasers inside and outside the State. The permit may be issued for food businesses. The permit may also be issued for a winery for sale of its own fortified wine.
- (7) Brown-Bagging Permit. — A brown-bagging permit authorizes each individual patron of an establishment, with the permission of the permittee, to bring up to eight liters of fortified wine or spirituous liquor, or eight liters of the two combined, onto the premises and to consume those alcoholic beverages on the premises. The permit may be issued for any of the following:
- a. Restaurants;
 - b. Hotels;
 - c. Private clubs;
 - d. Community theatres;
 - e. Congressionally chartered veterans organizations.
- (8) Special Occasion Permit. — A special occasion permit authorizes the host of a reception, party or other special occasion, with the permission of the permittee, to bring fortified wine and spirituous liquor onto the premises of the business and to serve the same to his guests. The permit may be issued for any of the following:
- a. Restaurants;
 - b. Hotels;
 - c. Eating establishments;
 - d. Private clubs;
 - e. Convention centers.
- (9) Limited Special Occasion Permit. — A limited special occasion permit authorizes the permittee to bring fortified wine and spirituous liquor onto the premises of a business, with the permission of the owner of that property, and to serve those alcoholic beverages to the permittee's guests at a reception, party, or other special occasion being held there. The permit may be issued to any individual other than the owner or possessor of the premises. An applicant for a limited special occasion permit shall have the written permission of the owner or possessor of the property on which the special occasion is to be held.
- (10) Mixed Beverages Permit. — A mixed beverages permit authorizes the retail sale of mixed beverages for consumption on the premises. The permit also authorizes a mixed beverages permittee to obtain a purchase-transportation permit under G.S. 18B-403 and 18B-404, and to use for culinary purposes spirituous liquor lawfully purchased for use in mixed beverages. The permit may be issued for any of the following:
- a. Restaurants;

- b. Hotels;
 - c. Private clubs;
 - d. Convention centers;
 - e. Community theatres;
 - f. Nonprofit organizations; and
 - g. Political organizations.
- (11) Culinary Permit. — A culinary permit authorizes a permittee to possess up to 12 liters of either fortified wine or spirituous liquor, or 12 liters of the two combined, in the kitchen of a business and to use those alcoholic beverages for culinary purposes. The permit may be issued for either of the following:
- a. Restaurants;
 - b. Hotels.
 - c. Cooking schools.
- A culinary permit may also be issued to a catering service to allow the possession of the amount of fortified wine and spirituous liquor stated above at the business location of that service and at the cooking site. The permit shall also authorize the caterer to transport those alcoholic beverages to and from the business location and the cooking site, and use them in cooking.
- (12) Mixed Beverages Catering Permit. — A mixed beverages catering permit authorizes a hotel or a restaurant that has a mixed beverages permit to bring spirituous liquor onto the premises where the hotel or restaurant is catering food for an event and to serve the liquor to guests at the event.
- (13) Guest Room Cabinet Permit. — A guest room cabinet permit authorizes a hotel having a mixed beverages permit to sell to its room guests, from securely locked cabinets, malt beverages, unfortified wine, fortified wine, and spirituous liquor. A permittee shall designate and maintain at least ten percent (10%) of the permittee's guest rooms as rooms that do not have a guest room cabinet. A permittee may dispense alcoholic beverages from a guest room cabinet only in accordance with written policies and procedures filed with and approved by the Commission. A permittee shall provide a reasonable number of vending machines, coolers, or similar machines on premises for the sale of soft drinks to hotel guests.
- A guest room cabinet permit may be issued for any of the following:
- a. A hotel located in a county subject to G.S. 18B-600(f).
 - b. A hotel located in a county that has a population in excess of 150,000 by the last federal census. (1945, c. 903, s. 1; 1947, c. 1098, ss. 2, 3; 1949, c. 974, s. 1; 1957, cc. 1048, 1448; 1963, c. 426, ss. 10, 12; c. 460, s. 1; 1971, c. 872, s. 1; 1973, c. 476, s. 128; 1975, c. 586, s. 1; c. 654, ss. 1, 2; c. 722, s. 1; 1977, c. 70, s. 19; c. 182, s. 1; c. 669, ss. 1, 2; c. 676, ss. 1, 2; c. 911; 1979, c. 348, ss. 2, 3; c. 683, ss. 5, 6, 11, 12; 1981, c. 412, s. 2; 1981 (Reg. Sess., 1982), c. 1262, ss. 16, 17, 22; 1983, c. 457, s. 3; c. 583, ss. 2-5; 1985, c. 89, ss. 1-3; c. 596, s. 1; 1987, c. 391, s. 2; c. 434, s. 1; 1989, c. 800, ss. 11, 12; 1991, c. 459, ss. 5, 6; c. 565, ss. 1, 7; c. 669, s. 1; 1991 (Reg. Sess., 1992), c. 920, s. 7; 1993, c. 508, s. 5; 1995, c. 466, s. 10; c. 509, ss. 16-18.)

Effect of Amendments.

Laws 1995, c. 466, s. 10, effective July 1, 1995, added the second subdivision (1); added "and if the holder of the permit to ship beverages in closed containers to retail purchasers inside and outside the State" in the first sentence of subdivision (2); added the second sentence of subdivision (3); added "and it authorizes the holder of the permit to ship wine in closed containers to retail purchasers inside and outside the State" in the first sentence of subdivision (4); added the second sentence of subdivision (5); in the first sentence of subdivision (6) substituted "authorizes" for "permits"; and added "and it authorizes the holder of the permit to ship food and beverages in closed containers to individual purchasers" in the first sentence of subdivision (7).

Legislative Classification
Establishments Entitled to "B
ging" Permits Not Unconst
— See Hursey v. Town of Gibs

§ 18B-1002. Spec

(a) Kinds of Permits
rized by this Chapter,
following activities:

- (1) A permit may be issued for the sale or possession of alcoholic beverages for inheritance, for personal use, for currence, and for the purpose of raising the sale of alcoholic beverages. A permit may also be issued for the sale of alcoholic beverages for possession.
- (2) A permit may be issued for the retail sale of fortified wine, for raising event or shall not be issued for the sale of a beverage in a container which is not a beverage in a container.
- (3) A permit may be issued for the business to sell alcoholic beverages otherwise be issued for the sale of alcoholic beverages.
- (4) A permit may be issued for decanters of wine to bring into the state for the greater amount of wine authorized for sale of beverages in the state.

Editorials

BAR NONE

Allow police to patrol ABC-licensed premises

In most states, it's not only legitimate, it's encouraged that police occasionally make an unobtrusive pass through such places as bars and topless clubs, keeping an eye out for any obvious lawbreaking such as gun-toting or prostitution. Not in most of North Carolina, though.

In fact, an on-duty officer has no more rights in an ABC-licensed premises than the average citizen. If the proprietor or anyone acting for the proprietor tells the officer to leave, the officer must do it. (It doesn't apply if the officer enters in hot pursuit of a fugitive, and of course the police can be requested to come in and investigate a crime or stop one in progress.)

That's been the case since the early 1980s, when lobbyists got the law changed. They cited bogus concerns about bad old cops hassling little old ladies having a glass of wine in a restaurant. The tactic worked.

Now state Rep. Bill Hurley of Fayetteville wants to undo the mistake, at least in Cumberland County. He has revised and updated a measure he submitted unsuccessfully three years ago, basically allowing the police to do their job without having these specific locales carved out of their beats. This way, there would be specific penalties for refusing the police entry during normal business hours, and especially for trying to obstruct them.

It is important to be clear about what the

bill does *not* seek:

- Authority to examine the permittee's books or records. (They're police, not CPAs.)

- Power to enforce ABC administrative regulations. (The police readily admit that they're not trained for it; besides, the ABC has its own officers for that.)

- A right to enter legitimate private clubs and sports clubs (the 19th hole and the Elks Lodge remain off-limits) or ordinary restaurants. However, the nudge-and-wink "private" clubs that let anyone join at the drop of a hat could be entered.

To repeat, the above items are what the bill would *not* change. Instead, it addresses the menace-to-society kinds of crimes we'd all like to see less of. Not all places that serve alcohol are hotbeds of iniquity and crime by any means. But there is a demonstrable overall connection.

With the success in crime reduction that has come with increased community-oriented policing, it's time to give the police back this piece of turf — not to harass, but to serve and protect. If you still have doubts about it, ask the question the other way around: Why would anyone *not* want the police to have this valuable tool?

Hurley has an impressive list of co-sponsors: Reps. Russell Capps, Don Davis, Ted Kinney, Mary McAllister, Mia Morris, Edd Nye, Phil Warner, Connie Wilson and Doug Yongue. The legislators have no reason to do anything but pass this bill. We hope they will do so, and soon.

MINUTES

HOUSE JUDICIARY I COMMITTEE

The House Committee on JUDICIARY I met in Room 1228/1327 of the Legislative Building on June 16, 1998 at 10:00 A.M. Representative Hardy, Co-Chairman, presided at the meeting. Other members present were: Representative Daughtry, Co-Chairman, and Representative(s) Braswell, Alexander, Blue, Capps, Clary, Crawford, Ellis, Hall, Hurley, Jeffus, Justus, Michaux, Miller, and Thompson. Staff Counsels Steven J. Rose and Karen C-Brown were also present.

Representative Daughtry introduced the pages for the day - Turner Harris of Cleveland County and Tommy Greenwood of Buncombe County.

The following bills were considered by the Committee:

SB-78 AN ACT TO AUTHORIZE THE DIRECTOR OF THE STATE CAPITOL POLICE AND THE CHIEF OF THE GENERAL ASSEMBLY POLICE TO PROVIDE FOR THE EVACUATION OF STATE AND LEGISLATIVE BUILDINGS AND GROUNDS IN THE EVENT OF EMERGENCY OR POTENTIALLY HAZARDOUS CONDITIONS.

Representative Ellis moved that a proposed house committee substitute be adopted for discussion. The motion carried.

Co-Chairman Daughtry began by referring to a News & Observer story which appeared last Saturday. (See Attachment J.) An administrative law judge ruled that he did not have jurisdiction in a sexual harassment case. As a result, a number of concerned individuals in the House believe that there is a problem in the law.

Staff member Phyllis Pickett explained that the committee substitute amends the State Personnel Act. She passed out a staff report on the bill. (See Attachment H.)

She explained that Section 1 adds sexual harassment as a type of grievance for which an employee does not have to go directly to a supervisor.

She explained that Section 2 lists the grounds for contested cases. It adds a subsection 10 which provides an independent ground of sexual harassment including quid pro quo harassment or a hostile work environment as grounds to file a contested case.

She explained that Section 3 of the bill is a conforming change that says a person who is alleging sexual harassment is able to go directly to the Office of Administrative Hearings and State Personnel Commission to have the claim heard.

Section 4 of the bill provides that alleged sexual harassment is another factor for which a hearing can be held before the Office of Administrative Hearings. That section also goes through remedies available.

Section 5 says that the act becomes effective on July 15, 1998 and applies to any grievances arising on or after that date.

Representative Michaux asked if this bill simply adds sexual harassment as a grieving matter and doesn't change any of the other procedures involving state grievances. Ms. Pickett answered in the affirmative.

Representative Russell spoke on behalf of the Women's Legislative Caucus. She spoke favorably for the bill. She said that typically people have little recourse because they are only able to complain to their immediate supervisor. She expressed the hope that following the passage of this bill the Office of State Personnel and the other agencies will spread the word that this behavior is unacceptable.

Mr. Burton Craig, the attorney representing Pam Robinson, presented some of the details about her case. Pam Robinson, a former employee of the State Department of Correction, filed an internal grievance with the Department of Correction against her immediate supervisor. After several procedural steps she presented her case to the State Personnel Commission. Mr. Craig said they found her to be credible but they said they did not have jurisdiction over her case because sexual harassment is not covered by state law. He said they have appealed the case the civil Superior Court.

Representative Capps asked if there was anything in the bill to help Ms. Robinson.

Mr. Craig replied that the effective date of the act as it stands would not include Ms. Robinson's situation. He suggested that the bill be amended to apply both to claims arising in the future and to all pending claims, i.e. pending either in the Office of Administrative Hearings, in the State Personnel Commission or on appeal from a decision from the State Personnel Commission. In Ms. Robinson's case he said they have asked the Wake County Superior Court to overturn the decision.

Representative Braswell asked specifically about the issue of the pending claims. He wanted to know if the bill referred to the date of the actual conduct or the date of the complaint.

Ms. Pickett answered that if it arises even to the conduct itself. If it arises it is from that point forward. Representative Braswell said let's assume that the conduct may

have occurred two or three months ago but the individual hasn't filed the complaint at this point but then chooses to do so on or after the date.

Ms. Pickett said that harassment is being added to the *quid pro quo* of the hostile work environment. If the hostile work environment is existing prior and continues to exist after July 15, 1998 it would certainly be covered. If the quid pro quo happens before that date and the employee doesn't appeal it, then it would not be covered because there is a cutoff.

Representative Ellis asked if Ms. Robinson's remedy is now to go to civil court and the state would become the defendant. Representative Daughtry said she has no remedy according to the State Personnel Act.

Mr. Craig said they were appealing the decision. He said he will argue that the ambiguous statutes should be construed the way they have been for years, i.e., that sexual harassment is a form of sex discrimination prohibited by law. At the same time he said they have filed suit in civil superior court saying that, as a last resort, there must be a remedy under the North Carolina Constitution.

Representative Ellis asked if this had been included in the State Personnel Act previously, what does he believe would have been the end result.

Mr. Craig said he believes that she would have been given the standard relief.

Representative Michaux wondered how many pending cases there are.

Julian Mann, an administrative law judge, answered that there were not a great number of them because of the unclear authority.

Representative Blue asked if this bill makes sexual harassment a form of sex discrimination. Mr. Craig answered in the affirmative. Ms. Pickett said that this bill makes sure that all the cases will be treated consistently.

Representative Hall wondered if there was any protection for this under federal law. Mr. Craig said that Title VII of the Civil Rights Act prohibits sex discrimination which has been interpreted to include sexual harassment. Thus, there is the possibility of someone pursuing a claim through the Federal court system. Ms. Robinson believes that her first line of recourse is through the state system.

Representative Hall asked if Ms. Robinson is able to resolve everything she wants in State Court will there still be another suit in Federal Court. Mr. Craig answered in the negative.

Representative Hall asked if Ms. Robinson terminated her job or was she terminated by the state. Mr. Craig said she was terminated but they declared that she resigned.

Representative Hall asked if the whole process determines that there is no truth to the allegations is there anything in this bill to permit the state to claim damages against the complaining person. Mr. Craig said it would be handled just like any other state grievance.

Representative Capps moved to amend the bill. (See Attachment H.) Vote on the amendment was favorable.

Representative Ellis moved that the House Committee Substitute as amended receive a favorable report and that the bill be rolled into a committee substitute. The vote taken was unfavorable to the original bill and favorable to the committee substitute.

HB-1393 AN ACT TO CLARIFY CONDITIONS OF PROBATION FOR INTERMEDIATE PUNISHMENTS UNDER STRUCTURED SENTENCING.

Bill Sponsor Representative Justus offered an amendment to clarify the effective date of the bill. The amendment replaces Section 5. (See Attachment M.) The motion passed.

Representative Justus described the notion of an intermediate sentence. (The staff summary of the bill is Attachment N.) It is one of three types of structured sentences. It is a sentence in a criminal case that places an offender on supervised probation and includes at least one of the following conditions – special probation, assignment to a residential program, house arrest with electronic monitoring, intensive probation, or assignment to a day reporting center.

Representative Justus further explained the bill. First, the definition of a day reporting center is changed. They are funded by the Criminal Justice Partnership Program and not all are funded equally because requests from the counties have differed. This bill seeks to make programs at day reporting centers more uniform across the state.

Representative Alexander wondered if this is a statewide bill. Representative Justus said the bill would make all the centers consistent so they operate in the same way.

Representative Justus then discussed changes regarding the residential program. The bill adds language similar to the program participation in the day reporting centers.

It also removes provisions that do not count time spent under the IMPACT (boot camp) program against an offender's time served. He explained that Sections 2-4 change some things about the IMPACT program. The net effect is to redefine the boot camp

program as a residential program of intermediate punishment rather than as a form of incarceration under special probation.

Gregg Stahl, Assistant Secretary for Legislature and Planning of the Department of Corrections, said this program has always been statutory. As sentencing laws have changed overtime, we have put a wrinkle in the IMPACT program. It is a "split sentence" program that was designed early on for misdemeanants. But misdemeanants do not get a sentence long enough to split so the judge can't sentence them to this program. IMPACT will no longer be a split sentence, special probation program, but will be a residential program under the definition earlier.

Representative Braswell asked if the defendant could be given a "split sentence" and ordered by the judge to go to one of these IMPACT programs. Mr. Stahl corrected him and said the person would be given a "suspended sentence" and be assigned to the IMPACT program as one of the conditions of his probation.

Representative Blue asked if there has been an analysis of the space available. The response was that boot camp is running at about 85% capacity. If everyone who qualifies were sent we would still have excess capacity.

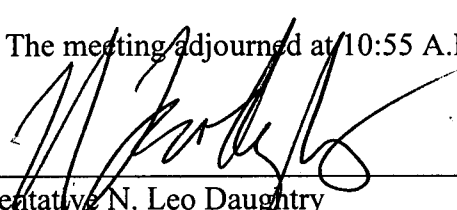
Representative Michaux asked if the day reporting centers in existence are being financed on a joint basis. Mr. Stahl answered that it is a state grant to the counties. The counties get around 9.4 million dollars through the Criminal Justice Partnership Program which was initiated to help the counties deal with offenders left in the counties after structured sentencing.

In a followup question Representative Michaux asked if the allocation covers the full cost and the answer was in the negative. He also asked if we are making this mandatory then why should not the state take full responsibility for it.

Mr. Stahl said that the full array of punishments are not available in all communities. He said some communities will be able to afford to do this and others will not.

Representative Michaux was concerned about what it would cost the counties. Representative Justus gave some history of the funding of the program which was started in 1995.

The meeting adjourned at 10:55 A.M.



Representative N. Leo Daughtry
Co-chairman



Betty Wickham
Committee Clerk

ATTACHMENTS

Exhibit A - NOTICE OF THE MEETING

Exhibit B - AGENDA

Exhibit C - VISITOR REGISTRATION

Exhibit D - COMMITTEE REPORT for SB 78

Exhibit E - PROPOSED HOUSE COMMITTEE SUBSTITUTE for SB 78 (PCS7997-RO001)

Exhibit F - PROPOSED HOUSE COMMITTEE SUBSTITUTE for SB 78 (CSLR-1B)

Exhibit G - SB 78

Exhibit H - PROPOSED AMENDMENT for SB 78 (Capps)

Exhibit I - STAFF REPORT for SB 78

Exhibit J - NEWSPAPER ARTICLE

Exhibit K - MISCELLANEOUS ARTICLES NOT HANDED OUT

Exhibit L - HB 1393

Exhibit M - PROPOSED AMENDMENT to HB 1393 (Justus)

Exhibit N - STAFF REPORT for HB 1393

**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE**

You are hereby notified that the Committee on **JUDICIARY I** will meet as follows:

DAY & DATE: **Tuesday, June 16, 1998**

TIME: **10:00 AM**

LOCATION: **Room 1228/1327 LB**

The following bills will be considered:

~~HB 1123~~ ~~State Personnel Grievance Procedure~~ ~~Sponsor - Rep. Sherrill~~

~~HB 1144~~ ~~Speeding in School Zones~~ ~~Sponsor- Rep. Wood~~

✓ HB 1393 **Clarify Intermediate Punishments** **Sponsor- Rep. Justus**

✓ SB 78 **State Building Evacuation** **Sponsor Senator Ballance**

Respectfully,

Representative N. Leo Daughtry, Co-Chairman
Representative Edwin Hardy, Co-Chairman

I hereby certify this notice was filed by the committee clerk at the following offices at
12:30 PM, June 11, 1998.

____ Principal Clerk
____ Reading Clerk - House Chamber

Jackie Hamby, Committee Clerk
Bernice Bullard, Committee Clerk
Betty Wickham, Committee Clerk

AGENDA

HOUSE COMMITTEE ON JUDICIARY I

June 16, 1998
Room 1228/1327 LB
10:00 AM

Representative N. Leo Daughtry, Co-Chairman
Representative Edwin (Sandy) Hardy, Co-Chairman

BILLS TO BE CONSIDERED:)

SB 78 STATE BUILDING EVACUATION Sponsor- Senator Ballance

HB 1393 CLARIFY INTERMEDIATE PUNISHMENTS Sponsor- Representative Justus

*Proposed House Committee Substitute for HB 1317 AMEND CONTESTED CASE
PROCEDURES/Sponsor-Representative C. Wilson, was placed in a subcommittee at June 4th Meeting for
member study [Rep. Arnold, Chr.; Blue, Braswell, Clary, Morgan & Sherrill])*

*(HB 1544 - RAISE CRIMINAL COURT FEES / Sponsor-Representative Preston, was placed in a
subcommittee for study at June 9th Meeting [Rep. Hall, Chr.; Clary, Ellis, R. Hunter, Michaux].)*

ADJOURNMENT

VISITOR REGISTRATION SHEET

Judiciary I, June 16, 1998

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

	NAME	FIRM OR AGENCY
1.	Juan Marm	Office of Administrative Hearing
2.	Polly Williams	NC Equity
3.	CB Russell	N.C. House
4.	Jean Canale	NC Council for Women
5.	Dunale Summers	NC Equity
6.	D. C.	NC DDC
7.	Barbara Gibson	NC JOL
8.	Carl Ardwin	OSP
9.	Ashley Tennent	NC Coalition Against Sexual Assault
10.	Angela Olsen	NC Coalition Against Sexual Assault
11.	Bernard Allen	SOS
22.	Nelli Riley	OSP
23.	Stephanie Brooks	Charlotte Obbeum
24.	Ronnie Condrey	Dept Insurance
25.	Drake Maynard	UNC-CH
26.	Wendy Mills	SEANC
27.	Evelyn Hawthorne	UNC-CH
28.	Troy Green	SEANC
29.	Danell Amner	SEANC
30.	Ray Mosteller	State 1st J. Res
31.	Shirley Lawling	SEANC

VISITOR REGISTRATION SHEET

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

	NAME	FIRM OR AGENCY
1.	<u>LaBona Thorne</u>	<u>SEANC - Area 10</u>
2.	<u>Dennis Merum</u>	<u>SEANC - AREA 10</u>
3.	<u>Leo Ruben</u>	<u>CYPC</u>
4.	<u>Gregg Wolf</u>	<u>NOE</u>
5.	<u>Frank Lewis</u>	<u>SOS</u>
6.	<u>Valerie Brewster</u>	<u>SEANC - Area #14</u>
7.	<u>Charles Hallway</u>	<u>SEANC - Area # 14</u>
8.	<u>Willie Walker</u>	<u>SEANC - AREA #14</u>
9.	<u>Candice King</u>	<u>SEANC - Area #14</u>
10.	<u>Charles H. Caphart</u>	<u>SEANC - dist #56</u>
11.	<u>Martha Glass</u>	<u>DOA</u>
22.	<u>Heather Lail</u>	<u>OSA</u>
23.	<u>Bill Breeze</u>	<u>NC Medical Board</u>
24.	_____	_____
25.	_____	_____
26.	_____	_____
27.	_____	_____
28.	_____	_____
29.	_____	_____
30.	_____	_____
31.	_____	_____

J. J. Jule

**1998 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative(s) **Daughtry and Hardy** for the Committee on **JUDICIARY I.**

☒ Committee Substitute for

S.B. 78 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE DIRECTOR OF THE STATE CAPITOL POLICE AND THE CHIEF OF THE GENERAL ASSEMBLY POLICE TO PROVIDE FOR THE EVACUATION OF STATE AND LEGISLATIVE BUILDINGS AND GROUNDS IN THE EVENT OF EMERGENCY OR POTENTIALLY HAZARDOUS CONDITIONS.

☐ 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

PUBLIC BILL

For, Loc. Mod. + Res
Proposed Committee Substitute For
S.B. 78

CHAP. _____

H 122

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DIRECTOR OF THE STATE CAPITOL POLICE AND THE CHIEF OF THE GENERAL ASSEMBLY POLICE TO PROVIDE FOR THE EVACUATION OF STATE AND LEGISLATIVE BUILDINGS AND GROUNDS IN THE EVENT OF EMERGENCY OR POTENTIALLY HAZARDOUS CONDITIONS.

Introduced by Senator(s) _____

Ballance

Principal Clerk's Use Only

Committee Substitute
Adopted
Pursuant to Rule 45.1
MAR 24 1997

CHANGES TITLE

PASSED 2nd & 3rd
READINGS
48-0 (v)
MAR 25 1997
ORDERED SENT TO
HOUSE OF REPRESENTATIVE

Janet Pruitt

PASSED 1st READING
MAR 27 1997
AND REFERRED TO COMMITTEE
ON *State Government*
ON MOTION OF
REP. *Morgan*
WITHDRAWN FROM
State Government
JUN 09 1998
RECOMMITTED TO
Judiciary I

RECEIVED

MAR 26 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 78

State Government, Local Government, and Personnel Committee Substitute Adopted
3/24/97

Proposed House Committee Substitute S78-PCS7997-RO001

Short Title: State Employee Sexual Harassment.

(Public)

Sponsors:

Referred to:

February 10, 1997

1 A BILL TO BE ENTITLED
2 AN ACT AMENDING THE STATE PERSONNEL ACT TO ESTABLISH
3 JURISDICTION FOR THE HEARING OF STATE EMPLOYEE SEXUAL
4 HARASSMENT GRIEVANCES BEFORE THE OFFICE OF
5 ADMINISTRATIVE HEARINGS AND THE STATE PERSONNEL
6 COMMISSION.

7 The General Assembly of North Carolina enacts:

8 Section 1. G.S. 126-34 reads as rewritten:

9 "**§ 126-34. Grievance appeal for career State employees.**

10 Any career State employee having a grievance arising out of or due to ~~his~~ the
11 employee's employment and who does not allege (i) discrimination because of ~~his~~ the
12 employee's age, sex, race, color, national origin, religion, creed, handicapping
13 condition as defined by G.S. 168A-3, or political affiliation or (ii) sexual harassment,
14 shall first discuss ~~his~~ the problem or grievance with ~~his~~ the employee's supervisor and
15 follow the grievance procedure established by ~~his~~ the employee's department or
16 agency."

17 Section 2. G.S. 126-34.1(a) is amended by adding a new subsection to
18 read:

19 "(10) Sexual harassment, including quid pro quo harassment or
20 harassment due to a hostile work environment."

21 Section 3. G.S. 126-36 reads as rewritten:

1 "§ 126-36. Appeal of unlawful State employment practice.

2 Any State employee or former State employee who has reason to believe ~~that~~
3 ~~employment, that:~~

4 (1) ~~Employment,~~ promotion, training, or transfer was denied ~~him~~ the
5 employee or that demotion, layoff or termination of employment
6 was forced upon ~~him~~ the employee in retaliation for opposition to
7 alleged discrimination or because of ~~his~~ the employee's age, sex,
8 race, color, national origin, religion, creed, political affiliation, or
9 ~~handicapped~~ handicapping condition as defined by G.S. 168A-3
10 except where specific age, sex or physical requirements constitute a
11 bona fide occupational qualification necessary to proper and
12 efficient administration, shall have the right to appeal directly to
13 the Office of Administrative Hearings and State Personnel
14 Commission.

15 (2) The employee has been subjected to sexual harassment, whether
16 quid pro quo harassment or harassment due to a hostile work
17 environment, or to retaliation for opposition to sexual harassment,
18 shall have the right to appeal directly to the Office of
19 Administrative Hearings and State Personnel Commission."

20 Section 4. G.S. 126-37(a) reads as rewritten:

21 "(a) Appeals involving a disciplinary action, alleged discrimination, alleged sexual
22 harassment, and any other contested case arising under this Chapter shall be
23 conducted in the Office of Administrative Hearings as provided in Article 3 of
24 Chapter 150B; provided that no grievance may be appealed unless the employee has
25 complied with G.S. 126-34. The State Personnel Commission shall make a final
26 decision in these cases as provided in G.S. 150B-36, except as provided in subsection
27 (b1) of this section. The State Personnel Commission is hereby authorized to reinstate
28 any employee to the position from which ~~he~~ the employee has been removed, to
29 order the employment, promotion, transfer, or salary adjustment of any individual to
30 whom it has been wrongfully denied or to direct other suitable action to correct the
31 abuse which may include the requirement of payment for any loss of salary which has
32 resulted from the improperly discriminatory action of the appointing authority."

33 Section 5. This act becomes effective July 15, 1998, and applies to:

- 34 (1) All cases pending on July 15, 1998,
35 a. In the Office of Administrative Hearings or before the State
36 Personnel Commission; or
37 b. On appeal from a decision of the State Personnel
38 Commission; and
39 (2) All State employee grievances arising on or after July 15, 1998.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 78

Proposed House Committee Substitute S78-CSLR-1B

WARNING: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: State Employee Sexual Harassment.

(Public)

Sponsors:

Referred to:

February 10, 1997

1 A BILL TO BE ENTITLED
2 AN ACT AMENDING THE STATE PERSONNEL ACT TO ESTABLISH JURISDICTION
3 FOR THE HEARING OF STATE EMPLOYEE SEXUAL HARASSMENT GRIEVANCES
4 BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS AND THE STATE
5 PERSONNEL COMMISSION.

6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 126-34 reads as rewritten:

8 "§ 126-34. Grievance appeal for career State employees.

9 Any career State employee having a grievance arising out of or
10 due to ~~his~~ the employee's employment and who does not allege (i)
11 discrimination because of ~~his~~ the employee's age, sex, race,
12 color, national origin, religion, creed, handicapping condition
13 as defined by G.S. 168A-3, or political affiliation or (ii)
14 sexual harassment, shall first discuss ~~his~~ the problem or
15 grievance with ~~his~~ the employee's supervisor and follow the
16 grievance procedure established by ~~his~~ the employee's department
17 or agency."

18 Section 2. G.S. 126-34.1(a) is amended by adding a new
19 subsection to read:

20 "(10) Sexual harassment, including quid pro quo
21 harassment or harassment due to a hostile work
22 environment."

1 Section 3. G.S. 126-36 reads as rewritten:

2 "§ 126-36. Appeal of unlawful State employment practice.

3 Any State employee or former State employee who has reason to
4 believe ~~that employment~~, that:

5 (1) Employment, promotion, training, or transfer was
6 denied him the employee or that demotion, layoff or
7 termination of employment was forced upon him the
8 employee in retaliation for opposition to alleged
9 discrimination or because of his the employee's
10 age, sex, race, color, national origin, religion,
11 creed, political affiliation, or handicapped
12 handicapping condition as defined by G.S. 168A-3
13 except where specific age, sex or physical
14 requirements constitute a bona fide occupational
15 qualification necessary to proper and efficient
16 administration, shall have the right to appeal
17 directly to the Office of Administrative Hearings
18 and State Personnel Commission.

19 (2) The employee has been subjected to sexual
20 harassment, whether quid pro quo harassment or
21 harassment due to a hostile work environment, or to
22 retaliation for opposition to sexual harassment,
23 shall have the right to appeal directly to the
24 Office of Administrative Hearings and State
25 Personnel Commission."

26 Section 4. G.S. 126-37(a) reads as rewritten:

27 "(a) Appeals involving a disciplinary action, alleged
28 discrimination, alleged sexual harassment, and any other
29 contested case arising under this Chapter shall be conducted in
30 the Office of Administrative Hearings as provided in Article 3 of
31 Chapter 150B; provided that no grievance may be appealed unless
32 the employee has complied with G.S. 126-34. The State Personnel
33 Commission shall make a final decision in these cases as provided
34 in G.S. 150B-36, except as provided in subsection (b1) of this
35 section. The State Personnel Commission is hereby authorized to
36 reinstate any employee to the position from which ~~he~~ the employee
37 has been removed, to order the employment, promotion, transfer,
38 or salary adjustment of any individual to whom it has been
39 wrongfully denied or to direct other suitable action to correct
40 the abuse which may include the requirement of payment for any
41 loss of salary which has resulted from the improperly
42 discriminatory action of the appointing authority."

1 Section 5. This act becomes effective July 15, 1998,
2 and applies to any State employee grievance arising on or after
3 that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

2

SENATE BILL 78

State Government, Local Government, and Personnel Committee Substitute Adopted
3/24/97

Short Title: State Building Evacuation.

(Public)

Sponsors:

Referred to:

February 10, 1997

1 A BILL TO BE ENTITLED

2 AN ACT TO AUTHORIZE THE DIRECTOR OF THE STATE CAPITOL
3 POLICE AND THE CHIEF OF THE GENERAL ASSEMBLY POLICE TO
4 PROVIDE FOR THE EVACUATION OF STATE AND LEGISLATIVE
5 BUILDINGS AND GROUNDS IN THE EVENT OF EMERGENCY OR
6 POTENTIALLY HAZARDOUS CONDITIONS.

7 The General Assembly of North Carolina enacts:

8 Section 1. Article 36 of Chapter 143 of the General Statutes is amended
9 by adding a new section to read:

10 "**§ 143-341.1. Evacuation of State buildings and grounds.**

11 The Director of the State Capitol Police, appointed by the Secretary pursuant to
12 G.S. 143-340(22), or the Director's designee, shall exercise at all times those means
13 that, in the opinion of the Director or the designee, may be effective in protecting all
14 State buildings and grounds, except for the State legislative buildings and grounds as
15 defined in G.S. 120-32.1(d), and the persons within those buildings and grounds from
16 fire, bombs, bomb threats, or any other emergency or potentially hazardous
17 conditions, including both the ordering and control of the evacuation of those
18 buildings and grounds. The Director or the Director's designee may employ the
19 assistance of other available law enforcement agencies and emergency agencies to aid
20 and assist in evacuations of those buildings and grounds."

21 Section 2. Article 7 of Chapter 120 of the General Statutes is amended
22 by adding a new section to read:

1 **"§ 120-32.1A. Evacuation of legislative buildings and grounds.**

2 The Chief of the General Assembly Police, or the Chief's designee, shall exercise
3 at all times those means that, in the opinion of the Chief, or the Chief's designee,
4 may be effective in protecting the State legislative buildings and grounds and the
5 persons within those buildings and grounds from fire, bombs, bomb threats, or any
6 other emergency or potentially hazardous conditions, including both the ordering and
7 control of the evacuation of those buildings and grounds. The Chief, or the Chief's
8 designee, may employ the assistance of other available law enforcement agencies and
9 emergency agencies to aid and assist in evacuations of the legislative buildings and
10 grounds."

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



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 78

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)
Page 1 of ____

S78-ALR-001

Date _____, 1998

Comm. Sub. [YES]
Amends Title []

- 1 moves to amend the bill on page 3, lines 1-3,
2 by rewriting those lines to read:
3 "Section 5. This act becomes effective July 15, 1998, and
4 applies to:
5 (1) All cases pending on July 15, 1998,
6 a. In the Office of Administrative Hearings or
7 before the State Personnel Commission; or
8 b. On appeal from a decision of the State Personnel
9 Commission; and
10 (2) All State employee grievances arising on or after July
11 15, 1998."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____



**North Carolina General Assembly
Legislative Services Office**

George R. Hall, Legislative Services Officer
(919) 733-7044

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
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Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
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Donald W. Fulford, Director
Information Systems Division
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(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

June 15, 1998

MEMORANDUM

TO: Representatives Leo Daughtry and Edwin Hardy, Co-Chairs,
House Judiciary I Committee.

FROM: Karen Cochrane Brown, Committee Co-Counsel. *KCB*

RE: Proposed House Committee Substitute for
Senate Bill 78 - State Employee Sexual Harassment.

The proposed committee substitute for Senate Bill 78 amends the State Personnel Act to establish jurisdiction for hearing of state employee sexual harassment grievances before the Office of Administrative Hearings and the State Personnel Commission. The following is a section by section summary of the bill.

Section 1.

Section 1 of the bill amends G.S. 126-34, which establishes the requirement that a career State employee having a grievance which does not involve discrimination, must first discuss the grievance with the employee's supervisor and then follow the agency's grievance procedure. The amendment adds grievances involving sexual harassment to the various enumerated forms of discrimination which are not required to go through the agency's grievance procedure.

Section 2.

This section amends G.S. 126-34.1(a), which sets forth the situations under which a State employee may commence a contested case under the Administrative Procedure Act, seeking review of certain personnel actions taken by the employer. The amendment adds sexual harassment, including quid pro quo harassment or harassment due to a hostile work environment, as an independent ground for commencing a contested case.

Section 3.

Section 3 amends G.S. 126-36, which authorizes a State employee or former State employee to bypass the agency's grievance process when the employee believes that certain personnel actions were taken against the employee for retaliatory or discriminatory reasons, and appeal directly to the State Personnel Commission. The amendment adds a reference to the Office of Administrative Hearings which conducts a hearing in accordance with Chapter 150B.

The amendment also adds a new subdivision which provides that employees who have been subjected to sexual harassment may also appeal directly to the Office of Administrative Hearings and State Personnel Commission.

Section 4.

This section makes a conforming amendment to G.S. 126-37. This statute authorizes the State Personnel Commission to review the recommended decisions of Administrative Law Judges and to make final decisions in various types of personnel cases. The amendment adds cases involving alleged sexual harassment, as a separate category, to the types of cases in which the Commission is authorized to make a final decision.

Section 5.

This section makes the act effective on July 15, 1998, and applicable to State employee grievances arising on or after that date.

THE NEWS & OBSERVER

SATURDAY, JUNE 6, 1998

RALEIGH,
NORTH CAROLINA

FINAL EDITION
50 CENTS

www.news-observer.com



Pamela Robinson worked for the Correction Department.

STAFF PHOTO BY CHRIS SEWARD

State rules against woman in sex bias case

BY JOSEPH NEFF
STAFF WRITER

The record shows that Pamela Robinson followed all of the rules.

She believed she was a victim of sexual harassment from her boss at the state Department of Correction, so she consulted personnel guidelines and took her complaint through three levels of state government procedures.

At each step, investigators and hearing officers found substantial evidence that Robert Terry Jr., a

Panel says law doesn't prohibit harassment

Correction Department probation and parole supervisor, had fondled and propositioned Robinson.

But Robinson is the one who ultimately lost her job.

And the state Personnel Commission dropped a bombshell on Robinson and every other state employee pinched, ogled, propositioned or sexually demeaned by a boss.

State law doesn't prohibit sexual harassment, the commission said.

"There is no jurisdiction [under state law for Robinson's] claim she was discriminated against on the basis of her sex by having to work in a hostile environment," the state Personnel Commission ruled May 11. State law "does not prohibit sexual harassment, either in the form of quid pro quo or hostile

environment."

This is the same four-member commission — two men and two women — that said Robinson's account was believable and that expressed concerns that the Correction Department had retaliated against her for complaining.

The ruling seems directly to contradict the Office of State Personnel's regulations, which say an "intimidating, hostile or offen-

SEE HARASS, PAGE 14A

HARASS

CONTINUED FROM PAGE 1A

sive working environment" is sex discrimination prohibited by state law.

The Department of Correction's personnel manual says the same.

State Personnel Director Ronald G. Penny struggled to explain the inconsistencies.

Sexual harassment "is not allowed," Penny said. "It is a violation of the law. But the statute does not give [the] state Personnel Commission jurisdiction to handle these cases."

The state can only handle sex discrimination cases when the discrimination alters the terms of workers' jobs, Penny said. This means an employee has to be fired, demoted or transferred as a result of the harassment, he said. Working in a hostile environment in and of itself is not enough, he said.

The state's position is that Robinson's job status did not change because of the harassment.

But why do state personnel manuals say that sexual harassment in and of itself is illegal? And why do the manuals counsel employees about how to file complaints with the state?

"It's misleading employees if the regulations don't spell it out correctly," said Penny, who referred further inquiries to the Attorney General's Office.

Neil Dalton, the deputy attorney general handling the case, declined to comment because the case is still pending.

Burton Craige, Robinson's attorney, said the commission's ruling means that state employees have no recourse if they work in a hostile work environment, whether it is sexual or racial.

"If you are black, and your white boss puts KKK signs up and down the hall, there would be no remedy for you," Craige said.

Robinson "has spent two years following the procedures they told her to follow and now they're telling her that their own procedures are a sham," Craige, of Raleigh, said.

No comment

Yet state workers with grievances are compelled to go through the state process because courts take a dim view of lawsuits where the employee has not exhausted the administrative process.

Robinson, who has taken the case to Wake County Superior Court, declined to comment on the advice of Craige.

Terry also declined to comment, saying the Attorney General's Office had advised him not to talk. Terry still has his \$38,196 a year supervisor's job.

Robinson began working for the state in May 1991 as a deputy court clerk in Henderson. In March 1995, she took a job as a stenographer in the Henderson office of the Division of Adult Probation and Parole, because the hours were more compatible with her child care duties.

According to Robinson's testimony at grievance hearings, Terry touched her inappropriately at least five times. He made references to them having an affair, she said.

On one occasion, she said, Terry told her he had dreamed about her, saying, "I can't tell you what it was about, because it might get me into trouble." Robinson said she interpreted this as a sexual remark. Later, she said Terry told her that they should sleep together during a two-day computer seminar in Raleigh.

Four witnesses testified that Robinson told them about the proposition soon after it happened.

Terry denied the allegations of sexual harassment.

After Robinson filed her complaint, the

Correction Department conducted an internal investigation that concluded Terry's conduct did not rise to the level of sexual harassment.

Robinson, appealed to the Office of Administrative Hearings.

After 11 days of testimony and reviewing dozens of documents, Administrative Law Judge Thomas R. West Jr. said that he believed Robinson's testimony and that he found Terry's testimony "not credible".

He said the state should reinstate Robinson and give her back pay.

Other women had testified about being sexually harassed by Terry. Other Correction Department employees corroborated Robinson's testimony.

"Terry repeatedly subjected [Robinson] to offensive touching, sexual suggestions and innuendoes," West wrote. "He made an explicit proposition that she spend the night with him at a state-sponsored seminar. He then subjected her to degrading inquiries about her relationships with other men. Each of these incidents was deliberate, unsolicited and unwelcome."

Internal missteps

Furthermore, West also found that the Department of Correction had botched its internal investigation. The department refused to interview key witnesses who did not work for the department. It also rejected Robinson's offer to take a polygraph test.

And West determined that Alfonza Fullwood, the Correction official in charge of the department's internal investigation, altered the conclusion of his initial report after a telephone call with Theodis Beck, the director of the Division of Adult Probation and Parole.

Beck could not be reached for comment.

Fullwood's first report contained extensive evidence that tended to support Robinson's contentions and refute Terry's denial.

After the phone call with Beck, Fullwood inserted the statement "Terry's conduct did not rise to the level of sexual harassment" into the report. In a deposition before the administrative law hearing, Fullwood denied changing the report, but recanted when he testified before West. At the hearing, Fullwood also admitted destroying his original report shortly before his deposition.

West also found that the department had retaliated against Robinson after she filed her grievance by giving her an unfavorable job evaluation, even though there were no unfavorable records in her file until she filed her grievance.

In addition, parole officials ordered Robinson to keep working in the same office as Terry, even after Robinson's doctor, Anita Blosser, said it would be detrimental to Robinson's health.

"Indeed, in light of Dr. Blosser's medical opinion, the inference is inescapable that [the Department of Correction] knew its order would force [Robinson's] resignation," West wrote.

Robinson refused to work in the same office as Terry. Craige, her lawyer, tried to work out a compromise, but the department did not respond to his letters.

The Division of Adult Probation and Parole terminated Robinson on April 29, 1996, saying her refusal to return to the office with Terry meant that she had resigned without giving notice.

She was dismissed two days short of becoming a five-year state employee, the point at which you become eligible for retirement benefits.

Joseph Neff can be reached at 829-4516 or jneff@nando.com

*X two handouts
not passed out*



PAMELA ROBINSON,
PETITIONER,

) STATE PERSONNEL COMMISSION
) DECISION AND ORDER
)

-VS-

) CASE NUMBER
)
) 96 OSP 0403
) 96 OSP 0654
)

N. C. DEPARTMENT OF
CORRECTION,
RESPONDENT.

A Petition for Contested Case Hearing in the above captioned matter 96 OSP 0403 was filed in the Office of Administrative Hearings on April 8, 1996, and in the above captioned matter 96 OSP 0654 on May 28, 1996. The Recommended Decision of Administrative Law Judge Thomas R. West was filed on December 8, 1997. The State Personnel Commission received the official record from the Office of Administrative Hearings on January 12, 1998. The State Personnel Commission calendared this matter for its February 12, 1998 meeting, but continued it off the February docket for good cause shown and at the request of the Respondent's attorney. The Commission then recalendared this matter for its April 2, 1998 meeting.

On March 3, 1998, Delores J. Stanley, Administrator to the State Personnel Commission, received a letter from Petitioner's attorney, Mr. Burton Craige, asking that Commissioner Garey Ballance consider recusing himself due to Mr. Frank Ballance's relationship with Mr. Robert Terry in this matter. Mr. Frank Ballance is the father of Commissioner Garey Ballance. Mr. Robert Terry is Petitioner's supervisor. This case concerns Petitioner's allegations that she was subjected to sexual harassment by her supervisor, Mr. Robert Terry. Mr. Garey Ballance did recuse himself in this matter and did not participate in the deliberations or the decision.

The Commission considered the recommended decision at its April 2, 1998 meeting and made a decision in this matter at its May 6 meeting in Executive Session via teleconference. Members of the Commission participating in the decision were: Vice Chairperson Ms. Judy Stephenson, Mr. George I. Allison, Mr. Stephen Davis and Ms. Becky Keith.

APPEARANCES

For the Petitioner: Burton Craige, Esq.
For the Respondent: Neil Dalton, Assistant Attorney General

After full consideration of this matter, including a review of the whole record, the State Personnel Commission enters the following **ORDER**:

Petitioner's Petitions for Contested Case Hearing are not within the jurisdiction of the Office of Administrative Hearings or the State Personnel Commission. There is no jurisdiction under Chapter 126 for Petitioner's claim that she was discriminated against on the basis of her sex by having to work in a "hostile environment." Discrimination claims under G.S. § 126-36 are limited to the denial of employment, promotion, training, transfer and demotion, layoff or termination of employment. The State Personnel Commission has no jurisdiction over claims made under Title VII of the Civil Rights Act of 1964, which is a federal law.

There is no jurisdiction for Petitioner's claim that she was "dismissed" because an employee who voluntarily resigns or chooses not to return to work may not bring a claim for wrongful discharge under North Carolina law. *See Gravitte v. Mitsubishi Semiconductor America*, 109 N.C. App. 466, 472, 428 S.E.2d 254, 258 (1993). Even if Petitioner's claim is that she did not voluntarily resign or refuse to return to work, there is still no jurisdiction for her claim. *See also Graham v. Hardee's Food Systems*, 121 N.C. App. 382, 385, 465 S.E.2d 558, 560 (1996) ("North Carolina courts have yet to adopt the employment tort of constructive discharge.") Finally, even if Petitioner were "dismissed" within the meaning of Chapter 126, there is no jurisdiction for Petitioner's claim that she was dismissed without just cause because Petitioner failed to comply with G.S. § 126-34 by pursuing that claim through the agency grievance procedure.

Because Petitioner was not "terminated," her retaliation claim also fails. Even if Petitioner were "terminated" however, Petitioner's claim that she was terminated from her employment due to retaliation was not made under G.S. § 126-36, but under G.S. § 126-17 which protects an employee from retaliation for protesting violations of G.S. § 126-16. Petitioner did not protest a violation of G.S. § 126-16. G.S. § 126-16 does not prohibit "sexual harassment," either in the form of "quid pro quo" or "hostile environment." Therefore, there is no jurisdiction for her claim that she was terminated in retaliation for complaining about a violation of G.S. § 126-16 which provides for equal opportunity for employment and compensation.

I. With regard to the Findings of Fact of the Administrative Law Judge, the Commission decides as follows:

The Commission hereby rejects the Recommended Findings of Fact of the

Administrative Law Judge because the State Personnel Commission has no jurisdiction over the matters alleged in Petitioner's Petitions.

II. With regard to the Conclusions of Law of the Administrative Law Judge, the Commission decides as follows:

The Commission hereby rejects the Recommended Conclusions of Law of the Administrative Law Judge because the State Personnel Commission has no jurisdiction over the matters alleged in Petitioner's Petition.

ORDER

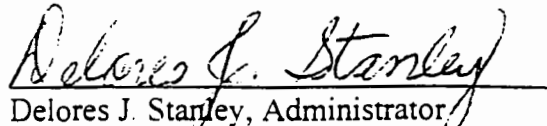
Pursuant to G.S. § 126-37, the State Personnel Commission hereby orders that the Petitioner's Petitions be dismissed for lack of subject matter jurisdiction.

The Commission does wish to express its concern, however, about the Respondent's response to the Petitioner's sexual harassment claims and note that it finds the Petitioner's claims regarding sexual harassment credible.

APPEAL

Pursuant to G.S. § 150B-45, any party wishing to appeal the Commission's decision may commence such an appeal by filing a Petition for Judicial Review in the Superior Court of Wake County or in the Superior Court of the county in which the party resides. The party seeking review must file the petition within 30 days after being served with a written copy of the Commission's Decision and Order. Pursuant to G.S. § 150B-47, the State Personnel Commission is required to file the official record in the contested case within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the petition must be sent to the State Personnel Commission at the time the appeal is initiated in order to insure timely filing of the record.

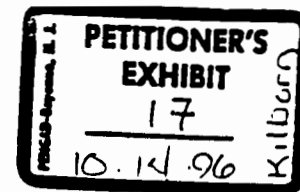
BY:


Delores J. Stanley, Administrator
State Personnel Commission

Pamela Robinson v. N.C. Department of Correction
State Personnel Commission Final Decision and Order
Page 4

May 11, 1998
Date

cc: The Honorable Mack Jarvis
Pamela Robinson
Neil Dalton, Assistant Attorney General
Burton Craig, Esq.
Ronald Gillespie
Dean Coley



North Carolina Department of Correction

214 West Jones Street • P.O. Box 29540 • Raleigh, North Carolina 27626-0540

Division of Human Resources Management

James B. Hunt, Jr., Governor

Ronald A. Gillespie, Director

Franklin Freeman, Secretary

March 7, 1996

Ms. Pamela Robinson

Route 4 Box 353

Henderson, NC 27536

Cert. # 272 301 027

Dear Ms. Robinson:

This office had conducted a thorough investigation into your allegation of inappropriate conduct by Mr. Robert Terry, Jr. Chief Probation Parole Officer, for the Vance /Warren County areas.

You were interviewed on January 18, 1996, alone with other witnesses. This office had an opportunity to thoroughly examine all the relevant information gathered in reference to your complaint and have submitted our findings to the Division of Adult Probation and Parole management for review and action if required.

The Department takes serious all allegations of sexual misconduct complaints and encourages all employees to immediately report any conduct viewed as inappropriate. Should you have any questions regarding this matter, please feel free to call me or Gwen Sanders, EEO Officer, at (919) 733-4465.

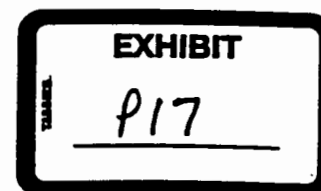
Should you disagree with our decision and wish to appeal this action, you may file a petition for a contested case hearing pursuant to G. S. 150B-23 with the Office of Administrative Hearings, Post Office Drawer 27447, Raleigh, NC 27611-7447, or 424 N. Blount Street, Raleigh, NC 27601-2817 within thirty (30) calendar days from receipt of this letter.

Sincerely,

Alfonza Fullwood
Alfonza Fullwood
EEO Manager

AF:GS

cc: Theodis Beck, Director, DAPP
James Fullwood, Second Judicial Division Chief, DAPP
Gwen Sanders, EEO Officer



*Xtra handouts
not pressed out*

Citation/Title
25 NCAC 1C.0214, SEXUAL HARASSMENT

*33348 25 NCAC 1C.0214

NORTH CAROLINA ADMINISTRATIVE CODE
TITLE 25. OFFICE OF STATE PERSONNEL
CHAPTER 1. OFFICE OF STATE PERSONNEL
SUBCHAPTER 1C. PERSONNEL ADMINISTRATION
SECTION .0200. GENERAL EMPLOYMENT POLICIES

.0214 SEXUAL HARASSMENT

(a) Purpose. The purpose of this policy is to establish that the State of North Carolina prohibits in any form the sexual harassment of state employees or applicants, and to require that every agency subject to the State Personnel Act establishes policies and programs to ensure that work sites are free of sexual harassment.

(b) Sexual harassment is defined as deliberate, unsolicited, and unwelcome verbal and/or physical conduct of a sexual nature or with sexual implications by a supervisor or co-worker which:

- (1) has or may have direct employment consequences resulting from the acceptance or rejection of such conduct; or
- (2) creates an intimidating, hostile or offensive working environment; or
- (3) interferes with an individual's work performance.

(c) Policy. The policy of the State of North Carolina is that no state employee may engage in conduct that falls under the definition of sexual harassment indicated in Paragraph (b) of this Rule. No personnel decisions shall be made on the basis of a granting or denial of sexual favors. All employees are guaranteed the right to work in an environment free from sexual harassment. Sexual harassment shall hereforth be deemed a form of sex discrimination prohibited by G.S. 126-16.

(d) Grievances. Any current or former state employee who feels he/she has been sexually harassed in violation of this policy and G.S. 126-16 may file a grievance through the departmental grievance procedure. Consistent with G.S. 126-36 and G.S. 126-36.1 any applicant for state employment or any current or former state employee who feels that he/she has been sexually harassed may appeal directly to the State Personnel Commission (such appeal consisting of a contested case hearing under Ch. 150B and a decision by the Personnel Commission) without first follow the departmental grievance procedure.

(e) Departmental Plans. Each department head or university chancellor shall include as a supplement to the Affirmative Action Plan a plan setting forth the steps to be taken to prevent and correct sexual harassment. Each department or

25 NCAC 1C.0214, SEXUAL HARASSMENT

university shall submit such a plan to the Office of State Personnel for review, technical assistance, and approval by the Director of State Personnel. Each plan on sexual harassment shall, at the minimum, include:

*33349 (1) publishing and disseminating a policy statement establishing that sexual harassment of employees and applicants is prohibited;

(2) establishment of internal procedure to handle complaints of sexual harassment. This procedure shall provide prompt investigation and resolution of complaints within the department or university and shall offer the employee recourse other than through the immediate supervisor;

(3) utilization of training and other methods to prevent sexual harassment;

(4) stating that the department will, in allegations of sexual harassment, review the entire record and the totality of the circumstances, to determine whether the alleged conduct constitutes sexual harassment;

(5) development of appropriate disciplinary actions for conduct determined to constitute sexual harassment, to be implemented on a case by case basis on the facts of each complaint;

(6) prohibition of internal interference, coercion, restraint or reprisal against any person complaining of alleged sexual harassment;

(7) notification to all employees that a complaint or allegation of sexual harassment may be filed within the department or may be filed with the State Personnel Commission, at the election of the employee.

History Note: Statutory Authority G.S. 126-4; 126-16; 126-17; 126-36; 126-36.1; Eff. December 1, 1980; Amended Eff. November 1, 1988; April 1, 1983.

*23750 G.S. § 126-16

**WEST'S NORTH CAROLINA
STATUTES
CHAPTER 126. STATE
PERSONNEL SYSTEM
ARTICLE 6. EQUAL
EMPLOYMENT AND
COMPENSATION OPPORTUNITY;
ASSISTING IN OBTAINING
STATE EMPLOYMENT**

Current through end of 1997 legislation

**§ 126-16. Equal opportunity for
employment and compensation by
State departments and agencies and**

local political subdivisions

All State departments and agencies and all local political subdivisions of North Carolina shall give equal opportunity for employment and compensation, without regard to race, religion, color, creed, national origin, sex, age, or handicapping condition as defined in G.S. 168A-3 to all persons otherwise qualified, except where specific age, sex or physical requirements constitute bona fide occupational qualifications necessary to proper and efficient administration. This section with respect to equal opportunity as to age shall be limited to individuals who are at least 40 years of age.

Search this disc for cases citing this section.

Subject:

SEXUAL HARASSMENT POLICY

POLICY

It is the policy of the Department of Correction that no applicant, employee or former employee (former employee meaning the alleged incident occurred at the time of employment) shall engage in or be subjected to conduct, in any form, which falls under the definition of sexual harassment.

PURPOSE

The purpose of this policy is to set forth as clear as possible a definition of sexual harassment and to provide employees, managers and supervisors with a means for preventing, reporting, investigating, and resolving issues relative to sexual harassment.

GENERAL OVERVIEW

This act of discrimination erodes all aspects of the employment experience contributing to absenteeism, turnover, drop in productivity, and loss of motivation. There is not any objective standard by which sexual harassment can be defined because the determination of sexual harassment is in the eyes of the interpreter. Therefore, it is not easy to define precisely what sexual harassment is, it shall include, but is not limited to the following:

slurs, epithets, threats, obscenities, gestures, derogatory comments and unwelcome off-color risque jokes, teasing or sexual advances and similar verbal or physical conduct, (i.e. bumping, touching, stroking, cornering, grabbing, hugging and kissing), and sexually suggestive objects or pictures.

According to the definition, "sexual harassment", is deliberate, unsolicited and unwelcome verbal and/or physical conduct of a sexual nature or with sexual implications by a supervisor or co-worker which:

1. has or may have direct employment consequences resulting from the acceptance or rejection of such conduct; or
2. creates an intimidating, hostile or offensive environment; or
3. interferes with an individual's work performance.

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Subject:

SEXUAL HARASSMENT POLICY

Sexual harassment does not include personal compliments welcomed by the recipient or social interaction or relationships freely entered into by employees of the Department.

Sexual harassment falls in two general categories. The first is referred to as "quid pro quo" which is a situation when an employee is subject of some kind of an adverse employment decision (such as denial of promotion, a transfer to a more undesirable location, or being discharged because of that employee's refusal to submit to sexual demands). The second category of sexual harassment is a hostile work environment or atmosphere. In this category, the environment on the job is so offensive, abusive or oppressive that it interferes with the job performance of the employee or creates an environment which in and of itself is intolerable. This is also called environmental harassment. An example of environmental harassment is the girly calendar.

Sexual harassment shall henceforth be deemed a form of sex discrimination prohibited by North Carolina G.S. 126-16.

COMPLAINT PROCEDURE/ALTERNATIVE MEANS TO COMPLAIN

Sexual harassment may be experienced by applicants, employees or former employees; sexual harassment may occur at various levels, (i.e., between peers or co-workers, supervisors and subordinates). Therefore, any applicant or employee, current or former (former employee meaning the alleged incident occurred at the time of employment), who feels that he/she has been sexually harassed may choose to file the complaint through the following available options:

1. Management Level

Report the alleged sexual harassment as soon as possible, preferably in writing to the immediate supervisor and/or to the next highest level of supervision, up to and including the highest level of supervision within the Division; or

2. Department Level

Report the alleged sexual harassment as soon as possible, preferably in writing, to the Department of Correction EEO Section, 214 West Jones Street, Raleigh, North Carolina 27603, Attention: EEO Manager; or

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Subject:

SEXUAL HARASSMENT POLICY

3. Outside Agencies

Employees may file complaints of the alleged sexual harassment directly with the Office of Administrative Hearings, 424 North Blount Street, Raleigh, North Carolina 27601.

Employees who filed a sexual harassment charge through the internal grievance process and are not satisfied with the decision of the Department, whether probationary or non-probationary, may appeal by filing a complaint with the Office of Administrative Hearings (OAH) within thirty (30) calendar days of receipt of the Department's decision. Employees may also file a complaint of the alleged sexual harassment with the Equal Employment Opportunity Commission (EEOC) regardless of having a separate complaint filed with the Department of Correction or the OAH. Complaints alleging sexual harassment shall be filed with EEOC within three hundred (300) Days of the occurrence. The complaint should be sent to:

Equal Employment Opportunity Commission
5500 Central Avenue
Charlotte, North Carolina 28212

or

Equal Employment Opportunity Commission
1309 Annapolis Drive
Raleigh, North Carolina 27608

INVESTIGATION

All sexual harassment complaints filed through the internal department grievance level shall receive an investigation that is thorough, prompt and will be kept confidential to the maximum extent possible.

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SEXUAL HARASSMENT POLICY

DISCIPLINE/CORRECTIVE ACTION

Sexual harassment is viewed as unacceptable personal conduct which shall result in immediate disciplinary action leading up to and including dismissal. An investigation shall be conducted with regard to all allegations. If the investigation leads to a determination that the charges are valid, the necessary effective corrective action shall be taken. Both the individual filing the charge and the accused individual, upon the completion of the investigation, shall be notified regarding the results of the investigation and that appropriate action has been taken--although it is not necessary to tell what kind. Further, individuals found to have filed false complaints or an employee providing false information regarding the complaint will be subject to appropriate disciplinary action as well.

PROHIBITION OF RETALIATION AND IMPEDING AN INVESTIGATION

The Department shall not tolerate co-workers or supervisors committing acts of retaliation against an employee who has filed a sexual harassment charge and/or an employee assisting in a complaint. Further, the Department will not tolerate interfering with or impeding in any manner the investigating of a complaint alleging sexual harassment. Retaliation can include remarks, threats, or the involuntary transfer to another location, post assignment, or shift of the person making the complaint unless the transfer is requested by the individual filing the complaint. Acts of retaliation shall be viewed as unacceptable personal conduct which shall result in immediate disciplinary action up to and including dismissal.

EMPLOYEE RESPONSIBILITY

An applicant, employee or former employee (former employee meaning the alleged incident occurred at the time of employment), who views specific comments and conduct as sexually offensive, should immediately make the offender aware of his/her conduct by telling the individual that the conduct is unwelcome and that such conduct is to cease. Further, the applicant, employee or former employee should maintain a record of the offensive conduct in the order in which it occurred. If the conduct does not cease the applicant, employee or former employee should immediately report the offensive conduct to his/her supervisor, or the next level of supervisor up to and including the highest level within the Division or employee may report the offending conduct to Department of Correction - EEO Section.

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SEXUAL HARASSMENT POLICY

NOTE: Putting the offender on notice is not a prerequisite to filing a sexual harassment charge because there may exist circumstances which make it difficult for the victim to voice opposition. An example of this is when the offending conduct is coming from the supervisor.

TIME REQUIREMENT FOR REPORTING AND FILING COMPLAINT

Quid Pro Quo (*employment decision based on sexual favors*): An applicant, employee or former employee (former employee meaning alleged harassment occurring at the time of employment) whose employment; promotion; demotion; layoff; termination of employment; compensation; or training was condition upon their rejection or acceptance of sexual favors is strongly encouraged to report any offensive conduct as soon as possible. Reporting the offensive conduct without delay makes for a less difficult investigation.

Hostile Environment (*unwelcome sexual conduct*): An applicant, employee or former employee (former employee meaning alleged incident occurred at the time of employment) who is subjected to unwelcome sexually explicit language (comment, remarks, other sexually oriented statements, off-color jokes) or physical touching should tell the offender that his/her conduct is unwelcome and such conduct should cease. Further, it is strongly encouraged to report the incident immediately to a supervisor or the next level of management up to and including the highest level within the division, or to the Department of Correction - EEO Section.

NOTE: While the Department of Correction strongly encourages any employee who feels he/she has been sexually harassed to report the offensive conduct, an employee should not wait until he/she receives disciplinary action to file such a complaint.

EMPLOYER RESPONSIBILITY

Each member of management is responsible for creating an atmosphere free of sexual harassment. In addition, it is the responsibility of management/supervisors to take immediate action once an incident is reported to include notifying the Department of Correction - EEO Section for instruction, guidance, consultation and assistance.

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SEXUAL HARASSMENT POLICY

All complaints, whether formal or informal will be handled thoroughly, promptly, and kept confidential to the maximum extent possible. Corrective action will be taken if the charge is found to be valid. Further, if managers/supervisors are notified either by the victim or another employee regarding conduct in the workplace which may be viewed as unwelcome and offensive, (i.e., remarks and jokes of a sexual nature) they should take corrective action without delay in an effort to create a work environment free of such conduct.

INVESTIGATION PROCEDURE

Managers and Supervisors who receive sexual harassment complaints, whether formal or informal, should immediately notify the Department's EEO Section for the purpose of documentation, consultation, guidance and assistance in conducting the investigation, if required. If the decision is to utilize field personnel to conduct the investigation, a copy of the investigatory report shall be submitted to the EEO Section for review and approval prior to final action.

NOTE: Managers and supervisors receiving internal complaints of a discriminatory nature, whether formal or informal; i.e. race, gender, national origin, religion, age, or disability, shall refer the complaint to the Department's EEO Section for the purpose of investigation and determination.

The following is a series of steps which shall be taken in conducting sexual harassment complaints:

1. Contact the Department of Correction EEO Section;
2. If it is determined that field personnel should conduct the investigation they should begin by getting details of the incident from the victim, including dates, what was said and done, and what specific conduct the alleged victim considers inappropriate;
3. Keep investigation, including the identity of the accused, confidential to the extent practical;
4. Interview witnesses or those who might have knowledge of the incident;
5. Document the investigation;

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SEXUAL HARASSMENT POLICY

6. Keep documentation of the incident out of both the employees' (accused and accuser) files unless sexual harassment is proven and discipline is imposed;
7. Tell the victim when you have completed the investigation and taken appropriate action--although it isn't necessary to tell what kind; and
8. Reassure the victim that there will be no retaliation and that you expect no recurring harassment but to contact management or Personnel if sexual harassment occurs again.
9. If the offensive conduct does not rise to the level of sexual harassment, complainant should be told that the alleged offender will be spoken with regarding the conduct and that any further incidents should be reported immediately. Although the offensive conduct may not rise to the level of sexual harassment, it could lead to some level of discipline.

NOTE: A through investigation will include five elements: (1) determine what happened; (2) determine whether or not sexual harassment occurred; (3) determine the appropriate action; (4) communicate findings to the parties involved (complainant and accused); and (5) document all steps taken from the initiation of the complaint to its resolution.

G00070

POLICY AND COMPLAINT PROCEDURE

1. The Commission shall be composed of five members, and may also include such number of advisors as may be deemed necessary for the proper discharge of its functions.

2. The Commission shall be appointed by the President of the United States, and shall hold office for a term of five years, and may be reappointed for one or more terms of five years each.

3. The Commission shall have the honor and privilege of access to all parts of the Executive branch of the Government, and shall have the right to call for and receive from any department, bureau, or office of the Executive branch of the Government, such information and documents as may be necessary for the proper discharge of its functions.

4. The Commission shall have the right to hold public hearings, and to receive testimony from any person who may be interested in the subject matter of its investigation.

5. The Commission shall have the right to subpoena and examine any person who may be interested in the subject matter of its investigation.

6. The Commission shall have the right to receive and examine any document or paper which may be in the possession, custody, or control of any person who may be interested in the subject matter of its investigation.

7. The Commission shall have the right to receive and examine any document or paper which may be in the possession, custody, or control of any person who may be interested in the subject matter of its investigation.

8. The Commission shall have the right to receive and examine any document or paper which may be in the possession, custody, or control of any person who may be interested in the subject matter of its investigation.

9. The Commission shall have the right to receive and examine any document or paper which may be in the possession, custody, or control of any person who may be interested in the subject matter of its investigation.

10. The Commission shall have the right to receive and examine any document or paper which may be in the possession, custody, or control of any person who may be interested in the subject matter of its investigation.

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William Freeman Secretaries

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 1393*

Short Title: Clarify Intermediate Punishments.

(Public)

Sponsors: Representatives Justus; and Baddour.

Referred to: Judiciary I.

May 21, 1998

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY CONDITIONS OF PROBATION FOR INTERMEDIATE
3 PUNISHMENTS UNDER STRUCTURED SENTENCING.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 15A-1340.11 reads as rewritten:

6 "§ 15A-1340.11. Definitions.

7 The following definitions apply in this Article:

- 8 (1) Active punishment. -- A sentence in a criminal case that requires
9 an offender to serve a sentence of imprisonment and is not
10 suspended. Special probation, as defined in G.S. 15A-1351, is not
11 an active punishment.
- 12 (2) Community punishment. -- A sentence in a criminal case that does
13 not include an active punishment, an intermediate punishment, or
14 any of the conditions of probation listed in subdivision (6) of this
15 section.
- 16 (3) Day-reporting center. -- A facility to which ~~offenders are~~ an
17 offender sentenced to intermediate punishment is required, as a
18 condition of probation, to report on a daily ~~or other regular~~
19 ~~at specified times~~ time from a for a specified length of ~~time~~
20 minimum of 90 days to a maximum of 180 days. An offender who
21 is unemployed shall be required to remain at the day-reporting
22 center for a minimum period of three hours per day. An offender
23 who is employed or a full-time student shall be required to remain
24 at the facility for at least one hour per day. An offender assigned

1 to a day-reporting center is to be engaged in habilitation programs
2 conducted at the facility, and may be ordered to participate in
3 activities such as ~~counseling, treatment, social skills training, or~~
4 ~~employment training.~~ work, substance abuse treatment, social skills
5 training, education, employment or employment training
6 conducted at the facility or at other specified locations. After the
7 initial reporting period, the offender shall remain under probation
8 supervision and shall continue to report as specified to complete
9 treatment conditions and habilitation programs. The offender shall
10 be required to adhere to a daily program regime and a curfew.

11 (4) Repealed by Session Laws 1997-57, s. 2.

12 (4a) House arrest with electronic monitoring. -- Probation in which the
13 offender is required to remain at his or her residence unless the
14 court or the probation officer authorizes the offender to leave for
15 the purpose of employment, counseling, a course of study, or
16 vocational training. The offender shall be required to wear a
17 device which permits the supervising agency to monitor the
18 offender's compliance with the condition electronically.

19 (5) Intensive probation. -- Probation that requires the offender to
20 submit to supervision by officers assigned to the Intensive
21 Supervision Program established pursuant to G.S. 143B-262(c), and
22 to comply with the rules adopted for that Program. Unless
23 otherwise ordered by the court, intensive supervision also requires
24 multiple contacts by a probation officer per week, a specific period
25 each day during which the offender must be at his or her
26 residence, and that the offender remain gainfully and suitably
27 employed or faithfully pursue a course of study or of vocational
28 training that will equip the offender for suitable employment.

29 (6) Intermediate punishment. -- A sentence in a criminal case that
30 places an offender on supervised probation and includes at least
31 one of the following conditions:

- 32 a. Special probation as defined in G.S. 15A-1351(a).
33 b. Assignment to a residential program.
34 c. House arrest with electronic monitoring.
35 d. Intensive probation.
36 e. Assignment to a day-reporting center.

37 In addition, a sentence to regular supervised probation imposed
38 pursuant to a community penalties plan as defined in G.S. 7A-
39 771(2) is an intermediate punishment, regardless of whether any of
40 the above conditions is imposed, if the plan is accepted by the
41 court and the plan does not include active punishment.

42 (7) Prior conviction. -- A person has a prior conviction when, on the
43 date a criminal judgment is entered, the person being sentenced
44 has been previously convicted of a crime:

- a. In the district court, and the person has not given notice of appeal and the time for appeal has expired; or
- b. In the superior court, regardless of whether the conviction is on appeal to the appellate division; or
- c. In the courts of the United States, another state, the armed services of the United States, or another country, regardless of whether the offense would be a crime if it occurred in North Carolina,

regardless of whether the crime was committed before or after the effective date of this Article.

- (8) Residential program. -- A program in which ~~the offender~~, an offender sentenced to intermediate punishment, as a condition of probation, is required to reside in a specified facility for a specified ~~period and~~ length of time. The length of time so specified shall be not less than 30 days nor more than two years. An offender in a residential program shall be engaged in recommended habilitation programs conducted at the facility or other locations, and shall abide by the rules and regulations of the residential program and probationary supervision. The offender may be ordered to participate in activities such as counseling, work, substance abuse treatment, social skills training, employment or employment training, conducted at the residential facility or at other specified locations."

Section 2. G.S. 15A-1343(b1)(2a) reads as rewritten:

- "(2a) Submit to a period of confinement in a facility operated by the Department of Correction for a minimum of 90 days or a maximum of 120 days ~~under special probation, reference G.S. 15A-1351(a) or G.S. 15A-1344(e)~~, and abide by all rules and regulations as provided in conjunction with the Intensive Motivational Program of Alternative Correctional Treatment (IMPACT), which provides an atmosphere for learning personal confidence, personal responsibility, self-respect, and respect for attitudes and value systems. This condition may also include a period of supervision through the Post-Boot Camp Probation Program."

Section 3. G.S. 15A-1344(e) reads as rewritten:

- "(e) Special Probation in Response to Violation. -- When a defendant has violated a condition of probation, the court may modify his probation to place him on special probation as provided in this subsection. In placing him on special probation, the court may continue or modify the conditions of his probation and in addition require that he submit to a period or periods of imprisonment, either continuous or noncontinuous, at whatever time or intervals within the period of probation the court determines. In addition to any other conditions of probation which the court may impose, the court shall impose, when imposing a period or periods of imprisonment

1 as a condition of special probation, the condition that the defendant obey the Rules
2 and Regulations of the Department of Correction governing conduct of inmates, and
3 this condition shall apply to the defendant whether or not the court imposes it as a
4 part of the written order. If imprisonment is for continuous periods, the confinement
5 may be in either the custody of the Department of Correction or a local confinement
6 facility. Noncontinuous periods of imprisonment under special probation may only be
7 served in a designated local confinement or treatment facility. Except for
8 probationary sentences for impaired driving under G.S. 20-138.1 and probationary
9 sentences which include a period of imprisonment in the Intensive Motivational
10 Program of Alternative Correctional Treatment (IMPACT) under G.S.
11 15A-1343(b1)(2a), G.S. 20-138.1, the total of all periods of confinement imposed as
12 an incident of special probation, but not including an activated suspended sentence,
13 may not exceed six months or one fourth the maximum sentence of imprisonment
14 imposed for the offense, whichever is less. For probationary sentences for impaired
15 driving under G.S. 20-138.1, the total of all periods of confinement imposed as an
16 incident of special probation, but not including an activated suspended sentence, shall
17 not exceed one-fourth the maximum penalty allowed by law. For probationary
18 sentences which include a period of imprisonment in the Intensive Motivational
19 Program of Alternative Correctional Treatment (IMPACT) under G.S.
20 15A-1343(b1)(2a), the total of all periods of confinement imposed as an incident of
21 special probation, but not including an activated suspended sentence, shall not exceed
22 six months or one half the maximum term of the suspended sentence of
23 imprisonment, whichever is less. No confinement other than an activated suspended
24 sentence may be required beyond the period of probation or beyond two years of the
25 time the special probation is imposed, whichever comes first."

26 Section 4. G.S. 15A-1351(a) reads as rewritten:

27 "(a) The judge may sentence to special probation a defendant convicted of a
28 criminal offense other than impaired driving under G.S. 20-138.1, if based on the
29 defendant's prior record or conviction level as found pursuant to Article 81B of this
30 Chapter, an intermediate punishment is authorized for the class of offense of which
31 the defendant has been convicted. A defendant convicted of impaired driving under
32 G.S. 20-138.1 may also be sentenced to special probation. Under a sentence of
33 special probation, the court may suspend the term of imprisonment and place the
34 defendant on probation as provided in Article 82, Probation, and in addition require
35 that the defendant submit to a period or periods of imprisonment in the custody of
36 the Department of Correction or a designated local confinement or treatment facility
37 at whatever time or intervals within the period of probation, consecutive or
38 nonconsecutive, the court determines. In addition to any other conditions of
39 probation which the court may impose, the court shall impose, when imposing a
40 period or periods of imprisonment as a condition of special probation, the condition
41 that the defendant obey the Rules and Regulations of the Department of Correction
42 governing conduct of inmates, and this condition shall apply to the defendant
43 whether or not the court imposes it as a part of the written order. If imprisonment is
44 for continuous periods, the confinement may be in the custody of either the

1 Department of Correction or a local confinement facility. Noncontinuous periods of
2 imprisonment under special probation may only be served in a designated local
3 confinement or treatment facility. Except for probationary sentences of impaired
4 driving under G.S. 20-138.1 and ~~probationary sentences which include a period of~~
5 ~~imprisonment in the Intensive Motivational Program of Alternative Correctional~~
6 ~~Treatment (IMPACT) under G.S. 15A-1343(b1)(2a),~~ G.S. 20-138.1, the total of all
7 periods of confinement imposed as an incident of special probation, but not including
8 an activated suspended sentence, may not exceed six months or one fourth the
9 maximum sentence of imprisonment imposed for the offense, whichever is less, and
10 no confinement other than an activated suspended sentence may be required beyond
11 two years of conviction. For probationary sentences for impaired driving under G.S.
12 20-138.1, the total of all periods of confinement imposed as an incident of special
13 probation, but not including an activated suspended sentence, shall not exceed one-
14 fourth the maximum penalty allowed by law. ~~For probationary sentences which~~
15 ~~include a period of imprisonment in the Intensive Motivational Program of~~
16 ~~Alternative Correctional Treatment (IMPACT) under G.S. 15A-1343(b1)(2a), the~~
17 ~~total of all periods of confinement imposed as an incident of special probation, but~~
18 ~~not including an activated suspended sentence, shall not exceed six months or~~
19 ~~one-half of the maximum term of the suspended sentence, whichever is less.~~ In
20 imposing a sentence of special probation, the judge may credit any time spent
21 committed or confined, as a result of the charge, to either the suspended sentence or
22 to the imprisonment required for special probation. The original period of probation,
23 including the period of imprisonment required for special probation, shall be as
24 specified in G.S. 15A-1343.2(d), but may not exceed a maximum of five years, except
25 as provided by G.S. 15A-1342(a). The court may revoke, modify, or terminate special
26 probation as otherwise provided for probationary sentences."

27 Section 5. This act becomes effective December 1, 1998.



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1393

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)
Page 1 of ____

H1393-ARL-001

Date 16 June, 1998

Comm. Sub. []
Amends Title []

Representative Justus

- 1 moves to amend the bill on page 5, line 27,
2 by rewriting that line to read:
3 "Section 5. This act becomes effective December 1, 1998
4 and applies to sentences imposed on or after that date."
5

SIGNED [Signature]
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____



**North Carolina General Assembly
Legislative Services Office**

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June 16, 1998

MEMORANDUM

TO: House Judiciary I Committee

FROM: Brenda J. Carter & Steven Rose (SR)

RE: HOUSE BILL 1393- CLARIFY INTERMEDIATE PUNISHMENTS

House Bill 1393 is a recommendation of the Joint Legislative Corrections and Crime Control Oversight Committee.

Intermediate Punishments

Under structured sentencing, sentence dispositions are prescribed on felony and misdemeanor punishment charts for each combination of offense class and prior record level. If the disposition is an "A", then the sentence must be activated. If the disposition is a "C" or an "I", then the sentence must be suspended. An "I" on the chart indicates that an intermediate punishment is authorized. An intermediate punishment requires a sentence of supervised probation with at least one of the following conditions:

- a. **Special Probation** as defined in G.S. 15A-1351(a). This sanction is sometimes referred to as a split sentence. The IMPACT program (boot camp) is a form of special probation.
- b. **Residential Program** assignment that requires the offender to reside in a facility for a specified period of time and to participate in activities such as counseling, treatment, social skills training, or employment training at the residential facility or other specified locations.
- c. **Electronic Monitoring** that requires the offender to remain in one or more specified places for a specified period or periods each day, and in which the offender is required to wear a device which permits the supervising agency to monitor the offender's compliance with the conditions.
- d. **Intensive Probation** that requires the offender to submit to supervision by officers assigned to the Intensive Probation Program and to comply with the rules adopted for that program.
- e. **Day Reporting Center** assignment that requires the offender to report on a daily or other regular basis at specified times for a specified length of time to participate in activities such as counseling, treatment, social skills training or employment training.

Absent specific findings by the court that shorter or longer periods of probation are necessary, the length of the original period of probation for a misdemeanor sentenced to intermediate punishment would be not less than 12 nor more than 24 months; the length of the original period of probation for a felon sentenced to intermediate punishment would be not less than 18 nor more than 36 months.

Clarifying Definitions

According to the Department of Correction, the statutory definitions of **day reporting center** and **residential program** lack sufficient definition with regard to frequency and duration of required program contacts with the offender. As a result, the two programs have not been utilized efficiently or uniformly from one jurisdiction to another. Section 1 of the bill amends the definitions for "day reporting center" and "residential program" to provide for specificity and consistency in the use of the programs as intermediate punishment.

IMPACT Changes

Since its inception, the Intensive Motivational Program of Alternative Correctional Treatment (IMPACT) program has been defined by statute as a form of "split sentence" and "special probation". An offender could be sentenced by a judge to serve up to 120 days in the IMPACT program, and upon successful completion the offender would be placed on supervised probation. First time offenders convicted of a misdemeanor or non-violent felony were thus given a "quick dip", or "shock incarceration" in the boot camp program. Under structured sentencing, the typical first time misdemeanor is sentenced to community punishment - which might include probation, community service, restitution, fines. The Department of Correction notes that misdemeanants now do not receive a sufficient active sentence to split for participation in IMPACT; persons now eligible for IMPACT are the more serious and violent offenders. The Department of Correction has indicated that with the implementation of structured sentencing IMPACT would be more appropriately defined as an Intermediate Punishment residential program. The IMPACT program has been transferred to the Division of Adult Probation and Parole, and is operated as a residential program, although time spent in the program counts against an offender's time served if the sentence is activated. The net effect of the changes in Sections 2-4 of the bill is to allow IMPACT to be redefined as a residential program of intermediate punishment rather than as a form of incarceration under special probation.

There are currently three statutes which make reference to IMPACT as special probation. Under a sentence of special probation, the court may suspend the term of imprisonment and place the defendant on probation and in addition require that the defendant submit to a period or periods of imprisonment. G.S. 15A-1343(b1) sets out special conditions of probation that may be imposed in addition to the regular conditions of probation that apply to all probationers; as a special condition of probation, a defendant may be required to complete the IMPACT program *under special probation*. G.S. 15A-1351(a) authorizes a judge to sentence a defendant who is eligible for an intermediate punishment to special probation. Finally, G.S. 15A-1344(e) currently provides that when a defendant has violated a condition of probation, the court may modify his probation to place him on special probation. In placing the defendant on special probation, the court may continue or modify existing conditions of probation and in addition require that the defendant submit to imprisonment for a specified time. Under current law, for probationary sentences that include IMPACT, the total of all periods of confinement imposed as an incident of special probation cannot exceed 6 months or $\frac{1}{2}$ the maximum term of the suspended sentence of imprisonment, whichever is less. This means that the typical first time misdemeanor (eligible for community punishment under structured sentencing) is not eligible for IMPACT as special

probation. The existing law excludes most misdemeanants and some low-level first time felons from the program, because the sentences are not long enough to split.

Sections 2-4 of the bill retain IMPACT as a special condition of probation G.S. 15A-1343(b1), but eliminate references to IMPACT as part of a split sentence or special probation. By removing references to IMPACT as a form of incarceration and special probation, the IMPACT program can fit within the definition of a "residential program" - this means that an offender who is eligible for intermediate punishment can be placed on supervised probation with assignment to IMPACT, provided the offender meets the eligibility requirements of the program.

The bill would become effective December 1, 1998.

MINUTES

HOUSE JUDICIARY I COMMITTEE

The House Committee on JUDICIARY I met in Room 1228/1327 of the Legislative Building on June 18, 1998 at 10:00 A.M. Representative Hardy, Co-Chairman, presided at the meeting. Other members present were: Representative Daughtry, Co-Chairman, and Representative(s) Braswell, Alexander, Arnold, Blue, Capps, Ellis, Hall, Jeffus, Justus, Michaux, Miller, and Thompson. Staff Counsel Steven Ross was also present.

HB 1567 AN ACT TO REDEFINE THE NEWSPAPERS ELIGIBLE TO ACCEPT LEGAL ADVERSITING IN ANSON COUNTY was the only bill considered.

Representative Hall presented a technical amendment which was adopted. (See Attachment G.)

Bill Sponsor Representative Hightower said this is a local bill and affects Anson County. This bill would allow a newly started newspaper, the Anson Express, to bid on legal advertising. At present the only legal advertising permitted is by another newspaper which is owned by people out of the county. The county commissioners say they can save money if they can put this out for bidding.

In response to a question by Representative Braswell, Mr. Rose said that according to Section 2 the act applies to Anson County only and only applies to notices or legal advertisements of that county. Mr. Braswell requested an interpretation of "of that county". There are other local modifications of this statute that apply to local ads that are required to be published "in that county". As Mr. Rose reads this, it would only be the county that could do it.

Representative Capps suggested that it read "published by the county."

In response to a question by Representative Ellis, Representative Hightower said these would be the only public ads they could do although they could publish private ads.

Representative Thompson asked why it takes legislation and the answer was because there is statewide legislation that says you can only publish in newspapers with paid circulation. This newspaper that wants to be able to advertise puts one in every post office box in the county free of charge.

Representative Thompson wanted to know if it was considered a shopper. The answer was that it has some news items also so it is between a shopper and a newspaper.

**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE**

You are hereby notified that the Committee on **JUDICIARY I** will meet as follows:

DAY & DATE: **Thursday, June 18, 1998**

TIME: **10:00 A.M.**

LOCATION: **Room 1228/1327 LB**

The following bills will be considered (Bill # & Short Title):

~~X~~ ~~HB 1389~~ ~~Funding for Legal Services~~ ~~Sponsor - Rep. Allred~~

~~✓~~ ~~HB 1393~~ ~~Clarify Intermediate Punishments~~ ~~Sponsor - Rep. Justus~~

~~✓~~ ~~HB 1441~~ ~~Restitution/Civil Judgment~~ ~~Sponsor - Rep. McCrary~~

~~✓~~ ~~HB 1567~~ ~~Anson Legal Advertising~~ ~~Sponsor - Rep. Hightower~~

~~X~~ ~~HB 1717~~ ~~Medical Savings Acct~~ ~~Sponsor - Rep. Hardy~~

Respectfully,

Representative N. Leo Daughtry, Co-Chairman
Representative Edwin Hardy, Co-Chairman

I hereby certify this notice was filed by the committee clerk at the following offices at
2:30 p.m. on June 16, 1998.

____ Principal Clerk
____ Reading Clerk - House Chamber

Betty Wickham, Committee Clerk

AGENDA

HOUSE COMMITTEE ON JUDICIARY I

June 18, 1998
Room 1228/1327 LB
10:00 AM

Representative N. Leo Daughtry, Co-Chairman
Representative Edwin (Sandy) Hardy, Co-Chairman

BILLS TO BE CONSIDERED:)

~~HB-1393~~ ~~Clarify-Intermediate-Punishments~~ ~~Sponsor-Rep. Justus~~

HB 1567 Anson Legal Advertising Sponsor - Rep. Hightower

Proposed House Committee Substitute for HB 1317 AMEND CONTESTED CASE
PROCEDURES/Sponsor-Representative C. Wilson, was placed in a subcommittee at June 4th Meeting for member study [Rep. Arnold, Chr.; Blue, Braswell, Clary, Morgan & Sherrill])

ADJOURNMENT

VISITOR REGISTRATION SHEET

Quincy I. 6/18/98

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY
1. <u>Christine White</u>	<u>NCA</u>
2. <u>Reslyn Samuels</u>	<u>NC Coalition Against Domestic Violence</u>
3. <u>Stacy Hooten</u>	<u>Office of the Gov.</u>
4. <u>W. O. Hooten</u>	<u>ACU</u>
5. <u>Tommy Duggan</u>	<u>CSC - Cumberland Co.</u>
6. <u>John Kennedy</u>	<u>CSC - Wake Co.</u>
7. <u>Adam Seavick</u>	<u>NCHAC</u>
8. _____	_____
9. _____	_____
10. _____	_____
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25. _____	_____
26. _____	_____
27. _____	_____
28. _____	_____
29. _____	_____
30. _____	_____
31. _____	_____

**1998 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative(s) **Daughtry and Hardy** for the Committee on **JUDICIARY I.**

☐ Committee Substitute for

H.B. 1567 A BILL TO BE ENTITLED AN ACT TO REDEFINE THE NEWSPAPERS
ELIGIBLE TO ACCEPT LEGAL ADVERTISING IN ANSON 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)

3/25/98

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 1567
Proposed Committee Substitute H1567-PCS1574

Short Title: Anson Legal Advertising.

(Local)

Sponsors:

Referred to:

May 28, 1998

1 A BILL TO BE ENTITLED

2 AN ACT TO REDEFINE THE NEWSPAPERS ELIGIBLE TO ACCEPT LEGAL
3 ADVERTISING IN ANSON COUNTY.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 1-597 reads as rewritten:

6 **"§ 1-597. Regulations for newspaper publication of legal notices, advertisements, etc.**

7 Whenever a notice or any other paper, document or legal advertisement of any
8 kind or description shall be authorized or required by any of the laws of the State of
9 North Carolina, heretofore or hereafter enacted, or by any order or judgment of any
10 court of this State to be published or advertised in a newspaper, such publication,
11 advertisement or notice shall be of no force and effect unless it shall be published in
12 a newspaper with a general circulation to actual paid subscribers which newspaper at
13 the time of such publication, advertisement or notice, shall have been admitted to the
14 United States mails in the Periodicals class in the county or political subdivision
15 where such publication, advertisement or notice is required to be published, and
16 which shall have been regularly and continuously issued in the county in which the
17 publication, advertisement or notice is authorized or required to be published, at least
18 one day in each calendar week for at least 25 of the 26 consecutive weeks
19 immediately preceding the date of the first publication of such advertisement,
20 publication or notice; provided that in the event that a newspaper otherwise meeting
21 the qualifications and having the characteristics prescribed by G.S. 1-597 to 1-599,
22 should fail for a period not exceeding four weeks in any calendar year to publish one
23 or more of its issues such newspaper shall nevertheless be deemed to have complied

1 with the requirements of regularity and continuity of publication prescribed herein.
2 Provided further, that in the event the newspaper otherwise meeting the qualifications
3 and having the characteristics prescribed by G.S. 1-597 to G.S.1-599, is admitted to
4 the United States mails as Standard Mail (A) rather than Periodicals class, the
5 newspaper shall qualify if it maintains a known office in the county where such
6 publication, advertisement or notice is required to be published, is originated and
7 published for the purpose of disseminating information of a public character, is not
8 primarily designed for advertising purposes, and does not contain more than
9 seventy-five percent (75%) advertising in more than one-fourth of the issues
10 published during the preceding six-month period. Provided further, that where any
11 city or town is located in two or more adjoining counties, any newspaper published in
12 such city or town shall, for the purposes of G.S. 1-597 to 1-599, be deemed to be
13 admitted to the mails, issued and published in all such counties in which such town
14 or city of publication is located, and every publication, advertisement or notice
15 required to be published in any such city or town or in any of the counties where
16 such city or town is located shall be valid if published in a newspaper published,
17 issued and admitted to the mails anywhere within any such city or town, regardless of
18 whether the newspaper's plant or known office or the post office where the
19 newspaper is admitted to the mails is in such county or not, if the newspaper
20 otherwise meets the qualifications and requirements of G.S. 1-597 to 1-599. This
21 provision shall be retroactive to May 1, 1940, and all publications, advertisements and
22 notices published in accordance with this provision since May 1, 1940, are hereby
23 validated.

24 Notwithstanding the provisions of G.S. 1-599, whenever a notice or any other
25 paper, document or legal advertisement of any kind or description shall be
26 authorized or required by any of the laws of the State of North Carolina, heretofore
27 or hereafter enacted, or by any order or judgment of any court of this State to be
28 published or advertised in a newspaper qualified for legal advertising in a county and
29 there is no newspaper qualified for legal advertising as defined in this section in such
30 county, then it shall be deemed sufficient compliance with such laws, order or
31 judgment by publication of such notice or any other such paper, document or legal
32 advertisement of any kind or description in a newspaper published in an adjoining
33 county or in a county within the same district court district as defined in G.S. 7A-133
34 or superior court district or set of districts as defined in G.S. 7A-41.1, as the case may
35 be; provided, if the clerk of the superior court finds as a fact that such newspaper
36 otherwise meets the requirements of this section and has a general circulation in such
37 county where no newspaper is published meeting the requirements of this section."

38 Section 2. This act applies to Anson County only and only applies to
39 notices or legal advertisements by that County.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 1567

Short Title: Anson Legal Advertising.

(Local)

Sponsors: Representative Hightower.

Referred to: Judiciary I.

May 28, 1998.

1 A BILL TO BE ENTITLED
2 AN ACT TO REDEFINE THE NEWSPAPERS ELIGIBLE TO ACCEPT LEGAL
3 ADVERTISING IN ANSON COUNTY.
4 The General Assembly of North Carolina enacts:
5 Section 1. G.S. 1-597 reads as rewritten:
6 "**§ 1-597. Regulations for newspaper publication of legal notices, advertisements, etc.**
7 Whenever a notice or any other paper, document or legal advertisement of any
8 kind or description shall be authorized or required by any of the laws of the State of
9 North Carolina, heretofore or hereafter enacted, or by any order or judgment of any
10 court of this State to be published or advertised in a newspaper, such publication,
11 advertisement or notice shall be of no force and effect unless it shall be published in
12 a newspaper with a general circulation to actual paid subscribers which newspaper at
13 the time of such publication, advertisement or notice, shall have been admitted to the
14 United States mails in the Periodicals class in the county or political subdivision
15 where such publication, advertisement or notice is required to be published, and
16 which shall have been regularly and continuously issued in the county in which the
17 publication, advertisement or notice is authorized or required to be published, at least
18 one day in each calendar week for at least 25 of the 26 consecutive weeks
19 immediately preceding the date of the first publication of such advertisement,
20 publication or notice; provided that in the event that a newspaper otherwise meeting
21 the qualifications and having the characteristics prescribed by G.S. 1-597 to 1-599,
22 should fail for a period not exceeding four weeks in any calendar year to publish one
23 or more of its issues such newspaper shall nevertheless be deemed to have complied
24 with the requirements of regularity and continuity of publication prescribed herein.

1 Provided further, that in the event the newspaper otherwise meeting the qualifications
2 and having the characteristics prescribed by G.S. 1-597 to G.S.1-599, is admitted to
3 the United States mails as third class matter rather than second-class matter, the
4 newspaper shall qualify if it maintains a known office in the county where such
5 publication, advertisement or notice is required to be published, is originated and
6 published for the purpose of disseminating information of a public character, is not
7 primarily designed for advertising purposes, and does not contain more than
8 seventy-five percent (75%) advertising in more than one-fourth of the issues
9 published during the preceding six-month period. Provided further, that where any
10 city or town is located in two or more adjoining counties, any newspaper published in
11 such city or town shall, for the purposes of G.S. 1-597 to 1-599, be deemed to be
12 admitted to the mails, issued and published in all such counties in which such town
13 or city of publication is located, and every publication, advertisement or notice
14 required to be published in any such city or town or in any of the counties where
15 such city or town is located shall be valid if published in a newspaper published,
16 issued and admitted to the mails anywhere within any such city or town, regardless of
17 whether the newspaper's plant or known office or the post office where the
18 newspaper is admitted to the mails is in such county or not, if the newspaper
19 otherwise meets the qualifications and requirements of G.S. 1-597 to 1-599. This
20 provision shall be retroactive to May 1, 1940, and all publications, advertisements and
21 notices published in accordance with this provision since May 1, 1940, are hereby
22 validated.

23 Notwithstanding the provisions of G.S. 1-599, whenever a notice or any other
24 paper, document or legal advertisement of any kind or description shall be
25 authorized or required by any of the laws of the State of North Carolina, heretofore
26 or hereafter enacted, or by any order or judgment of any court of this State to be
27 published or advertised in a newspaper qualified for legal advertising in a county and
28 there is no newspaper qualified for legal advertising as defined in this section in such
29 county, then it shall be deemed sufficient compliance with such laws, order or
30 judgment by publication of such notice or any other such paper, document or legal
31 advertisement of any kind or description in a newspaper published in an adjoining
32 county or in a county within the same district court district as defined in G.S. 7A-133
33 or superior court district or set of districts as defined in G.S. 7A-41.1, as the case may
34 be; provided, if the clerk of the superior court finds as a fact that such newspaper
35 otherwise meets the requirements of this section and has a general circulation in such
36 county where no newspaper is published meeting the requirements of this section."

37 Section 2. This act applies to Anson County only and only applies to
38 notices or legal advertisements of that County.

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



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1567

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)
Page 1 of 1

H1567-ARL-001

Date _____, 1998

Comm. Sub. []
Amends Title []

Representative

1 moves to amend the bill on page 2, line 3,
2 by deleting the words "third class matter rather than second class
3 matter," and substituting the words "Standard Mail (A) rather than
4 Periodicals class,".
5

SIGNED Robby Ray Hall
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1567

DATE _____

S. B. No. _____

Amendment No. _____

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Brossard
Sen.) _____

1 moves to amend the bill on page 2, line 38

2 () WHICH CHANGES THE TITLE

3 by deleting the word "of" and

4 substituting "by".

5 _____

6 _____

7 _____

8 _____

9 _____

10 _____

11 _____

12 _____

13 _____

14 _____

15 _____

16 _____

17 _____

18 _____

19 _____

SIGNED Jerry Brossard

ADOPTED _____ FAILED _____ TABLED _____



**North Carolina General Assembly
Legislative Services Office**

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June 18, 1998

MEMORANDUM

TO: House Judiciary I Committee

FROM:  Steven Rose, Committee Counsel

RE: House Bill 1567; Anson legal advertising

House Bill 1567 is a local bill amending G.S. 1-597. It affects Anson County. G.S. 1-597 provides the regulations for newspaper publication of legal notices.

G.S. 1-597 provides that legal notices must be published in a newspaper with a general circulation to actual paid subscribers. The local amendment removes the requirement that the newspaper have actual paid subscribers.

The bill further amends G.S. 1-597 to allow a newspaper otherwise meeting the necessary qualifications, but which is admitted to the United States mails as 3rd Class matter rather than 2nd class matter, to qualify if it maintains a known office in the county where the advertisement is required to be published, is originated and published for the purpose of disseminating information of a public character, is not primarily an advertising newspaper, and does not contain more than 75% advertising in more than ¼ of the issues published during the preceding six months. Finally, G.S. 1-597 is amended as it applies to municipalities located in two or more adjoining counties. Under present law, a newspaper located in such municipality is valid for publication in any of the counties in which the town is located regardless of whether the newspaper's plant or the post office where the newspaper is admitted to the mails is in that county or not. The amendment, on page 2, line 17, is a conforming amendment to allow that part of G.S. 1-597 to conform to the changes made on page 2, lines 1-9.

The act applies to Anson County only and only applies to notices or legal advertisements of Anson County. The act is effective when it becomes law.

HI567-SMRL-001

MINUTES

HOUSE JUDICIARY I COMMITTEE

The House Committee on JUDICIARY I met in Room 1228/1327 of the Legislative Building on June 23, 1998 at 10:00 A.M. Representatives Hardy and Daughtry, Co-Chairmen, presided at the meeting. Other members present were: Representative(s) Braswell, Alexander, Arnold, Blue, Capps, Clary, Crawford, Ellis, Gray, Hall, Hardaway, Holmes, Hunter R., Hurley, Jeffus, Justus, Michaux, Miller, Morgan, Sherrill and Thompson. Staff Counsels Steven Ross and Karen Cochrane-Brown were also present.

HB 665 AN ACT TO CREATE THE CRIME VICTIMS' RIGHTS ACT, TO ASSIST VICTIMS OF DOMESTIC VIOLENCE, TO ALLOW THE ENFORCEMENT OF ORDERS FOR RESTITUTION IN CRIMINAL CASES IN THE SAME MANNER AS CIVIL JUDGMENTS, TO CREATE AN EXCEPTION TO THE STATUTORY EXEMPTIONS FOR EXECUTION OF RESTITUTION JUDGMENTS, TO CHANGE THE ORDER OF PRIORITY FOR DISBURSEMENT OF FUNDS IN CRIMINAL CASES, TO PROHIBIT THE USE OF STATE FUNDS FOR JURY CONSULTANTS, TO REQUEST THE NORTH CAROLINA SUPREME COURT TO CONSIDER AND ADOPT RULES TO EXPEDITE APPEALS FROM CAPITAL CASES THAT INCLUDE A SENTENCE OF DEATH, AND TO REQUIRE A JUDGE PRESIDING IN A CAPITAL TRIAL TO INSTRUCT THE SENTENCING JURY REGARDING THE REVIEW OF SENTENCES OF LIFE IMPRISONMENT WITHOUT PAROLE was the only bill considered.

Representative Hardy called the meeting to order and introduced the two pages for the day – Courtney Hagnie of Madison County and Cameron Howes of Orange County. April Demerick, intern for Sen. Odom, is with Representative Alexander today.

Bill sponsor, Representative Eddins, explained that this bill has been in this committee before and in some subcommittees. There have been some changes. He went over the changes that he has worked on. These occur on page 10, Section 4-6.

Representative Daughtry moved to amend the bill. (See Attachment E.)

Staff member Karen Cochrane-Brown explained changes to the bill which would result from the amendment. She explained that it amends the bill by deleting Sections 6 and 7 on pages 10 and 11 and it substitutes a new Section 6 which deals with review of sentences of life imprisonment without parole after 25 years.

Representative Daughtry said that the original bill has a provision that the judge must instruct the jury about the fact that life in prison does not mean life in prison. It

means that after 25 years the trial court will review the transcript. We are repealing that requirement of the court.

Representative Michaux asked if the review still remains. Representative Daughtry answered in the negative.

Representative Arnold asked if that meant that a life sentence was not just 25 years. Representative Daughtry said that the way the law is now after 25 years the trial court must review the transcript and the history and then make a recommendation to the governor for the purpose of commuting the sentence. This amendment repeals that provision.

Representative Miller wanted to know if the law remains the same with the removal of Sections 6 and 7.

Ms. Karen Cochrane-Brown answered in the negative. She said that those sections are replaced which is a substantive change of the law.

Representative Miller recalled that they debated that point a few years ago and there was a purpose for the review then. He wondered what has transpired since then to support the change.

Representative Daughtry said that there is concern that a sentence of life imprisonment is not a sentence of life imprisonment. Right now the judge is required to instruct the jury about the 25 years review by the court.

Representative Miller wondered why we were dealing with this subject matter and not the crime victims sections.

Representative Michaux said that his amendment merely takes out the mandatory review.

Representative Hurley asked if the review might then be optional.

Representative Daughtry said that review is always optional by the governor.

Representative Justus gave a short history of the bill. One year it went to the Senate floor. In the crime session of 1994, he asked to remove the 25 year judicial review at the Governor's behest. It languished in Judiciary II for the rest of the period.

Representative Michaux asked if 15A-2002 was being repealed. Ms. Cochrane-Brown answered in the negative. She said the reference to 15A-1380.5 is being repealed. In a followup Representative Michaux asked if a judge is still allowed to instruct the jury that a sentence of life imprisonment means a sentence of life imprisonment without parole. He was told yes.

The first amendment (Daughtry's) was adopted.

Representative Hall sent forth an amendment. See Attachment F. (Discussion did not begin on the Hall amendment until the end of this meeting. It continued throughout the next meeting and the vote occurred on Hall amendment two meetings after this date.)

Representative Eddins drew attention to Sections 4 and 5, page 10. Section 4 says that funds may not be used to pay for jury consultants in criminal cases and Section 5 expedites appeals in murder in the first degree cases.

Representative Blue asked if Section 4 was recommended by AOC or another agency. Representative Eddins said it was recommended by victims.

Representative Blue said he thought the judge should have the discretion to decide what it takes to have a fair trial. He feels as though this wording gives away any ability to determine what constitutes a fair trial.

Representative Eddins said that the victims feel that this bill levels the playing field, that in a capital case the accused has two attorneys, and that there is no need to spend additional tax dollars to support the case.

In a followup Representative Blue asked to what extent superior court judges have taxed the Administrative Office of the Courts for jury consultants and whether the basis for that decision was on constitutional grounds as opposed statutory grounds.

Representative Eddins said that Jim Mills of the Fiscal Staff wrote a letter last September. He estimated that 14 of 1275 expert witnesses were jury consultants. This is a small number and a small dollar amount. Mr. Mills added, however, that defense requests for jury consultants are increasing.

Representative Blue wondered if they have surveyed to see if any judge has based his decision on some constitutional principle. If so, then the only way is to pay for these expenses out of the AOC budget.

Representative Hardy said he was not aware of any case in the last 200 years after we had this constitution where a jury consultant was required in order to have a fair trial.

Representative Eddins reiterated that two attorneys is enough.

Ms. Katherine Smith of the NC Victims Assistance Network spoke in favor of the present wording. She said her organization believes there is a cottage industry popping up in the area of jury consultants, litigation specialists, etc. which have nothing to do with the finding of fact of guilt or innocence. Her group believes in the right to a jury of peers, but she said the increased use of litigation specialists has nothing to do with obtaining a

fair trial. We also have a Death Penalty Resource Center in North Carolina who can help with regard to jury selection.

Representative Hardy spoke in favor of the present wording. He said that he first heard about this during the O.J. Simpson case. He said that what will happen is that jury consultants paid for by taxpayers dollars will be required for a fair trial. Everyone on death row that did not get one will file a prayer for relief. This will cost the taxpayers a lot of money. For 650 years in our common law system there were no jury selection experts and are we saying that there were no fair trials in that period.

Representative Braswell said defense attorneys have the obligation of representing their clients zealously. Jury consultants are used for more than determining the nature of the jury. He believes these issues come up when there are change in venue questions. It is the trial judge who will make a determination on these motions. He does not believe this opens the floodgates. The fact that the defendant has two attorneys does not tilt the scale in the defendant's favor because the district attorney has an entire staff.

Representative Michaux said that OJ Simpson was paid for by private funds. He also said that if a rich defendant can take advantage of a jury consultant, why shouldn't an indigent defendant receive the same right.

Representative Miller asked to what extent are these consultants presently used by the district attorneys.

Mr. Tom Lock, chairman of the district attorney's association, said to his knowledge no district attorney in this state has ever sought a motion to request the services of these consultants. These motions are very common in death penalty cases. He said he personally has not had a case in which the judge has allowed a jury consultant, but he heard that they have been allowed in about 14 cases. He said he certainly would favor this section of HB 665.

Representative Daughtry said these changes in the last sections of the bill were the only changes made in the bill since it was in Judiciary I last year.

Representative Michaux sent forth an amendment to delete Section 4. (See attachment G.)

In response to an inquiry by Representative Daughtry, Mr. Lock said his group strongly supports HB 665 as written. Representative Daughtry asked him what his thoughts were on misdemeanors which are domestic violence. (See the Hall amendment.)

He began by saying that the DA's strongly support the victims of crime, including victims of domestic violence. He said his group believes that requiring the DA's to offer the fair treatment for victims provisions of current statutes to victims of domestic violence to the extent possible is a good compromise and one they can handle now. His

concern is if they were mandated to provide all the services at this time. He said approximately 35 of the 39 DA's in the state are running some sort of domestic violence programs – 7 are using grants through the Governor's Crime Commission.

Representative Sherrill asked for a definition of serious misdemeanors on p. 10. Mr. Lock said serious bodily injury would involve great pain and suffering as defined in case law. There is a certain amount of discretion involved.

At this time Representative Daughtry allowed the floor to discuss the Hall Amendment. (See Attachment F.)

Representative Hall said his amendment restores some of the misdemeanors, those of domestic violence, to coverage under the bill. He said when the bill was first debated all misdemeanors were added to the bill. They were dropped in a subcommittee. The bill traveled to another committee where Representative Daughtry put an amendment to include the victims of domestic violence. Subsequently, that amendment was taken out. If one takes the definition that we are going to talk about, it leaves to the discretion of the DA's to decide what constitutes domestic violence.

Representative Arnold asked if line 13 of the amendment covers gays. Representative Hall said that it says exactly what it says. Representative Arnold asked if he would object to heterosexual relationships only. Representative Hall said he would object because gays are victims also.

Ms. Catherine Smith of the North Carolina Victims Assistance Network said that the bill was very complex and that she would rather see the bill be enacted as it is and then come back at a later date. She said that one compromise made is that it includes language which opens up the Fair Treatment For Victims and Witnesses Act. She said that now it was important to appropriate the funds and move forward.

Representative Hall said that they have accepted the definition put forth by the Governor's Crime Commission which does limit the amount of domestic crimes to misdemeanors. Based on pilot studies, he said we are only talking about 30, 822 victims per year. That cost would only be \$47 per victim. He said if we can't do this for the women we should do it for the children. We don't know how many end up in mental institutions because they have been abused. He said that the attorney general is now supporting the inclusion of domestic violence cases.

Representative Ellis said that last year an amendment like this derailed the bill. He said a significant number of the population said they wanted this amendment. He said we have spent a year debating this issue and we need to get something passed. He asked that they oppose the amendment.

Representative Jeffus asked how other states have handled this issue.

Mr. Lock said that other states are better funded. He said their opposition to the amendment is not philosophical. It is entirely based on the lack of resources at this time. He said that his group and he thought the victims' group favored this amendment and hoped that down the road it could be done. He fears with the resources they have now they would be overwhelmed. He very much likes the language in there now because it would require them to provide these services to victims of domestic violence, to the extent possible.

Representative Alexander spoke in favor of the amendment. She reiterated about the amount of \$1.3 million -- \$42.17 per person. That is a little amount to pay.

Representative Blue agreed totally with Representative Hall. He said a great percentage of criminal cases originate in households as a form of domestic violence. He said that \$1.3 million is a pittance compared to its potential to save a great percentage of cases that end up in criminal courts. The question about if there is money ought to be decided in the appropriations committee. At a time when we can talk about \$1 billion plus in revenue over and above what was projected, for us not to be willing to recommend spending \$1 million to broaden this umbrella on the victims of domestic violence is doing a disservice.

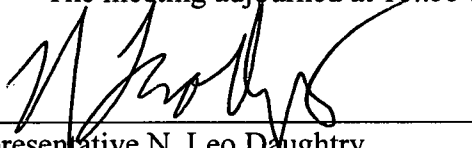
Representative Hall said one person convicted of homicide will cost \$1 million to this state so if we can eliminate one homicide we will save the state this amount.

Representative Justus said that the Justice and Public Safety worked on this bill for over a year. All the members are interested in victim's rights. At present there are 9 pilot programs that have a misdemeanor program, but he has not been able to find out what the results are in those programs. He would like to know if crimes have increased or decreased. More or less instances of homicide?

Representative Justus said that the definition could apply to mental hospitals and to rest homes. Pregnancies have occurred in Rex Hospital. He said he thought we needed to change the definition.

Representative Justus commented on the cost. He said if it took \$5-\$6 million to handle 44,000 cases how can we handle 31,000 cases with \$1.3 million. He said that the appropriations process is not going to have a lot of money to spend. He suggested they vote the amendment down, see how this bill works, and come back in another year after the pilot programs can be studied.

The meeting adjourned at 10:55 A.M.



Representative N. Leo Daughtry
Co-chairman



Representative Edwin M. Hardy
Co-chairman



Betty Wickham
Committee Clerk

ATTACHMENTS

Exhibit A - NOTICE OF THE MEETING

Exhibit B - AGENDA

Exhibit C - VISITOR REGISTRATION

Exhibit D - HB 665

Exhibit E - PROPOSED AMENDMENT #1 for HB 665 (Daughtry)

Exhibit F - PROPOSED AMENDMENT #2 for HB 665 (Hall)

Exhibit G - PROPOSED AMENDMENT #4 for HB 665 (Michaux)

Exhibit H - STATISTICS AND MANUAL ABOUT DOMESTIC VIOLENCE

**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE**

You are hereby notified that the Committee on **JUDICIARY I** will meet as follows:

DAY & DATE: **Tuesday, June 23, 1998**

TIME: **10:00 A.M.**

LOCATION: **Room 1228/1327 LB**

The following bills will be considered (Bill # & Short Title):

~~HB-1321 Future of the Courts Sponsor - Rep. Daughtry~~

~~HB 1389 Funding for Legal Services Sponsor - Rep. Allred~~

✓ HB 665 Crime Victims' Rights Act Sponsor - Rep. Eddins

Respectfully,

Representative N. Leo Daughtry, Co-Chairman
Representative Edwin Hardy, Co-Chairman

I hereby certify this notice was filed by the committee clerk at the following offices at
1:45 p.m. on **June 18, 1998**.

____ Principal Clerk
____ Reading Clerk - House Chamber

Betty Wickham, Committee Clerk

AGENDA

HOUSE COMMITTEE ON JUDICIARY I

June 23, 1998
Room 1228/1327 LB
10:00 AM

Representative N. Leo Daughtry, Co-Chairman
Representative Edwin (Sandy) Hardy, Co-Chairman

BILLS TO BE CONSIDERED:)

HB 665	Crime Victims' Rights Act	Sponsor - Rep. Eddins
HB 1321	Future of the Courts	Sponsor - Rep. Daughtry
HB 1389	Funding for Legal Services	Sponsor - Rep. Allred

Proposed House Committee Substitute for HB 1317 AMEND CONTESTED CASE

PROCEDURES/Sponsor-Representative C. Wilson, was placed in a subcommittee at June 4th Meeting for member study [Rep. Arnold, Chr.; Blue, Braswell, Clary, Morgan & Sherrill])

ADJOURNMENT

VISITOR REGISTRATION SHEET

Judiciary 1 June 23 1998

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY
1. <u>Michael Crowell</u>	<u>COURTES FUTURES Comm'n</u>
2. <u>Susan Valauri</u>	<u>Nationwide</u>
3. <u>Marian Dodd</u>	<u>League of Women Voters</u>
4. <u>Roslyn Sault</u>	<u>NC Coalition Against Domestic Violence</u>
5. <u>Howard Long</u>	<u>NC - NOW</u>
6. <u>William H. H. H.</u>	<u>NC Van</u>
7. <u>Peggy D.</u>	<u>NCAN</u>
8. <u>Tom Loh</u>	<u>Conference of D.A.s</u>
9. <u>Jane P. Gray</u>	<u>DA - 11th Dist.</u>
10. <u>Jane W.</u>	<u>DOJ</u>
11. <u>Edie Caldwell</u>	<u>NC AOC</u>
12. <u>Joe Stewart</u>	<u>Sherris/Law Enforcement</u>
13. <u>Tom Keith</u>	<u>CCPS</u>
14. <u>Tom Higwood</u>	<u>NC Conf of Dist Courts</u>
15. <u>Barnd Summers</u>	<u>DA - 3A Dist.</u>
16. <u>Alan Grader</u>	<u>NC Egent</u>
17. <u>Lao Rubert</u>	<u>NC Council of CP</u>
18. <u>Chris Fitzsimon</u>	<u>CYM</u>
19. <u>Jeanne Bonds</u>	<u>Common Sense Foundation</u>
20. <u>Ashleigh Veiles</u>	<u>AOC</u>
21. <u>Patwell</u>	<u>Charlotte Observer</u>
	<u>AA</u>

VISITOR REGISTRATION SHEET

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY
1. <u>Thomas M. Ghe</u>	<u>NCATL</u>
2. <u>M R Hunter</u>	<u>Appellate Department</u>
3. <u>Dick Taylor</u>	<u>NCATL</u>
4. <u>Bill Seabird</u>	<u>dc Bdr Assoc.</u>
5. <u>Lynn Mackness</u>	<u>Fiscal Research</u>
6. <u>Mike OMM</u>	<u>NC State AFSCW</u>
7. <u>John Phelps</u>	<u>League of Municipalities</u>
8. <u>Julie Milten Denning</u>	<u>NCATL</u>
9. <u>Rebecca Fuller</u>	<u>NCATL</u>
10. <u>Mark Deaton</u>	<u>Capital Group</u>
11. <u>Lucius Pullen</u>	<u>ATTORNEY</u>
22. <u>John Pullen</u>	<u>M/T</u>
23. _____	_____
24. _____	_____
25. _____	_____
26. _____	_____
27. _____	_____
28. _____	_____
29. _____	_____
30. _____	_____
31. _____	_____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

4

HOUSE BILL 665

Committee Substitute Favorable 6/25/97
Committee Substitute #2 Favorable 7/10/97
Committee Substitute #3 Favorable 6/18/98

Short Title: Crime Victims' Rights Act.

(Public)

Sponsors:

Referred to:

March 27, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO CREATE THE CRIME VICTIMS' RIGHTS ACT, TO ASSIST
3 VICTIMS OF DOMESTIC VIOLENCE, TO ALLOW THE ENFORCEMENT OF
4 ORDERS FOR RESTITUTION IN CRIMINAL CASES IN THE SAME
5 MANNER AS CIVIL JUDGMENTS, TO CREATE AN EXCEPTION TO THE
6 STATUTORY EXEMPTIONS FOR EXECUTION OF RESTITUTION
7 JUDGMENTS, TO CHANGE THE ORDER OF PRIORITY FOR
8 DISBURSEMENT OF FUNDS IN CRIMINAL CASES, TO PROHIBIT THE USE
9 OF STATE FUNDS FOR JURY CONSULTANTS, TO REQUEST THE NORTH
10 CAROLINA SUPREME COURT TO CONSIDER AND ADOPT RULES TO
11 EXPEDITE APPEALS FROM CAPITAL CASES THAT INCLUDE A
12 SENTENCE OF DEATH, AND TO REQUIRE A JUDGE PRESIDING IN A
13 CAPITAL TRIAL TO INSTRUCT THE SENTENCING JURY REGARDING
14 THE REVIEW OF SENTENCES OF LIFE IMPRISONMENT WITHOUT
15 PAROLE.

16 The General Assembly of North Carolina enacts:

17 Section 1. Chapter 15A of the General Statutes is amended by adding a
18 new Subchapter to read:

19 "SUBCHAPTER XVI. CRIME VICTIMS' RIGHTS.

20 "ARTICLE 101.

21 "Crime Victims' Rights Act.

1 "§ 15A-2010. Definitions.

2 (a) The following definitions apply in this Article:

- 3 (1) Accused. -- A person who has been arrested and charged with
4 committing a crime covered by this Article.
- 5 (2) Law enforcement agency. -- Law enforcement agency includes the
6 following:
- 7 a. Arresting law enforcement agency. -- The law enforcement
8 agency that makes the arrest of an accused.
- 9 b. Custodial agency. -- The agency that has legal custody of an
10 accused or defendant arising from a charge or conviction of
11 a crime covered by this Article including, but not limited to,
12 local jails or detention facilities, regional jails or detention
13 facilities, or the Department of Correction.
- 14 c. Investigating law enforcement agency. -- The law
15 enforcement agency with primary responsibility for
16 investigating the crime committed against the victim.
- 17 (3) Next of kin. -- The victim's spouse, children, parents, siblings, or
18 grandparents. The term does not include the accused unless the
19 charges are dismissed or the person is found not guilty.
- 20 (4) Victim. -- A person against whom there is probable cause to
21 believe one of the following crimes was committed:
- 22 a. A Class A, B1, B2, C, D, or E felony.
- 23 b. A Class F felony if it is a violation of one of the following:
24 G.S. 14-16.6(b); 14-16.6(c); 14-18; 14-32.1(e); 14-32.2(b)(3);
25 14-32.3(a); 14-32.4; 14-34.2; 14-34.6(c); 14-41; 14-43.2; 14-
26 43.3; 14-190.17; 14-190.19; 14-202.1; 14-288.9; or 20-138.5.
- 27 c. A Class G felony if it is a violation of one of the following:
28 G.S. 14-32.3(b); 14-51; 14-58; 14-87.1; or 20-141.4.
- 29 d. A Class H felony if it is a violation of one of the following:
30 G.S. 14-32.3(a); 14-32.3(c); or 14-33.2.
- 31 e. A Class I felony if it is a violation of one of the following:
32 G.S. 14-277.3; 14-32.3(b); 14-34.6(b); or 14-190.17A.
- 33 f. An attempt of any of the felonies listed in this subdivision if
34 the attempted felony is punishable as a felony.

35 (b) If the victim is deceased, then the next of kin, in the order set forth in the
36 definition contained in this section, is entitled to the victim's rights under this Article,
37 except for the rights contained in G.S. 15A-2014. An individual entitled to exercise
38 the victim's rights as a member of the class of next of kin may designate anyone in
39 the class to act on behalf of the class.

40 "§ 15A-2011. Responsibilities of law enforcement agency.

41 (a) As soon as practicable but within 72 hours after identifying a victim covered by
42 this Article, the investigating law enforcement agency shall provide the victim with
43 the following information:

- 44 (1) The availability of medical services, if needed.

- 1 (2) The availability of crime victims' compensation funds under
2 Chapter 15B of the General Statutes and the address and
3 telephone number of the agency responsible for dispensing the
4 funds.
- 5 (3) The address and telephone number of the district attorney's office
6 that will be responsible for prosecuting the victim's case.
- 7 (4) The name and telephone number of an investigating law
8 enforcement agency employee whom the victim may contact if the
9 victim has not been notified of an arrest in the victim's case within
10 six months after the crime was reported to the law enforcement
11 agency.
- 12 (5) Information about an accused's opportunity for pretrial release.
- 13 (6) The name and telephone number of an investigating law
14 enforcement agency employee whom the victim may contact to
15 find out whether the accused has been released from custody.
- 16 The investigating law enforcement agency shall also be available to provide victims
17 with more direct assistance in understanding the criminal justice process and the
18 scope of victims' services available to assist them. The investigating law enforcement
19 agency shall assist a victim in obtaining any of those services upon the request of the
20 victim.
- 21 (b) As soon as practicable but within 72 hours after receiving notification from the
22 arresting law enforcement agency that the accused has been arrested, the investigating
23 law enforcement agency shall forward to the district attorney's office that will be
24 responsible for prosecuting the case the victim's name, address, date of birth, social
25 security number, race, sex, and telephone number, unless the victim refuses to
26 disclose any or all of the information, in which case, the investigating law
27 enforcement agency shall so inform the district attorney's office.
- 28 (c) Upon receiving the information in subsection (a) of this section, the victim
29 shall, on a form provided by the investigating law enforcement agency, indicate
30 whether the victim wishes to receive any further notices from the investigating law
31 enforcement agency. If the victim elects to receive further notices, the victim shall be
32 responsible for notifying the investigating law enforcement agency of any changes in
33 the victim's name, address, and telephone number.
- 34 (d) As soon as practicable but within 72 hours after the arrest of a person believed
35 to have committed a crime covered by this Article, the arresting law enforcement
36 agency shall inform the investigating law enforcement agency of the arrest. As soon
37 as practicable but within 72 hours of being notified of the arrest, the investigating law
38 enforcement agency shall notify the victim of the arrest.
- 39 **"§ 15A-2012. Responsibilities of the district attorney's office.**
- 40 (a) Within 21 days after the arrest of the accused, but not less than 24 hours
41 before the accused's first scheduled probable cause hearing, the district attorney's
42 office shall provide to the victim a pamphlet or other written material that explains in
43 a clear and concise manner the following:

- (1) The victim's rights under this Article, including the right to confer with the attorney prosecuting the case about the disposition of the case and the right to provide a victim impact statement.
- (2) The responsibilities of the district attorney's office under this Article.
- (3) The victim's eligibility for compensation under the Crime Victims' Compensation Act and the deadlines by which the victim must file a claim for compensation.
- (4) The steps generally taken by the district attorney's office when prosecuting a felony case.
- (5) Suggestions on what the victim should do if threatened or intimidated by the accused or someone acting on the accused's behalf.
- (6) The name and telephone number of a victim and witness assistant in the district attorney's office whom the victim may contact for further information.

(b) Upon receiving the information in subsection (a) of this section, the victim shall, on a form provided by the district attorney's office, indicate whether the victim wishes to receive notices of some, all, or none of the trial and posttrial proceedings involving the accused. If the victim elects to receive notices, the victim shall be responsible for notifying the district attorney's office or any other department or agency that has a responsibility under this Article of any changes in the victim's address and telephone number. The victim may alter the request for notification at any time by notifying the district attorney's office and completing the form provided by the district attorney's office.

(c) The district attorney's office shall notify a victim of the date, time, and place of all trial court proceedings of the type which the victim has elected to receive notice. All notices required to be given by the district attorney's office shall be given in a manner that is reasonably calculated to be received by the victim prior to the date of the court proceeding.

(d) Whenever practical, the district attorney's office shall provide a secure waiting area during court proceedings that does not place the victim in close proximity to the defendant or the defendant's family.

(e) When the victim is to be called as a witness in a court proceeding, the court shall make every effort to permit the fullest attendance possible by the victim in the proceedings.

(f) Prior to the disposition of the case, the district attorney's office shall offer the victim the opportunity to consult with the prosecuting attorney to obtain the views of the victim about the disposition of the case, including the victim's views about dismissal, plea or negotiations, sentencing, and any pretrial diversion programs.

(g) At the sentencing hearing, the prosecuting attorney shall submit to the court a copy of a form containing the identifying information set forth in G.S. 15A-2011(b) about any victim electing to receive further notices under this Article. The form shall be included with the final judgment and commitment transmitted to the Department

1 of Correction or other agency receiving custody of the defendant and shall be
2 maintained by the custodial agency as a confidential file.

3 **"§ 15A-2013. Evidence of victim impact.**

4 (a) A victim has the right to offer evidence of the impact of the crime, which shall
5 be considered by the court or jury, as the case may be, in sentencing the defendant.

6 The evidence may include the following:

7 (1) A description of the nature and extent of any physical,
8 psychological, or emotional injury suffered by the victim as a result
9 of the offense committed by the defendant.

10 (2) An explanation of any economic or property loss suffered by the
11 victim as a result of the offense committed by the defendant.

12 (3) A request for restitution and an indication of whether the victim
13 has applied for or received compensation under the Crime
14 Victims' Compensation Act.

15 (b) No victim shall be required to offer evidence of the impact of the crime. No
16 inference or conclusion shall be drawn from a victim's decision not to offer evidence
17 of the impact of the crime.

18 **"§ 15A-2014. Restitution.**

19 (a) Upon conviction of the defendant or upon a plea of guilty, the court shall, in
20 addition to any penalty authorized by law, require that the defendant make
21 restitution to a victim or the victim's estate for any injuries or damages arising out of
22 the offense committed by the defendant. In determining the amount of restitution,
23 the court shall consider the following:

24 (1) The cost of any medical or other professional services and devices
25 or equipment required by the victim.

26 (2) The cost of physical therapy, occupational therapy, and
27 rehabilitation required by the victim.

28 (3) Any income loss, after taxes, suffered by the victim.

29 (4) The cost of any psychological or medical treatment for the victim's
30 next of kin.

31 (5) The cost of the victim's funeral and any related services.

32 (6) Any other injuries or damages arising out of the offense committed
33 by the defendant.

34 (b) The court may require that the victim or the victim's estate provide evidence
35 that documents the costs claimed by the victim or the victim's estate under this
36 section. Any such documentation shall be shared with the defendant before the
37 sentencing hearing.

38 (c) In determining the amount of restitution to be made, the court shall take into
39 consideration the resources of the defendant including all real and personal property
40 owned by the defendant and the income derived from the property, the defendant's
41 ability to earn, the defendant's obligation to support dependents, and any other
42 matters that pertain to the defendant's ability to make restitution, but the court is not
43 required to make findings of fact or conclusions of law on these matters. The amount
44 of restitution must be limited to that supported by the record, and the court may

1 order partial restitution when it appears that the damage or loss caused by the offense
2 is greater than that which the defendant is able to pay.

3 (d) An order providing for restitution does not abridge the right of a victim or the
4 victim's estate to bring a civil action against the defendant for damages arising out of
5 the offense committed by the defendant.

6 (e) The court may order the defendant to make restitution to a person other than
7 the victim, or to any organization, corporation, or association, including the Crime
8 Victims' Compensation Fund that provided assistance to the victim following the
9 commission of the offense by the defendant. Restitution shall be made to the victim
10 or the victim's estate before it is made to any other person, organization, corporation,
11 or association.

12 (f) The court may require the defendant to make full restitution no later than a
13 certain date or, if the circumstances warrant, may allow the defendant to make
14 restitution in installments over a specified time period.

15 (g) If the defendant is placed on probation or post-release supervision, any
16 restitution ordered under this Article shall be a condition of probation or post-release
17 supervision.

18 (h) If the court orders partial restitution, the court shall state on the record the
19 reasons for such an order.

20 **"§ 15A-2015. Enforcement of order for restitution.**

21 (a) An order for restitution under this Article may be enforced in the same
22 manner as a civil judgment, subject to the provisions of this section.

23 (b) The order for restitution under this Article shall be docketed and indexed in
24 the county of the original conviction in the same manner as a civil judgment. The
25 order for restitution may be collected in the same manner as a civil judgment unless
26 the order to pay restitution is a condition of probation. If the order to pay restitution
27 is a condition of probation, the judgment may only be collected in accordance with
28 subsection (c) of this section.

29 (c) If the defendant is ordered to pay restitution as a condition of probation, the
30 docketed judgment may not be collected until the date of notification to the clerk of
31 superior court in the county of the original conviction that the judge presiding at the
32 probation termination or revocation hearing has made a finding that restitution in a
33 sum certain remains due and payable, that the defendant's probation has been
34 terminated or revoked, and that the remaining balance of restitution owing may be
35 collected by execution on the judgment. The clerk shall then enter upon the
36 judgment docket the amount that remains due and payable on the judgment, together
37 with amounts equal to the standard fees for docketing, copying, certifying, and
38 mailing, as appropriate, and shall notify the victim by first-class mail at the victim's
39 last known address that the judgment may be executed upon, together with the
40 amount of the judgment. Until the clerk receives notification of termination or
41 revocation of probation and the amount that remains due and payable on the order
42 of restitution, the clerk shall not be required to update the judgment docket to reflect
43 partial payments on the order of restitution as a condition of probation.

1 (d) An appeal of the conviction upon which the order of restitution is based shall
2 stay execution on the judgment until the appeal is completed. If the conviction is
3 overturned, the judgment shall be removed from the judgment docket.

4 **"§ 15A-2016. Posttrial responsibilities.**

5 (a) Within 30 days after the final proceeding of the trial phase of the case, the
6 district attorney's office shall notify the victim, in writing, of:

- 7 (1) The final disposition of the case.
8 (2) The crimes of which the defendant was convicted.
9 (3) The defendant's right to appeal, if any.

10 (b) Upon a defendant's giving notice of appeal to the Court of Appeals or the
11 Supreme Court, the district attorney's office shall forward to the Attorney General's
12 office the victim's name, address, and telephone number. Upon receipt of this
13 information, and thereafter as the circumstances require, the Attorney General's
14 office shall provide the victim with the following:

- 15 (1) A clear and concise explanation of how the appellate process
16 works, including information about possible actions that may be
17 taken by the appellate court.
18 (2) Notice of the date, time, and place of any appellate proceedings
19 involving the defendant. Notice shall be given in a manner that is
20 reasonably calculated to be received by the victim prior to the date
21 of the proceedings.
22 (3) The final disposition of an appeal.

23 (c) If the defendant has been released on bail pending the outcome of the appeal,
24 the agency that has custody of the defendant shall notify the investigating law
25 enforcement agency, and the investigating law enforcement agency shall notify the
26 victim that the defendant has been released.

27 (d) If the defendant's conviction is overturned, and the district attorney's office
28 decides to retry the case or the case is remanded to superior court for a new trial, the
29 victim shall be entitled to the same rights under this Article as if the first trial did not
30 take place.

31 (e) The Conference of District Attorneys shall maintain a repository relating to
32 victims' identities, addresses, and other appropriate information for use by agencies
33 charged with responsibilities under this Article.

34 **"§ 15A-2017. Responsibilities of agency with custody of defendant.**

35 The Department of Correction shall notify the victim of:

- 36 (1) The projected date by which the defendant can be released from
37 custody. The calculation of the release date shall be as exact as
38 possible, including earned time and disciplinary credits if the
39 sentence of imprisonment exceeds 90 days.
40 (2) An inmate's assignment to a minimum custody unit and the
41 address of the unit. This notification shall include notice that the
42 inmate's minimum custody status may lead to the inmate's
43 participation in one or more community-based programs such as
44 work release or supervised leaves in the community.

(3) The victim's right to submit any concerns to the agency with custody and the procedure for submitting such concerns.

(4) The defendant's escape from custody.

(5) The defendant's capture.

(6) The date the defendant is scheduled to be released from the facility. Whenever practical, notice shall be given 60 days before release.

(7) The defendant's death.

"§ 15A-2018. Responsibilities of Division of Adult Probation and Parole.

The Division of Adult Probation and Parole shall notify the victim of:

(1) The defendant's regular conditions of probation or post-release supervision, special or added conditions, supervision requirements, and any subsequent changes.

(2) The date of a hearing to determine whether the defendant's supervision should be revoked, continued with or without modifications, or terminated.

(3) The final disposition of any hearing referred to in subdivision (2) of this section.

(4) Any restitution modification.

(5) The defendant's movement into or out of any intermediate sanction as defined in G.S. 15A-1340.11(6).

(6) The defendant absconding supervision.

(7) The capture of a defendant described in subdivision (6) of this section.

(8) The date when the defendant is terminated or discharged.

(9) The defendant's death.

"§ 15A-2019. Notice of commuted sentence or pardon.

The Governor's Clemency Office shall notify a victim when it is considering commuting the defendant's sentence or pardoning the defendant. The Governor's Clemency Office shall also give notice that the victim has the right to present a written statement to be considered by the Office before the defendant's sentence is commuted or the defendant is pardoned. The Governor's Clemency Office shall notify the victim of its decision. Notice shall be given in a manner that is reasonably calculated to allow for a timely response to the commutation or pardon decision.

"§ 15A-2020. No money damages.

This Article does not create a claim for damages against the State, a county, or a municipality, or any of its agencies, instrumentalities, officers, or employees.

"§ 15A-2021. No ground for relief.

The failure or inability of any person to provide a right or service under this Article may not be used by a defendant in a criminal case, by an inmate, or by any other accused as a ground for relief in any criminal or civil proceeding.

"§ 15A-2022. Incompetent victim's rights exercised.

1 When a victim is rendered mentally or physically incompetent or when the victim
2 is a minor, the victim's rights under this Article, other than the rights provided by
3 G.S. 15A-2014 and G.S. 15A-2015, may be exercised by the victim's next of kin."

4 Section 1.1. If the General Assembly appropriates funds for State grants
5 to local and State law enforcement to implement the provisions of this act, the
6 Department of Crime Control and Public Safety shall establish criteria for the
7 allocation of these State grants. These criteria shall include a requirement that the
8 requesting law enforcement agency document services and man-hours that directly
9 relate to the provisions of this act. The criteria shall also require documentation that
10 the requesting law enforcement agency is not receiving funding from any other source
11 for that specific service. The Department of Crime Control and Public Safety shall
12 report quarterly to the Chairs of the House and Senate Appropriations Committees
13 and the Chairs of the House and Senate Appropriations Subcommittees on Justice
14 and Public Safety on the development of the grant program and allocation of funding.

15 Section 2. The provisions of Article 45 of Subchapter VIII of Chapter
16 15A of the General Statutes are supplemental to the provisions of Article 101 of
17 Subchapter XVI of Chapter 15A of the General Statutes as enacted in Section 1 of
18 this act. If there is any conflict between the provisions of Article 45 and Article 101,
19 the provisions of Article 101 shall control.

20 Section 2.1. G.S. 1C-1601(e) reads as rewritten:

21 "(e) Exceptions. -- The exemptions provided in this Article are inapplicable to
22 claims

- 23 (1) Of the United States or its agencies as provided by federal law;
- 24 (2) Of the State or its subdivisions for taxes, appearance bonds or
25 fiduciary bonds;
- 26 (3) Of lien by a laborer for work done and performed for the person
27 claiming the exemption, but only as to the specific property
28 affected;
- 29 (4) Of lien by a mechanic for work done on the premises, but only as
30 to the specific property affected;
- 31 (5) For payment of obligations contracted for the purchase of the
32 specific real property affected;
- 33 (6) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1224, s.
34 6;
- 35 (7) For contractual security interests in the specific property affected;
36 provided, that the exemptions shall apply to the debtor's
37 household goods notwithstanding any contract for a nonpossessory,
38 nonpurchase money security interest in any such goods;
- 39 (8) For statutory liens, on the specific property affected, other than
40 judicial liens;
- 41 (9) For child support, alimony or distributive award order pursuant to
42 Chapter 50 of the General ~~Statutes~~ Statutes;
- 43 (10) For criminal restitution orders docketed as civil judgments
44 pursuant to G.S. 15A-2015."

Section 2.2. G.S. 7A-304(d) reads as rewritten:

"(d) In any criminal case in which the liability for costs, fines, restitution, or any other lawful charge has been finally determined, the clerk of superior court shall, unless otherwise ordered by the presiding judge, disburse such funds when paid in accordance with the following priorities:

(1) Sums in restitution prorated among the persons entitled thereto;

~~(1)(2)~~ Costs due the county;

~~(2)(3)~~ Costs due the city;

~~(3)(4)~~ Fines to the county school fund;

~~(4) Sums in restitution prorated among the persons entitled thereto;~~

(5) Costs due the State;

(6) Attorney's fees.

Sums in restitution received by the clerk of superior court shall be disbursed when:

(1) Complete restitution has been received; or

(2) When, in the opinion of the clerk, additional payments in restitution will not be collected; or

(3) Upon the request of the person or persons entitled thereto; and

(4) In any event, at least once each calendar year."

Section 2.3. Article 45 of Subchapter VIII of Chapter 15A of the General Statutes is amended by adding a new section to read:

"§ 15A-828. Assistance to victims of domestic violence.

In the allocation of resources to persons the district attorney determines are victims of serious misdemeanors, the district attorney shall, to the extent possible, provide the services listed in G.S. 15A-825 to victims of domestic violence misdemeanors that could involve the infliction of serious bodily injury."

Section 3. The Department of Crime Control and Public Safety shall establish a pilot program to integrate the Justice Wide Area Network (JWAN) with the proposed Victim Information and Notification Everyday (VINE) automated victim notification system. The pilot program shall include the development of a software application that can be implemented statewide to integrate the VINE system with other criminal justice networks. The Department shall report to the Chairs of the Joint Legislative Correction and Crime Control Oversight Committee and the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety by April 1, 1999, on the progress of the pilot program.

Section 4. Funds appropriated to the Judicial Department may not be used to contract for the services of jury consultants in criminal cases where the defendant has been assigned counsel by the court.

Section 5. The General Assembly requests the North Carolina Supreme Court to consider and adopt rules to expedite appeals from all cases in which the defendant is convicted of murder in the first degree and the judgment of the superior court includes a sentence of death.

Section 6. G.S. 15A-2002 reads as rewritten:

"§ 15A-2002. Capital offenses; jury verdict and sentence.

1 (a) If the recommendation of the jury is that the defendant be sentenced to death,
2 the judge shall impose a sentence of death in accordance with the provisions of
3 Chapter 15, Article 19 of the General Statutes. If the recommendation of the jury is
4 that the defendant be imprisoned for life in the State's prison, the judge shall impose
5 a sentence of imprisonment for life in the State's prison, without parole.

6 (b) The judge shall instruct the jury, in words substantially equivalent to those of
7 this section, that a sentence of life imprisonment means a sentence of life without
8 parole.

9 (c) The judge shall instruct the jury about the review of sentences of life
10 imprisonment without parole in words substantially equivalent to those of G.S. 15A-
11 1380.5."

12 Section 7. G.S. 15A-2000 is amended by adding a new subsection to
13 read:

14 "(d1) Argument by District Attorney. -- The district attorney may inform the jury
15 in the closing argument about the review of sentences of life imprisonment without
16 parole in words substantially equivalent to those of G.S. 15A-1380.5."

17 Section 8. The provisions of this act are severable. If any provision of
18 this act is held invalid by a court of competent jurisdiction, the invalidity does not
19 affect other provisions of the act that can be given effect without the invalid
20 provision.

21 Section 9. Sections 1.1, 2.3, 5, and this section of this act are effective
22 when they become law. Section 4 of this act becomes effective July 1, 1998. Sections
23 6 and 7 of this act become effective December 1, 1998, and apply to capital
24 sentencing hearings or rehearings begun on or after that date. The remainder of this
25 act becomes effective October 1, 1998.



a куклу

**NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 665**

Adopted

AMENDMENT NO. 1
(to be filled in by
Principal Clerk)

Page 1 of 1

H665-ARO-1.98

Date _____, 1998

Comm. Sub. [YES]
Amends Title []
Fourth Edition

1 moves to amend the bill on page 10, lines 42-43, and on page 11,
2 lines 1-16,
3 by deleting the lines and substituting the following:
4
5 "Section 6. Article 85B of Chapter 15A is repealed.";
6
7 and on page 11, lines 22-24, by rewriting the lines to read:
8
9 "when they become law. Section 4 of this act becomes effective July
10 1, 1998. Section 6 of this act becomes effective December 1, 1998,
11 and applies to offenses committed on or after that date. The
12 remainder of this".
13

SIGNED Daughtry
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED



J.I
 @ June 23 mtg
 @ June 25 mtg
 @ June 30 mtg

NORTH CAROLINA GENERAL ASSEMBLY
 AMENDMENT
 House Bill 665

AMENDMENT NO. 23
 (to be filled in by
 Principal Clerk)
 Page 1 of

H665-ARO-2.98

Date 6/23/, 1998

Comm. Sub. [YES]
 Amends Title []
 Fourth Edition

1 moves to amend the bill on page 2, line 39-40,
 2 by inserting the following new section between the lines:
 3
 4 "§15A-2010.1. Assistance to victims of domestic violence.
 5 Effective July 1, 1999, victims of domestic violence shall be
 6 entitled to all of the rights of victims under this Article. For
 7 purposes of determining eligibility for assistance under this
 8 Article, a victim of domestic violence is any person against whom
 9 there is probable cause to believe that any of the following
 10 misdemeanor offenses has been committed; G.S. 14-33(c)(1), G.S. 14-
 11 33(c)(2), G.S. 14-33(a), G.S. 14-34, G.S. 14-134.3, or G.S. 14-
 12 277.3, when the offense is committed between persons who are current
 13 or former spouses, or who live together in an intimate relationship
 14 or who have lived together in an intimate relationship, or who have
 15 or are expecting a child in common. These crimes are in addition to
 16 the felonies set forth in G.S. 15A-2010(a)(4)."
 17
 18

SIGNED Robby L. Hall
 Amendment Sponsor

SIGNED _____
 Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

Michaux's amendment

(Please type or use ballpoint pen)

EDITION No. 4thH. B. No. 665

DATE _____

S. B. No. _____

Amendment No. _____

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Michaux

Sen.) _____

1 moves to amend the bill on page 10, line 35-37

2 () WHICH CHANGES THE TITLE

3 by Deleting those lines and pg4 11 by rewriting those lines to5 read: "When they become Law,6 Sections".

7 _____

8 _____

9 _____

10 _____

11 _____

12 _____

13 _____

14 _____

15 _____

16 _____

17 _____

18 _____

19 _____

SIGNED [Signature]

ADOPTED _____

FAILED _____

TABLED _____



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June 23, 1998

MEMORANDUM

TO: Representatives Leo Daughtry and Edwin Hardy, Co-Chairs,
House Judiciary I Committee.

FROM: Karen Cochrane Brown, Committee Co-Counsel.

RE: **House Bill 665 - Crime Victims' Rights Act.**
(Fourth Edition)

The Fourth Edition of House Bill 665 was proposed by the House Appropriations Subcommittee on Justice and Public Safety. It makes several changes to the last version of the bill. The latest changes are reflected in this summary in italics at the end of each section.

House Bill 665 creates Article 101 of Chapter 15A, the Crime Victims' Rights Act, to implement the provisions of Section 37 of Article I of the North Carolina Constitution, which provides for basic rights for victims of crime. The constitutional amendment was passed by the 1995 General Assembly and approved by the voters in 1996.

Section 1 of the bill establishes the new Article 101 which sets forth the substantive rights to which crime victims will be entitled. The new Article contains the following sections:

G.S. 15A-2010. Definitions. This section defines pertinent terms including the term "victim". This definition provides that the Act is applicable to any person against whom there is probable cause to believe one of certain enumerated crimes was committed. The crimes include all Class A, B1, B2, C, D, and E felonies, and certain Class F, G, H, and I felonies most of which involve acts where physical harm to a victim is involved. No misdemeanors are included.

The new version makes no changes to this section.

G.S. 15A-2010.1. Assistance to victims of domestic violence. This provision makes the act applicable to victims of domestic violence, effective July 1, 1999. It also contains a definition of victims of domestic violence which includes certain misdemeanors in addition to the felonies contained in the definition of "victim".

The new version deletes this section, which extended victim assistance rights to victims of domestic violence, effective July 1, 1999. This bill retains the language requiring district attorneys to use their authority under current Fair Treatment Act to provide services to victims of serious misdemeanors to emphasize services to victims of domestic violence misdemeanors that could involve infliction of serious injuries. This language is found in section 2.3 of the bill on page 10.

G.S. 15A-2011. Responsibilities of law enforcement agency. Within 24 hours of identifying a victim covered by the Act the investigating law enforcement agency must provide certain information to the victim, including the availability of medical services, the availability of compensation funds, the address and phone number of the district attorney's office, the name and phone number of a contact person in the agency, information about the accused's opportunity for pretrial release, and the name and phone number of a contact person to find out if the accused has been released.

Within 24 hours of receiving notification of an arrest in the case, the investigating law enforcement agency must forward information about the victim to the district attorney's office, unless the victim refuses to disclose the information.

Within 24 hours after an arrest is made, the arresting law enforcement agency must notify the investigating law enforcement agency which must then notify the victim within 24 hours.

The new version modifies the duties of law enforcement to allow notices to victims and to other agencies and the district attorney's offices to be provided as soon as practicable but within 72 hours. It also expands the duties from-just-notification-of-victims to direct assistance such as helping victims obtain services.

G.S. 2012. Responsibilities of the district attorney's office. Within 21 days of the arrest, but not less than 24 hours before the first scheduled probable cause hearing, the district attorney's office must provide the victim with a pamphlet which explains the victims rights during this phase of the case. These rights include the right to confer with the prosecuting attorney and the right to provide a victim impact statement, as well as information about eligibility for compensation, information about the steps in prosecuting a felony and the name and phone number of a victim and witness assistant who can be contacted for further information.

The district attorney's office must provide a form on which the victim can indicate whether he or she wishes further notice of some or all of the trial proceedings. The victim must be notified of the date, time, and location of these proceedings and where practical, secure waiting areas must be provided for the victim during court proceedings. When a victim is to be called as a witness in a court proceeding, the court is required to make every effort to permit the fullest attendance possible by the victim in the proceeding. Prior to disposition of the case, the district attorney must offer to consult with the victim to obtain the victim's views about dismissal, plea or negotiations, sentencing, and any pretrial diversion programs.

Finally, at the sentencing hearing, the prosecutor must submit to the court a form containing identifying information about the victim to be included with the final judgment and commitment transmitted to the Department of Corrections or other custodial agency and must be maintained as a confidential file.

There were no changes to this section.

G.S. 15A-2013. Evidence of victim impact. The victim has the right to make a victim impact statement, which must be considered by the court or jury, as applicable, when sentencing the defendant. The statement may include a description of the harm and losses suffered by the victim, a request for restitution, and whether compensation has been applied for or received under the Crime Victims' Compensation Act. The victim impact statement is not required and no inference may be drawn from a victim's decision not to make one.

There were no changes to this section.

G.S. 15A-2014. Restitution. Upon conviction of the defendant or upon a guilty plea, the court shall require the defendant to make restitution to the victim or the victim's estate for injury or damages to the victim. The court shall consider the cost of medical or other professional services, the cost of therapy or rehabilitation, any income loss, the cost of treatment for the victim's next of kin, the cost of funeral and related services, and any other injuries or damages arising out of the offense. The court shall also take into consideration the resources and earning capacity, as well as other obligations of the defendant.

The existence of the order for restitution does not affect the right of the victim or the victim's estate to bring a civil action against the defendant for damages.

The court may direct the defendant to make restitution to a person or entity other than the victim; but the victim or the victim's estate is entitled to receive restitution before any other person or entity.

The court may direct that restitution be made by a certain date or may allow it to be made in installments over a period of time.

If the defendant is placed on probation or post-release supervision, restitution shall be a condition of probation or post-release supervision.

There were no changes to this section.

G.S. 15A-2015. Enforcement of order for restitution. An order of restitution under this Article may be enforced in the same manner as a civil judgment. It may be docketed and indexed in the county of the original conviction and may be collected like a civil judgment unless it is a condition of probation. If the order is a condition of probation, it can only be executed upon when the court terminates or revokes probation and notifies the clerk of Superior Court. Until

the clerk receives this notification, the clerk is not required to note partial payments of the order of restitution as a condition of probation on the judgment docket.

This section also provides that if a conviction is appealed, execution on the judgment based upon the order of restitution is stayed until the appeal is completed. If the conviction is overturned, the judgment is removed from the judgment docket.

There were no changes to this section.

G.S. 15A-2016. Posttrial responsibilities. Within 30 days of the completion of the trial phase of the case, the district attorney's office must notify the victim, in writing, of the final disposition of the case, the crimes of which the defendant was convicted, and the defendant's right to appeal, if any. If the defendant appeals, the district attorney's office must forward victim information to the Attorney General's office which must provide the victim with an explanation of the appellate process, the date, time and place of any appellate proceedings, and the final disposition of an appeal. If the defendant is released on bail during the appeal, the victim must be notified, and if the conviction is overturned, and the prosecutor decides to retry the case or it is remanded for a new trial, the victim is entitled to the same rights as if the first trial had not occurred.

The Conference of District Attorneys is directed to maintain a repository of victims' names and addresses and other appropriate information for use by agencies charged with responsibilities under the Article.

There were no changes to this section.

G.S. 15A-2017. Responsibilities of agency with custody of defendant. After conviction, the Department of Correction must notify the victim of the defendant's projected release date, the inmate's assignment to a minimum custody unit and the possibility of the inmate's participation in a community-based program, the victim's right to submit concerns to the agency, the defendant's escape from custody, the defendant's capture, the defendant's scheduled release date, (with 60 days prior notice, when practical), and the defendant's death.

There were no changes to this section.

G.S. 15A-2018. Responsibilities of Division of Adult Probation and Parole. The Division of Adult Probation and Parole is directed to notify the victim of the defendant's regular and special conditions of probation and post-release supervision, the date of any hearings to revoke, modify, or terminate supervision, the final disposition of any such hearing, any restitution modification, the defendant's movement into or out of any intermediate sanction, the defendant's absconding supervision, the defendant's capture, the date the defendant is terminated or discharged, and the defendant's death.

There were no changes to this section.

G.S. 15A-2019. Notice of commuted sentence or pardon. The Governor's Clemency Office must notify the victim when it is considering commuting the defendant's sentence or pardoning the defendant, and give the victim an opportunity to make a written statement. It must also give notice of the final decision in a manner calculated to allow for a timely response to the decision.

There were no changes to this section.

G.S. 15A-2020. No money damages. This Article does not create a claim for damages against the State, a county, or a municipality or any of its agencies, instrumentalities, officers or employees.

There were no changes to this section.

G.S. 15A-2021. No ground for relief. An accused person, or defendant, or inmate may not use the failure of any person to provide a right or service under this Article as a ground for relief in a criminal or civil proceeding.

There were no changes to this section.

G.S. 15A-2022. Incompetent victim's rights exercised. An incompetent or minor victim's rights under this Article may be exercised by the victim's next of kin, except for the rights of restitution and the enforcement of restitution.

There were no changes to this section.

A new section 1.1 of the bill provides that if the General Assembly appropriates funds for State grants to law enforcement to implement this act, the Department of Crime Control and Public Safety shall establish criteria for the allocation of these funds. The criteria must include requiring the applicants to document the services provided and that they receive no funding from any other source for that specific service. The Department is required to report quarterly to the House and Senate Appropriations chairs and the House and Senate Justice and Public Safety subcommittee chairs.

Section 2 of House Bill 665 provides that the provisions of Article 45 of Chapter 15A (the Fair Treatment of Victims and Witnesses Act) are supplemental to the provisions of Article 101 created by section 1 of this bill, and in the event of any conflict, the provisions of Article 101 govern.

There were no changes to this section.

Section 2.1 amends G.S. 1C-1601(e) which deals with the items that are not exempt from judgment execution. The amendment adds orders for restitution docketed as civil judgments under Article 101.

There were no changes to this section.

Section 2.2 amends G.S. 7A-304(d) by changing the order in which funds received in criminal cases are disbursed. Currently, sums received in restitution are fourth in line. This amendment moves them to first in line.

There were no changes to this section.

Section 2.3 amends the Fair Treatment to Victims and Witnesses Act to add a new provision directing the district attorney to provide the services listed in G.S. 15A-825 to victims of domestic violence misdemeanors that could involve the infliction of serious bodily injury, to the extent possible.

Inasmuch as the earlier reference to domestic violence victims has been deleted from this version of the bill, this section is now the basis upon which victims of domestic violence misdemeanors may receive assistance under the bill.

Section 2.4 directs the Conference of District Attorneys and the Governor's Crime Commission to study the incidence of domestic violence and to identify the felonies and misdemeanors that may be categorized as domestic violence. The Conference must report its findings to the 1998 Session of the 1997 General Assembly.

This section has been deleted from the bill, but it should be noted that the Crime Commission did undertake to study domestic violence crimes and developed a definition which includes several misdemeanors which the Commission found to be most common among those charged in domestic violence cases.

Section 2.5 directs the Post-Release Supervision and Parole Commission to compile a report of the notification services it has provided under G.S. 15A-825(11), and report to the 1998 Session of the 1997 General Assembly.

This section has been deleted from the bill.

The new version adds several new sections which were not found in the earlier versions of the bill.

New section 3 requires the Department of Crime Control and Public Safety to establish a pilot program to study and develop software that will integrate criminal justice information systems with the automated victim notification system.

New section 4 adds a provision which restricts the Judicial Department from using funds to pay for jury consultants for indigent defendants. (A similar provision is contained in House Bill 1523).

New section 5 requests the North Carolina Supreme Court to consider and adopt rules to expedite appeals for cases where the defendant is convicted of first degree murder and is sentenced to death. (A similar provision is contained in House Bill 1733).

New sections 6 and 7 require the judge to instruct the jury about the review of life without parole sentences and allows the District Attorney to inform the jury about the review of life without parole sentences. (Similar provisions are contained in House Bill 1734).

Section 2.6 makes the provisions of the Act severable, so that if any part of the Act is held invalid by the court, it would not affect the validity of the remaining provisions.

This provision is now Section 8 of the bill.

Finally, Section 3 provides that G.S. 15A-2010.1 in section 1 of the act, which makes the act applicable to victims of domestic violence, becomes effective July 1, 1999. Section 2.3 which also relates to assistance to victims of domestic violence, becomes effective when the act becomes law and expires on July 1, 1999. Sections 1.1, 2.4, 2.5 and this section are effective when they become law. The remainder of the act becomes effective July 1, 1998.

The effective dates have been changed also. The provisions relating to state grants to law enforcement, domestic violence, and the request to the Supreme Court become effective when the act becomes law. The provision relating to funds for jury consultants becomes effective July 1, 1998. The provisions relating to jury instructions about review of life sentences becomes effective December 1, 1998, and applies to capital sentencing hearings or rehearings begun on or after that date. The remainder of the act, including all the substantive portions relating to victims rights, becomes effective October 1, 1998.

MINUTES

HOUSE JUDICIARY I COMMITTEE

The House Committee on JUDICIARY I met in Room 1228/1327 of the Legislative Building on June 25, 1998 at 10:00 A.M. Representative Daughtry, Co-Chairman, presided at the meeting. Other members present were: Representative Hardy, Co-Chairman, and Representative(s) Braswell, Alexander, Arnold, Blue, Capps, Clary, Crawford, Ellis, Gray, Hall, Hardaway, Holmes, Hunter R., Hurley, Jeffus, Justus, Michaux, Miller, Morgan, and Sherrill. Ex-officio member Representative Wood was present. Staff Counsels Steven Ross and Karen Cochrane-Brown were also present.

HB 665 AN ACT TO CREATE THE CRIME VICTIMS' RIGHTS ACT, TO ASSIST VICTIMS OF DOMESTIC VIOLENCE, TO ALLOW THE ENFORCEMENT OF ORDERS FOR RESTITUTION IN CRIMINAL CASES IN THE SAME MANNER AS CIVIL JUDGMENTS, TO CREATE AN EXCEPTION TO THE STATUTORY EXEMPTIONS FOR EXECUTION OF RESTITUTION JUDGMENTS, TO CHANGE THE ORDER OF PRIORITY FOR DISBURSEMENT OF FUNDS IN CRIMINAL CASES, TO PROHIBIT THE USE OF STATE FUNDS FOR JURY CONSULTANTS, TO REQUEST THE NORTH CAROLINA SUPREME COURT TO CONSIDER AND ADOPT RULES TO EXPEDITE APPEALS FROM CAPITAL CASES THAT INCLUDE A SENTENCE OF DEATH, AND TO REQUIRE A JUDGE PRESIDING IN A CAPITAL TRIAL TO INSTRUCT THE SENTENCING JURY REGARDING THE REVIEW OF SENTENCES OF LIFE IMPRISONMENT WITHOUT PAROLE was the only bill considered.

Representative Daughtry called the meeting to order and introduced the two pages for the day – Melissa Warren of Wake County and Anne Simmons Tucker of Mecklenburg County. This bill was sponsored by Representative Eddins.

Discussion continued on the amendment introduced by Representative Hall during the June 23rd meeting. (See Attachment E.)

Ms. Rosilyn Savitt, representing the North Carolina Coalition Against Domestic Violence and the North Carolina Chapter of the National Organization for Women, spoke in favor of the amendment. She said that the victims of domestic violence misdemeanors are the most likely to be revictimized. She said that the Hall Amendment adopts the definition of domestic violence recommended by the Governor's Crime Commission. She said that the cost of passing the Hall amendment will be \$42.17 per domestic violence victim covered in the amendment.

Ms. Savitt said the language on page 10, line 21-25, will not help one victim because G.S. 15A-825 does not mandate anything with regards to misdemeanor crimes.

She said it would be better to not have this section at all. She said the qualifying language " misdemeanors that could involve the infliction of serious bodily injury" was too high a standard. She said that including the Hall Amendment now makes sense so that all branches of government can plan to budget for it and there is no reason to wait and see how the pilot programs are working.

Mr. Tom Keith, District Attorney from the 21st Prosecutorial District and past president of the Conference of District Attorneys, offered statistical summaries and a prosecution manual relating to domestic violence cases in the state of North Carolina. See Attachment F.

Mr. Keith said that prosecutors want to prosecute domestic violence, but it is a hyper complex issue. He has a grant from the Crime Commission which gave him six positions. To provide assistance to the group covered in the Hall definition he estimates it would require about ten new positions to do the job correctly in his county. His entire support staff numbers eleven.

According to the Hall definition, Mr. Keith estimates that in his county there would be at least 2400 cases of the domestic violence charges listed in his handouts. For each of these cases he estimates a minimum of 1 ½ hours is needed to provide the services necessary. If all they do is call the victim to relay the next court date, that would do nothing. Domestic violence is an ongoing offense. He said he needs but can't find a judge for domestic violence court. He explained in detail the procedures his office uses in these cases. (See Attachment G.)

Representative Daughtry asked if he supported the Hall Amendment but does not have the personnel to do the job. Mr. Keith said if we put all the categories of relationships that are in the Hall Amendment (lines 12-15) into the bill, he estimates the additional costs would be \$9.7 million. He said if we decide to pass what is in the Hall amendment we need to do it right and fund it properly.

Representative Justus asked how much was the grant Mr. Keith received to run the pilot program.

Mr. Keith said the grant was \$350,000 for 2 years. He answered that one year has passed and he has had to raise 20% matching funds in the local community.

Mr. Justus asked if his district was typical of the others. Mr. Keith said that he thought his figures would be consistent across the state. He said there would be a tremendous impact on the law enforcement system – the need for more bailiffs and deputy sheriffs, etc. Also Mr. Keith said that his estimate did not include the cost of additional judges and clerks.

Representative Arnold asked about the 108 cases of domestic violence dismissals in the Exhibit "D" of Attachment F. Mr. Keith said that these dismissals are a small percentage of the cases.

Representative Arnold expressed confusion. He said that while Ms. Savitt says that it would cost only \$42.17 to prosecute these cases, Mr. Keith says we don't have the court system in place to prosecute these cases. He said this indicates to him that there is a need for court reform. He said it was deplorable that we can't accept an amendment because we don't have the people to prosecute. He said that the only thing to do is to start piecemeal.

Referring to Exhibit "E" of Attachment G, Mr. Keith said that North Carolina has one of the lowest staffing ratios in the United States. Representative Arnold said it is a shame they can't afford the Hall amendment, as much as everyone would like to vote for it.

Representative Blue asked if Mr. Keith agreed that the responsible thing to do is to do something about it. Mr. Keith said yes if you fund it. Mr. Keith said he has almost eliminated his domestic violence murder cases last year.

Representative Gray asked about a potential funding source that might not be a burden on the general fund but a burden on those who appear in court. Mr. Keith said that we automatically dismiss cases such as no operators, expired tags, expired inspection. We save having to try the case and are getting no court costs at present. Some states have the offender pay part court costs. If done in his county this would raise \$125,000 per year and this would increase his support staff 50%.

Ms. Catherine Smith of the North Carolina Victim Assistance Network said she supports Mr. Keith's comments. She said we need to recognize that our court systems are in a crises. If we want to include the domestic violence misdemeanors, then we need be fiscally responsible.

Representative Alexander asked Ms. Savitt how she arrived at her figures. Ms. Savitt said they were done by Keppel Analysis by the Governor's Crime Commission between sessions. They did a detailed analysis and came up with a definition. They sent that definition to the Administrative Office of the Courts who did an analysis of the number of victims the Hall Amendment would cover. The report is available for anyone to read. Fiscal staff of Justice and Public Safety Appropriations Subcommittee came up with the dollar figure of \$1.3 million to cover those 30, 822 victims. That comes to \$42.17 per victim.

Representative Hunter said he believes we all want to cover the domestic violence victims but want to make sure we have the money to do it right. He asked to hear from the AOC what money would be necessary to fund this.

Mr. Pete Powell of the Administrative Office of the Courts (AOC) said he did not have an exact figure but his estimate would be higher than what Fiscal Research found.

Mr. Jim Mills and Mr. Charles Bruce of Fiscal Staff said they worked on the fiscal note. Mr. Nelson said their estimate of \$1.3 million is based only on the duties required under HB 665 and the number of cases obtained by extrapolating the number of cases reported by the nine pilot programs statewide. It does not include the other victims' services that the DA's are providing in the pilot projects over and above those listed in HB 665.

Representative Justus reminded that Mr. Keith said his program cost \$350,000. He wondered if there was any reason to assume that the other pilot programs didn't cost that much.

Mr. Nelson reminded that the pilot program covers more services than are required in HB 665. He said it may be appropriate to cover those additional services and then there would be an additional cost.

In a followup Representative Justus wanted to know how many more services than are required now in HB 665 are covered by the \$350,000. He asked Mr. Keith what services he was providing over and above what the bill covers.

Mr. Keith elaborated on the services which he said were needed to save lives. He said that \$1.3 million only provide the bare minimum. In response to a question by Representative Justus he reiterated that he would need a 10 people in addition to the 11 he already has to do a good job.

Representative Sherrill said that money was coming into this program from places other than the grant.

Representative Miller asked what edition of the bill the Hall Amendment was to amend. The answer was the 4th edition of HB 665.

Representative Daughtry said that the amendment amends the bill on page 2, line 39-40.

Representative Michaux asked what we will do about domestic violence if we don't put the Hall amendment in.

Representative Daughtry said that the bill already has language about domestic violence on page 10, Section 15A-828.

Representative Michaux said this is a limiting section because it says that "to the extent possible."

Representative Ellis said that it has been two years since 80% of the 7 million citizens said to do something for victims. He said they put this amendment in the bill and waited another year trying to find the resources. He said the bill is designed to address felonies, i.e., very serious crimes. He said that it is apparent that we cannot afford to address misdemeanors. He said must respond to 80% of the citizens and get the bill passed that addresses felonies. He said they should not wait for another two years debating a small point with regard to the total citizenry of this state.

Representative Blue said that he does not believe that some of the misdemeanors are small points. He believes that these situations escalate and get more serious and if we intervene early then it can make a difference. He believes a little bit of something is better than nothing. He said that if passing this amendment allows us to take a step then we should do it. He thinks that this substantive policy committee should make a statement and send a message to the Appropriations Committee that they should find the money.

Representative Hall said that when the citizens voted they did not have one class of victims they wanted to help. They were asked if they wanted to provide assistance to crime victims. He believes that domestic violence is a big problem in the state for women and for children. He said the DA has exaggerated the numbers. He said that the question is are we prepared to protect all citizens.

Mr. Bill Brooks of the North Carolina Family Policy Council mentioned a final point not yet brought out in the discussion. He said NCFPC has concerns that the language in the amendment extends coverage beyond the marriage relationship. He said this also affects the cost of the bill. He said it is a lot easier to locate someone in a marriage relationship than it is to locate parties in "intimate relationships". He recommends that if they decide to go ahead on the amendment that the following language be stricken "or who live together in an intimate relationship or who have lived together in an intimate relationship or who have or are expecting a child in common." Doing so would limit the scope and the cost of the amendment.

The meeting adjourned at 10.:55 A.M.



Representative N. Leo Daughery
Co-chairman



Betty Wickham
Committee Clerk

ATTACHMENTS

Exhibit A - NOTICE OF THE MEETING

Exhibit B - AGENDA

Exhibit C - VISITOR REGISTRATION

Exhibit D - HB 665

Exhibit E - PROPOSED AMENDMENT #2 for HB 665 (Hall)

Exhibit F - STAFF REPORT on HB 665

Exhibit G - STATISTICS AND MANUAL ABOUT DOMESTIC VIOLENCE

**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE**

You are hereby notified that the Committee on **JUDICIARY I** will meet as follows:

DAY & DATE: **Thursday, June 25, 1998**

TIME: **10:00 A.M.**

LOCATION: **Room 1228/1327 LB**

The following bills will be considered (Bill # & Short Title):

HB 665	Crime Victims' Rights Act	Sponsor - Rep. Eddins

HB 1321	Future of the Courts	Sponsor - Rep. Daughtry

HB 1389	Funding for Legal Services	Sponsor - Rep. Allred

Respectfully,

Representative N. Leo Daughtry, Co-Chairman
Representative Edwin Hardy, Co-Chairman

I hereby certify this notice was filed by the committee clerk at the following offices at
2:35 p.m. on June 23, 1998.

____Principal Clerk
____Reading Clerk - House Chamber

Betty Wickham, Committee Clerk

AGENDA

HOUSE COMMITTEE ON JUDICIARY I

June 25, 1998
Room 1228/1327 LB
10:00 AM

Representative N. Leo Daughtry, Co-Chairman
Representative Edwin (Sandy) Hardy, Co-Chairman

BILLS TO BE CONSIDERED:

HB 665 Crime Victim's Rights Act Sponsor- Representative Eddins
(Continued from meeting held on Tuesday, June 23rd)

HB 1321 Future of the Courts Sponsor- Representative Daughtry

HB 1389 Funding for Legal Services Sponsor- Representative Allred

(Proposed House Committee Substitute for HB 1317 **AMEND CONTESTED CASE PROCEDURES***/Sponsor-Representative C. Wilson, was placed in a subcommittee at June 4th meeting for member study [Rep. Arnold, Chr.; Blue, Braswell, Clary, Morgan, Sherrill])*

ADJOURNMENT

VISITOR REGISTRATION SHEET

Judiciary I June 25, 1998

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY
1. Jeff Hunt	29 th DIST. D.A.
2. Tom Keith	21 st DIST DA
3. Lisa Dunning	Case Manager - DV 21 st DIST
4. Roslyn Savitt	NC Coalition Against Domestic Violence
5. Bill Brooks	NC FPC
6. Catherine Litten	NCIAR
7. Karen Moravsky	NC Citizen
8. Linda Wilson	NC AOC
9. Paula A. Wolf	Covenant with NC's Children
10. Linda Summers	NC Equity
11. McCullum	NC PP
22. Teri Christensen	Harbor Inc.
23. Jean Carroll	NC Council for Women
24. Stephanie G. Black	Charlotte Observer
25. Allen Miles	Bailey & Dixon LLP
26. Garland Hanes	Gov. Office
27. Michael Crowell	COURTS Futures Comm'n
28. Natalie Stewart	ACLU
29. Emily Howell	Sen. Basnight's office
30. B. Powell	AOC
31. Lyda Barber	CSPC
Jan M. Killian	Mover Van Allen

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

4

HOUSE BILL 665

Committee Substitute Favorable 6/25/97
Committee Substitute #2 Favorable 7/10/97
Committee Substitute #3 Favorable 6/18/98

Short Title: Crime Victims' Rights Act.

(Public)

Sponsors:

Referred to:

March 27, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO CREATE THE CRIME VICTIMS' RIGHTS ACT, TO ASSIST
3 VICTIMS OF DOMESTIC VIOLENCE, TO ALLOW THE ENFORCEMENT OF
4 ORDERS FOR RESTITUTION IN CRIMINAL CASES IN THE SAME
5 MANNER AS CIVIL JUDGMENTS, TO CREATE AN EXCEPTION TO THE
6 STATUTORY EXEMPTIONS FOR EXECUTION OF RESTITUTION
7 JUDGMENTS, TO CHANGE THE ORDER OF PRIORITY FOR
8 DISBURSEMENT OF FUNDS IN CRIMINAL CASES, TO PROHIBIT THE USE
9 OF STATE FUNDS FOR JURY CONSULTANTS, TO REQUEST THE NORTH
10 CAROLINA SUPREME COURT TO CONSIDER AND ADOPT RULES TO
11 EXPEDITE APPEALS FROM CAPITAL CASES THAT INCLUDE A
12 SENTENCE OF DEATH, AND TO REQUIRE A JUDGE PRESIDING IN A
13 CAPITAL TRIAL TO INSTRUCT THE SENTENCING JURY REGARDING
14 THE REVIEW OF SENTENCES OF LIFE IMPRISONMENT WITHOUT
15 PAROLE.

16 The General Assembly of North Carolina enacts:

17 Section 1. Chapter 15A of the General Statutes is amended by adding a
18 new Subchapter to read:

19 "SUBCHAPTER XVI. CRIME VICTIMS' RIGHTS.

20 "ARTICLE 101.

21 "Crime Victims' Rights Act.

1 "§ 15A-2010. Definitions.

2 (a) The following definitions apply in this Article:

- 3 (1) Accused. -- A person who has been arrested and charged with
4 committing a crime covered by this Article.
- 5 (2) Law enforcement agency. -- Law enforcement agency includes the
6 following:
- 7 a. Arresting law enforcement agency. -- The law enforcement
8 agency that makes the arrest of an accused.
- 9 b. Custodial agency. -- The agency that has legal custody of an
10 accused or defendant arising from a charge or conviction of
11 a crime covered by this Article including, but not limited to,
12 local jails or detention facilities, regional jails or detention
13 facilities, or the Department of Correction.
- 14 c. Investigating law enforcement agency. -- The law
15 enforcement agency with primary responsibility for
16 investigating the crime committed against the victim.
- 17 (3) Next of kin. -- The victim's spouse, children, parents, siblings, or
18 grandparents. The term does not include the accused unless the
19 charges are dismissed or the person is found not guilty.
- 20 (4) Victim. -- A person against whom there is probable cause to
21 believe one of the following crimes was committed:
- 22 a. A Class A, B1, B2, C, D, or E felony.
- 23 b. A Class F felony if it is a violation of one of the following:
24 G.S. 14-16.6(b); 14-16.6(c); 14-18; 14-32.1(e); 14-32.2(b)(3);
25 14-32.3(a); 14-32.4; 14-34.2; 14-34.6(c); 14-41; 14-43.2; 14-
26 43.3; 14-190.17; 14-190.19; 14-202.1; 14-288.9; or 20-138.5.
- 27 c. A Class G felony if it is a violation of one of the following:
28 G.S. 14-32.3(b); 14-51; 14-58; 14-87.1; or 20-141.4.
- 29 d. A Class H felony if it is a violation of one of the following:
30 G.S. 14-32.3(a); 14-32.3(c); or 14-33.2.
- 31 e. A Class I felony if it is a violation of one of the following:
32 G.S. 14-277.3; 14-32.3(b); 14-34.6(b); or 14-190.17A.
- 33 f. An attempt of any of the felonies listed in this subdivision if
34 the attempted felony is punishable as a felony.

35 (b) If the victim is deceased, then the next of kin, in the order set forth in the
36 definition contained in this section, is entitled to the victim's rights under this Article,
37 except for the rights contained in G.S. 15A-2014. An individual entitled to exercise
38 the victim's rights as a member of the class of next of kin may designate anyone in
39 the class to act on behalf of the class.

40 "§ 15A-2011. Responsibilities of law enforcement agency.

41 (a) As soon as practicable but within 72 hours after identifying a victim covered by
42 this Article, the investigating law enforcement agency shall provide the victim with
43 the following information:

- 44 (1) The availability of medical services, if needed.

- 1 (2) The availability of crime victims' compensation funds under
2 Chapter 15B of the General Statutes and the address and
3 telephone number of the agency responsible for dispensing the
4 funds.
- 5 (3) The address and telephone number of the district attorney's office
6 that will be responsible for prosecuting the victim's case.
- 7 (4) The name and telephone number of an investigating law
8 enforcement agency employee whom the victim may contact if the
9 victim has not been notified of an arrest in the victim's case within
10 six months after the crime was reported to the law enforcement
11 agency.
- 12 (5) Information about an accused's opportunity for pretrial release.
- 13 (6) The name and telephone number of an investigating law
14 enforcement agency employee whom the victim may contact to
15 find out whether the accused has been released from custody.
- 16 The investigating law enforcement agency shall also be available to provide victims
17 with more direct assistance in understanding the criminal justice process and the
18 scope of victims' services available to assist them. The investigating law enforcement
19 agency shall assist a victim in obtaining any of those services upon the request of the
20 victim.
- 21 (b) As soon as practicable but within 72 hours after receiving notification from the
22 arresting law enforcement agency that the accused has been arrested, the investigating
23 law enforcement agency shall forward to the district attorney's office that will be
24 responsible for prosecuting the case the victim's name, address, date of birth, social
25 security number, race, sex, and telephone number, unless the victim refuses to
26 disclose any or all of the information, in which case, the investigating law
27 enforcement agency shall so inform the district attorney's office.
- 28 (c) Upon receiving the information in subsection (a) of this section, the victim
29 shall, on a form provided by the investigating law enforcement agency, indicate
30 whether the victim wishes to receive any further notices from the investigating law
31 enforcement agency. If the victim elects to receive further notices, the victim shall be
32 responsible for notifying the investigating law enforcement agency of any changes in
33 the victim's name, address, and telephone number.
- 34 (d) As soon as practicable but within 72 hours after the arrest of a person believed
35 to have committed a crime covered by this Article, the arresting law enforcement
36 agency shall inform the investigating law enforcement agency of the arrest. As soon
37 as practicable but within 72 hours of being notified of the arrest, the investigating law
38 enforcement agency shall notify the victim of the arrest.
- 39 **"§ 15A-2012. Responsibilities of the district attorney's office.**
- 40 (a) Within 21 days after the arrest of the accused, but not less than 24 hours
41 before the accused's first scheduled probable cause hearing, the district attorney's
42 office shall provide to the victim a pamphlet or other written material that explains in
43 a clear and concise manner the following:

- (1) The victim's rights under this Article, including the right to confer with the attorney prosecuting the case about the disposition of the case and the right to provide a victim impact statement.
- (2) The responsibilities of the district attorney's office under this Article.
- (3) The victim's eligibility for compensation under the Crime Victims' Compensation Act and the deadlines by which the victim must file a claim for compensation.
- (4) The steps generally taken by the district attorney's office when prosecuting a felony case.
- (5) Suggestions on what the victim should do if threatened or intimidated by the accused or someone acting on the accused's behalf.
- (6) The name and telephone number of a victim and witness assistant in the district attorney's office whom the victim may contact for further information.

(b) Upon receiving the information in subsection (a) of this section, the victim shall, on a form provided by the district attorney's office, indicate whether the victim wishes to receive notices of some, all, or none of the trial and posttrial proceedings involving the accused. If the victim elects to receive notices, the victim shall be responsible for notifying the district attorney's office or any other department or agency that has a responsibility under this Article of any changes in the victim's address and telephone number. The victim may alter the request for notification at any time by notifying the district attorney's office and completing the form provided by the district attorney's office.

(c) The district attorney's office shall notify a victim of the date, time, and place of all trial court proceedings of the type which the victim has elected to receive notice. All notices required to be given by the district attorney's office shall be given in a manner that is reasonably calculated to be received by the victim prior to the date of the court proceeding.

(d) Whenever practical, the district attorney's office shall provide a secure waiting area during court proceedings that does not place the victim in close proximity to the defendant or the defendant's family.

(e) When the victim is to be called as a witness in a court proceeding, the court shall make every effort to permit the fullest attendance possible by the victim in the proceedings.

(f) Prior to the disposition of the case, the district attorney's office shall offer the victim the opportunity to consult with the prosecuting attorney to obtain the views of the victim about the disposition of the case, including the victim's views about dismissal, plea or negotiations, sentencing, and any pretrial diversion programs.

(g) At the sentencing hearing, the prosecuting attorney shall submit to the court a copy of a form containing the identifying information set forth in G.S. 15A-2011(b) about any victim electing to receive further notices under this Article. The form shall be included with the final judgment and commitment transmitted to the Department

1 of Correction or other agency receiving custody of the defendant and shall be
2 maintained by the custodial agency as a confidential file.

3 **"§ 15A-2013. Evidence of victim impact.**

4 (a) A victim has the right to offer evidence of the impact of the crime, which shall
5 be considered by the court or jury, as the case may be, in sentencing the defendant.

6 The evidence may include the following:

- 7 (1) A description of the nature and extent of any physical,
8 psychological, or emotional injury suffered by the victim as a result
9 of the offense committed by the defendant.
- 10 (2) An explanation of any economic or property loss suffered by the
11 victim as a result of the offense committed by the defendant.
- 12 (3) A request for restitution and an indication of whether the victim
13 has applied for or received compensation under the Crime
14 Victims' Compensation Act.

15 (b) No victim shall be required to offer evidence of the impact of the crime. No
16 inference or conclusion shall be drawn from a victim's decision not to offer evidence
17 of the impact of the crime.

18 **"§ 15A-2014. Restitution.**

19 (a) Upon conviction of the defendant or upon a plea of guilty, the court shall, in
20 addition to any penalty authorized by law, require that the defendant make
21 restitution to a victim or the victim's estate for any injuries or damages arising out of
22 the offense committed by the defendant. In determining the amount of restitution,
23 the court shall consider the following:

- 24 (1) The cost of any medical or other professional services and devices
25 or equipment required by the victim.
- 26 (2) The cost of physical therapy, occupational therapy, and
27 rehabilitation required by the victim.
- 28 (3) Any income loss, after taxes, suffered by the victim.
- 29 (4) The cost of any psychological or medical treatment for the victim's
30 next of kin.
- 31 (5) The cost of the victim's funeral and any related services.
- 32 (6) Any other injuries or damages arising out of the offense committed
33 by the defendant.

34 (b) The court may require that the victim or the victim's estate provide evidence
35 that documents the costs claimed by the victim or the victim's estate under this
36 section. Any such documentation shall be shared with the defendant before the
37 sentencing hearing.

38 (c) In determining the amount of restitution to be made, the court shall take into
39 consideration the resources of the defendant including all real and personal property
40 owned by the defendant and the income derived from the property, the defendant's
41 ability to earn, the defendant's obligation to support dependents, and any other
42 matters that pertain to the defendant's ability to make restitution, but the court is not
43 required to make findings of fact or conclusions of law on these matters. The amount
44 of restitution must be limited to that supported by the record, and the court may

1 order partial restitution when it appears that the damage or loss caused by the offense
2 is greater than that which the defendant is able to pay.

3 (d) An order providing for restitution does not abridge the right of a victim or the
4 victim's estate to bring a civil action against the defendant for damages arising out of
5 the offense committed by the defendant.

6 (e) The court may order the defendant to make restitution to a person other than
7 the victim, or to any organization, corporation, or association, including the Crime
8 Victims' Compensation Fund that provided assistance to the victim following the
9 commission of the offense by the defendant. Restitution shall be made to the victim
10 or the victim's estate before it is made to any other person, organization, corporation,
11 or association.

12 (f) The court may require the defendant to make full restitution no later than a
13 certain date or, if the circumstances warrant, may allow the defendant to make
14 restitution in installments over a specified time period.

15 (g) If the defendant is placed on probation or post-release supervision, any
16 restitution ordered under this Article shall be a condition of probation or post-release
17 supervision.

18 (h) If the court orders partial restitution, the court shall state on the record the
19 reasons for such an order.

20 **"§ 15A-2015. Enforcement of order for restitution.**

21 (a) An order for restitution under this Article may be enforced in the same
22 manner as a civil judgment, subject to the provisions of this section.

23 (b) The order for restitution under this Article shall be docketed and indexed in
24 the county of the original conviction in the same manner as a civil judgment. The
25 order for restitution may be collected in the same manner as a civil judgment unless
26 the order to pay restitution is a condition of probation. If the order to pay restitution
27 is a condition of probation, the judgment may only be collected in accordance with
28 subsection (c) of this section.

29 (c) If the defendant is ordered to pay restitution as a condition of probation, the
30 docketed judgment may not be collected until the date of notification to the clerk of
31 superior court in the county of the original conviction that the judge presiding at the
32 probation termination or revocation hearing has made a finding that restitution in a
33 sum certain remains due and payable, that the defendant's probation has been
34 terminated or revoked, and that the remaining balance of restitution owing may be
35 collected by execution on the judgment. The clerk shall then enter upon the
36 judgment docket the amount that remains due and payable on the judgment, together
37 with amounts equal to the standard fees for docketing, copying, certifying, and
38 mailing, as appropriate, and shall notify the victim by first-class mail at the victim's
39 last known address that the judgment may be executed upon, together with the
40 amount of the judgment. Until the clerk receives notification of termination or
41 revocation of probation and the amount that remains due and payable on the order
42 of restitution, the clerk shall not be required to update the judgment docket to reflect
43 partial payments on the order of restitution as a condition of probation.

1 (d) An appeal of the conviction upon which the order of restitution is based shall
2 stay execution on the judgment until the appeal is completed. If the conviction is
3 overturned, the judgment shall be removed from the judgment docket.

4 **"§ 15A-2016. Posttrial responsibilities.**

5 (a) Within 30 days after the final proceeding of the trial phase of the case, the
6 district attorney's office shall notify the victim, in writing, of:

7 (1) The final disposition of the case.

8 (2) The crimes of which the defendant was convicted.

9 (3) The defendant's right to appeal, if any.

10 (b) Upon a defendant's giving notice of appeal to the Court of Appeals or the
11 Supreme Court, the district attorney's office shall forward to the Attorney General's
12 office the victim's name, address, and telephone number. Upon receipt of this
13 information, and thereafter as the circumstances require, the Attorney General's
14 office shall provide the victim with the following:

15 (1) A clear and concise explanation of how the appellate process
16 works, including information about possible actions that may be
17 taken by the appellate court.

18 (2) Notice of the date, time, and place of any appellate proceedings
19 involving the defendant. Notice shall be given in a manner that is
20 reasonably calculated to be received by the victim prior to the date
21 of the proceedings.

22 (3) The final disposition of an appeal.

23 (c) If the defendant has been released on bail pending the outcome of the appeal,
24 the agency that has custody of the defendant shall notify the investigating law
25 enforcement agency, and the investigating law enforcement agency shall notify the
26 victim that the defendant has been released.

27 (d) If the defendant's conviction is overturned, and the district attorney's office
28 decides to retry the case or the case is remanded to superior court for a new trial, the
29 victim shall be entitled to the same rights under this Article as if the first trial did not
30 take place.

31 (e) The Conference of District Attorneys shall maintain a repository relating to
32 victims' identities, addresses, and other appropriate information for use by agencies
33 charged with responsibilities under this Article.

34 **"§ 15A-2017. Responsibilities of agency with custody of defendant.**

35 The Department of Correction shall notify the victim of:

36 (1) The projected date by which the defendant can be released from
37 custody. The calculation of the release date shall be as exact as
38 possible, including earned time and disciplinary credits if the
39 sentence of imprisonment exceeds 90 days.

40 (2) An inmate's assignment to a minimum custody unit and the
41 address of the unit. This notification shall include notice that the
42 inmate's minimum custody status may lead to the inmate's
43 participation in one or more community-based programs such as
44 work release or supervised leaves in the community.

(3) The victim's right to submit any concerns to the agency with custody and the procedure for submitting such concerns.

(4) The defendant's escape from custody.

(5) The defendant's capture.

(6) The date the defendant is scheduled to be released from the facility. Whenever practical, notice shall be given 60 days before release.

(7) The defendant's death.

"§ 15A-2018. Responsibilities of Division of Adult Probation and Parole.

The Division of Adult Probation and Parole shall notify the victim of:

(1) The defendant's regular conditions of probation or post-release supervision, special or added conditions, supervision requirements, and any subsequent changes.

(2) The date of a hearing to determine whether the defendant's supervision should be revoked, continued with or without modifications, or terminated.

(3) The final disposition of any hearing referred to in subdivision (2) of this section.

(4) Any restitution modification.

(5) The defendant's movement into or out of any intermediate sanction as defined in G.S. 15A-1340.11(6).

(6) The defendant absconding supervision.

(7) The capture of a defendant described in subdivision (6) of this section.

(8) The date when the defendant is terminated or discharged.

(9) The defendant's death.

"§ 15A-2019. Notice of commuted sentence or pardon.

The Governor's Clemency Office shall notify a victim when it is considering commuting the defendant's sentence or pardoning the defendant. The Governor's Clemency Office shall also give notice that the victim has the right to present a written statement to be considered by the Office before the defendant's sentence is commuted or the defendant is pardoned. The Governor's Clemency Office shall notify the victim of its decision. Notice shall be given in a manner that is reasonably calculated to allow for a timely response to the commutation or pardon decision.

"§ 15A-2020. No money damages.

This Article does not create a claim for damages against the State, a county, or a municipality, or any of its agencies, instrumentalities, officers, or employees.

"§ 15A-2021. No ground for relief.

The failure or inability of any person to provide a right or service under this Article may not be used by a defendant in a criminal case, by an inmate, or by any other accused as a ground for relief in any criminal or civil proceeding.

"§ 15A-2022. Incompetent victim's rights exercised.

1 When a victim is rendered mentally or physically incompetent or when the victim
2 is a minor, the victim's rights under this Article, other than the rights provided by
3 G.S. 15A-2014 and G.S. 15A-2015, may be exercised by the victim's next of kin."

4 Section 1.1. If the General Assembly appropriates funds for State grants
5 to local and State law enforcement to implement the provisions of this act, the
6 Department of Crime Control and Public Safety shall establish criteria for the
7 allocation of these State grants. These criteria shall include a requirement that the
8 requesting law enforcement agency document services and man-hours that directly
9 relate to the provisions of this act. The criteria shall also require documentation that
10 the requesting law enforcement agency is not receiving funding from any other source
11 for that specific service. The Department of Crime Control and Public Safety shall
12 report quarterly to the Chairs of the House and Senate Appropriations Committees
13 and the Chairs of the House and Senate Appropriations Subcommittees on Justice
14 and Public Safety on the development of the grant program and allocation of funding.

15 Section 2. The provisions of Article 45 of Subchapter VIII of Chapter
16 15A of the General Statutes are supplemental to the provisions of Article 101 of
17 Subchapter XVI of Chapter 15A of the General Statutes as enacted in Section 1 of
18 this act. If there is any conflict between the provisions of Article 45 and Article 101,
19 the provisions of Article 101 shall control.

20 Section 2.1. G.S. 1C-1601(e) reads as rewritten:

21 "(e) Exceptions. -- The exemptions provided in this Article are inapplicable to
22 claims

- 23 (1) Of the United States or its agencies as provided by federal law;
- 24 (2) Of the State or its subdivisions for taxes, appearance bonds or
25 fiduciary bonds;
- 26 (3) Of lien by a laborer for work done and performed for the person
27 claiming the exemption, but only as to the specific property
28 affected;
- 29 (4) Of lien by a mechanic for work done on the premises, but only as
30 to the specific property affected;
- 31 (5) For payment of obligations contracted for the purchase of the
32 specific real property affected;
- 33 (6) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1224, s.
34 6;
- 35 (7) For contractual security interests in the specific property affected;
36 provided, that the exemptions shall apply to the debtor's
37 household goods notwithstanding any contract for a nonpossessory,
38 nonpurchase money security interest in any such goods;
- 39 (8) For statutory liens, on the specific property affected, other than
40 judicial liens;
- 41 (9) For child support, alimony or distributive award order pursuant to
42 Chapter 50 of the General Statutes. Statutes;
- 43 (10) For criminal restitution orders docketed as civil judgments
44 pursuant to G.S. 15A-2015."

1 Section 2.2. G.S. 7A-304(d) reads as rewritten:

2 "(d) In any criminal case in which the liability for costs, fines, restitution, or any
3 other lawful charge has been finally determined, the clerk of superior court shall,
4 unless otherwise ordered by the presiding judge, disburse such funds when paid in
5 accordance with the following priorities:

6 (1) Sums in restitution prorated among the persons entitled thereto;

7 ~~(1)(2)~~ Costs due the county;

8 ~~(2)(3)~~ Costs due the city;

9 ~~(3)(4)~~ Fines to the county school fund;

10 ~~(4) Sums in restitution prorated among the persons entitled thereto;~~

11 (5) Costs due the State;

12 (6) Attorney's fees.

13 Sums in restitution received by the clerk of superior court shall be disbursed when:

14 (1) Complete restitution has been received; or

15 (2) When, in the opinion of the clerk, additional payments in
16 restitution will not be collected; or

17 (3) Upon the request of the person or persons entitled thereto; and

18 (4) In any event, at least once each calendar year."

19 Section 2.3. Article 45 of Subchapter VIII of Chapter 15A of the General
20 Statutes is amended by adding a new section to read:

21 **"§ 15A-828. Assistance to victims of domestic violence.**

22 In the allocation of resources to persons the district attorney determines are victims
23 of serious misdemeanors, the district attorney shall, to the extent possible, provide the
24 services listed in G.S. 15A-825 to victims of domestic violence misdemeanors that
25 could involve the infliction of serious bodily injury."

26 Section 3. The Department of Crime Control and Public Safety shall
27 establish a pilot program to integrate the Justice Wide Area Network (JWAN) with
28 the proposed Victim Information and Notification Everyday (VINE) automated victim
29 notification system. The pilot program shall include the development of a software
30 application that can be implemented statewide to integrate the VINE system with
31 other criminal justice networks. The Department shall report to the Chairs of the
32 Joint Legislative Correction and Crime Control Oversight Committee and the Chairs
33 of the Senate and House Appropriations Subcommittees on Justice and Public Safety
34 by April 1, 1999, on the progress of the pilot program.

35 Section 4. Funds appropriated to the Judicial Department may not be
36 used to contract for the services of jury consultants in criminal cases where the
37 defendant has been assigned counsel by the court.

38 Section 5. The General Assembly requests the North Carolina Supreme
39 Court to consider and adopt rules to expedite appeals from all cases in which the
40 defendant is convicted of murder in the first degree and the judgment of the superior
41 court includes a sentence of death.

42 Section 6. G.S. 15A-2002 reads as rewritten:

43 **"§ 15A-2002. Capital offenses; jury verdict and sentence.**

1 (a) If the recommendation of the jury is that the defendant be sentenced to death,
2 the judge shall impose a sentence of death in accordance with the provisions of
3 Chapter 15, Article 19 of the General Statutes. If the recommendation of the jury is
4 that the defendant be imprisoned for life in the State's prison, the judge shall impose
5 a sentence of imprisonment for life in the State's prison, without parole.

6 (b) The judge shall instruct the jury, in words substantially equivalent to those of
7 this section, that a sentence of life imprisonment means a sentence of life without
8 parole.

9 (c) The judge shall instruct the jury about the review of sentences of life
10 imprisonment without parole in words substantially equivalent to those of G.S. 15A-
11 1380.5."

12 Section 7. G.S. 15A-2000 is amended by adding a new subsection to
13 read:

14 "(d1) Argument by District Attorney. -- The district attorney may inform the jury
15 in the closing argument about the review of sentences of life imprisonment without
16 parole in words substantially equivalent to those of G.S. 15A-1380.5."

17 Section 8. The provisions of this act are severable. If any provision of
18 this act is held invalid by a court of competent jurisdiction, the invalidity does not
19 affect other provisions of the act that can be given effect without the invalid
20 provision.

21 Section 9. Sections 1.1, 2.3, 5, and this section of this act are effective
22 when they become law. Section 4 of this act becomes effective July 1, 1998. Sections
23 6 and 7 of this act become effective December 1, 1998, and apply to capital
24 sentencing hearings or rehearings begun on or after that date. The remainder of this
25 act becomes effective October 1, 1998.



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 665

AMENDMENT NO. 2
(to be filled in by
Principal Clerk)

Page 1 of 1

H665-ARO-2.98

Date , 1998

Comm. Sub. [YES]
Amends Title []
Fourth Edition

1 moves to amend the bill on page 2, line 39-40,
2 by inserting the following new section between the lines:
3
4 "§15A-2010.1. Assistance to victims of domestic violence.
5 Effective July 1, 1999, victims of domestic violence shall be
6 entitled to all of the rights of victims under this Article. For
7 purposes of determining eligibility for assistance under this
8 Article, a victim of domestic violence is any person against whom
9 there is probable cause to believe that any of the following
10 misdemeanor offenses has been committed; G.S. 14-33(c)(1), G.S. 14-
11 33(c)(2), G.S. 14-33(a), G.S. 14-34, G.S. 14-134.3, or G.S. 14-
12 277.3, when the offense is committed between persons who are current
13 or former spouses, or who live together in an intimate relationship
14 or who have lived together in an intimate relationship, or who have
15 or are expecting a child in common. These crimes are in addition to
16 the felonies set forth in G.S. 15A-2010(a)(4)."
17
18

SIGNED Hall
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED FAILED TABLED



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June 23, 1998

MEMORANDUM

TO: Representatives Leo Daughtry and Edwin Hardy, Co-Chairs,
House Judiciary I Committee.

FROM: Karen Cochrane Brown, Committee Co-Counsel.

RE: **House Bill 665 - Crime Victims' Rights Act.**
(Fourth Edition)

The Fourth Edition of House Bill 665 was proposed by the House Appropriations Subcommittee on Justice and Public Safety. It makes several changes to the last version of the bill. The latest changes are reflected in this summary in *italics* at the end of each section.

House Bill 665 creates Article 101 of Chapter 15A, the Crime Victims' Rights Act, to implement the provisions of Section 37 of Article I of the North Carolina Constitution, which provides for basic rights for victims of crime. The constitutional amendment was passed by the 1995 General Assembly and approved by the voters in 1996.

Section 1 of the bill establishes the new Article 101 which sets forth the substantive rights to which crime victims will be entitled. The new Article contains the following sections:

G.S. 15A-2010. Definitions. This section defines pertinent terms including the term "victim". This definition provides that the Act is applicable to any person against whom there is probable cause to believe one of certain enumerated crimes was committed. The crimes include all Class A, B1, B2, C, D, and E felonies, and certain Class F, G, H, and I felonies most of which involve acts where physical harm to a victim is involved. No misdemeanors are included.

The new version makes no changes to this section.

G.S. 15A-2010.1. Assistance to victims of domestic violence. This provision makes the act applicable to victims of domestic violence, effective July 1, 1999. It also contains a definition of victims of domestic violence which includes certain misdemeanors in addition to the felonies contained in the definition of "victim".

The new version deletes this section, which extended victim assistance rights to victims of domestic violence, effective July 1, 1999. This bill retains the language requiring district attorneys to use their authority under current Fair Treatment Act to provide services to victims of serious misdemeanors to emphasize services to victims of domestic violence misdemeanors that could involve infliction of serious injuries. This language is found in section 2.3 of the bill on page 10.

G.S. 15A-2011. Responsibilities of law enforcement agency. Within 24 hours of identifying a victim covered by the Act the investigating law enforcement agency must provide certain information to the victim, including the availability of medical services, the availability of compensation funds, the address and phone number of the district attorney's office, the name and phone number of a contact person in the agency, information about the accused's opportunity for pretrial release, and the name and phone number of a contact person to find out if the accused has been released.

Within 24 hours of receiving notification of an arrest in the case, the investigating law enforcement agency must forward information about the victim to the district attorney's office, unless the victim refuses to disclose the information.

Within 24 hours after an arrest is made, the arresting law enforcement agency must notify the investigating law enforcement agency which must then notify the victim within 24 hours.

The new version modifies the duties of law enforcement to allow notices to victims and to other agencies and the district attorney's offices to be provided as soon as practicable but within 72 hours. It also expands the duties from just notification of victims to direct assistance such as helping victims obtain services.

G.S. 2012. Responsibilities of the district attorney's office. Within 21 days of the arrest, but not less than 24 hours before the first scheduled probable cause hearing, the district attorney's office must provide the victim with a pamphlet which explains the victims rights during this phase of the case. These rights include the right to confer with the prosecuting attorney and the right to provide a victim impact statement, as well as information about eligibility for compensation, information about the steps in prosecuting a felony and the name and phone number of a victim and witness assistant who can be contacted for further information.

The district attorney's office must provide a form on which the victim can indicate whether he or she wishes further notice of some or all of the trial proceedings. The victim must be notified of the date, time, and location of these proceedings and where practical, secure waiting areas must be provided for the victim during court proceedings. When a victim is to be called as a witness in a court proceeding, the court is required to make every effort to permit the fullest attendance possible by the victim in the proceeding. Prior to disposition of the case, the district attorney must offer to consult with the victim to obtain the victim's views about dismissal, plea or negotiations, sentencing, and any pretrial diversion programs.

Finally, at the sentencing hearing, the prosecutor must submit to the court a form containing identifying information about the victim to be included with the final judgment and commitment transmitted to the Department of Corrections or other custodial agency and must be maintained as a confidential file.

There were no changes to this section.

G.S. 15A-2013. Evidence of victim impact. The victim has the right to make a victim impact statement, which must be considered by the court or jury, as applicable, when sentencing the defendant. The statement may include a description of the harm and losses suffered by the victim, a request for restitution, and whether compensation has been applied for or received under the Crime Victims' Compensation Act. The victim impact statement is not required and no inference may be drawn from a victim's decision not to make one.

There were no changes to this section.

G.S. 15A-2014. Restitution. Upon conviction of the defendant or upon a guilty plea, the court shall require the defendant to make restitution to the victim or the victim's estate for injury or damages to the victim. The court shall consider the cost of medical or other professional services, the cost of therapy or rehabilitation, any income loss, the cost of treatment for the victim's next of kin, the cost of funeral and related services, and any other injuries or damages arising out of the offense. The court shall also take into consideration the resources and earning capacity, as well as other obligations of the defendant.

The existence of the order for restitution does not affect the right of the victim or the victim's estate to bring a civil action against the defendant for damages.

The court may direct the defendant to make restitution to a person or entity other than the victim; but the victim or the victim's estate is entitled to receive restitution before any other person or entity.

The court may direct that restitution be made by a certain date or may allow it to be made in installments over a period of time.

If the defendant is placed on probation or post-release supervision, restitution shall be a condition of probation or post-release supervision.

There were no changes to this section.

G.S. 15A-2015. Enforcement of order for restitution. An order of restitution under this Article may be enforced in the same manner as a civil judgment. It may be docketed and indexed in the county of the original conviction and may be collected like a civil judgment unless it is a condition of probation. If the order is a condition of probation, it can only be executed upon when the court terminates or revokes probation and notifies the clerk of Superior Court. Until

the clerk receives this notification, the clerk is not required to note partial payments of the order of restitution as a condition of probation on the judgment docket.

This section also provides that if a conviction is appealed, execution on the judgment based upon the order of restitution is stayed until the appeal is completed. If the conviction is overturned, the judgment is removed from the judgment docket.

There were no changes to this section.

G.S. 15A-2016. Posttrial responsibilities. Within 30 days of the completion of the trial phase of the case, the district attorney's office must notify the victim, in writing, of the final disposition of the case, the crimes of which the defendant was convicted, and the defendant's right to appeal, if any. If the defendant appeals, the district attorney's office must forward victim information to the Attorney General's office which must provide the victim with an explanation of the appellate process, the date, time and place of any appellate proceedings, and the final disposition of an appeal. If the defendant is released on bail during the appeal, the victim must be notified, and if the conviction is overturned, and the prosecutor decides to retry the case or it is remanded for a new trial, the victim is entitled to the same rights as if the first trial had not occurred.

The Conference of District Attorneys is directed to maintain a repository of victims' names and addresses and other appropriate information for use by agencies charged with responsibilities under the Article.

There were no changes to this section.

G.S. 15A-2017. Responsibilities of agency with custody of defendant. After conviction, the Department of Correction must notify the victim of the defendant's projected release date, the inmate's assignment to a minimum custody unit and the possibility of the inmate's participation in a community-based program, the victim's right to submit concerns to the agency, the defendant's escape from custody, the defendant's capture, the defendant's scheduled release date, (with 60 days prior notice, when practical), and the defendant's death.

There were no changes to this section.

G.S. 15A-2018. Responsibilities of Division of Adult Probation and Parole. The Division of Adult Probation and Parole is directed to notify the victim of the defendant's regular and special conditions of probation and post-release supervision, the date of any hearings to revoke, modify, or terminate supervision, the final disposition of any such hearing, any restitution modification, the defendant's movement into or out of any intermediate sanction, the defendant's absconding supervision, the defendant's capture, the date the defendant is terminated or discharged, and the defendant's death.

There were no changes to this section.

G.S. 15A-2019. Notice of commuted sentence or pardon. The Governor's Clemency Office must notify the victim when it is considering commuting the defendant's sentence or pardoning the defendant, and give the victim an opportunity to make a written statement. It must also give notice of the final decision in a manner calculated to allow for a timely response to the decision.

There were no changes to this section.

G.S. 15A-2020. No money damages. This Article does not create a claim for damages against the State, a county, or a municipality or any of its agencies, instrumentalities, officers or employees.

There were no changes to this section.

G.S. 15A-2021. No ground for relief. An accused person, or defendant, or inmate may not use the failure of any person to provide a right or service under this Article as a ground for relief in a criminal or civil proceeding.

There were no changes to this section.

G.S. 15A-2022. Incompetent victim's rights exercised. An incompetent or minor victim's rights under this Article may be exercised by the victim's next of kin, except for the rights of restitution and the enforcement of restitution.

There were no changes to this section.

A new section 1.1 of the bill provides that if the General Assembly appropriates funds for State grants to law enforcement to implement this act, the Department of Crime Control and Public Safety shall establish criteria for the allocation of these funds. The criteria must include requiring the applicants to document the services provided and that they receive no funding from any other source for that specific service. The Department is required to report quarterly to the House and Senate Appropriations chairs and the House and Senate Justice and Public Safety subcommittee chairs.

Section 2 of House Bill 665 provides that the provisions of Article 45 of Chapter 15A (the Fair Treatment of Victims and Witnesses Act) are supplemental to the provisions of Article 101 created by section 1 of this bill, and in the event of any conflict, the provisions of Article 101 govern.

There were no changes to this section.

Section 2.1 amends G.S. 1C-1601(e) which deals with the items that are not exempt from judgment execution. The amendment adds orders for restitution docketed as civil judgments under Article 101.

There were no changes to this section.

Section 2.2 amends G.S. 7A-304(d) by changing the order in which funds received in criminal cases are disbursed. Currently, sums received in restitution are fourth in line. This amendment moves them to first in line.

There were no changes to this section.

Section 2.3 amends the Fair Treatment to Victims and Witnesses Act to add a new provision directing the district attorney to provide the services listed in G.S. 15A-825 to victims of domestic violence misdemeanors that could involve the infliction of serious bodily injury, to the extent possible.

Inasmuch as the earlier reference to domestic violence victims has been deleted from this version of the bill, this section is now the basis upon which victims of domestic violence misdemeanors may receive assistance under the bill.

Section 2.4 directs the Conference of District Attorneys and the Governor's Crime Commission to study the incidence of domestic violence and to identify the felonies and misdemeanors that may be categorized as domestic violence. The Conference must report its findings to the 1998 Session of the 1997 General Assembly.

This section has been deleted from the bill, but it should be noted that the Crime Commission did undertake to study domestic violence crimes and developed a definition which includes several misdemeanors which the Commission found to be most common among those charged in domestic violence cases.

Section 2.5 directs the Post-Release Supervision and Parole Commission to compile a report of the notification services it has provided under G.S. 15A-825(11), and report to the 1998 Session of the 1997 General Assembly.

This section has been deleted from the bill.

The new version adds several new sections which were not found in the earlier versions of the bill.

New section 3 requires the Department of Crime Control and Public Safety to establish a pilot program to study and develop software that will integrate criminal justice information systems with the automated victim notification system.

New section 4 adds a provision which restricts the Judicial Department from using funds to pay for jury consultants for indigent defendants. (A similar provision is contained in House Bill 1523).

New section 5 requests the North Carolina Supreme Court to consider and adopt rules to expedite appeals for cases where the defendant is convicted of first degree murder and is sentenced to death. (A similar provision is contained in House Bill 1733).

New sections 6 and 7 require the judge to instruct the jury about the review of life without parole sentences and allows the District Attorney to inform the jury about the review of life without parole sentences. (Similar provisions are contained in House Bill 1734).

Section 2.6 makes the provisions of the Act severable, so that if any part of the Act is held invalid by the court, it would not affect the validity of the remaining provisions.

This provision is now Section 8 of the bill.

Finally, Section 3 provides that G.S. 15A-2010.1 in section 1 of the act, which makes the act applicable to victims of domestic violence, becomes effective July 1, 1999. Section 2.3 which also relates to assistance to victims of domestic violence, becomes effective when the act becomes law and expires on July 1, 1999. Sections 1.1, 2.4, 2.5 and this section are effective when they become law. The remainder of the act becomes effective July 1, 1998.

The effective dates have been changed also. The provisions relating to state grants to law enforcement, domestic violence, and the request to the Supreme Court become effective when the act becomes law. The provision relating to funds for jury consultants becomes effective July 1, 1998. The provisions relating to jury instructions about review of life sentences becomes effective December 1, 1998, and applies to capital sentencing hearings or rehearings begun on or after that date. The remainder of the act, including all the substantive portions relating to victims rights, becomes effective October 1, 1998.

PROBLEMS IN DOMESTIC VIOLENCE PROSECUTION

Domestic violence is different from all other crimes. Unlike other crimes that are completed upon arrest, domestic violence is an **ongoing** crime, continuing even into the future.

1. Proposed Charges Covered by Domestic Violence Definition of HB 665
 - a. Assault Inflicting Serious Injury
 - b. ADW
 - c. AOF
 - d. Assault on Minor
 - e. Assault by Pointing a Gun
 - f. Assault
 - g. Domestic Criminal Trespass
 - h. Stalking
 - i. Child Abuse
 - j. Communicating Threats
 - k. Harassing Phone Calls
2. There are other cases as well that are domestic violence misdemeanors. See Exhibit "A" for a total of 23 charges heard in one week in Forsyth County.
3. The 23 charges represented 34% of Forsyth County District Criminal Court cases in March 1997 (without worthless check cases). Nationally, they are also 35% of all misdemeanors.
4. The Forsyth County District Attorney's Office handles 4,800 misdemeanor domestic violence cases per year out of 5,800 domestic violence cases in the proposed 11 categories under a Crime Commission grant in a special program. Forsyth County had 85 DV cases in court on both days of court this week.
 - 6 personnel in DV grant (1 supervisor, 1 cop, 3 case managers, 1 clerk)
 - 1.5 hours per victim, 2 cases per victim
 - Present support staff 11 (not including 6 DV staff) and 15 ADAs is insufficient.
 - 2 more case managers and 2 process servers for sheriff's department needed.
5. Problem: Change attitudes towards DV
Solution: Training: assume the victim died - get circumstantial evidence
 - a. Magistrate
 - b. Law Enforcement
 - c. EMS
 - d. Medical Providers
 - e. District Attorneys
 - f. Judges
 - g. Probation/Parole

6. Problem: 50% warrants don't have correct address
Solutions:
 - Special Victim Info sheet at Magistrate's Office
 - Need Database of Abusers at Magistrate's Office for bond purposes
 - Need additional magistrates or secretarial staff during prime time to get information
7. Problem: Pro Se (no officer involvement) Victims' cases need investigation as well
Solution: Designate grant investigator to handle cases/interview victims/take photos/interview defendant and witnesses/obtain medical records
8. "Must" Arrest Policy: Create specialized DV law enforcement units
Problem: Increase Arrests = More defendants in Jail = More Cost to Counties
Solution: Jail Management Grant = 1 position
9. "Must" Prosecute or "No Drop" Policy:
Problem: DA Needs Additional Staff: More Trials, Long Trials, More Staff
10. First Appearance Preparation by DV Unit (See Exhibit "B")
 - a. Get photos, police report and 911 tape
 - b. Run criminal records
 - c. Call victims before court and after court if bond reduced
 - d. Staff each DV case with jail, pre-trial, ADA, probation/parole (ankle bracelet) and DV Unit personnel to recommend bond.
 - e. Lethality assessment (See Exhibit "6")
 - f. Bond motions.
11. Problem: Need Personal Interview of victim before court by ADA
Solution: 2 ADAs in DV Court: 1 try case, 1 preparing next case
Need additional ADA
12. Problems: Many victims fail to appear and cases get dismissed.
(See Exhibit "D")
 - Issue subpoenas/pink so sheriff can prioritize them
 - Show Cause for failure to appear / only in person.
 - Someone to serve them.
13. Problem: Increased Paperwork/Integrate 50-B Hearings
Solution: More courtroom clerks for DV Court and technology
14. Problem: Inadequate time spent on DV misdemeanors in District court.
Solution: Specialized DV Court:

- Need more courtrooms and divide them to separate victim from defendant.
 - Need additional DV Judge.
15. Problem: Officers trial dates different.
Solution: Need someone to administer "stand-by" program, part-time.
 16. Problem: Need separate waiting rooms for civil 50-B order hearings
Solution: ?
 17. Problem: Double jeopardy problem if successive prosecution after 50-B violations.
Solution: Need to integrate Civil 50-B and criminal cases.
 18. Problem: Stop re-offending.
Solution: Need offender counseling (no Fed \$)
 19. Problem: Treat other issues.
Solution: Need Drug Treatment Court - DV Component
 - Mental Health Referrals
 20. Partial Solution to Notification
SAVIN 5, 12, 13 & 25th DA Districts, Pilot, Auto Victim Notification System
 21. Only 306 LA/VWA statewide including 60 added last year.
46 positions last year were for felony VWA. Only 4 more VWAs if DV misdemeanors added - grossly insufficient
 22. Forsyth County does not have enough staff now. (See Exhibit "E")
DA shares legal assistant with another attorney.
 - Had to close 3rd floor office so legal assistant can get work done for 5 ADAs
 - Technology insufficient. See Exhibit "F."

Positive Effects of Forsyth County Program

- Dismissal rate reduced from 55% to 25%.
- Conviction rate increased for 45% to 84%.
- Women move to Winston-Salem to be safe.
- Death reduced but some deaths will still occur.
- Save next generation of children.

CONCLUSION

The Conference of District Attorneys supports adding domestic violence misdemeanors to HB 665. However, an unfunded mandate could result if adequate personnel, equipment and processes are not appropriated.

Since 75% of all domestic violence murders occur within 2 weeks of a woman's leaving her husband, care must be taken not to create a false sense of security in the victim by not having adequate systems for her protection in place.

An ill concerned and underfunded plan that only holds out the false hope of help from the court system could result in the opposite effect occurring: that of more women being killed.

Thomas J. Keith
District Attorney
21st Prosecutorial District
June 28, 1998

Domestic Violence Statistics, Week of March 3-7, 1997					
	DV RELATED	NON-DV RELATED	TOTAL		DV RELATED %
Assault on Female	48	2	50		96%
Assault on a Child under 12	4	0	4		100%
Assault by Pointing a Gun	1	0	1		100%
Assault Inflicting Serious Injury	0	0	0		
Assault with a Deadly Weapon	4	3	7		57%
Assault on Handicapped	1	0	1		100%
Assault and Battery	0	0	0		
Simple Affray	0	1	1		0%
Simple Assault	1	7	8		12.50%
Misdemeanor Child Abuse	0	0	0		
Misdemeanor Stalking	0	0	0		
Communicating Threats	10	5	15		66.66%
Threatening/Harrassing Phone Call	8	2	10		80%
Misd. Domestic Criminal Trespass	2	0	2		100%
2nd Degree Trespass	1	13	14		7%
1st Degree Trespass	2	4	6		33.33%
Forcible Trespass	0	0	0		
Trespass on Posted Property	0	0	0		
Other Offenses Not Included in AOC Summary					
Indecent Liberties with Child	1	0	1		100%
Injury to Personal Property	4	5	9		44.44%
Injury to Real Property	1	2	3		33.33%
False Imprisonment	1	0	1		100%
Secret Peeping	1	0	1		100%

EXHIBIT "A"

**FORSYTH COUNTY DISTRICT ATTORNEY'S OFFICE
DOMESTIC VIOLENCE CASE MANAGERS' RESPONSIBILITIES**

- Jail faxes daily list of domestic violence defendants scheduled for 1st Appearance Court - Receive warrants/criminal summons from case manager located at magistrate's office
- Run DCI/NCIC records on every defendant (screen defendants for possible felony recharges, follow up with other states for wanted suspects and for services of outstanding warrants in other jurisdictions)
- Work with Law Enforcement Agencies to obtain officers' reports, initial & follow-up photos and physical evidence associated with each case (i.e., 911 tapes, transcripts)
- Prepare written bond motions for 1st Appearance Court
- Generate & issue subpoenas for law enforcement officers, victims, witnesses, medical records, telephone records, etc. – Coordinate stand-by subpoenas with victims, witnesses, & officers to insure their convenience
- Make earliest possible contact with victim:
 - Notify of court date & time
 - Explain the court process to those who are new to it
 - Photograph injuries
 - Determine what end-result the victim is seeking (i.e. sentencing)
 - Refer to counseling
- Prepare prosecution packets for each case containing all relevant information for ADAs to use in the courtroom (organize & compile all paperwork)
- Follow-up with victim after court to explain sentencing
- Statistical Reporting
- Grant writing, reporting, program development (probation, Pretrial, community service, law enforcement, et.al.)

LETHALITY ASSESSMENT TOOL

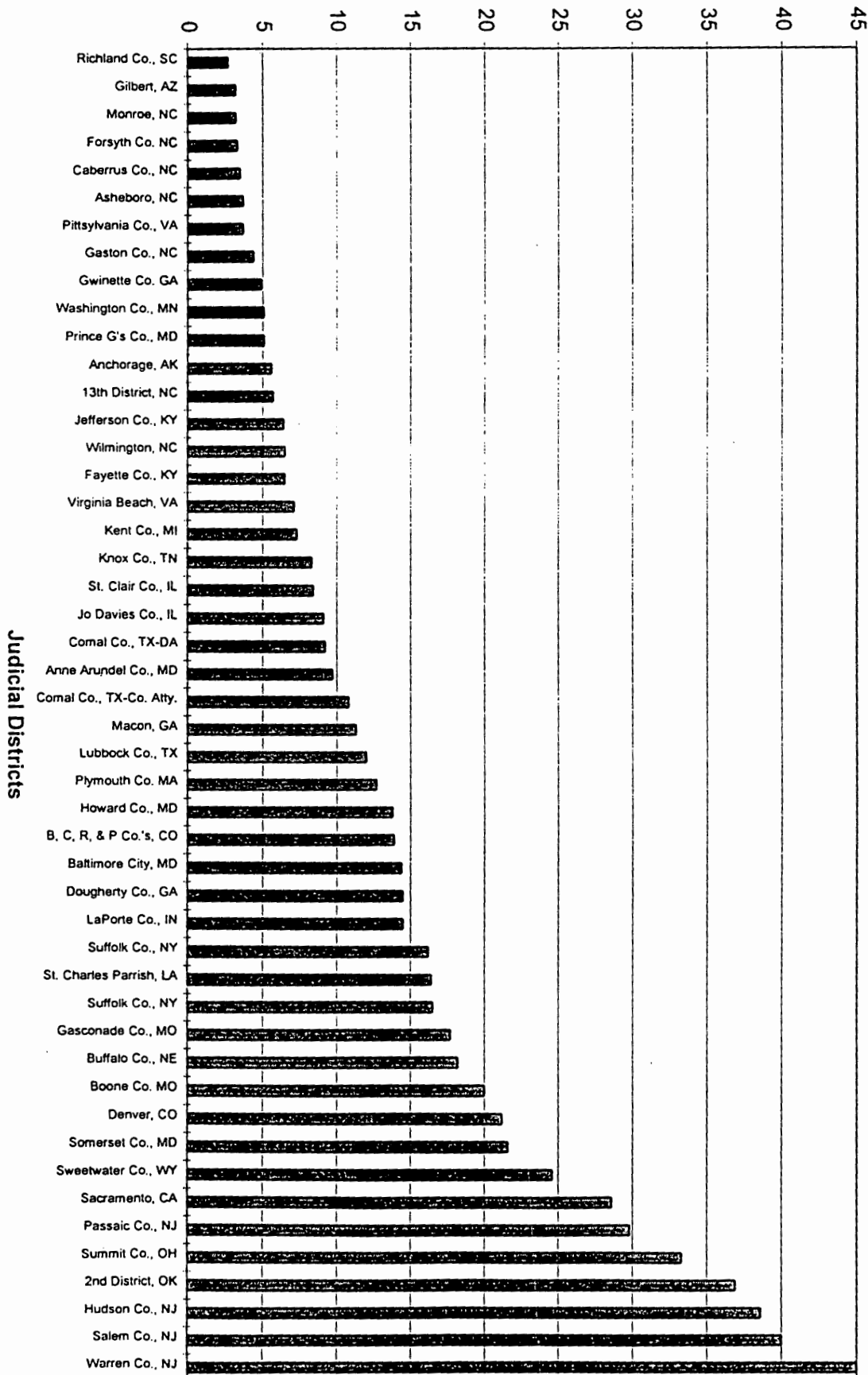
- HAS THE DEFENDANT EVER TALKED ABOUT KILLING HIM/HERSELF, THE PARTNER, THE CHILDREN, OR OTHER FAMILY MEMBERS? _____ (5)
- HOW RECENTLY? WEEK _____ (5) 1MONTH _____ (4) 6 MONTHS _____ (3)
1YEAR _____ (2)
- HAS THE DEFENDANT EVER TALKED ABOUT SPECIFIC WAYS HE /SHE WOULD KILL THEMSELVES OR OTHERS, THE METHOD TO BE USED, THE WEAPON, OR WHERE TO DO IT? _____ (5)
- HAS THE DEFENDANT MADE REFERENCES AS TO HOW IT WOULD FEEL TO DIE OR TO KILL SOMEONE ELSE? _____ (5)
- DOES THE DEFENDANT WORK? _____ (2) ✓
- DOES THE DEFENDANT HAVE OUTSIDE ACTIVITIES OR HOBBIES? _____ (2) ✓
- DOES THE DEFENDANT DEAL WELL WITH STRESS? _____ (3) ✓
- DOES THE DEFENDANT TALK IN TERMS OF BEING A LOSER? _____ (2) ✓
- DOES THE DEFENDANT CARRY WEAPONS? _____ (4) ✓
- DOES THE DEFENDANT VALUE WEAPONS? _____ (3)
- HAS THE DEFENDANT EVER THREATENED YOU WITH A GUN OR WEAPON OF ANY KIND? _____ (5) ✓
- HAS THE DEFENDANT MADE STATEMENTS SUCH AS "IF I CAN'T HAVE YOU, NO ONE WILL." ? _____ (4)
- HAS THE DEFENDANT MADE STATEMENTS ABOUT YOU BEING THE "ONLY THING" IN HIS/HER LIFE? _____ (4) ✓
- DOES THE DEFENDANT USE DRUGS OR ALCOHOL? _____ (3) HOW OFTEN? _____
- HAS THE DEFENDANT EVER MUTILATED, HURT OR KILLED YOUR PET (S) OR THREATENED TO DO SO? _____ (5) ✓
- DOES THE DEFENDANT HAVE SUPPORTIVE FAMILY AND FRIENDS? _____ (3) ✓

(KEY: SCORE = 40-60 = HIGH PROBABILITY; 20-39 = AVERAGE PROBABILITY; 10-19 = LOW PROBABILITY)

Reason for 108 Domestic Violence Dismissals (July-Nov 1997 Forsyth Co.)

	Unable to Serve	Failure to Appear	V did not want to prosecute	D charged w/ Hab. Mis. Assault	Subpoena not Returned	V Changed Story	Recommended by DV Unit	Unk.	V Refused to Testify	Issue Resolved
Jul-97	12	4	1	0	0	0	1	1	0	2
Aug-97	13	7	0	1	0	1	3	1	0	2
Sep-97	17	8	1	1	0	0	2	0	2	1
Oct-97	12	6	0	0	2	0	0	0	0	2
Nov-97	1	2	1	1	0	0	0	0	0	0
Total	55	27	3	3	2	1	6	2	2	7

Support Staff per 100,000 Citizens



Support Staff per 100,000 Citizens

**Forsyth County District
Attorney's Office**

21st Prosecutorial District
P.O. Box 20083 Winston-Salem, N.C. 27120

March 2, 1998

State of North Carolina
Administrative Office of the Courts
P.O. Box 2448
Raleigh, N.C. 27602

Dear John Taylor:

The following are amendments required by my office to better serve citizens of Forsyth County:

1. Computers for 5 members of my office who do **not** have a PC:

1. Lisa Donofrio (Assistant District Attorney)
2. Ken Tisdale (Assistant District Attorney)
3. Tim Severo (Assistant District Attorney)
4. Gene Newell (Legal Assistant)
5. Anna Shugart (Legal Assistant)

2. New computers for 11 members of my office who currently work on PC's that are:

1. As slow as 33 MHz
2. Contain small amounts of RAM
3. Have limited hard drive space
4. Have no CD-ROM drive
5. Have no ability to access the Forsyth County WAN to utilize resources such as Spillman, which is our jail program
6. Still using Windows 3.11 for Workgroups

3. A State Terminal for Courtroom 4A

4. Pegasus E-Mail and an Upgrade to Windows95 or better for **all** users

5. WestLaw on the network

6. A new server with:

1. The latest version of Novell NetWare
2. More CD-ROM drives

7. A fax machine for the 7th floor (currently one does not exist)

8. A proxy server to alleviate IP address issues

9. A new copy machine to replace the worn out one on the 3rd floor

Sincerely,

Tom Keith
District Attorney

MINUTES

HOUSE JUDICIARY I COMMITTEE

The House Committee on JUDICIARY I met in Room 1228/1327 of the Legislative Building on June 30, 1998 at 10:00 A.M. Representative Daughtry, Co-Chairman, presided at the meeting. Other members present were: Representative Hardy, Co-Chairman, and Representative(s) Alexander, Arnold, Blue, Capps, Clary, Crawford, Ellis, Hall, Hardaway, Holmes, Hunter R., Hurley, Jeffus, Justus, Michaux, Morgan, and Sherrill and Thompson. Ex-officio member Representative Wood was present. Staff Counsels Steven Ross and Karen Cochrane-Brown were also present.

HB 665 AN ACT TO CREATE THE CRIME VICTIMS' RIGHTS ACT, TO ASSIST VICTIMS OF DOMESTIC VIOLENCE, TO ALLOW THE ENFORCEMENT OF ORDERS FOR RESTITUTION IN CRIMINAL CASES IN THE SAME MANNER AS CIVIL JUDGMENTS, TO CREATE AN EXCEPTION TO THE STATUTORY EXEMPTIONS FOR EXECUTION OF RESTITUTION JUDGMENTS, TO CHANGE THE ORDER OF PRIORITY FOR DISBURSEMENT OF FUNDS IN CRIMINAL CASES, TO PROHIBIT THE USE OF STATE FUNDS FOR JURY CONSULTANTS, TO REQUEST THE NORTH CAROLINA SUPREME COURT TO CONSIDER AND ADOPT RULES TO EXPEDITE APPEALS FROM CAPITAL CASES THAT INCLUDE A SENTENCE OF DEATH, AND TO REQUIRE A JUDGE PRESIDING IN A CAPITAL TRIAL TO INSTRUCT THE SENTENCING JURY REGARDING THE REVIEW OF SENTENCES OF LIFE IMPRISONMENT WITHOUT PAROLE was the only bill considered.

Representative Daughtry called the meeting to order and introduced the two pages for the day - Rachel Harrison of Cumberland County and Jennifer Snow of Wake County. This bill was sponsored by Representative Eddins.

Discussion continued on the amendment regarding domestic violence introduced by Representative Hall during the June 23rd meeting. (See Attachment F.)

Representative Capps moved to amend the Hall Amendment on page 1, line 13-14 by striking the words "or who live together in an intimate relationship or who have lived together in an intimate relationship." (See Attachment G.)

Representative Sherrill discussed adding the word "willfully" to live together instead of striking words as set forth in the Capps Amendment. She said there was a concern about prisoners, nursing homes, etc.

Representative Capps explained his perfecting amendment. He said the bill gives special benefits to a select group of victims. He said that if these words were not stricken

from the bill it would be the first time that someone would be entitled to a government benefit because he has committed a crime. He recalled that state statute GS 14-148-84 prohibits habitation together and GS 14-177 makes homosexual acts between same sex partners illegal. Whereas having a child together between unmarried persons may be an immoral act, he said it is not a violation of the law so that phrase is left in.

He further noted that deciding who has lived together in an intimate relationship creates a problem of proof because there is no official record. The victim would have to assert the commission of a crime committed by the victim.

Representative Capps said there is a problem of what is "living together" and what is "intimate." He said that the people of North Carolina have proven time and again that they are conservative on these issues and want the General Assembly to uphold traditional family values.

Representative Arnold asked if this would eliminate common law marriages from coverage. Representative Daughtry said that North Carolina does not have that.

Ms. Cochrane-Brown said they are no longer recognized but to the extent that someone if they were still alive this would not affect that situation.

Representative Blue thinks this Capps amendment would eliminate people who are living together and have not been married from the full protection of the law against criminal conduct being committed against them. He asked for someone's interpretation otherwise. Representative Blue thinks that the Capps Amendment eliminates everyone except spouses and former spouses and people who have a joint child.

Ms. Cochrane-Brown said that she thinks it is the intent of this amendment to eliminate coverage of persons who cohabit.

Representative Blue wanted clarification about whether the Capps Amendment eliminates coverage of men and women who live together without the benefit of clergy or magistrate for 20 or 30 years.

Ms. Cochrane-Brown answered in the affirmative and went on to say that anyone who acquired the status of common law marriage before the law was changed is now considered a spouse and would be covered by the first clause in the Hall Amendment.

Representative Blue said his question went further. He said there are people who live together and do not have recognized marriages. Although it may be a violation of the statutes, Representative Blue does not know of any attorney in the state who enforces those statutes. He then said maybe Representative Capps is going after anyone who lives together and is not married including roommate situations of people who are of different sexes.

Representative Michaux asked what is an intimate relationship according to the law.

Mr. Barry Bryant of the Governor's Crime Commission said this definition varies from state to state. Representative Daughtry said we were only interested in our state.

Mr. Bryant asked for two minutes to find the definition.

Representative Hall said that the Capps Amendment ensures that two men living together and two women living together would not be covered under a misdemeanor case. Representative Hall said it is very clear that homosexuals are covered in the bill for felony cases. He asked that they defeat the Capps Amendment. He said that they don't have to condone those kind of relationships. He said the constitutional amendment is to provide for victims of crime, regardless of who they are.

Representative Ellis wanted clarification. He asked whether a domestic violence assault between two persons living together in an intimate relationship would still qualify for criminal prosecution even though it would not qualify for assistance under this bill. The answer was in the affirmative.

Representative Ellis commented on Representative Hall's remarks. He said that Representative Hall said these people were covered under the bill in felony cases so we don't need to worry about the misdemeanors. That is exactly his argument against the Hall amendment, i.e. that these are misdemeanors and not felony assaults.

Representative Capps reiterated that this perfecting amendment does not take away anyone's right. He said it simply keeps from adding a benefit to a group that are in violation of the law.

Representative Hall corrected Representative Ellis. He said a felony assault case by people living together are protected under this bill. He wondered why we don't extend that coverage to those people who are involved in misdemeanor cases.

Representative Michaux said he was still waiting for the answer to his question about the definition of an intimate relationship.

Representative Daughtry said he wasn't sure Mr. Bryant has the answer.

Representative Capps said that points out part of the problem.

Representative Michaux said that a lot depends on the definition of an intimate relationship. He said there are legislators that live in the same apartment for a period of time and would they be subject to this.

Representative Daughtry asked Ms. Cochrane-Brown to respond. She said that "intimate" probably means more than sharing the same space but she would defer to the Governor's Crime Commission.

Representative Michaux said that we do have an Equal Protection Amendment in our constitution and if it applies for a felony it should apply for a misdemeanor.

Representative Daughtry called for the vote on Representative Capps' Perfecting Amendment. Those voting in favor were Representative(s) Capps, Ellis, Justus, Morgan, Thompson, Daughtry, Hardy and ex-officio member Wood. Those voting against were Representative(s) Alexander, Arnold, Blue, Clary, Hall, Hardaway, Hunter R., Hurley, Jeffus, Michaux and Sherrill. Absent were Representative(s) Braswell, Crawford, Esposito, Fitch, Gray, Holmes, Miller and ex-officio member Howard. The vote was 8-11 against the amendment. (See Attachment K.)

Representative Hall called the question. That motion passed by voice vote.

Representative Daughtry called for roll call vote on the Hall Amendment. Those voting in favor were Representative(s) Alexander, Arnold, Blue, Clary, Fitch, Hall, Hunter R., Hurley, Jeffus, Michaux and Sherrill. Those voting against were Representative(s) Capps, Ellis, Justus, Morgan, Thompson, Daughtry, Hardy and ex-officio member Wood. Those absent were Representative(s) Braswell, Crawford, Esposito, Gray, Holmes, Miller and ex-officio member Howard. The vote was 12-8 in favor of the amendment. (See Attachment L.)

Representative Justus made a few comments. He said that a year ago the Justice and Public Safety Subcommittee starting working on a Victim Rights Bill. He thinks they did a good job in 1997. He said we have spent over \$4.2 million to provide the personnel to make this work. When the bill came back in 1998 he said we put another \$5.7 million into the program for local law enforcement officers – a total of almost \$10 million. He said there was an additional \$37 million for victim's rights and the JPS Committee thought they had done an adequate job of funding the program.

Representative Justus said that Victim's Rights is a number one priority and we should be willing to fund the bill.

Representative Michaux discussed his proposed amendment #4. (See Attachment H.) He said this idea was one we started talking about in the June 25th meeting. He said that he has since found out that over a long period of time there have been only 14 instances where this has been used. He said that we should let the judge decide. He also feels that if wealthy private individuals can hire the services of jury consultants then why shouldn't indigent defendants also have these services if the court allows it. In his amendment he wants to take out the section that says no funds appropriated to the Judicial Department may be used for jury consultants.

Representative Blue asked about the part of page 11. He was told that it applied to line 22. The amendment needed to be corrected.

Ms. Catherine Smith of the NC Victims Assistance Network said that providing a jury consultant is not a constitutional right. It has nothing to do with a fair trial. The defendant has 2 attorneys and can also access the death penalty resource center. They also have national resources they can use.

Representative Hardy referred to Representative Braswell's comments on June 25th. Most of these are used when there is a change of venue. He knows about 2 of the 14 cases. In one, the jury specialist was not hired until after the change of venue. Both sides hired one. The one the DA hired flew first class from Chicago at tax payers expense. When the money ran out he left. This is something new. It has come up since the O.J. Simpson trial. The judge will be inclined to request jury selection experts to avoid a second trial. Then it will be defined as needed in the law for a fair trial. If we set the standard here then this law would have to be found unconstitutional. For 650 years in our common law the jury selection expert was the attorney.

Amendment #4 (Michaux's) failed by show of hands.

Representative Ellis presented another amendment. (See Attachment I). He said to delete anything below line 5 on the amendment. He said this amendment includes all misdemeanors in a non-domestic situation. He finds it offensive that we have divided the citizens. He said if a woman walking down the street is hit in the face by a stranger she will not receive the level of service that a woman who is hit by her former spouse would receive. This amendment applies to the last 13,000 cases of misdemeanors. It may add \$½ million. This is a matter of equal protection.

Representative Blue wondered if Representative Ellis was trying to catfish the entire bill. He said it shows an insensitivity to the nature of domestic violence. He said the reason these crimes need to be included is because of the escalating nature of them. Ultimately they lead to very serious felonies.

Representative Ellis said that last week he was misquoted about domestic violence. He never called it a small crime. He said it was a small percentage of the total crimes. He recognizes that domestic violence is a serious crime but when someone is physically assaulted they need to receive the same service, regardless of who commits the crime.

The amendment failed by show of hands.

Representative Sherrill presented her amendment. (See Attachment J). It would insert the word "voluntarily". She thinks this would take care of the concern of members of Justice and Public Safety as it relates to inmates, nursing homes, and other places. She believes this will clarify what they are trying to do.

Representative Ellis is not sure that the word "voluntarily" does it.

Representative Clary said that that word would not take care of it because in a nursing situation they are there voluntarily. She suggested using "adults living in an institutional setting".

Representative Sherrill remained with her amendment.

Representative Ellis said he could understand Representative Sherrill's concern that we do not want people in General Prison receiving assistance under this bill. Also, there is concern about people living in a rest home. We need find a word that addresses the institutional situations and separates them from a domestic class. He does not believe that voluntarily does it.

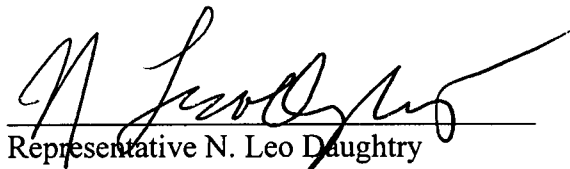
Representative Sherrill said she wanted them to vote on the amendment and if it needed to be changed it could be done in the appropriations subcommittee.

The amendment to the amendment passed by voice vote.

Representative Hall moved the committee vote favorable to the committee substitute as amended and rolled into a new committee substitute, unfavorable to the original committee substitute, and re-referred to the Appropriations Committee. The motion passed by voice vote.

Representative Hall commented on the issue of DA's not having adequate funding. He reviewed how their budgets have been growing. In 1995 it went from \$33.8 million to \$37 million in 1996. In 1997 they went to \$42 million. Last year the DA's reverted nearly \$600,000.

Representative Daughtry adjourned the meeting at 10:45 A.M.



Representative N. Leo Daughtry
Co-chairman



Betty Wickham
Committee Clerk

ATTACHMENTS

Exhibit A - NOTICE OF THE MEETING

Exhibit B - AGENDA

Exhibit C - VISITOR REGISTRATION

Exhibit D - COMMITTEE REPORT for HB 665

Exhibit E - PROPOSED COMMITTEE SUBSTITUTE for HB 665

Exhibit F - PROPOSED AMENDMENT #2 for HB 665 (Hall)

Exhibit G - PROPOSED AMENDMENT #3 FOR HB 665 (Capps)

Exhibit H - PROPOSED AMENDMENT #4 FOR HB 665 (Michaux)

Exhibit I - PROPOSED AMENDMENT #5 FOR HB 665 (Ellis)

Exhibit J - PROPOSED AMENDMENT #6 FOR HB 665 (Sherrill)

Exhibit K - ROLL CALL VOTE for Capps AMENDMENT

Exhibit L - ROLL CALL VOTE for Hall AMENDMENT

Exhibit M - HB 665

**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE**

You are hereby notified that the Committee on **JUDICIARY I** will meet as follows:

DAY & DATE: Tuesday, June 30, 1998

TIME: 10:00 A.M.

LOCATION: Room 1228/1327 LB

The following bills will be considered (Bill # & Short Title):

✓ HB 665	Crime Victims' Rights Act	Sponsor - Rep. Eddins
HB 1321	~~Future of the Courts~~	Sponsor - Rep. Daughtry
HB 1389	~~Funding for Legal Services~~	Sponsor - Rep. Allred

*fav. to Com. Sub # 4
re - ny approp.
Amendments
Rep. Capps - perfecting
amendment
offered
Rep. Michael's amendment
failed
Rep. Ellis amendment
Rep. Sherrell's amendment.*

Respectfully,

Representative N. Leo Daughtry, Co-Chairman
Representative Edwin Hardy, Co-Chairman

I hereby certify this notice was filed by the committee clerk at the following offices at
12:05 p.m. on June 25, 1998.

___ Principal Clerk
___ Reading Clerk - House Chamber

Betty Wickham, Committee Clerk

AGENDA

HOUSE COMMITTEE ON JUDICIARY I

June 30, 1998
Room 1228/1327 LB
10:00 AM

Representative N. Leo Daughtry, Co-Chairman
Representative Edwin (Sandy) Hardy, Co-Chairman

BILLS TO BE CONSIDERED:

HB 665 Crime Victim's Rights Act Sponsor- Representative Eddins
(Continued from meeting held on Tuesday, June 25th
at discussion of Amendment 2, Rep. Hall's amendment)

HB 1321 Future of the Courts Sponsor- Representative Daughtry

HB 1389 Funding for Legal Services Sponsor- Representative Allred

*(Proposed House Committee Substitute for HB 1317 AMEND CONTESTED CASE
PROCEDURES/Sponsor-Representative C. Wilson, was placed in a subcommittee at
June 4th meeting for member study [Rep. Arnold, Chr.; Blue, Bráswell, Clary, Morgan,
Sherrill])*

ADJOURNMENT

VISITOR REGISTRATION SHEET

Judiciary 1

June 30

1998

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME

FIRM OR AGENCY AND ADDRESS

Roslyn Savell	We Coalition Against Domestic Violence NC - NBW
Jane P. Gray	DOJ
BRIAN HABIT	Common Sense Foundation.
Selden Holt	Governor's Crime Commission
Chittumil Little	NCAM
Narian Doud	League of Women Voters NC
William B Oaks	NCPP
MC Cullen	NCPP
Eliza Taylor	NCPP
Lathleen Tuschen	NCPP
Barry Bryant	GCE
Dick Jugh	NCATL
Paula Cromer	NCATL
J. H. [unclear]	Office of the GOV.
Jean Canale	NC Council for Women

VISITOR REGISTRATION SHEET

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME

FIRM OR AGENCY AND ADDRESS

Robin Allen	7304 Bay Hill Ct Rd 27615
Burda Summers	NC Equity
Jeff Hunt	29 th Prosecutorial Dist, DA.
Jim Keitt	nc of primary / DA-21
Jim Loch	DA-11 th Dist.
Peg Doser	Conference of DAs
Jeanne Bonds	AOC
Kim Smith	NCLM
Stephanie Bishop	Charlotte Observer
Jelly Wilson	ACLU
Natale SSW	ACLU
Jacq A. Little	N.C. PRS + People Comm.
John Kennedy	Assoc. of Clerks of Superior Court
PE Powell	AOC
Lucia Peul	nc Medical Society
Bill Scobbin	NC BAR Assoc.
Spence Ford	The News + Observer

de Nelf

Rebecca Fuller

Milly Brown

Johnny Harrison

John Kent

Nancy Bradley

N60

NCATZ

NY State ARLOD

CAC of NY

N/CFPC

UNCEB

file

**1998 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative(s) **Daughtry and Hardy** for the Committee on **JUDICIARY I.**

☒ Committee Substitute #3 for

H.B. 665 A BILL TO BE ENTITLED AN ACT TO CREATE THE CRIME VICTIMS' RIGHTS ACT, TO ASSIST VICTIMS OF DOMESTIC VIOLENCE, TO ALLOW THE ENFORCEMENT OF ORDERS FOR RESTITUTION IN CRIMINAL CASES IN THE SAME MANNER AS CIVIL JUDGMENTS, TO CREATE AN EXCEPTION TO THE STATUTORY EXEMPTIONS FOR EXECUTION OF RESTITUTION JUDGMENTS, TO CHANGE THE ORDER OF PRIORITY FOR DISBURSEMENT OF FUNDS IN CRIMINAL CASES, TO PROHIBIT THE USE OF STATE FUNDS FOR JURY CONSULTANTS, TO REQUEST THE NORTH CAROLINA SUPREME COURT TO CONSIDER AND ADOPT RULES TO EXPEDITE APPEALS FROM CAPITAL CASES THAT INCLUDE A SENTENCE OF DEATH, AND TO REQUIRE A JUDGE PRESIDING IN A CAPITAL TRIAL TO INSTRUCT THE SENTENCING JURY REGARDING THE REVIEW OF SENTENCES OF LIFE IMPRISONMENT WITHOUT PAROLE.

- ☐ 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 # 4, **X** which changes the title, unfavorable as to original Committee Substitute Bill # 3, and recommendation that the committee substitute bill # 4 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.
- ☐ With an indefinite postponement report.
- ☐ With an indefinite postponement report, with a Minority Report attached.
- ☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

file

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 665

Committee Substitute Favorable 6/25/97

Committee Substitute #2 Favorable 7/10/97

Committee Substitute #3 Favorable 6/18/98

Proposed Committee Substitute H665-PCS8352-RO2.98 # 4

Short Title: Crime Victims' Rights Act.

(Public)

Sponsors:

Referred to:

March 27, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO CREATE THE CRIME VICTIMS' RIGHTS ACT, TO ASSIST
3 VICTIMS OF DOMESTIC VIOLENCE, TO ALLOW THE ENFORCEMENT OF
4 ORDERS FOR RESTITUTION IN CRIMINAL CASES IN THE SAME
5 MANNER AS CIVIL JUDGMENTS, TO CREATE AN EXCEPTION TO THE
6 STATUTORY EXEMPTIONS FOR EXECUTION OF RESTITUTION
7 JUDGMENTS, TO CHANGE THE ORDER OF PRIORITY FOR
8 DISBURSEMENT OF FUNDS IN CRIMINAL CASES, TO PROHIBIT THE USE
9 OF STATE FUNDS FOR JURY CONSULTANTS, TO REQUEST THE NORTH
10 CAROLINA SUPREME COURT TO CONSIDER AND ADOPT RULES TO
11 EXPEDITE APPEALS FROM CAPITAL CASES THAT INCLUDE A
12 SENTENCE OF DEATH, AND TO ELIMINATE THE REVIEW OF
13 SENTENCES OF LIFE IMPRISONMENT WITHOUT PAROLE.
14 The General Assembly of North Carolina enacts:
15 Section 1. Chapter 15A of the General Statutes is amended by adding a
16 new Subchapter to read:
17 "SUBCHAPTER XVI. CRIME VICTIMS' RIGHTS.
18 "ARTICLE 101.
19 "Crime Victims' Rights Act.
20 "§ 15A-2010. Definitions.
21 (a) The following definitions apply in this Article:

- (1) Accused. -- A person who has been arrested and charged with committing a crime covered by this Article.
- (2) Law enforcement agency. -- Law enforcement agency includes the following:
- a. Arresting law enforcement agency. -- The law enforcement agency that makes the arrest of an accused.
 - b. Custodial agency. -- The agency that has legal custody of an accused or defendant arising from a charge or conviction of a crime covered by this Article including, but not limited to, local jails or detention facilities, regional jails or detention facilities, or the Department of Correction.
 - c. Investigating law enforcement agency. -- The law enforcement agency with primary responsibility for investigating the crime committed against the victim.
- (3) Next of kin. -- The victim's spouse, children, parents, siblings, or grandparents. The term does not include the accused unless the charges are dismissed or the person is found not guilty.
- (4) Victim. -- A person against whom there is probable cause to believe one of the following crimes was committed:
- a. A Class A, B1, B2, C, D, or E felony.
 - b. A Class F felony if it is a violation of one of the following: G.S. 14-16.6(b); 14-16.6(c); 14-18; 14-32.1(e); 14-32.2(b)(3); 14-32.3(a); 14-32.4; 14-34.2; 14-34.6(c); 14-41; 14-43.2; 14-43.3; 14-190.17; 14-190.19; 14-202.1; 14-288.9; or 20-138.5.
 - c. A Class G felony if it is a violation of one of the following: G.S. 14-32.3(b); 14-51; 14-58; 14-87.1; or 20-141.4.
 - d. A Class H felony if it is a violation of one of the following: G.S. 14-32.3(a); 14-32.3(c); or 14-33.2.
 - e. A Class I felony if it is a violation of one of the following: G.S. 14-277.3; 14-32.3(b); 14-34.6(b); or 14-190.17A.
 - f. An attempt of any of the felonies listed in this subdivision if the attempted felony is punishable as a felony.

(b) If the victim is deceased, then the next of kin, in the order set forth in the definition contained in this section, is entitled to the victim's rights under this Article, except for the rights contained in G.S. 15A-2014. An individual entitled to exercise the victim's rights as a member of the class of next of kin may designate anyone in the class to act on behalf of the class.

"§ 15A-2010.1. Assistance to victims of domestic violence.

Effective July 1, 1999, victims of domestic violence shall be entitled to all of the rights of victims under this Article. For purposes of determining eligibility for assistance under this Article, a victim of domestic violence is any person against whom there is probable cause to believe that any of the following misdemeanor offenses has been committed: G.S. 14-33(c)(1), 14-33(c)(2), 14-33(a), 14-34, 14-134.3, or 14-277.3, when the offense is committed between persons who are current or

1 former spouses, or who voluntarily live together in an intimate relationship or who
2 have voluntarily lived together in an intimate relationship, or who have or are
3 expecting a child in common. These crimes are in addition to the felonies set forth in
4 G.S. 15A-2010(a)(4).

5 **"§ 15A-2011. Responsibilities of law enforcement agency.**

6 (a) As soon as practicable but within 72 hours after identifying a victim covered by
7 this Article, the investigating law enforcement agency shall provide the victim with
8 the following information:

9 (1) The availability of medical services, if needed.

10 (2) The availability of crime victims' compensation funds under
11 Chapter 15B of the General Statutes and the address and
12 telephone number of the agency responsible for dispensing the
13 funds.

14 (3) The address and telephone number of the district attorney's office
15 that will be responsible for prosecuting the victim's case.

16 (4) The name and telephone number of an investigating law
17 enforcement agency employee whom the victim may contact if the
18 victim has not been notified of an arrest in the victim's case within
19 six months after the crime was reported to the law enforcement
20 agency.

21 (5) Information about an accused's opportunity for pretrial release.

22 (6) The name and telephone number of an investigating law
23 enforcement agency employee whom the victim may contact to
24 find out whether the accused has been released from custody.

25 The investigating law enforcement agency shall also be available to provide victims
26 with more direct assistance in understanding the criminal justice process and the
27 scope of victims' services available to assist them. The investigating law enforcement
28 agency shall assist a victim in obtaining any of those services upon the request of the
29 victim.

30 (b) As soon as practicable but within 72 hours after receiving notification from the
31 arresting law enforcement agency that the accused has been arrested, the investigating
32 law enforcement agency shall forward to the district attorney's office that will be
33 responsible for prosecuting the case the victim's name, address, date of birth, social
34 security number, race, sex, and telephone number, unless the victim refuses to
35 disclose any or all of the information, in which case, the investigating law
36 enforcement agency shall so inform the district attorney's office.

37 (c) Upon receiving the information in subsection (a) of this section, the victim
38 shall, on a form provided by the investigating law enforcement agency, indicate
39 whether the victim wishes to receive any further notices from the investigating law
40 enforcement agency. If the victim elects to receive further notices, the victim shall be
41 responsible for notifying the investigating law enforcement agency of any changes in
42 the victim's name, address, and telephone number.

43 (d) As soon as practicable but within 72 hours after the arrest of a person believed
44 to have committed a crime covered by this Article, the arresting law enforcement

1 agency shall inform the investigating law enforcement agency of the arrest. As soon
2 as practicable but within 72 hours of being notified of the arrest, the investigating law
3 enforcement agency shall notify the victim of the arrest.

4 **"§ 15A-2012. Responsibilities of the district attorney's office.**

5 (a) Within 21 days after the arrest of the accused, but not less than 24 hours
6 before the accused's first scheduled probable cause hearing, the district attorney's
7 office shall provide to the victim a pamphlet or other written material that explains in
8 a clear and concise manner the following:

9 (1) The victim's rights under this Article, including the right to confer
10 with the attorney prosecuting the case about the disposition of the
11 case and the right to provide a victim impact statement.

12 (2) The responsibilities of the district attorney's office under this
13 Article.

14 (3) The victim's eligibility for compensation under the Crime
15 Victims' Compensation Act and the deadlines by which the victim
16 must file a claim for compensation.

17 (4) The steps generally taken by the district attorney's office when
18 prosecuting a felony case.

19 (5) Suggestions on what the victim should do if threatened or
20 intimidated by the accused or someone acting on the accused's
21 behalf.

22 (6) The name and telephone number of a victim and witness assistant
23 in the district attorney's office whom the victim may contact for
24 further information.

25 (b) Upon receiving the information in subsection (a) of this section, the victim
26 shall, on a form provided by the district attorney's office, indicate whether the victim
27 wishes to receive notices of some, all, or none of the trial and posttrial proceedings
28 involving the accused. If the victim elects to receive notices, the victim shall be
29 responsible for notifying the district attorney's office or any other department or
30 agency that has a responsibility under this Article of any changes in the victim's
31 address and telephone number. The victim may alter the request for notification at
32 any time by notifying the district attorney's office and completing the form provided
33 by the district attorney's office.

34 (c) The district attorney's office shall notify a victim of the date, time, and place
35 of all trial court proceedings of the type which the victim has elected to receive
36 notice. All notices required to be given by the district attorney's office shall be given
37 in a manner that is reasonably calculated to be received by the victim prior to the
38 date of the court proceeding.

39 (d) Whenever practical, the district attorney's office shall provide a secure waiting
40 area during court proceedings that does not place the victim in close proximity to the
41 defendant or the defendant's family.

42 (e) When the victim is to be called as a witness in a court proceeding, the court
43 shall make every effort to permit the fullest attendance possible by the victim in the
44 proceedings.

(f) Prior to the disposition of the case, the district attorney's office shall offer the victim the opportunity to consult with the prosecuting attorney to obtain the views of the victim about the disposition of the case, including the victim's views about dismissal, plea or negotiations, sentencing, and any pretrial diversion programs.

(g) At the sentencing hearing, the prosecuting attorney shall submit to the court a copy of a form containing the identifying information set forth in G.S. 15A-2011(b) about any victim electing to receive further notices under this Article. The form shall be included with the final judgment and commitment transmitted to the Department of Correction or other agency receiving custody of the defendant and shall be maintained by the custodial agency as a confidential file.

"§ 15A-2013. Evidence of victim impact.

(a) A victim has the right to offer evidence of the impact of the crime, which shall be considered by the court or jury, as the case may be, in sentencing the defendant. The evidence may include the following:

(1) A description of the nature and extent of any physical, psychological, or emotional injury suffered by the victim as a result of the offense committed by the defendant.

(2) An explanation of any economic or property loss suffered by the victim as a result of the offense committed by the defendant.

(3) A request for restitution and an indication of whether the victim has applied for or received compensation under the Crime Victims' Compensation Act.

(b) No victim shall be required to offer evidence of the impact of the crime. No inference or conclusion shall be drawn from a victim's decision not to offer evidence of the impact of the crime.

"§ 15A-2014. Restitution.

(a) Upon conviction of the defendant or upon a plea of guilty, the court shall, in addition to any penalty authorized by law, require that the defendant make restitution to a victim or the victim's estate for any injuries or damages arising out of the offense committed by the defendant. In determining the amount of restitution, the court shall consider the following:

(1) The cost of any medical or other professional services and devices or equipment required by the victim.

(2) The cost of physical therapy, occupational therapy, and rehabilitation required by the victim.

(3) Any income loss, after taxes, suffered by the victim.

(4) The cost of any psychological or medical treatment for the victim's next of kin.

(5) The cost of the victim's funeral and any related services.

(6) Any other injuries or damages arising out of the offense committed by the defendant.

(b) The court may require that the victim or the victim's estate provide evidence that documents the costs claimed by the victim or the victim's estate under this

1 section. Any such documentation shall be shared with the defendant before the
2 sentencing hearing.

3 (c) In determining the amount of restitution to be made, the court shall take into
4 consideration the resources of the defendant including all real and personal property
5 owned by the defendant and the income derived from the property, the defendant's
6 ability to earn, the defendant's obligation to support dependents, and any other
7 matters that pertain to the defendant's ability to make restitution, but the court is not
8 required to make findings of fact or conclusions of law on these matters. The amount
9 of restitution must be limited to that supported by the record, and the court may
10 order partial restitution when it appears that the damage or loss caused by the offense
11 is greater than that which the defendant is able to pay.

12 (d) An order providing for restitution does not abridge the right of a victim or the
13 victim's estate to bring a civil action against the defendant for damages arising out of
14 the offense committed by the defendant.

15 (e) The court may order the defendant to make restitution to a person other than
16 the victim, or to any organization, corporation, or association, including the Crime
17 Victims' Compensation Fund that provided assistance to the victim following the
18 commission of the offense by the defendant. Restitution shall be made to the victim
19 or the victim's estate before it is made to any other person, organization, corporation,
20 or association.

21 (f) The court may require the defendant to make full restitution no later than a
22 certain date or, if the circumstances warrant, may allow the defendant to make
23 restitution in installments over a specified time period.

24 (g) If the defendant is placed on probation or post-release supervision, any
25 restitution ordered under this Article shall be a condition of probation or post-release
26 supervision.

27 (h) If the court orders partial restitution, the court shall state on the record the
28 reasons for such an order.

29 **"§ 15A-2015. Enforcement of order for restitution.**

30 (a) An order for restitution under this Article may be enforced in the same
31 manner as a civil judgment, subject to the provisions of this section.

32 (b) The order for restitution under this Article shall be docketed and indexed in
33 the county of the original conviction in the same manner as a civil judgment. The
34 order for restitution may be collected in the same manner as a civil judgment unless
35 the order to pay restitution is a condition of probation. If the order to pay restitution
36 is a condition of probation, the judgment may only be collected in accordance with
37 subsection (c) of this section.

38 (c) If the defendant is ordered to pay restitution as a condition of probation, the
39 docketed judgment may not be collected until the date of notification to the clerk of
40 superior court in the county of the original conviction that the judge presiding at the
41 probation termination or revocation hearing has made a finding that restitution in a
42 sum certain remains due and payable, that the defendant's probation has been
43 terminated or revoked, and that the remaining balance of restitution owing may be
44 collected by execution on the judgment. The clerk shall then enter upon the

1 judgment docket the amount that remains due and payable on the judgment, together
2 with amounts equal to the standard fees for docketing, copying, certifying, and
3 mailing, as appropriate, and shall notify the victim by first-class mail at the victim's
4 last known address that the judgment may be executed upon, together with the
5 amount of the judgment. Until the clerk receives notification of termination or
6 revocation of probation and the amount that remains due and payable on the order
7 of restitution, the clerk shall not be required to update the judgment docket to reflect
8 partial payments on the order of restitution as a condition of probation.

9 (d) An appeal of the conviction upon which the order of restitution is based shall
10 stay execution on the judgment until the appeal is completed. If the conviction is
11 overturned, the judgment shall be removed from the judgment docket.

12 **"§ 15A-2016. Posttrial responsibilities.**

13 (a) Within 30 days after the final proceeding of the trial phase of the case, the
14 district attorney's office shall notify the victim, in writing, of:

15 (1) The final disposition of the case.

16 (2) The crimes of which the defendant was convicted.

17 (3) The defendant's right to appeal, if any.

18 (b) Upon a defendant's giving notice of appeal to the Court of Appeals or the
19 Supreme Court, the district attorney's office shall forward to the Attorney General's
20 office the victim's name, address, and telephone number. Upon receipt of this
21 information, and thereafter as the circumstances require, the Attorney General's
22 office shall provide the victim with the following:

23 (1) A clear and concise explanation of how the appellate process
24 works, including information about possible actions that may be
25 taken by the appellate court.

26 (2) Notice of the date, time, and place of any appellate proceedings
27 involving the defendant. Notice shall be given in a manner that is
28 reasonably calculated to be received by the victim prior to the date
29 of the proceedings.

30 (3) The final disposition of an appeal.

31 (c) If the defendant has been released on bail pending the outcome of the appeal,
32 the agency that has custody of the defendant shall notify the investigating law
33 enforcement agency, and the investigating law enforcement agency shall notify the
34 victim that the defendant has been released.

35 (d) If the defendant's conviction is overturned, and the district attorney's office
36 decides to retry the case or the case is remanded to superior court for a new trial, the
37 victim shall be entitled to the same rights under this Article as if the first trial did not
38 take place.

39 (e) The Conference of District Attorneys shall maintain a repository relating to
40 victims' identities, addresses, and other appropriate information for use by agencies
41 charged with responsibilities under this Article.

42 **"§ 15A-2017. Responsibilities of agency with custody of defendant.**

43 The Department of Correction shall notify the victim of:

- (1) The projected date by which the defendant can be released from custody. The calculation of the release date shall be as exact as possible, including earned time and disciplinary credits if the sentence of imprisonment exceeds 90 days.
- (2) An inmate's assignment to a minimum custody unit and the address of the unit. This notification shall include notice that the inmate's minimum custody status may lead to the inmate's participation in one or more community-based programs such as work release or supervised leaves in the community.
- (3) The victim's right to submit any concerns to the agency with custody and the procedure for submitting such concerns.
- (4) The defendant's escape from custody.
- (5) The defendant's capture.
- (6) The date the defendant is scheduled to be released from the facility. Whenever practical, notice shall be given 60 days before release.
- (7) The defendant's death.

"§ 15A-2018. Responsibilities of Division of Adult Probation and Parole.

The Division of Adult Probation and Parole shall notify the victim of:

- (1) The defendant's regular conditions of probation or post-release supervision, special or added conditions, supervision requirements, and any subsequent changes.
- (2) The date of a hearing to determine whether the defendant's supervision should be revoked, continued with or without modifications, or terminated.
- (3) The final disposition of any hearing referred to in subdivision (2) of this section.
- (4) Any restitution modification.
- (5) The defendant's movement into or out of any intermediate sanction as defined in G.S. 15A-1340.11(6).
- (6) The defendant absconding supervision.
- (7) The capture of a defendant described in subdivision (6) of this section.
- (8) The date when the defendant is terminated or discharged.
- (9) The defendant's death.

"§ 15A-2019. Notice of commuted sentence or pardon.

The Governor's Clemency Office shall notify a victim when it is considering commuting the defendant's sentence or pardoning the defendant. The Governor's Clemency Office shall also give notice that the victim has the right to present a written statement to be considered by the Office before the defendant's sentence is commuted or the defendant is pardoned. The Governor's Clemency Office shall notify the victim of its decision. Notice shall be given in a manner that is reasonably calculated to allow for a timely response to the commutation or pardon decision.

"§ 15A-2020. No money damages.

1 This Article does not create a claim for damages against the State, a county, or a
2 municipality, or any of its agencies, instrumentalities, officers, or employees.

3 "§ 15A-2021. No ground for relief.

4 The failure or inability of any person to provide a right or service under this
5 Article may not be used by a defendant in a criminal case, by an inmate, or by any
6 other accused as a ground for relief in any criminal or civil proceeding.

7 "§ 15A-2022. Incompetent victim's rights exercised.

8 When a victim is rendered mentally or physically incompetent or when the victim
9 is a minor, the victim's rights under this Article, other than the rights provided by
10 G.S. 15A-2014 and G.S. 15A-2015, may be exercised by the victim's next of kin."

11 Section 1.1. If the General Assembly appropriates funds for State grants
12 to local and State law enforcement to implement the provisions of this act, the
13 Department of Crime Control and Public Safety shall establish criteria for the
14 allocation of these State grants. These criteria shall include a requirement that the
15 requesting law enforcement agency document services and man-hours that directly
16 relate to the provisions of this act. The criteria shall also require documentation that
17 the requesting law enforcement agency is not receiving funding from any other source
18 for that specific service. The Department of Crime Control and Public Safety shall
19 report quarterly to the Chairs of the House and Senate Appropriations Committees
20 and the Chairs of the House and Senate Appropriations Subcommittees on Justice
21 and Public Safety on the development of the grant program and allocation of funding.

22 Section 2. The provisions of Article 45 of Subchapter VIII of Chapter
23 15A of the General Statutes are supplemental to the provisions of Article 101 of
24 Subchapter XVI of Chapter 15A of the General Statutes as enacted in Section 1 of
25 this act. If there is any conflict between the provisions of Article 45 and Article 101,
26 the provisions of Article 101 shall control.

27 Section 2.1. G.S. 1C-1601(e) reads as rewritten:

28 "(e) Exceptions. -- The exemptions provided in this Article are inapplicable to
29 claims

- 30 (1) Of the United States or its agencies as provided by federal law;
- 31 (2) Of the State or its subdivisions for taxes, appearance bonds or
32 fiduciary bonds;
- 33 (3) Of lien by a laborer for work done and performed for the person
34 claiming the exemption, but only as to the specific property
35 affected;
- 36 (4) Of lien by a mechanic for work done on the premises, but only as
37 to the specific property affected;
- 38 (5) For payment of obligations contracted for the purchase of the
39 specific real property affected;
- 40 (6) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1224, s.
41 6;
- 42 (7) For contractual security interests in the specific property affected;
43 provided, that the exemptions shall apply to the debtor's

household goods notwithstanding any contract for a nonpossessory, nonpurchase money security interest in any such goods;

(8) For statutory liens, on the specific property affected, other than judicial liens;

(9) For child support, alimony or distributive award order pursuant to Chapter 50 of the General ~~Statutes~~ Statutes;

(10) For criminal restitution orders docketed as civil judgments pursuant to G.S. 15A-2015."

Section 2.2. G.S. 7A-304(d) reads as rewritten:

"(d) In any criminal case in which the liability for costs, fines, restitution, or any other lawful charge has been finally determined, the clerk of superior court shall, unless otherwise ordered by the presiding judge, disburse such funds when paid in accordance with the following priorities:

(1) Sums in restitution prorated among the persons entitled thereto;

~~(1)(2)~~ Costs due the county;

~~(2)(3)~~ Costs due the city;

~~(3)(4)~~ Fines to the county school fund;

~~(4)~~ Sums in restitution prorated among the persons entitled thereto;

(5) Costs due the State;

(6) Attorney's fees.

Sums in restitution received by the clerk of superior court shall be disbursed when:

(1) Complete restitution has been received; or

(2) When, in the opinion of the clerk, additional payments in restitution will not be collected; or

(3) Upon the request of the person or persons entitled thereto; and

(4) In any event, at least once each calendar year."

Section 2.3. Article 45 of Subchapter VIII of Chapter 15A of the General Statutes is amended by adding a new section to read:

"§ 15A-828. Assistance to victims of domestic violence.

In the allocation of resources to persons the district attorney determines are victims of serious misdemeanors, the district attorney shall, to the extent possible, provide the services listed in G.S. 15A-825 to victims of domestic violence misdemeanors that could involve the infliction of serious bodily injury."

Section 3. The Department of Crime Control and Public Safety shall establish a pilot program to integrate the Justice Wide Area Network (JWAN) with the proposed Victim Information and Notification Everyday (VINE) automated victim notification system. The pilot program shall include the development of a software application that can be implemented statewide to integrate the VINE system with other criminal justice networks. The Department shall report to the Chairs of the Joint Legislative Correction and Crime Control Oversight Committee and the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety by April 1, 1999, on the progress of the pilot program.

1 Section 4. Funds appropriated to the Judicial Department may not be
2 used to contract for the services of jury consultants in criminal cases where the
3 defendant has been assigned counsel by the court.

4 Section 5. The General Assembly requests the North Carolina Supreme
5 Court to consider and adopt rules to expedite appeals from all cases in which the
6 defendant is convicted of murder in the first degree and the judgment of the superior
7 court includes a sentence of death.

8 Section 6. Article 85B of Chapter 15A is repealed.

9 Section 7. The provisions of this act are severable. If any provision of
10 this act is held invalid by a court of competent jurisdiction, the invalidity does not
11 affect other provisions of the act that can be given effect without the invalid
12 provision.

13 Section 8. Sections 1.1, 2.3, 5, and this section of this act are effective
14 when they become law. Section 4 of this act becomes effective July 1, 1998. Section
15 6 of this act becomes effective December 1, 1998, and applies to offenses committed
16 on or after that date. The remainder of this act becomes effective October 1, 1998.



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 665

AMENDMENT NO. 2
(to be filled in by
Principal Clerk)

H665-ARO-2.98

Page 1 of

Date , 1998

Comm. Sub. [YES]
Amends Title []
Fourth Edition

1 moves to amend the bill on page 2, line 39-40,
2 by inserting the following new section between the lines:
3
4 "§15A-2010.1. Assistance to victims of domestic violence.
5 Effective July 1, 1999, victims of domestic violence shall be
6 entitled to all of the rights of victims under this Article. For
7 purposes of determining eligibility for assistance under this
8 Article, a victim of domestic violence is any person against whom
9 there is probable cause to believe that any of the following
10 misdemeanor offenses has been committed; G.S. 14-33(c)(1), G.S. 14-
11 33(c)(2), G.S. 14-33(a), G.S. 14-34, G.S. 14-134.3, or G.S. 14-
12 277.3, when the offense is committed between persons who are current
13 or former spouses, or who live together in an intimate relationship
14 or who have lived together in an intimate relationship, or who have
15 or are expecting a child in common. These crimes are in addition to
16 the felonies set forth in G.S. 15A-2010(a)(4)."
17
18

SIGNED Rep. Hall
Amendment Sponsor

SIGNED
Committee Chair if Senate Committee Amendment

ADOPTED

FAILED

TABLED



**NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 665**

AMENDMENT NO. 3
(to be filled in by
Principal Clerk)
Page 1 of

H665-ARO-7.98

Date _____, 1998

Comm. Sub. [YES]
Amends Title []
Fourth Edition

Representative Capps

1 moves to amend the amendment offered by Representative Hall on page
2 1, line 13-14, by striking the following words:

3 *willfully*
4 "or who live ~~together~~ in an intimate relationship or who have lived
5 together in an intimate relationship,"

SIGNED [Signature]
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 4th

H. B. No. 665

DATE _____

S. B. No. _____

Amendment No. 4

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Michaux
Sen.) _____

1 moves to amend the bill on page 10, line 35-37

2 () WHICH CHANGES THE TITLE

3 by Deleting those lines and pg

4 11 by deleting those lines to

5 read: "When they become Law.

6 Sections".

7 _____

8 _____

9 _____

10 _____

11 _____

12 _____

13 _____

14 _____

15 _____

16 _____

17 _____

18 _____

19 _____

SIGNED [Signature]

ADOPTED _____ FAILED _____ TABLED _____



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 665

AMENDMENT NO. 5
(to be filled in by
Principal Clerk)
Page 1 of

H665-ARO-3.98

Date , 1998

Comm. Sub. [YES]
Amends Title []
Fourth Edition

Representative Ellis

1 moves to amend the bill on page 2, lines 34-35,
2 by inserting the following new subsubdivision between the lines:

3
4 "(g) A misdemeanor offense if it is a violation of one
5 of the following: G.S. 14-33(c)(1), 14-33(c)(2),
6 14-33(a), 14-34, 14-134.3, 14-277.3.";

7
8 and on page 2, lines 39-40, by inserting the following new section
9 between the lines.

10
11 "§15A-2010.1. Assistance to victims of domestic violence.
12 Effective July 1, 1999, victims of domestic violence shall be
13 entitled to all of the rights of victims under this Article. For
14 purposes of determining eligibility for assistance under this
15 Article, a victim of domestic violence is any person against whom
16 there is probable cause to believe that any of the following
17 misdemeanor offenses has been committed; G.S. 14-33(c)(1), G.S. 14-
18 33(c)(2), G.S. 14-33(a), G.S. 14-34, G.S. 14-134.3, or G.S. 14-
19 277.3, when the offense is committed between persons who are current
20 or former spouses, or who live together in an intimate relationship



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 665

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)
Page 2 of ____

H665-ARO-3.98

1 ~~or who have lived together in an intimate relationship, or who have~~
2 ~~or are expecting a child in common. These crimes are in addition to~~
3 ~~the felonies set forth in G.S. 15A-2010(a)(4)."~~
4
5

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____
by

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 4

H. B. No. 665

DATE _____

S. B. No. _____

Amendment No. 6

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE ☒

Rep.) Sherill
Sen.) _____

1 as amended by amendment #2, offered by Rep. Hall,
moves to amend the bill on page 1, line 13

2 () WHICH CHANGES THE TITLE

3 by inserting the word "voluntarily" between
4 the words "who" and "live";
5 and on page 1, line 14

7 by inserting the word "voluntarily"
8 between the words "have" and "lived".

SIGNED *W Sherill*

ADOPTED _____ FAILED _____ TABLED _____

*Reflecting Council
Larkin*

ROLL CALL VOTE

8 11 = _____ (TOTAL)
YES NO

HB# 665
SB# _____

HOUSE STANDING COMMITTEE ON JUDICIARY I

House Subcommittee on _____

YES	NO	MEMBER (last name)	YES	NO	MEMBER (last name)
_____	☒	Alexander	☒	_____	Daughtry, Co-Chairman
_____	☒	Arnold	☒	_____	Hardy, Co-Chairman
_____	☒	Blue	_____	_____	
_____	_____	Braswell	_____	_____	
☒	_____	Capps	_____	_____	
_____	☒	Clary	_____	_____	
<u>absent</u>	_____	Crawford <i>Approp. mtg.</i>	_____	_____	
☒	_____	Ellis	_____	_____	
<u>absent</u>	_____	Esposito <i>Approp. mtg.</i>	_____	_____	
_____	_____	Fitch	_____	_____	
_____	_____	Gray	_____	_____	
_____	☒	Hall	_____	_____	
_____	☒	Hardaway	_____	_____	
<u>absent</u>	_____	Holmes. <i>Approp. mtg.</i>	_____	_____	
_____	☒	Hunter, R.	_____	_____	
_____	☒	Hurley	_____	_____	
_____	☒	Jeffus	_____	_____	
☒	_____	Justus	_____	_____	
_____	☒	Michaux	_____	_____	
_____	_____	Miller	_____	_____	
☒	_____	Morgan	Ex officio Members		
_____	☒	Sherrill	☒	_____	Speaker Pro Tem (Wood)
☒	_____	Thompson	_____	_____	Majority Leader (Daughtry)
_____	_____		_____	_____	Majority Whip (Howard)

ROLL CALL VOTE

Hall's
amendment

12 8 = _____ (TOTAL)
YES NO

HB# 665
SB# _____

HOUSE STANDING COMMITTEE ON JUDICIARY I

House Subcommittee on _____

YES	NO	MEMBER (last name)	YES	NO	MEMBER (last name)
☒	☐	Alexander	☐	☒	Daughtry, Co-Chairman
☒	☐	Arnold	☐	☒	Hardy, Co-Chairman
☒	☐	Blue	☐	☐	
☐	☐	Braswell	☐	☐	
☐	☒	Capps	☐	☐	
☒	☐	Clary	☐	☐	
<u>absent</u>	☐	Crawford <i>Approp. Mtg</i>	☐	☐	
☐	☒	Ellis	☐	☐	
<u>absent</u>	☐	Esposito <i>Approp Mtg</i>	☐	☐	
☒	☐	Fitch	☐	☐	
☐	☐	Gray	☐	☐	
☒	☐	Hall	☐	☐	
☒	☐	Hardaway	☐	☐	
<u>absent</u>	☐	Holmes. <i>Approp Mtg</i>	☐	☐	
☒	☐	Hunter, R.	☐	☐	
☒	☐	Hurley	☐	☐	
☒	☐	Jeffus	☐	☐	
☐	☒	Justus	☐	☐	
☒	☐	Michaux	☐	☐	
☐	☐	Miller	☐	☐	
☐	☒	Morgan	Ex officio Members		
☒	☐	Sherrill	☐	☒	Speaker Pro Tem (Wood)
☐	☒	Thompson	☐	☐	Majority Leader (Daughtry)
☐	☐		☐	☐	Majority Whip (Howard)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

4

HOUSE BILL 665

Committee Substitute Favorable 6/25/97
Committee Substitute #2 Favorable 7/10/97
Committee Substitute #3 Favorable 6/18/98

Short Title: Crime Victims' Rights Act.

(Public)

Sponsors:

Referred to:

March 27, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO CREATE THE CRIME VICTIMS' RIGHTS ACT, TO ASSIST
3 VICTIMS OF DOMESTIC VIOLENCE, TO ALLOW THE ENFORCEMENT OF
4 ORDERS FOR RESTITUTION IN CRIMINAL CASES IN THE SAME
5 MANNER AS CIVIL JUDGMENTS, TO CREATE AN EXCEPTION TO THE
6 STATUTORY EXEMPTIONS FOR EXECUTION OF RESTITUTION
7 JUDGMENTS, TO CHANGE THE ORDER OF PRIORITY FOR
8 DISBURSEMENT OF FUNDS IN CRIMINAL CASES, TO PROHIBIT THE USE
9 OF STATE FUNDS FOR JURY CONSULTANTS, TO REQUEST THE NORTH
10 CAROLINA SUPREME COURT TO CONSIDER AND ADOPT RULES TO
11 EXPEDITE APPEALS FROM CAPITAL CASES THAT INCLUDE A
12 SENTENCE OF DEATH, AND TO REQUIRE A JUDGE PRESIDING IN A
13 CAPITAL TRIAL TO INSTRUCT THE SENTENCING JURY REGARDING
14 THE REVIEW OF SENTENCES OF LIFE IMPRISONMENT WITHOUT
15 PAROLE.

16 The General Assembly of North Carolina enacts:

17 Section 1. Chapter 15A of the General Statutes is amended by adding a
18 new Subchapter to read:

19 "SUBCHAPTER XVI. CRIME VICTIMS' RIGHTS.

20 "ARTICLE 101.

21 "Crime Victims' Rights Act.

1 "§ 15A-2010. Definitions.

2 (a) The following definitions apply in this Article:

- 3 (1) Accused. -- A person who has been arrested and charged with
4 committing a crime covered by this Article.
- 5 (2) Law enforcement agency. -- Law enforcement agency includes the
6 following:
- 7 a. Arresting law enforcement agency. -- The law enforcement
8 agency that makes the arrest of an accused.
- 9 b. Custodial agency. -- The agency that has legal custody of an
10 accused or defendant arising from a charge or conviction of
11 a crime covered by this Article including, but not limited to,
12 local jails or detention facilities, regional jails or detention
13 facilities, or the Department of Correction.
- 14 c. Investigating law enforcement agency. -- The law
15 enforcement agency with primary responsibility for
16 investigating the crime committed against the victim.
- 17 (3) Next of kin. -- The victim's spouse, children, parents, siblings, or
18 grandparents. The term does not include the accused unless the
19 charges are dismissed or the person is found not guilty.
- 20 (4) Victim. -- A person against whom there is probable cause to
21 believe one of the following crimes was committed:
- 22 a. A Class A, B1, B2, C, D, or E felony.
- 23 b. A Class F felony if it is a violation of one of the following:
24 G.S. 14-16.6(b); 14-16.6(c); 14-18; 14-32.1(e); 14-32.2(b)(3);
25 14-32.3(a); 14-32.4; 14-34.2; 14-34.6(c); 14-41; 14-43.2; 14-
26 43.3; 14-190.17; 14-190.19; 14-202.1; 14-288.9; or 20-138.5.
- 27 c. A Class G felony if it is a violation of one of the following:
28 G.S. 14-32.3(b); 14-51; 14-58; 14-87.1; or 20-141.4.
- 29 d. A Class H felony if it is a violation of one of the following:
30 G.S. 14-32.3(a); 14-32.3(c); or 14-33.2.
- 31 e. A Class I felony if it is a violation of one of the following:
32 G.S. 14-277.3; 14-32.3(b); 14-34.6(b); or 14-190.17A.
- 33 f. An attempt of any of the felonies listed in this subdivision if
34 the attempted felony is punishable as a felony.

35 (b) If the victim is deceased, then the next of kin, in the order set forth in the
36 definition contained in this section, is entitled to the victim's rights under this Article,
37 except for the rights contained in G.S. 15A-2014. An individual entitled to exercise
38 the victim's rights as a member of the class of next of kin may designate anyone in
39 the class to act on behalf of the class.

40 "§ 15A-2011. Responsibilities of law enforcement agency.

41 (a) As soon as practicable but within 72 hours after identifying a victim covered by
42 this Article, the investigating law enforcement agency shall provide the victim with
43 the following information:

- 44 (1) The availability of medical services, if needed.

- 1 (2) The availability of crime victims' compensation funds under
2 Chapter 15B of the General Statutes and the address and
3 telephone number of the agency responsible for dispensing the
4 funds.
- 5 (3) The address and telephone number of the district attorney's office
6 that will be responsible for prosecuting the victim's case.
- 7 (4) The name and telephone number of an investigating law
8 enforcement agency employee whom the victim may contact if the
9 victim has not been notified of an arrest in the victim's case within
10 six months after the crime was reported to the law enforcement
11 agency.
- 12 (5) Information about an accused's opportunity for pretrial release.
- 13 (6) The name and telephone number of an investigating law
14 enforcement agency employee whom the victim may contact to
15 find out whether the accused has been released from custody.
- 16 The investigating law enforcement agency shall also be available to provide victims
17 with more direct assistance in understanding the criminal justice process and the
18 scope of victims' services available to assist them. The investigating law enforcement
19 agency shall assist a victim in obtaining any of those services upon the request of the
20 victim.
- 21 (b) As soon as practicable but within 72 hours after receiving notification from the
22 arresting law enforcement agency that the accused has been arrested, the investigating
23 law enforcement agency shall forward to the district attorney's office that will be
24 responsible for prosecuting the case the victim's name, address, date of birth, social
25 security number, race, sex, and telephone number, unless the victim refuses to
26 disclose any or all of the information, in which case, the investigating law
27 enforcement agency shall so inform the district attorney's office.
- 28 (c) Upon receiving the information in subsection (a) of this section, the victim
29 shall, on a form provided by the investigating law enforcement agency, indicate
30 whether the victim wishes to receive any further notices from the investigating law
31 enforcement agency. If the victim elects to receive further notices, the victim shall be
32 responsible for notifying the investigating law enforcement agency of any changes in
33 the victim's name, address, and telephone number.
- 34 (d) As soon as practicable but within 72 hours after the arrest of a person believed
35 to have committed a crime covered by this Article, the arresting law enforcement
36 agency shall inform the investigating law enforcement agency of the arrest. As soon
37 as practicable but within 72 hours of being notified of the arrest, the investigating law
38 enforcement agency shall notify the victim of the arrest.
- 39 **"§ 15A-2012. Responsibilities of the district attorney's office.**
- 40 (a) Within 21 days after the arrest of the accused, but not less than 24 hours
41 before the accused's first scheduled probable cause hearing, the district attorney's
42 office shall provide to the victim a pamphlet or other written material that explains in
43 a clear and concise manner the following:

- (1) The victim's rights under this Article, including the right to confer with the attorney prosecuting the case about the disposition of the case and the right to provide a victim impact statement.
- (2) The responsibilities of the district attorney's office under this Article.
- (3) The victim's eligibility for compensation under the Crime Victims' Compensation Act and the deadlines by which the victim must file a claim for compensation.
- (4) The steps generally taken by the district attorney's office when prosecuting a felony case.
- (5) Suggestions on what the victim should do if threatened or intimidated by the accused or someone acting on the accused's behalf.
- (6) The name and telephone number of a victim and witness assistant in the district attorney's office whom the victim may contact for further information.

(b) Upon receiving the information in subsection (a) of this section, the victim shall, on a form provided by the district attorney's office, indicate whether the victim wishes to receive notices of some, all, or none of the trial and posttrial proceedings involving the accused. If the victim elects to receive notices, the victim shall be responsible for notifying the district attorney's office or any other department or agency that has a responsibility under this Article of any changes in the victim's address and telephone number. The victim may alter the request for notification at any time by notifying the district attorney's office and completing the form provided by the district attorney's office.

(c) The district attorney's office shall notify a victim of the date, time, and place of all trial court proceedings of the type which the victim has elected to receive notice. All notices required to be given by the district attorney's office shall be given in a manner that is reasonably calculated to be received by the victim prior to the date of the court proceeding.

(d) Whenever practical, the district attorney's office shall provide a secure waiting area during court proceedings that does not place the victim in close proximity to the defendant or the defendant's family.

(e) When the victim is to be called as a witness in a court proceeding, the court shall make every effort to permit the fullest attendance possible by the victim in the proceedings.

(f) Prior to the disposition of the case, the district attorney's office shall offer the victim the opportunity to consult with the prosecuting attorney to obtain the views of the victim about the disposition of the case, including the victim's views about dismissal, plea or negotiations, sentencing, and any pretrial diversion programs.

(g) At the sentencing hearing, the prosecuting attorney shall submit to the court a copy of a form containing the identifying information set forth in G.S. 15A-2011(b) about any victim electing to receive further notices under this Article. The form shall be included with the final judgment and commitment transmitted to the Department

1 of Correction or other agency receiving custody of the defendant and shall be
2 maintained by the custodial agency as a confidential file.

3 **"§ 15A-2013. Evidence of victim impact.**

4 (a) A victim has the right to offer evidence of the impact of the crime, which shall
5 be considered by the court or jury, as the case may be, in sentencing the defendant.

6 The evidence may include the following:

7 (1) A description of the nature and extent of any physical,
8 psychological, or emotional injury suffered by the victim as a result
9 of the offense committed by the defendant.

10 (2) An explanation of any economic or property loss suffered by the
11 victim as a result of the offense committed by the defendant.

12 (3) A request for restitution and an indication of whether the victim
13 has applied for or received compensation under the Crime
14 Victims' Compensation Act.

15 (b) No victim shall be required to offer evidence of the impact of the crime. No
16 inference or conclusion shall be drawn from a victim's decision not to offer evidence
17 of the impact of the crime.

18 **"§ 15A-2014. Restitution.**

19 (a) Upon conviction of the defendant or upon a plea of guilty, the court shall, in
20 addition to any penalty authorized by law, require that the defendant make
21 restitution to a victim or the victim's estate for any injuries or damages arising out of
22 the offense committed by the defendant. In determining the amount of restitution,
23 the court shall consider the following:

24 (1) The cost of any medical or other professional services and devices
25 or equipment required by the victim.

26 (2) The cost of physical therapy, occupational therapy, and
27 rehabilitation required by the victim.

28 (3) Any income loss, after taxes, suffered by the victim.

29 (4) The cost of any psychological or medical treatment for the victim's
30 next of kin.

31 (5) The cost of the victim's funeral and any related services.

32 (6) Any other injuries or damages arising out of the offense committed
33 by the defendant.

34 (b) The court may require that the victim or the victim's estate provide evidence
35 that documents the costs claimed by the victim or the victim's estate under this
36 section. Any such documentation shall be shared with the defendant before the
37 sentencing hearing.

38 (c) In determining the amount of restitution to be made, the court shall take into
39 consideration the resources of the defendant including all real and personal property
40 owned by the defendant and the income derived from the property, the defendant's
41 ability to earn, the defendant's obligation to support dependents, and any other
42 matters that pertain to the defendant's ability to make restitution, but the court is not
43 required to make findings of fact or conclusions of law on these matters. The amount
44 of restitution must be limited to that supported by the record, and the court may

1 order partial restitution when it appears that the damage or loss caused by the offense
2 is greater than that which the defendant is able to pay.

3 (d) An order providing for restitution does not abridge the right of a victim or the
4 victim's estate to bring a civil action against the defendant for damages arising out of
5 the offense committed by the defendant.

6 (e) The court may order the defendant to make restitution to a person other than
7 the victim, or to any organization, corporation, or association, including the Crime
8 Victims' Compensation Fund that provided assistance to the victim following the
9 commission of the offense by the defendant. Restitution shall be made to the victim
10 or the victim's estate before it is made to any other person, organization, corporation,
11 or association.

12 (f) The court may require the defendant to make full restitution no later than a
13 certain date or, if the circumstances warrant, may allow the defendant to make
14 restitution in installments over a specified time period.

15 (g) If the defendant is placed on probation or post-release supervision, any
16 restitution ordered under this Article shall be a condition of probation or post-release
17 supervision.

18 (h) If the court orders partial restitution, the court shall state on the record the
19 reasons for such an order.

20 **"§ 15A-2015. Enforcement of order for restitution.**

21 (a) An order for restitution under this Article may be enforced in the same
22 manner as a civil judgment, subject to the provisions of this section.

23 (b) The order for restitution under this Article shall be docketed and indexed in
24 the county of the original conviction in the same manner as a civil judgment. The
25 order for restitution may be collected in the same manner as a civil judgment unless
26 the order to pay restitution is a condition of probation. If the order to pay restitution
27 is a condition of probation, the judgment may only be collected in accordance with
28 subsection (c) of this section.

29 (c) If the defendant is ordered to pay restitution as a condition of probation, the
30 docketed judgment may not be collected until the date of notification to the clerk of
31 superior court in the county of the original conviction that the judge presiding at the
32 probation termination or revocation hearing has made a finding that restitution in a
33 sum certain remains due and payable, that the defendant's probation has been
34 terminated or revoked, and that the remaining balance of restitution owing may be
35 collected by execution on the judgment. The clerk shall then enter upon the
36 judgment docket the amount that remains due and payable on the judgment, together
37 with amounts equal to the standard fees for docketing, copying, certifying, and
38 mailing, as appropriate, and shall notify the victim by first-class mail at the victim's
39 last known address that the judgment may be executed upon, together with the
40 amount of the judgment. Until the clerk receives notification of termination or
41 revocation of probation and the amount that remains due and payable on the order
42 of restitution, the clerk shall not be required to update the judgment docket to reflect
43 partial payments on the order of restitution as a condition of probation.

1 (d) An appeal of the conviction upon which the order of restitution is based shall
2 stay execution on the judgment until the appeal is completed. If the conviction is
3 overturned, the judgment shall be removed from the judgment docket.

4 **"§ 15A-2016. Posttrial responsibilities.**

5 (a) Within 30 days after the final proceeding of the trial phase of the case, the
6 district attorney's office shall notify the victim, in writing, of:

7 (1) The final disposition of the case.

8 (2) The crimes of which the defendant was convicted.

9 (3) The defendant's right to appeal, if any.

10 (b) Upon a defendant's giving notice of appeal to the Court of Appeals or the
11 Supreme Court, the district attorney's office shall forward to the Attorney General's
12 office the victim's name, address, and telephone number. Upon receipt of this
13 information, and thereafter as the circumstances require, the Attorney General's
14 office shall provide the victim with the following:

15 (1) A clear and concise explanation of how the appellate process
16 works, including information about possible actions that may be
17 taken by the appellate court.

18 (2) Notice of the date, time, and place of any appellate proceedings
19 involving the defendant. Notice shall be given in a manner that is
20 reasonably calculated to be received by the victim prior to the date
21 of the proceedings.

22 (3) The final disposition of an appeal.

23 (c) If the defendant has been released on bail pending the outcome of the appeal,
24 the agency that has custody of the defendant shall notify the investigating law
25 enforcement agency, and the investigating law enforcement agency shall notify the
26 victim that the defendant has been released.

27 (d) If the defendant's conviction is overturned, and the district attorney's office
28 decides to retry the case or the case is remanded to superior court for a new trial, the
29 victim shall be entitled to the same rights under this Article as if the first trial did not
30 take place.

31 (e) The Conference of District Attorneys shall maintain a repository relating to
32 victims' identities, addresses, and other appropriate information for use by agencies
33 charged with responsibilities under this Article.

34 **"§ 15A-2017. Responsibilities of agency with custody of defendant.**

35 The Department of Correction shall notify the victim of:

36 (1) The projected date by which the defendant can be released from
37 custody. The calculation of the release date shall be as exact as
38 possible, including earned time and disciplinary credits if the
39 sentence of imprisonment exceeds 90 days.

40 (2) An inmate's assignment to a minimum custody unit and the
41 address of the unit. This notification shall include notice that the
42 inmate's minimum custody status may lead to the inmate's
43 participation in one or more community-based programs such as
44 work release or supervised leaves in the community.

(3) The victim's right to submit any concerns to the agency with custody and the procedure for submitting such concerns.

(4) The defendant's escape from custody.

(5) The defendant's capture.

(6) The date the defendant is scheduled to be released from the facility. Whenever practical, notice shall be given 60 days before release.

(7) The defendant's death.

"§ 15A-2018. Responsibilities of Division of Adult Probation and Parole.

The Division of Adult Probation and Parole shall notify the victim of:

(1) The defendant's regular conditions of probation or post-release supervision, special or added conditions, supervision requirements, and any subsequent changes.

(2) The date of a hearing to determine whether the defendant's supervision should be revoked, continued with or without modifications, or terminated.

(3) The final disposition of any hearing referred to in subdivision (2) of this section.

(4) Any restitution modification.

(5) The defendant's movement into or out of any intermediate sanction as defined in G.S. 15A-1340.11(6).

(6) The defendant absconding supervision.

(7) The capture of a defendant described in subdivision (6) of this section.

(8) The date when the defendant is terminated or discharged.

(9) The defendant's death.

"§ 15A-2019. Notice of commuted sentence or pardon.

The Governor's Clemency Office shall notify a victim when it is considering commuting the defendant's sentence or pardoning the defendant. The Governor's Clemency Office shall also give notice that the victim has the right to present a written statement to be considered by the Office before the defendant's sentence is commuted or the defendant is pardoned. The Governor's Clemency Office shall notify the victim of its decision. Notice shall be given in a manner that is reasonably calculated to allow for a timely response to the commutation or pardon decision.

"§ 15A-2020. No money damages.

This Article does not create a claim for damages against the State, a county, or a municipality, or any of its agencies, instrumentalities, officers, or employees.

"§ 15A-2021. No ground for relief.

The failure or inability of any person to provide a right or service under this Article may not be used by a defendant in a criminal case, by an inmate, or by any other accused as a ground for relief in any criminal or civil proceeding.

"§ 15A-2022. Incompetent victim's rights exercised.

1 When a victim is rendered mentally or physically incompetent or when the victim
2 is a minor, the victim's rights under this Article, other than the rights provided by
3 G.S. 15A-2014 and G.S. 15A-2015, may be exercised by the victim's next of kin."

4 Section 1.1. If the General Assembly appropriates funds for State grants
5 to local and State law enforcement to implement the provisions of this act, the
6 Department of Crime Control and Public Safety shall establish criteria for the
7 allocation of these State grants. These criteria shall include a requirement that the
8 requesting law enforcement agency document services and man-hours that directly
9 relate to the provisions of this act. The criteria shall also require documentation that
10 the requesting law enforcement agency is not receiving funding from any other source
11 for that specific service. The Department of Crime Control and Public Safety shall
12 report quarterly to the Chairs of the House and Senate Appropriations Committees
13 and the Chairs of the House and Senate Appropriations Subcommittees on Justice
14 and Public Safety on the development of the grant program and allocation of funding.

15 Section 2. The provisions of Article 45 of Subchapter VIII of Chapter
16 15A of the General Statutes are supplemental to the provisions of Article 101 of
17 Subchapter XVI of Chapter 15A of the General Statutes as enacted in Section 1 of
18 this act. If there is any conflict between the provisions of Article 45 and Article 101,
19 the provisions of Article 101 shall control.

20 Section 2.1. G.S. 1C-1601(e) reads as rewritten:

21 "(e) Exceptions. -- The exemptions provided in this Article are inapplicable to
22 claims

- 23 (1) Of the United States or its agencies as provided by federal law;
- 24 (2) Of the State or its subdivisions for taxes, appearance bonds or
25 fiduciary bonds;
- 26 (3) Of lien by a laborer for work done and performed for the person
27 claiming the exemption, but only as to the specific property
28 affected;
- 29 (4) Of lien by a mechanic for work done on the premises, but only as
30 to the specific property affected;
- 31 (5) For payment of obligations contracted for the purchase of the
32 specific real property affected;
- 33 (6) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1224, s.
34 6;
- 35 (7) For contractual security interests in the specific property affected;
36 provided, that the exemptions shall apply to the debtor's
37 household goods notwithstanding any contract for a nonpossessory,
38 nonpurchase money security interest in any such goods;
- 39 (8) For statutory liens, on the specific property affected, other than
40 judicial liens;
- 41 (9) For child support, alimony or distributive award order pursuant to
42 Chapter 50 of the General Statutes. Statutes;
- 43 (10) For criminal restitution orders docketed as civil judgments
44 pursuant to G.S. 15A-2015."

Section 2.2. G.S. 7A-304(d) reads as rewritten:

"(d) In any criminal case in which the liability for costs, fines, restitution, or any other lawful charge has been finally determined, the clerk of superior court shall, unless otherwise ordered by the presiding judge, disburse such funds when paid in accordance with the following priorities:

(1) Sums in restitution prorated among the persons entitled thereto;

~~(1)(2)~~ Costs due the county;

~~(2)(3)~~ Costs due the city;

~~(3)(4)~~ Fines to the county school fund;

~~(4)~~ Sums in restitution prorated among the persons entitled thereto;

(5) Costs due the State;

(6) Attorney's fees.

Sums in restitution received by the clerk of superior court shall be disbursed when:

(1) Complete restitution has been received; or

(2) When, in the opinion of the clerk, additional payments in restitution will not be collected; or

(3) Upon the request of the person or persons entitled thereto; and

(4) In any event, at least once each calendar year."

Section 2.3. Article 45 of Subchapter VIII of Chapter 15A of the General Statutes is amended by adding a new section to read:

"§ 15A-828. Assistance to victims of domestic violence.

In the allocation of resources to persons the district attorney determines are victims of serious misdemeanors, the district attorney shall, to the extent possible, provide the services listed in G.S. 15A-825 to victims of domestic violence misdemeanors that could involve the infliction of serious bodily injury."

Section 3. The Department of Crime Control and Public Safety shall establish a pilot program to integrate the Justice Wide Area Network (JWAN) with the proposed Victim Information and Notification Everyday (VINE) automated victim notification system. The pilot program shall include the development of a software application that can be implemented statewide to integrate the VINE system with other criminal justice networks. The Department shall report to the Chairs of the Joint Legislative Correction and Crime Control Oversight Committee and the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety by April 1, 1999, on the progress of the pilot program.

Section 4. Funds appropriated to the Judicial Department may not be used to contract for the services of jury consultants in criminal cases where the defendant has been assigned counsel by the court.

Section 5. The General Assembly requests the North Carolina Supreme Court to consider and adopt rules to expedite appeals from all cases in which the defendant is convicted of murder in the first degree and the judgment of the superior court includes a sentence of death.

Section 6. G.S. 15A-2002 reads as rewritten:

"§ 15A-2002. Capital offenses; jury verdict and sentence.

1 (a) If the recommendation of the jury is that the defendant be sentenced to death,
2 the judge shall impose a sentence of death in accordance with the provisions of
3 Chapter 15, Article 19 of the General Statutes. If the recommendation of the jury is
4 that the defendant be imprisoned for life in the State's prison, the judge shall impose
5 a sentence of imprisonment for life in the State's prison, without parole.

6 (b) The judge shall instruct the jury, in words substantially equivalent to those of
7 this section, that a sentence of life imprisonment means a sentence of life without
8 parole.

9 (c) The judge shall instruct the jury about the review of sentences of life
10 imprisonment without parole in words substantially equivalent to those of G.S. 15A-
11 1380.5."

12 Section 7. G.S. 15A-2000 is amended by adding a new subsection to
13 read:

14 "(d1) Argument by District Attorney. -- The district attorney may inform the jury
15 in the closing argument about the review of sentences of life imprisonment without
16 parole in words substantially equivalent to those of G.S. 15A-1380.5."

17 Section 8. The provisions of this act are severable. If any provision of
18 this act is held invalid by a court of competent jurisdiction, the invalidity does not
19 affect other provisions of the act that can be given effect without the invalid
20 provision.

21 Section 9. Sections 1.1, 2.3, 5, and this section of this act are effective
22 when they become law. Section 4 of this act becomes effective July 1, 1998. Sections
23 6 and 7 of this act become effective December 1, 1998, and apply to capital
24 sentencing hearings or rehearings begun on or after that date. The remainder of this
25 act becomes effective October 1, 1998.

MINUTES

HOUSE JUDICIARY I COMMITTEE

The House Committee on JUDICIARY I met in Room 1228/1327 of the Legislative Building on July 2, 1998 at 10:00 A.M. Representative Hardy, Co-Chairman, presided at the meeting. Other members present were: Representative Daughtry, Co-Chairman, and Representative(s) Alexander, Arnold, Blue, Capps, Ellis, Gray, Hall, Hardaway, Hunter R., Hurley, Jeffus, Justus, Michaux, and Miller. Staff Counsels Steven Ross and Karen Cochrane-Brown were also present.

HB 1321 AN ACT TO IMPROVE THE STATE COURT SYSTEM BY IMPLEMENTING CERTAIN RECOMMENDATIONS OF THE COMMISSION FOR THE FUTURE OF JUSTICE AND THE COURTS IN NORTH CAROLINA AND TO MAKE OTHER CHANGES IN THE OPERATIONS OF THE COURTS was the only bill considered.

Representative Hardy called the meeting to order. He introduced the pages for the day – Sean Wiggs of Cumberland County and Erin Provost of Wake County.

Representative Daughtry, the bill sponsor, presented the bill.

Representative Capps sent forth a technical amendment (see Attachment G) to correct a typographical error. Representative Hall moved for adoption and the amendment was adopted.

Representative Daughtry said that Mr. John Medlin started the Future of the Courts Commission several years ago. The chief justice at that time believed the courts needed to be reformed. Much time was spent by this commission to see if there was a better way to meet the court needs of the people of North Carolina. After this committee did their work, a commission was established by the Speaker and the President Pro Tempore. This bill is the result of that effort.

Representative Daughtry said that the first part of the bill creates a State Judicial Council, provides for the holding of family courts, and changes the method by which criminal cases are calendared for trial in Superior Court. (See the Committee Counsel report or Attachment E.)

Representative Daughtry listed the 18 members of the state judicial council and how they would be chosen: See May 19, 1998 summary of HB 1321 (Attachment F) and Committee Counsel Report of HB 1321 (Attachment E).

Representative Daughtry explained the duties of the council line by line. (See Attachments E and F.)

Representative Daughtry said that the council members will be reimbursed for their travel, meal and lodging expenses while on council business at the same rate as members of the General Assembly and shall become salaried at \$200/day for each day of official council business.

Representative Daughtry said that the bill will also establish three pilot programs for the holding of family court in three district court districts. He said the explosion of divorces, child custody, juvenile law, equitable distribution, the complexities and heartbreak of domestic relations cries out for us to set up a system of family courts and judges who are able to deal with these matters from the beginning to the end.

Lastly, Representative Daughtry spoke about the calendaring of criminal trial sessions. He said that for many years the district attorney has had the responsibility of the calendar. This would require the district attorney to file the calendar with the clerk. Cases may be added to or removed from the calendar only by order of the court pursuant to guidelines developed by the Supreme Court. He said there have been abuses by the district attorneys such as requiring defendants to sit in court all week and using the calendaring to get plea bargains. He said this bill is only a beginning, but he hoped not the end.

Representative Hall asked whether the part of the bill on page 3, starting on line 15, would take the election of judges out of the hands of the people and the judges and put it in a nomination committee.

Representative Daughtry said he was incorrect. He said if someone wants to resign, or if a person dies and there becomes a vacancy, then the Governor, if he chooses, can use this judicial council to select someone to fill the vacancy. Representative Daughtry said it does not change the way appellate judges are now elected.

Representative Hall asked about p. 3, beginning on line 34. He asked who has the authority there.

Representative Daughtry said that now in the Court of Appeals they have panels, and there is some talk of adding an additional panel of three judges because of the work load.

Representative Ellis asked how often the council would meet.

Representative Daughtry said there is no set time for meetings. They would meet at the call of the chairman.

Representative Ellis asked if a judicial district was having a problem and they went to the chairman but the council did not respond, would there be any mechanism to compel the council to meet.

Representative Daughtry said that there is the same redress as there is now, but there is no mechanism to compel the council to meet.

In a follow-up, Representative Ellis wondered if there was any limit on the number of times the council can meet. The answer was in the negative.

In a third point, Representative Ellis asked about p. 4, line 16, which says members will be reimbursed while on the council's business. He wondered if that meant while the council was meeting. Representative Ellis wondered if members might make a living by going around and checking in on folks as opposed to actually being on real business. He suggested putting some limits in that section.

Representative Jeffus expressed concern about the council. She said it seems as though we have given the council a lot to do on a part time basis. Representative Daughtry said he did not know how often the council would have to meet.

Representative Michaux referred to Section 3 of the bill. He said that North Carolina is the only state in the union that allows prosecutors to calendar criminal cases. This power to calendar criminal cases can be fraught with abuse of that power. There have been many instances where prosecutors calendar cases before judges they believe will "go their way." Also, he said that there are instances where a case can continue to be calendared as much as 30 or 40 times before the case ever comes to trial. The decision is at the discretion of the district attorney.

Thirdly, Representative Michaux said that the district attorney has the power to dismiss a case and then reinstate it at a later date. A person charged with a crime who can't make bail can languish in jail because he can't get his case tried. He said we need to do something about the fact that the power to calendar is in the hands of the district attorneys.

Mr. Tom Lock, a member of the conference of district attorneys, further explained the bill. He said that most of the present DA's would say that there was a problem in many years past. He said, however, that in the last two election cycles $\frac{3}{4}$ of the DA's have been replaced. He said there are about eight districts across the state now where the judges actually do the setting of the cases after conferring with the DA's and the defense counsel.

Mr. Lock said the DA's met about 3 weeks ago and debated this issue. He said they could not reach a consensus but a slight majority of the DA's were in favor of maintaining the present system (GS 7A-49.3). The DA's argued that if they changed their present system, they would still be accountable to the public for the caseloads and

backlog without having the real power to do something about those caseloads. He contended that the problem has been addressed. He said we no longer have situations where defendants languish in jail for months and months.

Representative Daughtry said there are changes in the calendaring procedure in this bill.

Mr. Lock said that at the meeting three weeks ago they discussed three alternatives: 1) maintaining the present system, 2) going to a system set forth in HB 1321, 3) case document management plans. To repeat, they could not reach a consensus. To repeat, a slight majority of the DA's favored maintaining the current system.

Representative Daughtry asked him to explain how under HB1321 they would have to file the calendar with the clerk as opposed to what the present law is.

Mr. Lock said the primary difference is that once the calendar is prepared, control of the calendar is vested in the hands of the Superior Court judge. The judge would have to grant all continuances and cases could be added to the calendar only with the consent of the judge. He said this plan would allow the DA's to determine when cases would be scheduled for trial but then control is turned over to the judge. He said if a defendant is languishing in jail, his lawyer under HB 1321 could remedy the situation by filing a motion for a bond hearing or a trial date and the judge could compel the DA to bring it to trial.

Representative Hardy asked how has structured sentencing affected judge shopping. Mr. Lock said he believes it had drastically reduced judge shopping. There is more consistency among the sentences handed down than before because judges don't have the discretion they used to have.

Representative Michaux said that in spite of structured sentencing there is still a degree of judge shopping. He then proposed an amendment (see Attachment H) that will take total control of the calendar and put it in the hands of the court as is done in 49 other states and in the US courts.

Mr. Dick Taylor, a representative of the Academy of the Trial Lawyers, distributed a handout which he said indicates that, contrary to what Mr. Lock says, this continues to be a problem. (See Attachment I.)

Mr. Taylor said North Carolina is the only state in the country where the DA's have this calendar control authority. He said it is unfair for one side to control the call of the case for a strategic advantage. He said that this power has been abused in a couple of recent cases. In a 1997 decision holding that in Robeson County the DA used its scheduling power to gain an unfair advantage at trial by scheduling the case when only

one of the two lawyers for the defendant could be present for the trial because the second lawyer was in another trial. He said the defendant was convicted.

Representative Justus wondered why the judge could not control the problem if one of the two lawyers was scheduled to be in another courtroom.

Mr. Taylor said that the law in North Carolina has been that the control of the calendar of the criminal court has been solely in the hands of the DA, one side of the dispute.

Representative Justus said that he did not answer his question. He asked again if the judge was in control of his court.

Mr. Taylor said the judge was not in control of the calendar. He believes that in some instances the judge has taken control but in the general operating rule is that the district attorney controls the calendar.

Representative Justus said that if there are two courts operating side by side and the DA abuses his power by waiting until case #1 begins, having the one of the lawyers on the other side, to go to courtroom #2 to try the case that uses the same lawyer and a second lawyer. Representative Justus wondered why someone couldn't explain the problem to the judge and get a fair ruling.

Mr. Taylor said that, in this case, the courts did seem to be aware of the problem and that a subsequent motion for appropriate relief on behalf of the convicted defendant resulted in a reversal of the case and a new trial was granted.

Representative Justus said he was aghast at that answer.

Representative Michaux said that once one gets into court it is true that the judge has control, but the judge does not have control over the calendar. Representative Michaux said that in nine time out of ten the judge will allow that situation to be resolved fairly, but he believes the situation should not be allowed to exist.

Representative Ellis wondered if there has been an election of that district attorney since the case was heard.

Mr. Taylor said he did not know. Representative Ellis confirmed that the decision was reversed in a subsequent trial court. The representative then wondered if that reversal was not an indicator that there was a bad decision made by the judge. He also wondered if there was a pursuit of an unjust situation in that trial court environment by the district attorney. He also wondered if the DA is not then subject to the wrath of the people in his area for those bad decisions that has allowed a criminal now to have his conviction overturned.

Mr. Taylor said that is the only recourse we have, but there has been a lot of time and money spent needlessly. Representative Ellis agreed but asked whether the policy of the state should be held responsible or should that district attorney and that judge be accountable for that.

Mr. Taylor said he thought the state should use its judicial resources efficiently and fairly to benefit the system. Referring to one of the pages of his handout, he said that it is the opinion of the North Carolina State bar that threatening to use the discretion to schedule a criminal trial to coerce a plea agreement from a criminal defendant is unethical.

Finally, as to the assertion that this power is not being abused now, Mr. Taylor referred to the last page, a form letter. He said it says that rejection of the plea offer will result in being prosecuted at the highest level possible and being indicted and placed on the trial docket week after week to intimidate the defendant and the lawyer into a plea. Mr. Taylor said that this is not a appropriate use of our resources. He said the answer is to the allow the court to manage its calendar.

Representative Ellis asked if the case used here as an example is a general rule or the exception.

Mr. Taylor said this is not an uncommon situation.

Representative Ellis asked if there was just a much chance of having an unsympathetic judge as having an unsympathetic DA.

Mr. Taylor said this would remove a fundamental flaw in the system, i.e. for this authority to reside with one side of the dispute.

Representative Justus said that in 1986 he and Representative Kerr (now Senator Kerr) when they were both on Justice and Public Safety found that justices had court on Tuesday and Wednesday but by Thursday noon there was no court. He wondered if this is what was meant by efficiency.

Representative Hunter said he thinks this issue causes the district attorneys more problems and grief. He said that some do it right and some do not. To Representative Justus, he said that it was the district attorneys who set the calendars for Thursday afternoons and Fridays, not the judge.

Representative Hunter said that Representative Michaux's amendment is one way to solve this problem of inefficiency of our court system. He said that we need someone to help the judge to do this. A lot of districts have a civil trial court administrator who runs the civil courts. Most people say that system operates generally well. He said we do need to come up with a better way.

Representative Hardy adjourned the meeting at 10:55 A.M.

EH

Representative Edwin M. Hardy
Co-chairman

Betty Wickham

Betty Wickham
Committee Clerk

ATTACHMENTS:

Exhibit A - NOTICE OF THE MEETING

Exhibit B - AGENDA

Exhibit C - VISITOR REGISTRATION

Exhibit D - HB 1321

Exhibit E - COMMITTEE COUNSEL REPORT ON HB 1321

Exhibit F - May 19 SUMMARY OF HB 1321

Exhibit G - PROPOSED AMENDMENT for HB 1321 (Capps)

Exhibit H - PROPOSED AMENDMENT for HB 1321 (Michaux)

Exhibit I - HANDOUTS FROM THE NC ACADEMY OF TRIAL LAWYERS

**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE**

You are hereby notified that the Committee on **JUDICIARY I** will meet as follows:

DAY & DATE: **Thursday, July 2, 1998**

TIME: **10:00 A.M.**

LOCATION: **Room 1228/1327 LB**

The following bills will be considered (Bill # & Short Title):

✓ **HB 1321** **Future of the Courts** **Sponsor - Rep. Daughtry**

HB 1389 ~~_____ Funding for Legal Services _____~~ ~~Sponsor - Rep. Allred~~

Respectfully,

Representative N. Leo Daughtry, Co-Chairman
Representative Edwin Hardy, Co-Chairman

I hereby certify this notice was filed by the committee clerk at the following offices at
1:35 p.m. on June 30, 1998.

____ Principal Clerk
____ Reading Clerk - House Chamber

Betty Wickham, Committee Clerk

AGENDA

HOUSE COMMITTEE ON JUDICIARY I

July 2, 1998
Room 1228/1327 LB
10:00 AM

Representative N. Leo Daughtry, Co-Chairman
Representative Edwin (Sandy) Hardy, Co-Chairman

BILLS TO BE CONSIDERED:)

HB 1321 FUTURE OF THE COURTS Sponsor - Rep. Daughtry

HB 1389 FUNDING FOR LEGAL SERVICES Sponsor - Rep. Allred

(Proposed House Committee Substitute for HB 1317 AMEND CONTESTED CASE

PROCEDURES/Sponsor-Representative C. Wilson, was placed in a subcommittee at June 4th Meeting for member study [Rep. Arnold, Chr.; Blue, Braswell, Clary, Morgan & Sherrill])

ADJOURNMENT

VISITOR REGISTRATION SHEET

JUDICIARY 1, JULY 2, 1998

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY
1. Ann Christian	NCAWA
2. Bill Scobbin	NC Bar Assoc
3. ALLAN HEAD	NC Bar Assoc
4. DON COWAN	Legal Services of North Carolina
5. Lucius PULLEN	ATTORNEY
6. ~~John H. Hester~~	Off. of the Gov.
7. ~~Mark Z. H.~~	NC AFR
8. Cheto Cromer	NCATL
9. Malcolm R. Hunter	Appellate Department
10. Melissa Pershing	NC Bar Assoc.
11. John McMillan	Manning Felt & Skinner PA
22. Jim Lister	NC A.F.T.
23. Tom Lark	Conf. of D.A.'s
24. Peg Dozer	Conference of D.A.s
25. TONY ADAMS	Legal Services of NC
26. Maya Harris	Legal Services of N.C.
27. Alan Niles	Bentley & Dixon LLP
28. ~~William H. Hester~~	NCBA
29. Jim Drennan	Institute of Government
30. Kevin Howell	NCBA
31. Ron Aycock	County Comm. Assoc.

VISITOR REGISTRATION SHEET

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY
1. <u>Lao Purbert</u>	<u>CSPK</u>
2. <u>Mary Carnahan</u>	<u>Mecklenburg County</u>
3. <u>Italio Skins</u>	<u>Charlotte Chamber</u>
4. <u>Anna Winer</u>	<u>NC AOCR</u>
5. <u>Melissa Lovell</u>	<u>DOJ</u>
6. <u>Rebecca Fuller</u>	<u>NCATL</u>
7. <u>Nike Shun</u>	<u>NARCO</u>
8. <u>Roslyn Savell</u>	<u>NC Coalition Against Domestic Violence</u>
9. <u>Kim Smith</u>	<u>NCLM</u>
10. <u>Nancy Bradley</u>	<u>NCCBO</u>
11. <u>Paula Gupston</u>	<u>NCFBA</u>
22. <u>David Anders</u>	<u>PFFMC</u>
23. _____	_____
24. _____	_____
25. _____	_____
26. _____	_____
27. _____	_____
28. _____	_____
29. _____	_____
30. _____	_____
31. _____	_____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 1321*

Short Title: Future of the Courts.

(Public)

Sponsors: Representatives Daughtry; and Baddour.

Referred to: Judiciary I.

May 19, 1998

1 A BILL TO BE ENTITLED
2 AN ACT TO IMPROVE THE STATE COURT SYSTEM BY IMPLEMENTING
3 CERTAIN RECOMMENDATIONS OF THE COMMISSION FOR THE
4 FUTURE OF JUSTICE AND THE COURTS IN NORTH CAROLINA AND TO
5 MAKE OTHER CHANGES IN THE OPERATIONS OF THE COURTS.

6 The General Assembly of North Carolina enacts:

7 Section 1. Chapter 7A of the General Statutes is amended by adding a
8 new Article to read:

9 "ARTICLE 7A.

10 "State Judicial Council.

11 "§ 7A-49.4. Composition of State Judicial Council.

12 (a) The State Judicial Council shall consist of 18 members as follows:

- 13 (1) The Chief Justice, who chairs the Council;
14 (2) The Chief Judge of the Court of Appeals;
15 (3) A district attorney chosen by the Conference of District Attorneys;
16 (4) A public defender chosen by the public defenders;
17 (5) A superior court judge chosen by the Conference of Superior
18 Court Judges;
19 (6) A district court judge chosen by the Conference of District Court
20 Judges;
21 (7) An attorney appointed by the Council of the State Bar;
22 (8) One attorney and one nonattorney appointed by the Chief Justice;
23 (9) Two nonattorneys and one attorney appointed by the Governor;

(10) Two nonattorneys and one attorney appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives; and

(11) Two nonattorneys and one attorney appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate.

(b) The Chief Justice and the Chief Judge shall be members of the State Judicial Council during their terms in those judicial offices. The terms of the other members selected initially for the State Judicial Council shall be as follows:

(1) One year. -- The district court judge, the nonattorney appointed by the Chief Justice, one nonattorney appointed upon the recommendation of the Speaker of the House of Representatives, and the attorney appointed upon the recommendation of the President Pro Tempore of the Senate.

(2) Two years. -- The district attorney, one nonattorney appointed by the Governor, the attorney appointed upon the recommendation of the Speaker of the House of Representatives, and one nonattorney appointed upon the recommendation of the President Pro Tempore of the Senate.

(3) Three years. -- The public defender, the attorney appointed by the Governor, one nonattorney appointed by the President Pro Tempore of the Senate, and one nonattorney appointed upon the recommendation of the Speaker of the House of Representatives.

(4) Four years. -- The superior court judge, the attorney appointed by the State Bar Council, the attorney appointed by the Chief Justice, and one nonattorney appointed by the Governor.

After these initial terms, the members of the State Judicial Council shall serve terms of four years. All terms of members shall begin on January 1 and end on December 31. No member may serve more than two consecutive full terms. Any vacancy on the Council shall be filled by a person appointed by the official or entity who appointed the person vacating the position.

(c) If an official or entity is authorized to appoint more than one member of the State Judicial Council, the members appointed by that official or entity must reside in different judicial districts.

(d) No incumbent member of the General Assembly or any incumbent judicial official, other than the ones specifically identified by office in subsection (a) of this section, may serve on the State Judicial Council.

(e) The appointing authorities shall confer with each other and attempt to arrange their appointments so that the members of the State Judicial Council fairly represent each area of the State, both genders, and each major racial group.

"§ 7A-49.5. Duties of the State Judicial Council.

(a) The State Judicial Council shall:

(1) Study the judicial system and report periodically to the Chief Justice on its findings;

- 1 (2) Advise the Chief Justice on priorities for funding;
- 2 (3) Review and advise the Chief Justice on the budget prepared by the
- 3 Director of the Administrative Office of the Courts for submission
- 4 to the General Assembly;
- 5 (4) Study and recommend to the General Assembly the salaries of
- 6 justices and judges;
- 7 (5) Recommend to the General Assembly changes in the expense
- 8 allowances, benefits, and other compensation for judicial officials;
- 9 (6) If a judgeship becomes vacant, review whether the judgeship is still
- 10 needed for that district and, if it is not, recommend to the Chief
- 11 Justice whether the judgeship should be transferred to another
- 12 district or should be abolished;
- 13 (7) Advise or assist the Chief Justice, as requested, on any other
- 14 matter concerning the operation of the courts.

15 (b) If requested to do so by the Governor, the 13 members of the State Judicial
16 Council who are not judges, district attorneys, or public defenders shall constitute an
17 appellate nominating panel to nominate candidates to the Governor for appointment
18 to vacancies on the Supreme Court and Court of Appeals.

19 (c) The State Judicial Council, with the assistance of the Director of the
20 Administrative Office of the Courts, shall recommend to the Chief Justice
21 performance standards for all courts and all judicial officials and shall recommend
22 procedures for periodic evaluation of the court system and individual judicial officials
23 and employees. If these standards are implemented by the Chief Justice, the
24 Director of the Administrative Office of the Courts shall inform each judicial official
25 of the standards being used to evaluate that official's performance. If implemented,
26 the evaluation of each judge shall include assessments from other judges, litigants,
27 jurors, and attorneys, as well as a self-evaluation by the judge. Summaries of the
28 evaluations of justices and judges shall be made available to the public, in a manner
29 to be determined by the Council.

30 (d) The State Judicial Council shall monitor caseloads in the appellate courts to
31 determine whether cases are being handled expeditiously, whether those courts have
32 adequate resources, and whether the courts are able to maintain a proper balance
33 between criminal and civil matters. If needed to assure such a balance, the Council
34 may recommend the establishment of separate divisions of the Court of Appeals for
35 criminal and civil cases and establish procedures for the regular rotation of individual
36 judges between those divisions.

37 (e) The State Judicial Council shall study and recommend guidelines for the
38 assignment and management of cases, including the identification of different kinds of
39 cases for different kinds of resolution. If the Chief Justice decides to implement these
40 guidelines, they may provide that, except for good cause, each civil case subject to
41 assignment to a trial judge should be directed first to an appropriate form of
42 alternative dispute resolution. The guidelines may also provide for posttrial
43 alternative dispute resolution before or as part of an appeal. The guidelines should
44 not require absolute uniformity from district to district and should allow case

1 management personnel within each circuit the flexibility to direct cases to the most
2 appropriate means of resolution in that district.

3 (f) The State Judicial Council shall monitor the use of alternative dispute
4 resolution throughout the court system and, with the assistance of the Director of the
5 Administrative Office of the Courts and the Dispute Resolution Commission,
6 evaluate the effectiveness of those programs.

7 (g) The State Judicial Council may recommend to the Chief Justice changes in the
8 boundaries of the judicial districts.

9 (h) The State Judicial Council shall perform other functions as needed to monitor
10 the administration of justice and assess the effectiveness of the Judicial Branch in
11 serving the public and to advise the Chief Justice and the General Assembly on
12 changes needed to assist the General Court of Justice in better fulfilling its mission.

13 **"§ 7A-49.6. Compensation of the State Judicial Council.**

14 Members of the State Judicial Council who are not judicial officials or salaried
15 public officials shall be reimbursed for their travel, meal and lodging expenses while
16 on Council business at the same rate as provided in G.S. 120-3.1(a)(3) for members of
17 the General Assembly, and shall also be compensated at the rate of two hundred
18 dollars (\$200.00) per day for each day on official Council business."

19 Section 2. (a) The Administrative Office of the Courts shall establish
20 pilot programs for the holding of family court within no more than three district
21 court districts, no more than two of which shall contain an urban county. Each pilot
22 program shall be conducted following the guidelines for the establishment of family
23 courts contained in the report of the Commission for the Future of Justice and the
24 Courts in North Carolina and shall be assigned to hear all matters involving
25 intrafamily rights, relationships, and obligations, and all juvenile justice matters,
26 including:

- 27 (1) Child abuse, neglect, and dependency;
- 28 (2) Delinquent and undisciplined juvenile matters;
- 29 (3) Emancipation of minors and termination of parental rights;
- 30 (4) Divorce;
- 31 (5) Annulment;
- 32 (6) Equitable distribution;
- 33 (7) Alimony and postseparation support;
- 34 (8) Child custody;
- 35 (9) Child support;
- 36 (10) Paternity;
- 37 (11) Adoption;
- 38 (12) Domestic violence civil restraining orders;
- 39 (13) Abortion consent waivers; and
- 40 (14) Adult protective services.

41 (b) The Administrative Office of the Courts shall report to the General
42 Assembly by March 1, 1999, on the establishment, number, and location of these pilot
43 programs and on their success in bringing consistency, efficiency, and fairness to the

1 resolution of family matters and their impact on caseloads in the district court
2 division.

3 Section 3. G.S. 7A-49.3 reads as rewritten:

4 **"§ 7A-49.3. Calendar for criminal trial sessions.**

5 (a) At least one week before the beginning of any session of the superior court for
6 the trial of criminal cases, the district attorney shall file with the clerk of superior
7 court a calendar of the cases ~~he intends to call for trial~~ to be tried at that session. The
8 calendar shall fix a day for the trial of each case listed thereon. ~~The district attorney~~
9 ~~may place on the calendar for the first day of the session all cases which will require~~
10 ~~consideration by the grand jury without obligation to call such cases for trial on that~~
11 ~~day.~~ No case on the calendar may be called for trial before the day fixed by the
12 calendar except by consent or by order of the court. ~~Any case docketed after the~~
13 ~~calendar has been filed with the clerk may be placed on the calendar at the discretion~~
14 ~~of the district attorney.~~ After the calendar has been filed with the clerk, cases may be
15 added to or removed from the calendar only by order of the court pursuant to
16 guidelines developed by the Supreme Court.

17 (a1) If he has not done so before the beginning of each session of superior court at
18 which criminal cases are to be heard, the District Attorney, after calling the calendar
19 and disposing of nonjury matters, including guilty pleas, if any such nonjury matters
20 are to be disposed of prior to the calling of cases for trial, shall announce to the court
21 the order in which ~~he intends to call for trial the~~ the calendar provides for the trial of
22 the cases remaining on the calendar. Deviations from the ~~announced~~ order of cases
23 as listed on the calendar require approval by the presiding judge, ~~judge, if the~~
24 ~~defendant whose case is called for trial objects; but the defendant may not object if~~
25 ~~all the cases scheduled to be heard before his case have been disposed of or delayed~~
26 ~~with the approval of the presiding judge or by consent.~~

27 (b) All witnesses shall be subpoenaed to appear on the date listed for the trial of
28 the case in which they are witnesses. Witnesses shall not be entitled to prove their
29 attendance for any day or days prior to the day on which the case in which they are
30 witnesses is set for trial, unless otherwise ordered by the presiding judge.

31 (c) Nothing in this section shall be construed to affect the authority of the court in
32 the call of cases for trial."

33 Section 4. Section 1 of this act becomes effective January 1, 1999.
34 Section 3 of this act becomes effective December 1, 1998. The remainder of this act
35 is effective when it becomes law.



North Carolina General Assembly
Legislative Services Office

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J-I
7.2-98

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May 27, 1998

MEMORANDUM

TO: House Judiciary I Committee

FROM:  Steven Rose, Committee Counsel

RE: House Bill 1321; Future of the Courts recommendations

House Bill 1321 contains recommendations from the Legislative Research Commission Future of the Courts Committee. The bill creates a State Judicial Council, provides for the creation of pilot programs for the holding of family court, and changes the method by which criminal cases are calendared for trial in Superior Court.

Section 1 of the bill adds Article 7A to Chapter 7A of the General Statutes. Article 7A creates a state judicial council to assist the Chief Justice of the Supreme Court in the Chief Justice's supervision of the judicial branch.

G.S. 7A-49.4 creates an 18 member state judicial council. The Chief Justice chairs the council. The Chief Judge of the Court of Appeals serves on the council, as does a District Attorney, a public defender, a Superior Court judge, a District Court judge, five attorneys, and seven nonattorneys.

The members of the council serve staggered four year terms beginning January 1, 1999. If an official or entity is authorized to appoint more than one member, the members must be from different judicial districts.

G.S. 7A-49.5 prescribes the duties of the council. These include studying the judicial system, advising the Chief Justice on funding priorities and on the budget prepared by the Director of the Administrative Office of the Courts for submission to the General Assembly, recommending changes in judicial salaries and benefits to the General Assembly, reviewing judgeship vacancies, and, if requested by the Chief Justice, advising or assisting on any other matter concerning operation of the courts. If requested by the Governor, the 13 members (should be "12") who are not judges, district attorneys, or public defenders, shall constitute an appellate nominating panel

for vacancies on the Supreme Court and Court of Appeals. The council shall recommend performance standards for all courts and judicial officials, as well as procedures for periodic evaluation of the court system and individual judicial officials and employees. The council will also monitor case loads in the appellate courts to determine whether cases are being handled expeditiously, whether recourses are adequate, and whether the courts are able to maintain a proper balance between criminal and civil matters. The council will study and recommend guidelines for the assignment and management of cases, including identification of different kinds of cases for different kinds of resolutions, and will monitor the use of, and evaluate the effectiveness of, alternative dispute resolution procedures. The council may recommend changes in the boundaries of judicial districts to the Chief Justice and will advise the Chief Justice and the General Assembly on changes needed to assist the general court of justice in better fulfilling its mission.

Section 2 of the bill provides for the establishment of pilot programs for the holding of family court within no more than three district court districts. These will be established by the Administrative Office of the Courts. No more than two of these pilot programs shall contain an urban county. The pilot programs will be conducted following the guidelines for the establishment of family courts as contained in the report of the Commission for the Future of Justice and the Courts of North Carolina. (SEE ATTACHMENT) The Administrative Office of the Courts shall report to the General Assembly by March 1, 1999 on the establishment, number, and location of these pilot programs and on their success in bringing consistency, efficiency, and fairness to the resolution of family matters, and the impact of the pilot program on caseloads in the district court division.

Section 3 of the bill amends G.S. 7A-49.3. The amendments change the method by which criminal trial sessions are calendared in Superior Court. The amendments provide that at least one week before the beginning of a criminal session of Superior Court the District Attorney shall file with the clerk a calendar of the cases to be tried at that session. After the filing of that calendar, cases may be added or removed only by order of the court pursuant to guidelines developed by the Supreme Court. Once the district attorney has announced the order in which the calendar provides for the trial of cases, deviations from the order of cases will require approval of the presiding judge.

Section 1 of the bill (State Judicial Council) becomes effective January 1, 1999. Section 2 of the bill (Family Court Pilot Programs) becomes effective when the act becomes law. Section 3 of the bill (Calendaring of Criminal Cases) becomes effective December 1, 1998.

H1321-SMRL-001

Without Favor, Denial or Delay

A Court System for the 21st Century

Commission for the Future
of Justice and the Courts
in North Carolina

December 1996

selection and service, but decided that the issues were too important to decide in the time available. More study is needed, including review of the experience from states like Arizona, which have significantly altered the jury process in recent years. Among the subjects that should be considered are:

- Converting to a "struck jury" method of selection
- Instructing jurors at the beginning of the case
- Allowing jurors to ask questions
- Requiring employers to pay their employees while they are on jury duty, with appropriate tax write-offs, or requiring the state to reimburse jurors for lost income
- Allowing counsel to summarize arguments during the trial
- Eliminating or reducing the number of peremptory challenges
- Having the judge conduct or play a greater role in voir dire or, if lawyers continue to conduct voir dire, imposing time limits

RECOMMENDATION 10: Appoint and train judges, and allow the State Judicial Council to make decisions about specialization.

The current system of election should be abandoned and all judges should be selected on the basis of merit, to assure that the state recruits, obtains and retains the judges who are best qualified. The appointment process described on page 32 will fulfill this goal.

To maintain the impartiality of the judiciary and a true statewide judicial system, circuit judges should "rotate" throughout their circuits. Rotation would free circuit judges from the pressures that can arise from purely local assignment and would foster the consistent application of the law across the state.

The education provided to judges needs to be greatly enhanced if the courts are to meet the challenges of a rapidly expanding body of law and to restore the public's confidence in the judiciary's ability to decide the issues before it. Such education should include

comprehensive treatment of the more sophisticated points of civil litigation as well as effective case management techniques and technological advances. Without this help, the judiciary will be hampered in its efforts to resolve increasingly complex cases correctly and efficiently.

North Carolina has recently developed a specialized business court in response to the need for judicial expertise in complex business cases. Although some additional specialized civil courts may be needed in the future, the shape of future litigation is too uncertain to predict the exact needs. Instead, consistent with the flexibility that is intended to be a hallmark of the new court system, the State Judicial Council should establish means by which the justice system can respond to future needs. For example, the council can establish new ADR programs and mechanisms, create specialized courts, designate specialized judges or utilize specialized resources. These changes can be statewide or within a single circuit, depending on the need.

FAMILY COURT

Whether we like it or not, North Carolina's families are facing more challenges and stress, including dramatic increases in divorce and juvenile crime, which have a profound impact on our courts.

In practical terms, domestic and juvenile matters are crowding the dockets of district courts—which are already filled with traffic cases, misdemeanor criminal offenses and general civil matters. At the same time, family matters in the courts are becoming increasingly complex and sensitive, whether it's determining equitable distribution of marital property, enforcing child support or addressing serious juvenile offenses.

Because of their heavy caseloads, however, district court judges often must treat each domestic and juvenile matter in the same way as other cases before

them—that is, as an isolated matter, in which the speed of resolution is largely determined by attorneys and litigants. The result is:

- Parts of the same case are handled by different judges at different times, with little communication among judicial officials and no consistency in court orders
- Delays are common, and are sometimes used by one party to inflict hardship on the other
- Children in foster care and other temporary arrangements often stay in these arrangements far too long
- Juveniles are punished for criminal matters, but the underlying reasons for their misconduct are not addressed
- Family problems increase the caseload of the criminal courts as juvenile offenders grow into adult offenders

With the stakes as high as they are, it is not surprising that the public, judges and attorneys all agree: the handling of domestic cases is where the courts can improve the most. For if the courts continue on the current path, we are going to create an unbearable burden on the judicial system and society—and the courts will continue to be part of the problem, rather than the solution.

What can we do? The Commission believes North Carolina must create a forum that resolves family-related issues in a manner that respects the rights of each individual family member, promotes the best interest of the family and helps families structure

their own solutions. This forum should be fully accessible to citizens, regardless of economic status, and should encourage the non-adversarial resolution of disputes whenever possible. Toward that end, the state should:

- Establish a specialized family court with jurisdiction over all disputes involving intra-familial rights, relationships and obligations and all juvenile matters

- Make available mediation or other forms of alternative dispute resolution for all family law cases
- Provide mediators, judges and other decisionmakers with specialized training in family and juvenile law and the psychological factors affecting families and children
- Make available the full range of the family court's services on a meaningful level to all citizens, regardless of economic wealth
- Resolve all cases as soon as possible but no later than one year after filing

Domestic Cases Continue To Increase

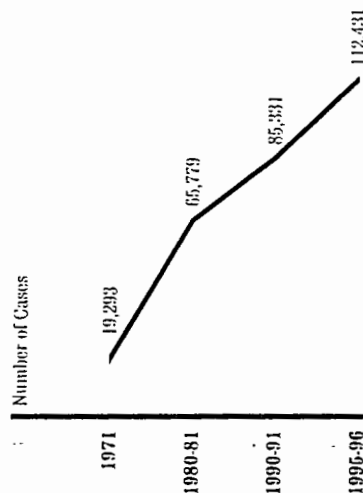


EXHIBIT 13

Source: AOC Annual Reports

RECOMMENDATION 1: Establish a "Family Court."

Considering that annual filings of domestic cases have jumped 483 percent in North Carolina over the last 25 years, it's understandable that a major change in the court structure is needed. The Commission believes that the best way to address this growing need is by creating a "family court"—a separate assignment within the circuit court—that hears all claims involving familial rights, relationships and obligations and all juvenile justice matters. In other words, the family court will provide a unified, rational

Domestic Litigants Are Most Critical of the Courts

Is the following an extremely or very serious problem?	Those with No Direct Contact with Courts	Former Jurors	Litigants In Domestic Cases
Time to have a civil case decided	37.5%	34.2%	43.4%
Attorneys being able to get continuances	32.8	44.5	46.3
People being treated differently by wealth	46.8	50.5	64.3
Personal biases of judges	18.6	20.4	36.5
Not enough judges	29.2	36.3	46.9
Frivolous lawsuits	37.4	52.1	48.7

EXHIBIT 14

Source: Wilkerson & Associates Survey

and caring forum for the resolution of all judicial proceedings involving family members.

Most cases will be heard by a judge regularly assigned to the family court, but any judge sitting in the circuit will be able to enter an appropriate temporary order in an emergency. With the assistance of specially trained court personnel, the judges will be able to coordinate family legal disputes, consolidate matters so that fewer hearings are needed and reach out to the community for the resources required to solve family problems.

These changes, combined with training for judges and special case management strategies, will provide citizens with a judiciary that is competent, sensitive, compassionate and well versed in family law. The new family court will hear matters including:

- All juvenile matters, including abuse, neglect, dependency, delinquency, emancipation and termination of parental rights
- Abortion consent waivers
- Adoption
- Domestic violence civil restraining orders
- Child custody
- Child support
- Paternity
- Divorce
- Equitable distribution

- Alimony and post-separation support
- Adult protective services
- Guardianship, mental health commitment hearings, hearings for voluntary admission to mental health facilities and actions under Article 2A of General Statutes Chapter 110

The family court will also be the forum for motions to enforce orders in the matters described above, including motions for civil and criminal contempt.

RECOMMENDATION 2: Develop judicial stability and expertise.

To maximize the effectiveness of the family court, judges should be assigned to the court for a term of at least three years. Although these judges may hear other matters when necessary, their principal appointment should be to the family court. When possible, the circuits should allow judges to rotate through different types of cases and, upon request, allow judges who show particular competence in family and juvenile matters to remain in the family court for longer than three years—or to hear certain types of cases. Certification as a “family court judge” or as a specialized judge for particular types of family cases would be one way to address this need.

The Commission recommends that the chief circuit judges select and assign the family court judges, make rotation decisions, and determine whether the three-

year terms can be extended. The chief circuit judges will also appoint managing family court judges and identify the specific roles they are to play—which could range from serving as a liaison between the chief circuit judge and the family court to exercising substantive supervisory responsibilities. The managing judges will coordinate closely with the circuit administrators and report directly to the chief circuit judge.

For family court to work, all personnel—judges, guardians ad litem, alternative dispute resolution personnel—must be adequately trained. We suggest that the training include substantive family law issues, basic principles of mediation and other alternative dispute resolution techniques, as well as sociology, psychology, child development, family systems, family-based services and social work. Family court personnel should also learn what local and statewide resources are available to aid families and individuals in distress.

**RECOMMENDATION 3:
Integrate mediation and other forms of alternative dispute resolution.**

Family issues are often not well-suited to the traditional adversarial model of the courts. We believe this is one area where alternative dispute resolution (ADR) processes should be used to reduce the emotional damage to the individuals involved, to empower the weaker parties, and to come up with solutions that preserve amicable relationships among family members.

Because early intervention has proven effective, family court cases should be referred to ADR as soon as possible after a complaint is filed. Indeed, to maximize

the benefits, the court-provided ADR services should be available to litigants *before* they file a complaint. In the disputes that are not resolved at this stage, ADR discussions should begin within days of filing. While early intervention may not be possible in every case, certain cases—such as child custody, child support and spousal support—must receive prompt attention. If ADR will not occur for more than two weeks after the filing of complaints in these cases, a family court

judge should conduct a brief hearing within the 14-day period. The judge should then enter temporary orders that would last until the selected processes are completed.

Moreover, the family court should establish a custody mediation program in every county for custody and visitation disputes and approve other types of ADR for support and property settlement claims. The case manager should be responsible for monitoring satisfactory completion of ADR and referring the case back to the family court for appropriate pre-trial procedures if ADR fails to resolve the issues.

We recommend that court-monitored ADR be *mandatory* in the following case types: child custody and visitation, equitable distribution, alimony and spousal

support, and certain child support cases. It should be *available* in all other cases, except for issues regarding Chapter 50B protective orders in domestic violence cases. Victims of domestic violence deserve the full protection of the court, including the safety brought on by the formality of a courtroom proceeding. In all cases, however, the family court judge should be able to exempt parties from ADR for good cause.

"Divorce, custody, child support, equitable distribution—these areas of the law affect the lives of more citizens than any other because so many people are directly or indirectly involved in the outcome."

Retired Chief District Court
Judge George Bason

Since important family issues arise in families across all income levels, court-provided ADR must be available to all citizens. Ideally, all ADR under the auspices of the court will be free of cost. At a minimum, ADR should be without charge for identified issues such as child custody and visitation, with fees for other types of cases based on a sliding scale. At the same time, court-provided efforts should not discourage litigants from resolving their disputes through private ADR mechanisms approved by the court.

RECOMMENDATION 4: Provide special services for custody disputes.

To serve the best interests of North Carolina's children, special services should be available whenever custody is an issue. We recommend the following.

Parent education. Under the current adversarial method of handling custody disputes, the interests of the children often come second to the interests of the parents or guardians, who may be unable to focus on what is best for the child. Those involved in custody disputes should be educated on the psychological and emotional impact of divorce and custody disputes on their children. When necessary, advocates should be provided to work directly with the children. Parent education should be provided by the court or paid for by litigants on a sliding scale. Ideally, it should be completed before ADR begins.

Appointed counsel. A family court judge should be able, when necessary, to appoint a lawyer for the child in custody or visitation proceedings and to tax the lawyer's fees as court costs.

Case management teams. In cases where the custody issues are not resolved in ADR, the case manager should take particular care to include all the necessary disciplines in the case management team, or to refer the family to other community services.

Guardian ad litem. The guardian ad litem program should be maintained as an essential element of the family court. In fact, the program's use should be

enhanced in the family court, particularly in custody disputes in which ADR fails to resolve all custody issues. In such cases, the case manager or case management team should determine whether a guardian ad litem should be appointed to investigate and advocate for the child.

RECOMMENDATION 5: Develop effective case management principles.

Family litigation frequently moves too slowly through the courts, at a pace controlled by the attorneys or the parties, with little judicial intervention. Multiple legal claims by the same family—even claims growing out of a single event such as a marital separation—are heard by different judges, in different courtrooms, and not necessarily in a timely manner. This lack of continuity and communication allows litigants to manipulate the system, to engage in piecemeal litigation and to obtain inconsistent court orders.

Something has to change. We are convinced that the best solution is to develop case management principles using the "case manager/case management team" approach. In this approach, the central figure is a case manager, assigned to work with one or more judges, who manages all cases involving members of the same family. The case manager is responsible for:

- Reviewing pleadings for completeness
- Referring disputes to appropriate ADR and other court or community resources
- Assisting the judge in enforcing discovery and other pretrial deadlines
- Ensuring that ADR occurs when appropriate
- Developing a case management team of court personnel and representatives of other agencies to assist with particular cases

The case management team should have the discretion to involve other governmental agencies, such as the Department of Social Services, and to refer family members to counseling or other community resources. Members of the team may include social

workers, psychologists, domestic violence specialists, ADR specialists, juvenile court counselors or others. They should be trained in mediation, family dynamics, child development, family systems, family-based services and the availability of community resources.

For this approach to work, the case manager must be perceived by the attorneys and the parties as a neutral employee of the courts, not as an advocate for either side. The manager must remain unbiased in opinion and in communication: although other members of the case management team might be called as witnesses in the case of trial, the case manager should not be competent as a witness.

RECOMMENDATION 6: Establish specific case management guidelines and timelines.

A swift and predictable schedule for litigation—with little room for attorney or litigant “foot dragging”—will keep parties focused on proceeding to resolution. A steady pace is also likely to facilitate settlement or produce prompt in-court resolutions for those cases in which settlement is not the likely outcome.

Attorneys and parties should be required to attend a scheduling conference with the judge as soon as possible after it becomes clear that ADR will not resolve the case. At the conference, the judge should set a schedule for completion of discovery, a time for any necessary pretrial conference, and a date for trial. The case manager should then monitor compliance.

Only the judge should be able to extend the deadlines or alter the schedule. No extensions should be open-ended; instead, new deadlines should be set and necessary adjustments made. To provide continuity, the judge who presides over the scheduling conference should become the presiding judge on all subsequent matters in that case, including any trial.

RECOMMENDATION 7: Delegate less complex matters to lawyer magistrates.

We expect the demands of family court to place significant pressures on the family court judges. Their

time should be reserved for matters of sufficient legal complexity to warrant use of a judge with special expertise in family or juvenile law. The many routine legal matters that will come to the court should be heard instead by lawyer magistrates. This arrangement will help prevent delay for all cases, especially those that will still be heard by a family court judge—contested cases and others raising urgent or complex issues.

Specifically, the chief circuit judge should have the discretion to delegate authority to lawyer magistrates in the following areas:

- Granting uncontested divorces
- Establishing child support under the Child Support Guidelines
- Issuing show cause orders in child support enforcement
- Ordering blood tests in paternity cases and taking paternity acknowledgments
- Ordering emancipation of minors

For reasons of court integrity and public perception, the lawyer magistrate’s decisions should be subject to appeal, *de novo*, before a family court judge.

RECOMMENDATION 8: Extend the family court’s dispositional authority until age 21.

The effectiveness of juvenile court for older teenagers is currently impeded by the provision that its jurisdiction ends when a child reaches age 18. In some cases, this restriction may foreclose an order that would be more commensurate with the crime and more likely to be effective for reform and rehabilitation. More important, the age restriction may also cause older juveniles to be bound over for trial in superior court when a juvenile disposition would be more appropriate.

We therefore recommend that the family court judge be able to impose dispositions and order treatment or other services that extend until the juvenile reaches age 21.

(2)

May 19, 1998

H 1321. FUTURE OF THE COURTS. TO IMPROVE THE STATE COURT SYSTEM BY IMPLEMENTING CERTAIN RECOMMENDATIONS OF THE COMMISSION FOR THE FUTURE OF JUSTICE AND THE COURTS IN NORTH CAROLINA AND TO MAKE OTHER CHANGES IN THE OPERATIONS OF THE COURTS. Adds new GS 7A-49.4 and 7A-49.5 to create a State Judicial Council charged with the following responsibilities: (1) study judicial system and report its findings to Chief Justice; (2) advise Chief Justice on priorities for funding and review budget prepared for submission to General Assembly; (3) study and recommend to General Assembly salaries of judges and recommend changes in expense allowances, benefits, and other compensation for judicial officials; (4) if a judgeship becomes vacant, review and recommend to the Chief Justice whether it is still needed for that district, should be transferred to another district, or should be abolished; (5) if requested by Governor, non-court official Council members may nominate candidates to Governor for appellate court seats; (6) recommend to Chief Justice performance standards for all courts and all judicial officials and procedures for periodic evaluation of court system and individual judicial officials and employees (if standards are implemented by Chief Justice, requires evaluation of each judge including assessments from other judges, litigants, jurors, and attorneys, and self-evaluation by the judge; summaries of evaluations must be made available to public); (7) monitor caseloads in appellate courts and, if appropriate, recommend establishment of separate divisions of the Court of Appeals for criminal and civil cases; (8) study and recommend guidelines for assignment and management of cases, including different kinds of resolution for cases; (9) monitor use of alternative dispute resolution; and (10) recommend to Chief Justice changes in boundaries of judicial districts.

Council will consist of 18 members—Chief Justice; Chief Judge of Court of Appeals; a district attorney, a public defender, a superior court judge, and a district court judge (each of these four court officials will be appointed by their respective associations); an attorney appointed by the Council of the State Bar; one attorney and one nonattorney appointed by the Chief Justice; two nonattorneys and one attorney appointed by the Governor; two nonattorneys and one attorney appointed by General Assembly upon recommendation of the Speaker; and two nonattorneys and one attorney appointed by the General Assembly upon recommendation of the President Pro Tem. Members will serve staggered four-year terms. Limits members to two consecutive terms.

Requires Administrative Office of the Courts to establish within three district court districts pilot programs for holding family court as recommended by the report of the Commission for the Future of Justice and the Courts in NC, and to report to the General Assembly by March 1, 1999 on the success of these programs.

Amends GS 7A-49.3 to provide that the district attorney must file with the clerk a calendar of the criminal cases to be tried at a session of court (now, cases that he or she intends to call) and to provide that cases may be removed or added to the calendar only by order of the court pursuant to guidelines developed by the Supreme Court, thereby removing the present discretion of the district attorney to add cases to the calendar. Provides that deviations in the order of trial of cases from the order listed in the calendar require approval of the judge (now, district attorney may announce order of trial at beginning of each session and judge must approve deviation only if defendant objects).

Provisions regarding State Judicial Council are effective Jan. 1, 1999; amendment to GS 7A-49.3 is effective Dec. 1, 1998.

Intro. by Daughtry.

Ref. to Judiciary I

GS 7A



Casper

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill ~~4391~~ 1321

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)
Page 1 of 1

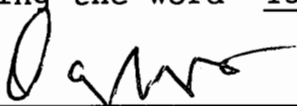
H1321-ARL-001

Date _____, 1998

Comm. Sub. ☐
Amends Title ☐

Representative

1 moves to amend the bill on page 3, line 15,
2 by deleting the word "13" and substituting the word "12".
3

SIGNED 
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

2-1
7-2-98

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT

House Bill 1321

AMENDMENT NO. _____

Date _____ 1998

Representative MICHAUX

moves to amend the bill on page 5, line 3 through 32 by rewriting those lines to read:

"Section 3. G.S. 7A-49.3 reads as rewritten:

"7A-49.3. Calendar for criminal trial sessions.

~~(a) At least one week before the beginning of any session of the superior court for the trial of criminal cases, the district attorney shall file with the clerk of superior court a calendar of the cases he intends to call for trial at that session. The calendar shall fix a day for the trial of each case listed thereon. The district attorney may place on the calendar for the first day of the session all cases which will require consideration by the grand jury without obligation to call such cases for trial on that day. No case on the calendar may be called for trial before the day fixed by the calendar except by consent or by order of the court. Any case docketed after the calendar has been filed with the clerk may be placed on the calendar at the discretion of the district attorney.~~

~~(a1) If he has not done so before the beginning of each session of superior court at which criminal cases are to be heard, the District Attorney, after calling the calendar and disposing of nonjury matters, including guilty pleas, if any such nonjury matters are to be disposed of prior to the calling of cases for trial, shall announce to the court the order in which he intends to call for trial the cases remaining on the calendar. Deviations from the announced order require approval by the presiding judge, if the defendant whose case is called for trial objects; but the defendant may not object if all the cases scheduled to be heard before his case have been disposed of or delayed with the approval of the presiding judge or by consent.~~

(a) For purposes of this section, 'to calendar or calendaring' means to select the criminal cases to be tried or otherwise brought before the court for a particular session of court and to publish those cases in a particular order on a trial calendar for that session.

The authority to calendar criminal cases in superior court is vested in the senior resident superior court judge as defined in G.S. 7A-41.1. The senior resident superior court judge is responsible for the calendaring of all superior court criminal cases, motions, or other proceedings for trial or hearing.

The responsibility for the calendaring of criminal cases in superior court may be delegated by the senior resident superior court judge to a trial court administrator or other person designated by the judge as deemed appropriate by the judge. However, the responsibility for the calendaring of criminal cases in superior court may not be delegated

to the district attorney, to an assistant district attorney, or to any member of the district attorney's staff. Calendars shall be published in sufficient time for all parties to a case to have adequate notice.

(b) All witnesses shall be subpoenaed to appear on the date listed for the trial of the case in which they are witnesses. Witnesses shall not be entitled to prove their attendance for any day or days prior to the day on which the case in which they are witnesses is set for trial, unless otherwise ordered by the presiding judge

~~(c) Nothing in this section shall be construed to affect the authority of the court in the call of cases for trial."~~

SIGNED _____

Amendment Sponsor

ADOPTED _____ FAILED _____ TABLED _____



Control of the Criminal Court Calendar in North Carolina: Why it's time for a change

- ⇒ North Carolina is the **ONLY** state in the country where District Attorneys control the calendar in criminal court.
- ⇒ When only one side has control, it creates an unfair advantage and an uneven playing field for that side. Our court system needs to give **everyone** a fair chance at trial. As the attached editorial from the Durham Herald-Sun states: "The scales of justice in criminal cases must not be allowed to tip toward one side or another."
- ⇒ North Carolina courts have held at various times that North Carolina's District Attorneys have abused their authority by manipulating the calendar.
- ⇒ The NC State Bar held it is prejudicial to the administration of justice for a prosecutor to threaten to use his or her discretion to schedule a criminal trial to evince a plea agreement from a criminal defendant.
- ⇒ Scheduling and re-scheduling cases to suit the prosecution is not cost-efficient, which affects all North Carolina taxpayers.
- ⇒ The practice greatly inconveniences North Carolina citizens who are called to court week after week after week in the hope their case will finally be heard.
- ⇒ The Future of the Courts subcommittee recommended administrating the criminal calendar in an unbiased manner.

VOTE TO CHANGE THE CRIMINAL CALENDAR MANAGEMENT SYSTEM IN NORTH CAROLINA!

**Make our courts fair, efficient, and cost-effective for the benefit of
ALL North Carolina citizens.**

Call Charles Cromer or Dick Taylor at (919) 832-1413 for more information.

EDITORIALS

COURT CALENDARS

An issue of fairness

A Durham judge has opened a new chapter in the long-running legal debate over prosecutors' power to schedule criminal trials. Last week Judge A. Leon Stanback, who is presiding for six months in Robeson County, granted a new trial for a convicted rapist on grounds that the Robeson County prosecutor engaged in unconstitutional manipulation of the original trial date. Stanback found that the district attorney had purposely scheduled the trial to gain unfair advantage by keeping two court-appointed defense attorneys from working together on the case.

Two Durham attorneys — Mark Montgomery and Paul Green — brought the motion in this case. They and other defense attorneys say Stanback's ruling is the first of its kind for the Tar Heel state.

Perhaps this decision will nudge the legislature into doing what it should have done years ago: Allow judges or an independent court administrator to schedule criminal cases, thereby erasing an unfair tilt toward prosecutors.

The dispute over court calendars has a long history in Durham. In 1992, N.C. Prisoner Legal Services sued then-District Attorney Ron Stephens on grounds that he manipulated the calendar to gain advantage in prosecuting criminal cases. In 1994 the state Supreme Court reviewed the lawsuit and ruled that it is unconstitutional for prosecutors to use court calendars "to gain an unfair tactical advantage" — such as shopping for a judge whom a district attorney finds most favorable. The high court at that time also gave trial judges authority to review prosecutors' scheduling practices — an authority Stanback exercised last week.

The Durham lawsuit was settled in 1995 when District Attorney Jim Hardin Jr. and Superior Court Judge Orlando F. Hudson announced a case-management plan that set forth guidelines for scheduling criminal cases. Durham's case-management system was a good compromise that sought not only to settle a lawsuit but to even the playing field for prosecutors and the defense.

Now the legislature needs to level that field for everyone and help end future potential litigation related to court calendars. In 1996, a legislative commission — the state Commission for the Future of Justice and the Courts — recommended that scheduling power be taken from district attorneys and given to judges or neutral court administrators. It's time for legislators to act on that sound recommendation, because the scales of justice in criminal cases must not be allowed to tip toward one side or another.

STATE OF NORTH CAROLINA
COUNTY OF ROBESON

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
1-5-1998 CRIMINAL SESSION

File Numbers: 91 CRS 3019
91 CRS 3020
91 CRS 3021

STATE OF NORTH CAROLINA,

versus

ORDER

TONY MCEACHERN,

Defendant.

THIS CAUSE, coming on to be heard and being heard, before the undersigned Superior Court Judge presiding at the January 5, 1998, Criminal Session of Superior Court in and for the County of Robeson, pursuant to an order for an evidentiary hearing upon the Defendant's Motion for Appropriate Relief, said order was signed by the Honorable Dexter Brooks on October 4, 1997.

Present in open court is the Defendant, Tony McEachern, along with his attorneys, Paul Green and Mark Montgomery. The State is being represented by District Attorney Luther Johnson Britt, III.

After hearing the testimony of the witnesses and reviewing the evidence presented by the Defendant, the Court, from a preponderance of the evidence, makes the following FINDINGS OF FACT:

1. That the Defendant, Tony McEachern, was convicted of first degree rape and incest in Robeson County Superior Court on March 8, 1993. Superior Court Judge Paul Wright was the presiding judge at the trial.
2. That the Defendant received a sentence of life plus fifteen years upon his conviction.
3. That the Defendant was represented at said trial by Assistant Public Defender Sue A. Berry.

Jan 9 '98 11:59 P.01

Jan 9 '98 11:40 P.02

4. That, as a matter of policy, the Robeson County Public Defender, Angus Thompson, assigns two attorneys to represent defendants on serious cases such as this one.

5. That on February 20, 1992, Assistant Public Defenders, T. Diane Phillips and Sue A. Berry, filed notice of their assignment to jointly represent Tony McEachern in cases denoted by File Numbers 91 CRS 3019 through 91 CRS 3021, which included the charges that resulted in the aforementioned convictions and are the subject of the Defendant's Motion for Appropriate Relief.

6. That Assistant Public Defender, T. Diane Phillips, was also assigned to represent another defendant, Van Bethea, in other charges before the Superior Court, those charges being second degree rape and second degree sex offense.

7. That both cases were calendared by the State for the week of March 1, 1993, and were set as the first cases to be heard, the McEachern case in Judge Paul Wright's courtroom and the Bethea case in Judge Coy Brewer's courtroom.

8. That upon the call of the McEachern case for trial, extensive discussion was had in Judge Paul Wright's chambers concerning the problems presented in the representation of Mr. McEachern, by the State's calling the Bethea's case before Judge Brewer at the same time as the McEachern case was being called before Judge Wright.

9. That present at said discussion was the Public Defender, Angus Thompson, Assistant District Attorney John Carter, and Assistant Public Defenders, T. Diane Phillips and Sue A. Berry, along with Judge Wright.

10. That the transcript of said discussion makes it apparent that the State was aware that calling said cases at that time would result in T. Diane Phillips not being available to assist Sue A. Berry in the McEachern trial.

11. That the Assistant Public Defenders, T. Diane Phillips and Sue A. Berry, had prepared to try Mr. McEachern's cases as a team and the Defendant McEachern had expected to be represented by both attorneys.

12. That the District Attorney's office used its scheduling power to gain an unfair advantage at the trial and also to make it impossible for the two Public Defenders to try Mr. McEachern's cases together.

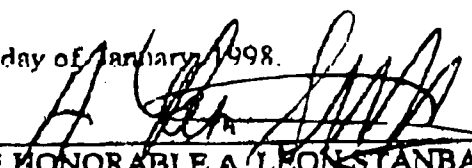
13. That the Court further finds that the State has presented no evidence at this hearing.

BASED UPON THE FOREGOING FINDINGS OF FACT, THE COURT MAKES THE FOLLOWING CONCLUSION OF LAW: Such use of its trial scheduling authority by the District Attorney resulted in the violation of the Defendant's

rights as guaranteed by the North Carolina Constitution, Article I, Section 18, 19 and 23, and the Fifth, Sixth and Fourteenth Amendments to the United States Constitution.

IT IS, THEREFORE, ORDERED that the Defendant, Tony McEachern, be given a new trial.

Entered in open court, this the 6th day of January 1998.



THE HONORABLE A. LEON STANBACK
Presiding Superior Court Judge

indications implying that
in an area of practice
certified as a specialist by
State Bar or a certifying
by the State Bar.
he is not a certified spe-
cialist of concentration or
in the directory.

are not distinct from the lawyer's provision of
legal services to clients. See RPC 238

Re McEachern

Proposed RPC 243

October 16, 1996

**Restraint in Exercising Prosecutor's
Discretion to Calendar Cases**

*Proposed opinion rules that it is prejudicial to
the administration of justice for a prosecutor to
threaten to use his discretion to schedule a criminal
trial to coerce a plea agreement from a criminal
defendant.*

Inquiry #1:

Defense Attorney represents Client on a
pending criminal charge. Prosecutor offered
Client a plea bargain. Defense Attorney in-
forms Prosecutor that Client will not accept
the offered plea bargain. Prosecutor tells De-
fense Attorney that if Client does not accept
the offered plea bargain, "Client's going to be
sitting in the courtroom all week and he's
going to be on the calendar every Monday
morning for weeks to come." Is it unethical
for Prosecutor to imply that he will use the
statutory calendaring power of the dis-
cretionary power of the district at-
torney's office to delay Client's trial if Client
will not accept the plea bargain?

Opinion #1:

Yes, threatening to use the discretion to
schedule a criminal trial to coerce a plea agree-
ment from a criminal defendant is prejudicial
to the administration of justice in violation of
Rule 1.7(d) of the Rules of Professional Con-
duct. A prosecutor should use restraint in the
discretionary exercise of the authority to cal-
endar criminal cases. See Comment (1) to
Rule 7.3, "Special Responsibilities of a Prose-
cutor," ("... the prosecutor represents the
sovereign and therefore should use restraint in
the discretionary exercise of government pow-
ers...").

Inquiry #2:

If a lawyer overhears the conversation be-
tween Prosecutor and Defense Attorney, does
the lawyer have a duty to report Prosecutor's
conduct to the State Bar or other appropriate
authority?

Opinion #2:

Rule 1.3(a) requires a lawyer who has
knowledge that another lawyer has committed
a violation of the Rules of Professional Con-
duct "that raises a substantial question as to

that lawyer's honesty, trustworthiness, or fi-
delity as a lawyer in other respects" to report the
conduct to the North Carolina State Bar or
other appropriate authority. Comment (3) to
Rule 1.3 states that:

[T]his rule limits the reporting obliga-
tion to those offenses that a self-regulating
profession must vigorously endeavor to
prevent. A measure of judgment is, there-
fore, required in complying with the pro-
visions of this rule. The term "substantial"
refers to the seriousness of the alleged of-
fense and not the quantum of evidence of
which the lawyer is aware.

Prosecutor's conduct may be an isolated
incident resulting from a momentary lapse in
judgment. If so, such conduct does not raise
a "substantial" question as to Prosecutor's fi-
delity as a lawyer. The lawyer who overhears
the conversation may want to counsel Prose-
cutor with regard to his conduct, but the
lawyer is not required to report the conduct to
the State Bar. However, if the lawyer knows
that Prosecutor routinely abuses the discre-
tionary power to schedule criminal cases or,
after being advised that this conduct is a vi-
olation of the Rules, Prosecutor continues the
conduct, the lawyer should report the matter
to the State Bar or other appropriate authority.

**Proposed RPC 2
October 16, 1996
Advance Disclaim
Relationship**

*Proposed opinion
states that a prospective client
no client-lawyer rela-
tionship of a free consu-
lation of a client lawyer
the opposing party.
inquiry.*

Contemplating
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with Attorney X;
Firm. Prior to the
pleted an intake ab-
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ledgment is for a free
legal advice will
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North Carolina
will be quoted i-
understand that
legale will exist u-
firm to represent
consultation will
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attorney with X
Mr. A's signature
Attorney X pro-
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During the consult-

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services" are included in

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from the secretary of
A then sends a letter of
company of the new
community. The letter
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attorney A's law firm.
the preparation of legal
contracts, pursuing
ing commercial loans,
is an advertisement for
appear on the envelope
the body of the letter.
ule 2.4(c)?

(c) which requires dis-
advertisement for legal
irect-mail letters.

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services to clients of his
ness consulting services
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g, and financial plans.
de business consulting
vice of his law firm?

wyer is subject to the
conduct with respect to
related service, such as
the law related service is
in circumstances that



*State of North Carolina
General Court of Justice
Prosecutorial District*

DISTRICT ATTORNEY

TELEPHONE:
FAX:

1998

Attorney :

RE:

Dear

PLEASE TAKE NOTICE:

You have been appointed as the lawyer for the above-noted client. He was arrested on '98. The repeat offender unit has notified me that he qualifies as an habitual felon according to state law. Enclosed is a copy of his NCIC record and a copy of the police report in this matter.

HE HAS UNTIL THURSDAY, 1998 TO AGREE TO PLEAD GUILTY TO THE ABOVE CHARGE AS AN HABITUAL FELON AND RECEIVE THE LOWEST POSSIBLE SENTENCE FOR THIS CLASS C FELONY AT HIS RECORD LEVEL. AFTER THAT DATE HE WILL BE PROSECUTED AT THE HIGHEST LEVEL POSSIBLE. THERE WILL BE NO FURTHER PLEA OFFERS AT ANY TIME AND HIS REJECTION OF THE PLEA WILL RESULT IN HIS BEING IMMEDIATELY INDICTED AND PLACED WEEKLY ON THE TRIAL DOCKET UNTIL HIS CASE IS REACHED.

MINUTES

HOUSE JUDICIARY I COMMITTEE

The House Committee on JUDICIARY I met in Room 1228/1327 of the Legislative Building on July 7, 1998 at 10:00 A.M. Representative Daughtry, Co-Chairman, presided at the meeting. Other members present were: Representative Hardy, Co-Chairman, and Representative(s) Alexander, Arnold, Braswell, Bryant, Capps, Clary, Crawford, Ellis, Esposito, Hall, Hardaway, Hurley, Jeffus, Justus, Michaux, Miller, Sherrill and Thompson. Staff Counsels Steven Ross and Karen Cochrane-Brown were also present.

HB 1321 AN ACT TO IMPROVE THE STATE COURT SYSTEM BY IMPLEMENTING CERTAIN RECOMMENDATIONS OF THE COMMISSION FOR THE FUTURE OF JUSTICE AND THE COURTS IN NORTH CAROLINA AND TO MAKE OTHER CHANGES IN THE OPERATIONS OF THE COURTS was the only bill considered.

Representative Daughtry called the meeting to order. He introduced the pages for the day – Megan Deane of Caldwell County and Joseph Delk from Beaufort County.

Representative Daughtry continued discussion on the bill. He said that at the last meeting Representative Michaux sent forth an amendment with respect to calendaring. He said there was a recommendation by the Future of the Courts Commission that as a compromise their amendment would require Section 7A-49.3 (a) on p. 5 of the bill. Representative Daughtry read this section.

He said that Representative Michaux's amendment would take calendaring from the district attorney and move it to the chief resident superior court judge.

Representative Michaux said that his amendment also allows the responsibility to be delegated by the senior resident superior court judge to a trial court administrator or other person designated by the judge. He said that authority could be delegated to the district attorney. Representative Michaux handed out an article that appeared in "Popular Government", Spring, 1994. (See Attachment F.)

Representative Michaux reiterated his point from last week that we are the only state in the union where the prosecutor has control of the criminal court calendar. He said this would be similar to how they do it in Federal Court – come in, set date for discovery, set date for arraignment, set date for trial, and there is no wavering. He said that at present an adversarial party calendars the cases.

Representative Daughtry asked what he thought about the compromise in the bill which is set forth in Section 7A-49.3(a).

Representative Michaux said the problem is that the control is with the district attorney. Representative Daughtry said that once it gets to the clerk it is not. Representative Michaux said that it still has to get to the clerk, and the district attorney can put those cases on the calendar as he sees fit. He can still "judge shop".

Representative Ellis said that sometimes the judge is prejudiced. Prosecutors are subject to elections and the people in their districts decide if they have done a good job. There is the same process available for a judge. He said all we are doing is transferring from one group of people who are elected to another. He doesn't see where this amendment will fix any individual problem. Representative Ellis said he thought the compromise in the bill does as much as we can do to fix the problem.

Representative Ellis moved that the amendment be laid upon the table. A voice vote resulted in a call of division. In a show of hands, the vote was 7-7 and the motion failed.

Representative Michaux moved the adoption of the amendment. A voice vote resulted in a call of division. In a show of hands, the vote was 7-7 and the motion failed.

Representative Miller said this points out there is a very serious problem with the present system and they have yet to come to a resolution.

Representative Daughtry agreed. He said he hopes that the compromise, which the Future of the Court spent two years deliberating, will bring some order and take some abuses away from the district attorneys.

Representative Miller said that the broad discretion in these units of power cause the problem and division between them. He said when we say the only way the case can be removed is by order of the court pursuant to guidelines developed by the Supreme Court, he wondered if those guidelines have been proposed.

Michael Crowell, Director of the Courts Future Commission, said this was something put together by the legislative study committee and it is different from what his commission proposes. He said he did not know anything about the guidelines.

Representative Michaux asked what the Future Commission recommended with respect to calendaring.

In detail, Mr. Crowell explained that the Future Commission recommended a revamping of the entire trial court structure -- merging of district and superior court, and creation of the office of a chief circuit judge to include the combination of a senior resident judge and a chief district judge who would have general responsibility for the

management of the caseload in that area of the court system. They would be assisted by a professional trial court administrator. He said calendaring went to the chief circuit judge who would set the calendar for all cases in both superior and district court, both criminal and civil. He said it also provided for reduced rotation of trial judges. More complicated cases would be assigned to judges from start to finish.

Representative Miller said that there is still concern that many have if calendaring is left to a superior court judge. He said we have rotating judges, and even the senior judge is in and out of the district and county. He wondered what would be the mechanism for calendaring. He asked what was the logic of the Future Commission. He wondered if they were setting up another trial court administrator, as in civil cases, under the direction of the resident superior court judge.

Mr. Crowell said the logic of the Future Commission was to significantly reduce the rotation of superior court judges, including the senior resident superior court judges. The Commission thought it was important that judges have control over the calendar, but the circumstances needed to be where they could effectively exercise that control, i.e., the judge could be home a substantial portion of the time, there was a trial court administrator to assist the judge, and other trial judges were home so they could be given some responsibility.

Representative Miller raised the issue of the rotation system. He said there is merit in the rotation system and he hoped that we would not skirt that system.

Representative Justus introduced an amendment. (See Attachment G.) He moved to amend the bill on page 5, line 26-27. He said if we are going to give the judge more responsibility, then he needs some help. He suggested that we should provide trial court administrators in every district.

Representative Hunter said he understands this would put a trial court administrator for the criminal calendar proceedings with the senior resident superior court judge in each district. He thinks that it is needed. He thinks that if we give the criminal court judges the authority to calendar, they will need professional help.

Representative Daughtry said that the bill says there will be one administrator per district.

Representative Hall asked what this bill is going to cost.

Representative Daughtry said he did not know and that the bill would have to go to the Appropriations Committee if it passes this committee.

Representative Miller asked if we have a trial court administrator in criminal cases and the district attorney sets the legal calendar, are we not creating a situation of direct conflict?

Representative Justus said that it was working in some districts already where there are trial court administrators. Representative Daughtry wondered if we presently have trial court administrators in criminal courts.

Mr. Tom Lock of the conference of district attorneys said there are trial court administrators in the handful of districts that have moved to a case management system in the criminal courts.

Mr. Rex Gore, president of the conference of district attorneys, said that for almost three years in his 13th judicial district we have been using a method of calendaring where we have been provided a person who deals with the criminal calendar. He said that this person works for him and the senior resident superior court judge. He said that she is officially under the district attorney's office but they use a different calendaring method than has been discussed here.

Representative Braswell asked the sponsor of the amendment if he had any objection to the trial court administrator working directly under the resident superior court judge. He said there seemed to be an ambiguity as to who the administrator would report to. Representative Justus said he had no objection.

Representative Daughtry asked Representative Justus to explain more about the benefits of this amendment.

Representative Justus said it will take some of workload from the judge. Eventually he said the trial court administrator will work for the judge and the district attorney and make it much more efficient.

Representative Hall asked if this is the compromise position. He asked if there would be an additional cost. He thinks this is another effort to undo what has already been approved. Representative Hall asked if this amendment would take it away from the district attorney altogether. Several representatives answered him in the negative.

Mr. Lock said that the workload of the senior resident superior court judge might be significantly increased and they might be very appreciative of the services of that person.

Representative Daughtry asked what the impact would be on the superior court judges who already have an administrator in the civil area.

Mr. Lock said that there would be no impact on those who already have one. It would simply provide one to those judges who do not have such an administrator.

Representative Miller said if we are going to bring out a bill that has the district attorney setting the calendar, subject to the order of the court for any deviation, then the DA sets the calendar and, in his opinion, it is surplus to put another administrator in. He thinks they should go ahead and support this bill as it is, and see how it works in two years. He said he has been in the legislature for fourteen terms and this issue has been raised fourteen times.

Representative Justus called the question.

Representative Daughtry then called for a vote on the perfecting amendment, put forth by Representative Braswell. (See Attachment H.)

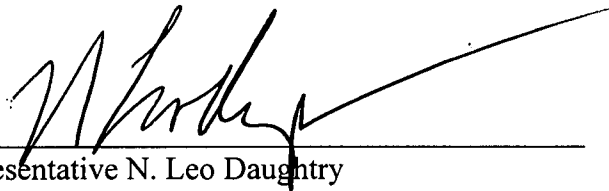
Staff counsel Steve Rose explained Braswell's perfecting amendment. He said it moves to amend the Justus amendment. He said it adds the following sentence to the end. "The senior resident superior court judge shall supervise the trial court administrator."

The motion to adopt the perfecting amendment passed by voice vote.

The motion to adopt the Justus amendment by voice vote was ruled to fail by the chair. However, a call of division resulted in a show of hands. By a vote of 9-6 the motion is adopted.

Representative Ellis moved that HB 1321 be rolled into a committee substitute and the substitute receive a favorable report, unfavorable to the original bill and referred to the committee on appropriations. The motion passed.

Representative Daughtry adjourned the meeting at 10.:50 A.M.



Representative N. Leo Daughtry
Co-chairman



Betty Wickham
Committee Clerk

ATTACHMENTS

Exhibit A - NOTICE OF THE MEETING

Exhibit B - AGENDA

Exhibit C - VISITOR REGISTRATION

Exhibit D - COMMITTEE REPORT for HB 1321

Exhibit E - HB 1321

Exhibit F - PROPOSED AMENDMENT for HB 1321 (Michaux)

Exhibit G - PROPOSED AMENDMENT for HB 1321 (Justus)

Exhibit H - PROPOSED AMENDMENT for HB 1321 (Braswell)

Exhibit I - PROPOSED COMMITTEE SUBSTITUTE for HB 1321

Exhibit J - HANDOUT FROM THE INSTITUTE OF GOVERNMENT

**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE**

You are hereby notified that the Committee on **JUDICIARY I** will meet as follows:

DAY & DATE: **Tuesday, July 7, 1998**

TIME: **10:00 AM**

LOCATION: **Room 1228/1327 LB**

The following bills will be considered:

HB 1314 ~~Cemetery Consumer Protection (PCS)~~ ~~Rep. Allred-Sponsor~~ *yn*

✓ **HB 1321** **Future of the Courts** **Rep. Daughtry-Sponsor**

HB 1357 ~~Best Value Info. Tech. Procurements (PCS)~~ ~~Rep. Reynolds-Sponsor~~ *yn*

HB 1389 ~~Funding for Legal Services~~ ~~Rep. Allred-Sponsor~~ *ck?*

Respectfully,

Representative N. Leo Daughtry, Co-Chairman
Representative Edwin Hardy, Co-Chairman

I hereby certify this notice was filed by the committee clerk at the following offices at
3:00 PM, July 2, 1998.

____ Principal Clerk
____ Reading Clerk - House Chamber

Bernice Bullard, Committee Clerk
Betty Wickham, Committee Clerk

AGENDA

HOUSE COMMITTEE ON JUDICIARY I

July 7 1998
Room 1228/1327 LB
10:00 AM

Representative N. Leo Daughtry, Co-Chairman
Representative Edwin (Sandy) Hardy, Co-Chairman

BILLS TO BE CONSIDERED:)

HB 1321 FUTURE OF THE COURTS Sponsor - Representative Daughtry
(Continued from meeting on July 2nd. The first item of business will be to take action on Representative Capps' Tech. Amendment that was adopted for discussion. The meeting adjourned with Representative Michaux's Amendment pending)

CS for HB 1314 CEMETERY CONSUMER PROTECTION Sponsor-Representative Allred

HB 1389 FUNDING FOR LEGAL SERVICES Sponsor - Representative Allred

CS for HB 1357 BEST VALUE INFO TECH. PROCUREMENTS Sponsor-Representative Reynolds

*(Proposed House Committee Substitute for HB 1317 **AMEND CONTESTED CASE PROCEDURES**/Sponsor-Representative C. Wilson, was placed in a subcommittee at June 4th Meeting for member study [Rep. Arnold, Chr.; Blue, Braswell, Clary, Morgan & Sherrill])*

ADJOURNMENT

VISITOR REGISTRATION SHEET

Judiciary I, July 7, 1998

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

	NAME	FIRM OR AGENCY
1.	J. P. Hunt	DA 2974
2.	Jan Lach	Conf of DA's
3.	Peg Jones	Conference of D.A.s
4.	Rex Gore	Conference of DAs
5.	Michael Crowell	COURTS FUTURES COMM'N
6.	~~John H. Hester~~	~~off. of 9th Cir.~~
7.	Dick Taylor	NCAAT
8.	David Sumner	ZDA PA
9.	Kara McCraw	NCGA
10.	Martha Glan	DOA
11.	Bob R. H. Hester	DOA Public Hearing
22.	Tony Adams	Legal Services of NC
23.	Steve Woodson	NC Farm Bureau Federation
24.	Alex Hirsch	Atty Gen's. Office
25.	William W. Hester	NC Bar
26.	Lucius Pullen	ATTORNEY
27.	Jack Cozart	Public Pse Adams & Bernstein
28.	Melissa Lovell	DOJ
29.	Janne Bonds	AOC
30.	Kelli Kukura	D. Hunt
31.	Nancy Bradley	NCCBS

VISITOR REGISTRATION SHEET

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY

1. <u>Don Anderson</u>	<u>AT&T</u>
2. _____	_____
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**1998 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative(s) **Daughtry and Hardy** for the Committee on **JUDICIARY I.**

☐ Committee Substitute for

H.B. 1321 A BILL TO BE ENTITLED AN ACT TO IMPROVE THE STATE COURT SYSTEM BY IMPLEMENTING CERTAIN RECOMMENDATIONS OF THE COMMISSION FOR THE FUTURE OF JUSTICE AND THE COURTS IN NORTH CAROLINA AND TO MAKE OTHER CHANGES IN THE OPERATIONS OF THE COURTS.

☐ 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, unfavorable as to original 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 1321*
Proposed Committee Substitute H1321-PCS3155-RL

Short Title: Future of the Courts.

(Public)

Sponsors:

Referred to:

May 19, 1998

1 A BILL TO BE ENTITLED
2 AN ACT TO IMPROVE THE STATE COURT SYSTEM BY IMPLEMENTING
3 CERTAIN RECOMMENDATIONS OF THE COMMISSION FOR THE
4 FUTURE OF JUSTICE AND THE COURTS IN NORTH CAROLINA AND TO
5 MAKE OTHER CHANGES IN THE OPERATIONS OF THE COURTS.

6 The General Assembly of North Carolina enacts:

7 Section 1. Chapter 7A of the General Statutes is amended by adding a
8 new Article to read:

9 "ARTICLE 7A.
10 "State Judicial Council.

11 "§ 7A-49.4. Composition of State Judicial Council.

12 (a) The State Judicial Council shall consist of 18 members as follows:

- 13 (1) The Chief Justice, who chairs the Council;
14 (2) The Chief Judge of the Court of Appeals;
15 (3) A district attorney chosen by the Conference of District Attorneys;
16 (4) A public defender chosen by the public defenders;
17 (5) A superior court judge chosen by the Conference of Superior
18 Court Judges;
19 (6) A district court judge chosen by the Conference of District Court
20 Judges;
21 (7) An attorney appointed by the Council of the State Bar;
22 (8) One attorney and one nonattorney appointed by the Chief Justice;
23 (9) Two nonattorneys and one attorney appointed by the Governor;

1 (10) Two nonattorneys and one attorney appointed by the General
2 Assembly upon the recommendation of the Speaker of the House
3 of Representatives; and

4 (11) Two nonattorneys and one attorney appointed by the General
5 Assembly upon the recommendation of the President Pro Tempore
6 of the Senate.

7 (b) The Chief Justice and the Chief Judge shall be members of the State Judicial
8 Council during their terms in those judicial offices. The terms of the other members
9 selected initially for the State Judicial Council shall be as follows:

10 (1) One year. -- The district court judge, the nonattorney appointed by
11 the Chief Justice, one nonattorney appointed upon the
12 recommendation of the Speaker of the House of Representatives,
13 and the attorney appointed upon the recommendation of the
14 President Pro Tempore of the Senate.

15 (2) Two years. -- The district attorney, one nonattorney appointed by
16 the Governor, the attorney appointed upon the recommendation of
17 the Speaker of the House of Representatives, and one nonattorney
18 appointed upon the recommendation of the President Pro Tempore
19 of the Senate.

20 (3) Three years. -- The public defender, the attorney appointed by the
21 Governor, one nonattorney appointed by the President Pro
22 Tempore of the Senate, and one nonattorney appointed upon the
23 recommendation of the Speaker of the House of Representatives.

24 (4) Four years. -- The superior court judge, the attorney appointed by
25 the State Bar Council, the attorney appointed by the Chief Justice,
26 and one nonattorney appointed by the Governor.

27 After these initial terms, the members of the State Judicial Council shall serve
28 terms of four years. All terms of members shall begin on January 1 and end on
29 December 31. No member may serve more than two consecutive full terms. Any
30 vacancy on the Council shall be filled by a person appointed by the official or entity
31 who appointed the person vacating the position.

32 (c) If an official or entity is authorized to appoint more than one member of the
33 State Judicial Council, the members appointed by that official or entity must reside in
34 different judicial districts.

35 (d) No incumbent member of the General Assembly or any incumbent judicial
36 official, other than the ones specifically identified by office in subsection (a) of this
37 section, may serve on the State Judicial Council.

38 (e) The appointing authorities shall confer with each other and attempt to arrange
39 their appointments so that the members of the State Judicial Council fairly represent
40 each area of the State, both genders, and each major racial group.

41 "§ 7A-49.5. Duties of the State Judicial Council.

42 (a) The State Judicial Council shall:

43 (1) Study the judicial system and report periodically to the Chief
44 Justice on its findings;

- 1 (2) Advise the Chief Justice on priorities for funding;
- 2 (3) Review and advise the Chief Justice on the budget prepared by the
- 3 Director of the Administrative Office of the Courts for submission
- 4 to the General Assembly;
- 5 (4) Study and recommend to the General Assembly the salaries of
- 6 justices and judges;
- 7 (5) Recommend to the General Assembly changes in the expense
- 8 allowances, benefits, and other compensation for judicial officials;
- 9 (6) If a judgeship becomes vacant, review whether the judgeship is still
- 10 needed for that district and, if it is not, recommend to the Chief
- 11 Justice whether the judgeship should be transferred to another
- 12 district or should be abolished;
- 13 (7) Advise or assist the Chief Justice, as requested, on any other
- 14 matter concerning the operation of the courts.
- 15 (b) If requested to do so by the Governor, the 12 members of the State Judicial
- 16 Council who are not judges, district attorneys, or public defenders shall constitute an
- 17 appellate nominating panel to nominate candidates to the Governor for appointment
- 18 to vacancies on the Supreme Court and Court of Appeals.
- 19 (c) The State Judicial Council, with the assistance of the Director of the
- 20 Administrative Office of the Courts, shall recommend to the Chief Justice
- 21 performance standards for all courts and all judicial officials and shall recommend
- 22 procedures for periodic evaluation of the court system and individual judicial officials
- 23 and employees. If these standards are implemented by the Chief Justice, the
- 24 Director of the Administrative Office of the Courts shall inform each judicial official
- 25 of the standards being used to evaluate that official's performance. If implemented,
- 26 the evaluation of each judge shall include assessments from other judges, litigants,
- 27 jurors, and attorneys, as well as a self-evaluation by the judge. Summaries of the
- 28 evaluations of justices and judges shall be made available to the public, in a manner
- 29 to be determined by the Council.
- 30 (d) The State Judicial Council shall monitor caseloads in the appellate courts to
- 31 determine whether cases are being handled expeditiously, whether those courts have
- 32 adequate resources, and whether the courts are able to maintain a proper balance
- 33 between criminal and civil matters. If needed to assure such a balance, the Council
- 34 may recommend the establishment of separate divisions of the Court of Appeals for
- 35 criminal and civil cases and establish procedures for the regular rotation of individual
- 36 judges between those divisions.
- 37 (e) The State Judicial Council shall study and recommend guidelines for the
- 38 assignment and management of cases, including the identification of different kinds of
- 39 cases for different kinds of resolution. If the Chief Justice decides to implement these
- 40 guidelines, they may provide that, except for good cause, each civil case subject to
- 41 assignment to a trial judge should be directed first to an appropriate form of
- 42 alternative dispute resolution. The guidelines may also provide for posttrial
- 43 alternative dispute resolution before or as part of an appeal. The guidelines should
- 44 not require absolute uniformity from district to district and should allow case

1 management personnel within each circuit the flexibility to direct cases to the most
2 appropriate means of resolution in that district.

3 (f) The State Judicial Council shall monitor the use of alternative dispute
4 resolution throughout the court system and, with the assistance of the Director of the
5 Administrative Office of the Courts and the Dispute Resolution Commission,
6 evaluate the effectiveness of those programs.

7 (g) The State Judicial Council may recommend to the Chief Justice changes in the
8 boundaries of the judicial districts.

9 (h) The State Judicial Council shall perform other functions as needed to monitor
10 the administration of justice and assess the effectiveness of the Judicial Branch in
11 serving the public and to advise the Chief Justice and the General Assembly on
12 changes needed to assist the General Court of Justice in better fulfilling its mission.

13 "§ 7A-49.6. Compensation of the State Judicial Council.

14 Members of the State Judicial Council who are not judicial officials or salaried
15 public officials shall be reimbursed for their travel, meal and lodging expenses while
16 on Council business at the same rate as provided in G.S. 120-3.1(a)(3) for members of
17 the General Assembly, and shall also be compensated at the rate of two hundred
18 dollars (\$200.00) per day for each day on official Council business."

19 Section 2. (a) The Administrative Office of the Courts shall establish
20 pilot programs for the holding of family court within no more than three district
21 court districts, no more than two of which shall contain an urban county. Each pilot
22 program shall be conducted following the guidelines for the establishment of family
23 courts contained in the report of the Commission for the Future of Justice and the
24 Courts in North Carolina and shall be assigned to hear all matters involving
25 intrafamily rights, relationships, and obligations, and all juvenile justice matters,
26 including:

- 27 (1) Child abuse, neglect, and dependency;
- 28 (2) Delinquent and undisciplined juvenile matters;
- 29 (3) Emancipation of minors and termination of parental rights;
- 30 (4) Divorce;
- 31 (5) Annulment;
- 32 (6) Equitable distribution;
- 33 (7) Alimony and postseparation support;
- 34 (8) Child custody;
- 35 (9) Child support;
- 36 (10) Paternity;
- 37 (11) Adoption;
- 38 (12) Domestic violence civil restraining orders;
- 39 (13) Abortion consent waivers; and
- 40 (14) Adult protective services.

41 (b) The Administrative Office of the Courts shall report to the General
42 Assembly by March 1, 1999, on the establishment, number, and location of these pilot
43 programs and on their success in bringing consistency, efficiency, and fairness to the

1 resolution of family matters and their impact on caseloads in the district court
2 division.

3 Section 3. G.S. 7A-49.3 reads as rewritten:

4 "**§ 7A-49.3. Calendar for criminal trial sessions.**

5 (a) At least one week before the beginning of any session of the superior court for
6 the trial of criminal cases, the district attorney shall file with the clerk of superior
7 court a calendar of the cases ~~he intends to call for trial~~ to be tried at that session. The
8 calendar shall fix a day for the trial of each case listed thereon. ~~The district attorney~~
9 ~~may place on the calendar for the first day of the session all cases which will require~~
10 ~~consideration by the grand jury without obligation to call such cases for trial on that~~
11 ~~day.~~ No case on the calendar may be called for trial before the day fixed by the
12 calendar except by consent or by order of the court. ~~Any case docketed after the~~
13 ~~calendar has been filed with the clerk may be placed on the calendar at the discretion~~
14 ~~of the district attorney.~~ After the calendar has been filed with the clerk, cases may be
15 added to or removed from the calendar only by order of the court pursuant to
16 guidelines developed by the Supreme Court.

17 (a1) If he has not done so before the beginning of each session of superior court at
18 which criminal cases are to be heard, the District Attorney, after calling the calendar
19 and disposing of nonjury matters, including guilty pleas, if any such nonjury matters
20 are to be disposed of prior to the calling of cases for trial, shall announce to the court
21 the order in which ~~he intends to call for trial the~~ the calendar provides for the trial of
22 the cases remaining on the calendar. Deviations from the ~~announced~~ order of cases
23 as listed on the calendar require approval by the presiding judge, ~~judge, if the~~
24 ~~defendant whose case is called for trial objects; but the defendant may not object if~~
25 ~~all the cases scheduled to be heard before his case have been disposed of or delayed~~
26 ~~with the approval of the presiding judge or by consent.~~

27 (a2) Each superior court district shall have a trial court administrator to assist the
28 court in the calendaring of criminal cases. The senior resident superior court judge
29 shall supervise the trial court administrator.

30 (b) All witnesses shall be subpoenaed to appear on the date listed for the trial of
31 the case in which they are witnesses. Witnesses shall not be entitled to prove their
32 attendance for any day or days prior to the day on which the case in which they are
33 witnesses is set for trial, unless otherwise ordered by the presiding judge.

34 (c) Nothing in this section shall be construed to affect the authority of the court in
35 the call of cases for trial."

36 Section 4. Section 1 of this act becomes effective January 1, 1999.
37 Section 3 of this act becomes effective December 1, 1998. The remainder of this act
38 is effective when it becomes law.

J-1
7-2-98
Michaux

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT

House Bill 1321

AMENDMENT NO. _____

Date _____ 1998

Representative MICHAUX

moves to amend the bill on page 5, line 3 through 32 by rewriting those lines to read:

“Section 3. G.S. 7A-49.3 reads as rewritten:

“7A-49.3. Calendar for criminal trial sessions.

~~(a) At least one week before the beginning of any session of the superior court for the trial of criminal cases, the district attorney shall file with the clerk of superior court a calendar of the cases he intends to call for trial at that session. The calendar shall fix a day for the trial of each case listed thereon. The district attorney may place on the calendar for the first day of the session all cases which will require consideration by the grand jury without obligation to call such cases for trial on that day. No case on the calendar may be called for trial before the day fixed by the calendar except by consent or by order of the court. Any case docketed after the calendar has been filed with the clerk may be placed on the calendar at the discretion of the district attorney.~~

~~(a1) If he has not done so before the beginning of each session of superior court at which criminal cases are to be heard, the District Attorney, after calling the calendar and disposing of nonjury matters, including guilty pleas, if any such nonjury matters are to be disposed of prior to the calling of cases for trial, shall announce to the court the order in which he intends to call for trial the cases remaining on the calendar. Deviations from the announced order require approval by the presiding judge, if the defendant whose case is called for trial objects; but the defendant may not object if all the cases scheduled to be heard before his case have been disposed of or delayed with the approval of the presiding judge or by consent.~~

(a) For purposes of this section, ‘to calendar or calendaring’ means to select the criminal cases to be tried or otherwise brought before the court for a particular session of court and to publish those cases in a particular order on a trial calendar for that session.

The authority to calendar criminal cases in superior court is vested in the senior resident superior court judge as defined in G.S. 7A-41.1. The senior resident superior court judge is responsible for the calendaring of all superior court criminal cases, motions, or other proceedings for trial or hearing.

The responsibility for the calendaring of criminal cases in superior court may be delegated by the senior resident superior court judge to a trial court administrator or other person designated by the judge as deemed appropriate by the judge. However, the responsibility for the calendaring of criminal cases in superior court may not be delegated

to the district attorney, to an assistant district attorney, or to any member of the district attorney's staff. Calendars shall be published in sufficient time for all parties to a case to have adequate notice.

(b) All witnesses shall be subpoenaed to appear on the date listed for the trial of the case in which they are witnesses. Witnesses shall not be entitled to prove their attendance for any day or days prior to the day on which the case in which they are witnesses is set for trial, unless otherwise ordered by the presiding judge

~~(c) Nothing in this section shall be construed to affect the authority of the court in the call of cases for trial."~~

SIGNED _____
Amendment Sponsor

ADOPTED _____ FAILED _____ TABLED _____



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1321

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)
Page 1 of 1

H1321-ARL-002

Date 7 July, 1998

Comm. Sub. []
Amends Title []

Representative

1 moves to amend the bill on page 5, between lines 26 and 27,
2 by adding the following:
3 "(a2) Each superior court district shall have a trial court
4 administrator to assist the court in the calendaring of criminal
5 cases."
6

SIGNED *Henry F. Justice*
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____



Brownell

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1321

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)
Page 1 of 1

H1321-ARL-002

Date _____, 1998

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2 by adding the following:
3 "(a2) Each superior court district shall have a trial court
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5 cases.".

6

*to be assigned to the
resident superior court judge*

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 1321*

Short Title: Future of the Courts.

(Public)

Sponsors: Representatives Daughtry; and Baddour.

Referred to: Judiciary I.

May 19, 1998

1 A BILL TO BE ENTITLED
2 AN ACT TO IMPROVE THE STATE COURT SYSTEM BY IMPLEMENTING
3 CERTAIN RECOMMENDATIONS OF THE COMMISSION FOR THE
4 FUTURE OF JUSTICE AND THE COURTS IN NORTH CAROLINA AND TO
5 MAKE OTHER CHANGES IN THE OPERATIONS OF THE COURTS.

6 The General Assembly of North Carolina enacts:

7 Section 1. Chapter 7A of the General Statutes is amended by adding a
8 new Article to read:

9 "ARTICLE 7A.

10 "State Judicial Council.

11 "§ 7A-49.4. Composition of State Judicial Council.

12 (a) The State Judicial Council shall consist of 18 members as follows:

- 13 (1) The Chief Justice, who chairs the Council;
14 (2) The Chief Judge of the Court of Appeals;
15 (3) A district attorney chosen by the Conference of District Attorneys;
16 (4) A public defender chosen by the public defenders;
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22 (8) One attorney and one nonattorney appointed by the Chief Justice;
23 (9) Two nonattorneys and one attorney appointed by the Governor;

(10) Two nonattorneys and one attorney appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives; and

(11) Two nonattorneys and one attorney appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate.

(b) The Chief Justice and the Chief Judge shall be members of the State Judicial Council during their terms in those judicial offices. The terms of the other members selected initially for the State Judicial Council shall be as follows:

(1) One year. -- The district court judge, the nonattorney appointed by the Chief Justice, one nonattorney appointed upon the recommendation of the Speaker of the House of Representatives, and the attorney appointed upon the recommendation of the President Pro Tempore of the Senate.

(2) Two years. -- The district attorney, one nonattorney appointed by the Governor, the attorney appointed upon the recommendation of the Speaker of the House of Representatives, and one nonattorney appointed upon the recommendation of the President Pro Tempore of the Senate.

(3) Three years. -- The public defender, the attorney appointed by the Governor, one nonattorney appointed by the President Pro Tempore of the Senate, and one nonattorney appointed upon the recommendation of the Speaker of the House of Representatives.

(4) Four years. -- The superior court judge, the attorney appointed by the State Bar Council, the attorney appointed by the Chief Justice, and one nonattorney appointed by the Governor.

After these initial terms, the members of the State Judicial Council shall serve terms of four years. All terms of members shall begin on January 1 and end on December 31. No member may serve more than two consecutive full terms. Any vacancy on the Council shall be filled by a person appointed by the official or entity who appointed the person vacating the position.

(c) If an official or entity is authorized to appoint more than one member of the State Judicial Council, the members appointed by that official or entity must reside in different judicial districts.

(d) No incumbent member of the General Assembly or any incumbent judicial official, other than the ones specifically identified by office in subsection (a) of this section, may serve on the State Judicial Council.

(e) The appointing authorities shall confer with each other and attempt to arrange their appointments so that the members of the State Judicial Council fairly represent each area of the State, both genders, and each major racial group.

"§ 7A-49.5. Duties of the State Judicial Council.

(a) The State Judicial Council shall:

(1) Study the judicial system and report periodically to the Chief Justice on its findings;

- 1 (2) Advise the Chief Justice on priorities for funding;
- 2 (3) Review and advise the Chief Justice on the budget prepared by the
- 3 Director of the Administrative Office of the Courts for submission
- 4 to the General Assembly;
- 5 (4) Study and recommend to the General Assembly the salaries of
- 6 justices and judges;
- 7 (5) Recommend to the General Assembly changes in the expense
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- 10 needed for that district and, if it is not, recommend to the Chief
- 11 Justice whether the judgeship should be transferred to another
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- 14 matter concerning the operation of the courts.

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24 Director of the Administrative Office of the Courts shall inform each judicial official
25 of the standards being used to evaluate that official's performance. If implemented,
26 the evaluation of each judge shall include assessments from other judges, litigants,
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28 evaluations of justices and judges shall be made available to the public, in a manner
29 to be determined by the Council.

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31 determine whether cases are being handled expeditiously, whether those courts have
32 adequate resources, and whether the courts are able to maintain a proper balance
33 between criminal and civil matters. If needed to assure such a balance, the Council
34 may recommend the establishment of separate divisions of the Court of Appeals for
35 criminal and civil cases and establish procedures for the regular rotation of individual
36 judges between those divisions.

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38 assignment and management of cases, including the identification of different kinds of
39 cases for different kinds of resolution. If the Chief Justice decides to implement these
40 guidelines, they may provide that, except for good cause, each civil case subject to
41 assignment to a trial judge should be directed first to an appropriate form of
42 alternative dispute resolution. The guidelines may also provide for posttrial
43 alternative dispute resolution before or as part of an appeal. The guidelines should
44 not require absolute uniformity from district to district and should allow case

1 management personnel within each circuit the flexibility to direct cases to the most
2 appropriate means of resolution in that district.

3 (f) The State Judicial Council shall monitor the use of alternative dispute
4 resolution throughout the court system and, with the assistance of the Director of the
5 Administrative Office of the Courts and the Dispute Resolution Commission,
6 evaluate the effectiveness of those programs.

7 (g) The State Judicial Council may recommend to the Chief Justice changes in the
8 boundaries of the judicial districts.

9 (h) The State Judicial Council shall perform other functions as needed to monitor
10 the administration of justice and assess the effectiveness of the Judicial Branch in
11 serving the public and to advise the Chief Justice and the General Assembly on
12 changes needed to assist the General Court of Justice in better fulfilling its mission.

13 **"§ 7A-49.6. Compensation of the State Judicial Council.**

14 Members of the State Judicial Council who are not judicial officials or salaried
15 public officials shall be reimbursed for their travel, meal and lodging expenses while
16 on Council business at the same rate as provided in G.S. 120-3.1(a)(3) for members of
17 the General Assembly, and shall also be compensated at the rate of two hundred
18 dollars (\$200.00) per day for each day on official Council business."

19 Section 2. (a) The Administrative Office of the Courts shall establish
20 pilot programs for the holding of family court within no more than three district
21 court districts, no more than two of which shall contain an urban county. Each pilot
22 program shall be conducted following the guidelines for the establishment of family
23 courts contained in the report of the Commission for the Future of Justice and the
24 Courts in North Carolina and shall be assigned to hear all matters involving
25 intrafamily rights, relationships, and obligations, and all juvenile justice matters,
26 including:

- 27 (1) Child abuse, neglect, and dependency;
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- 29 (3) Emancipation of minors and termination of parental rights;
- 30 (4) Divorce;
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- 38 (12) Domestic violence civil restraining orders;
- 39 (13) Abortion consent waivers; and
- 40 (14) Adult protective services.

41 (b) The Administrative Office of the Courts shall report to the General
42 Assembly by March 1, 1999, on the establishment, number, and location of these pilot
43 programs and on their success in bringing consistency, efficiency, and fairness to the

1 resolution of family matters and their impact on caseloads in the district court
2 division.

3 Section 3. G.S. 7A-49.3 reads as rewritten:

4 **"§ 7A-49.3. Calendar for criminal trial sessions.**

5 (a) At least one week before the beginning of any session of the superior court for
6 the trial of criminal cases, the district attorney shall file with the clerk of superior
7 court a calendar of the cases ~~he intends to call for trial~~ to be tried at that session. The
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9 ~~may place on the calendar for the first day of the session all cases which will require~~
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11 ~~day.~~ No case on the calendar may be called for trial before the day fixed by the
12 calendar except by consent or by order of the court. ~~Any case docketed after the~~
13 ~~calendar has been filed with the clerk may be placed on the calendar at the discretion~~
14 ~~of the district attorney.~~ After the calendar has been filed with the clerk, cases may be
15 added to or removed from the calendar only by order of the court pursuant to
16 guidelines developed by the Supreme Court.

17 (a1) If he has not done so before the beginning of each session of superior court at
18 which criminal cases are to be heard, the District Attorney, after calling the calendar
19 and disposing of nonjury matters, including guilty pleas, if any such nonjury matters
20 are to be disposed of prior to the calling of cases for trial, shall announce to the court
21 the order in which ~~he intends to call for trial~~ the calendar provides for the trial of
22 the cases remaining on the calendar. Deviations from the ~~announced~~ order of cases
23 as listed on the calendar require approval by the presiding judge, ~~judge, if the~~
24 ~~defendant whose case is called for trial objects, but the defendant may not object if~~
25 ~~all the cases scheduled to be heard before his case have been disposed of or delayed~~
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27 (b) All witnesses shall be subpoenaed to appear on the date listed for the trial of
28 the case in which they are witnesses. Witnesses shall not be entitled to prove their
29 attendance for any day or days prior to the day on which the case in which they are
30 witnesses is set for trial, unless otherwise ordered by the presiding judge.

31 (c) Nothing in this section shall be construed to affect the authority of the court in
32 the call of cases for trial."

33 Section 4. Section 1 of this act becomes effective January 1, 1999.
34 Section 3 of this act becomes effective December 1, 1998. The remainder of this act
35 is effective when it becomes law.

POPULAR GOVERNMENT

INSTITUTE of GOVERNMENT

The University of North Carolina at Chapel Hill

Should Prosecutors Control the Criminal Trial Calendar

■ Stanley Hammer

A reprint from

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Should Prosecutors Control the Criminal Trial Calendar?

Stanley Hammer

Should Prosecutors Control the Criminal Trial Calendar?

Stanley Hammer

Because the prosecutor is an adversary party, any degree of direct prosecutorial participation in case scheduling can lead to an appearance of abuse.

—Commentary, *American Bar Association
Speedy Trial Standards* § 12-1.2.

North Carolina stands alone in granting prosecutors the sole authority to determine when a defendant charged with a crime will be tried. This system, in effect for nearly half a century, was designed for laudable ends—the orderly calendaring of cases and the convenience of prosecuting witnesses. But today the system represents an indefensible concentration of power that is ineffective in meeting its original goals, damaging to the integrity of the criminal justice system, and arguably unconstitutional.

Although the broad discretion possessed by North Carolina district attorneys has been the subject of occasional criticism from the organized bar,¹ it has received only meager scrutiny by the appellate courts² and slight exposure in the press.³ Nevertheless, a system that vests a prosecutor with the power to determine the time of a defendant's trial and the judge before whom it will be heard merits close examination.

In fact, reconsideration of prosecutorial control of the criminal trial calendar is under way, both by the legislature and the courts (see "Current Reviews of Calendaring System," page 8). This article attempts to demonstrate why—as a matter of law, policy, and simple justice—the current system should not be allowed to continue.

The author is an assistant public defender in High Point, North Carolina. He hopes that the views he expresses in this article will contribute to public debate on the subject.

How We Got Here

Until the middle of this century, North Carolina's criminal court calendaring system was no system at all but a series of unrelated and uncoordinated local practices. Between 1915 and 1937, for example, the General Assembly enacted separate, local calendar statutes for twenty-one counties.⁴ Most of these acts empowered the clerk of superior court to set the trial calendar and notify the prosecutor and defense lawyers of the order of cases.

Many of these calendar statutes set priorities for the calling of cases. For example, the 1921 act for Guilford and Rowan counties required that the clerk compile the calendar ten days before a term of court, placing cases in the following order:

- Cases in which the defendants had been bound over by the inferior courts and were in jail in default of bail
- All other cases in which the defendants were in jail
- All cases in which defendants were not in jail
- All other cases⁵

The act also required that the cases be called in the order in which they appeared on the calendar.

While the local acts for most counties placed control of the calendar in the clerk, a handful of counties (Columbus, Craven, Cabarrus, Cumberland, and Greene) gave the prosecutor that control. In Burke County the clerk had general calendar authority, but the prosecutor, upon proper notice, could set a case for a day certain.⁶

This hodgepodge of criminal court calendaring arrangements was only one example of the disarray of the criminal justice system generally. In 1947 the General Assembly established a commission with the formidable

task of recommending legislation "for the Improvement of Justice in North Carolina."⁷ Chaired by Sam Ervin, then a justice of the state supreme court, the commission recommended several pieces of legislation to the 1949 General Assembly,⁸ including a bill that provided for a uniform system of criminal trial calendaring in Superior Court, to be administered by prosecutors.⁹ The commission focused on the plight of witnesses who were "inconvenienced . . . by being forced to wait in court for days to give testimony"; the commission sought to eliminate this inconvenience and to ensure that cases were set as "near as possible to the day of trial."¹⁰ The commission's proposal was introduced as House Bill 157 and quietly ratified on February 28, 1949.

Since that day North Carolina's prosecutors have administered the criminal trial calendar. But the grant of this power to prosecutors appears to have been incidental to the legislature's primary goals of establishing uniformity in calendaring and avoiding inconvenience to witnesses. The legislature could not have envisioned the ways in which prosecutors would be able to exercise their authority.

Prosecutorial Practices Today

Currently, the authority of prosecutors over the criminal calendar is codified at Sections 7A-61, 7A-49.3, and 15A-931 of the North Carolina General Statutes. Taken as a whole, these statutes empower prosecutors in North Carolina to prepare the calendar of criminal cases to be tried at each session of court; decide the order in which cases on the calendar are called for trial; and dismiss pending cases, whether or not set for trial, and reinstate them at a later time. The concentration of these powers in one party's hands has strained the values that are fundamental to a fair adversarial criminal process. Equally important, the current system actually disserves the purpose for which it supposedly was designed: the efficient management of cases.

By simply calling a case for trial during one week of court rather than another, prosecutors can place a case before a judge considered more likely than another to rule in their favor. Prosecutors also can use their calendaring authority to coerce criminal defendants to waive their rights to trial and accept a plea bargain offer: defendants unable to make bond can languish in jail for a year or more awaiting trial if they refuse to accept a plea bargain offered by the prosecutor. Defendants fortunate enough to secure pretrial release may not face any better a fate. The prosecutor can place a defendant's case on the trial docket repeatedly without actually calling it for trial, forcing the

defendant to appear each time or accept the prosecutor's plea bargain offer. (A few examples of these practices and the hardships they generate are highlighted in "Abuses of the Calendaring System," page 4.)

Furthermore, lengthy delays are the natural consequence of a system in which one party can continue cases without leave of court, or dismiss them and reinstate them at a later date. Delay not only hampers the ability of criminal defendants to mount their defense, it also disserves the public, with lengthy case backlogs, inefficient use of court time, and increased costs to the state. The one person in the courtroom to whom both the accused and the public would expect to look for relief—the judge—is often in no position to grant it.

Criminal Trial Calendaring Elsewhere in the United States

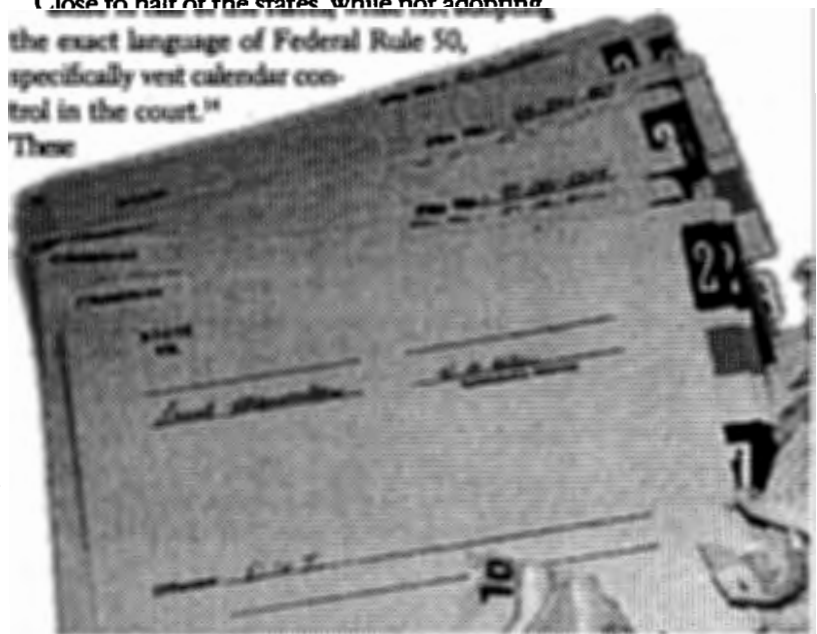
Throughout the United States, the court (that is, the presiding judge) sets the order of criminal trials in state and federal courts alike. Rule 50(a) of the Federal Rules of Criminal Procedure, for example, provides:

The district courts may provide for placing criminal proceedings upon appropriate calendars. Preference shall be given to criminal proceedings as far as practicable.¹¹

Moreover, under the Federal Speedy Trial Act, trial dates are required to be set by the court at an early stage of the proceedings.¹²

Several states, including Arkansas, Tennessee, and West Virginia, have adopted rules or statutes with language parallel to Federal Rule 50(a),¹³ vesting the court with control of the criminal trial calendar. In those states, as in the federal courts, local rules of practice dictate the exact procedure for setting criminal trials.

Close to half of the states, while not adopting the exact language of Federal Rule 50, specifically vest calendar control in the court.¹⁴ These



Courtesy M. Smith

Abuses of Calendaring System

Although the control of the criminal trial calendar by prosecutors has received little public attention, those who work within the criminal justice system or who have studied it are well aware of the system's shortcomings.

In a 1978 study of the criminal calendaring process in North Carolina, the National Center for State Courts concluded that district attorneys use their calendaring powers to coerce plea agreements and to obtain continuances without leave of court. The study also concluded that North Carolina prosecutors hold excessive power over the trial calendar and recommended that the court

bear responsibility for calendaring cases.

Between August and December 1983 the Fund for Rural Justice studied the courts in Robeson County, North Carolina, and offered a report of its findings to the Chief Justice of the North Carolina Supreme Court. The report referred to "calendar manipulation," noting:

The Fund for Rural Justice has documented numerous cases in which the defendant appeared in court over thirty times. The assistant prosecutor's practice is to periodically survey the courtroom and, upon noticing that a "regular" is absent, call

that case. The defendant is cited for failure to appear. Often it is because the defendant has gone to the rest room or to make a phone call. With bail revoked or raised beyond his ability to pay, the defendant goes to jail. After repeated court appearances the defendant's job is lost or placed in jeopardy.

In 1992 a superior court judge sitting in Guilford County, while rejecting a defendant's claim that he had been denied a speedy trial as a result of calendar manipulation, made the following findings:

Notwithstanding the provision by the legislature for victim witness co-

states include Alabama, Georgia, Maryland, Mississippi, Texas, and Virginia.

Illinois, Maine, and South Carolina have no specific provision governing control of the criminal trial calendar. However, decisional law in these states establishes the inherent authority of the court to control the calendar.¹⁵

A majority of jurisdictions have speedy trial statutes,¹⁶ many of which direct the court to set a firm trial date at arraignment¹⁷ or upon demand by the defendant.¹⁸

In Arizona and Nebraska the prosecuting attorney advises the court of relevant facts in determining the order of cases on the calendar.¹⁹ Likewise, the Alabama Court of Appeals has held that although a prosecutor may have input in decisions concerning the positioning of cases on the calendar, the responsibility of compiling the calendar is that of the clerk.²⁰

Ohio, New York, and Louisiana have adopted rules by which criminal cases are assigned randomly to a judge who controls all matters, including setting dates for hearing and trial.²¹

North Carolina Practice at Odds with Model Codes

The power North Carolina concentrates in the hands of the prosecutor exceeds even that recommended by the National District Attorneys Association (NDAA), which advocates that the trial calendar be controlled

jointly by the court and the prosecutor. The NDAA standards also provide that at the time of arraignment a "date certain" should be set for trial.²²

The North Carolina practice is similarly inconsistent with the American Bar Association (ABA) Standards for Criminal Justice, a compilation of standards recommended as a "desirable minimum" in the administration of criminal justice. The ABA Standards canvass the field of criminal procedure and contain recommendations under headings such as Prosecution and Defense Functions, Fair Trial and Free Press, Guilty Pleas, Sentencing, Appeals, and Postconviction Remedies.²³ The prosecution standards recommend: "Control of the trial calendar should be vested in the court. The prosecuting attorney should advise the court of facts relevant in determining the order of cases on the court's calendar."²⁴

The commentary to these standards notes that the purpose of vesting control of the calendar in the court is to avoid the appearance of "lack of fair and even-handed administration of justice."²⁵ Likewise, the commentary to the speedy trial standards provides:

The trial court should be vested with absolute (not merely ultimate) responsibility over the trial calendar. This judicial responsibility should not be delegated in any way to the prosecution, even if the ultimate responsibility clearly remains with the court. Because the prosecutor is an adversary party, any degree of direct prosecutorial participation in case scheduling can lead to an appearance of abuse.²⁶

ordinators, victims frequently complain about not knowing when their cases are to be tried. At least one letter has recently appeared in the *Greensboro News and Record* to that effect. Defendants almost never know when their cases are to be called and frequently gamble that their cases will not be called and leave the courthouse. The confidence of the public in the criminal courts is waning. The calendaring process is one of several reasons for such decline in confidence. More attention must be paid to those defendants held in jail awaiting trial. The delay in the trial of jail cases has reached a crisis in such places as Guilford County, both in High Point and in Greensboro, Forsyth and Durham counties. [State v. Caple, No. 92-CRS 3609, Guilford County]

In the Durham County case of *Simmon et al. v. Hardin* (see "Current Reviews of Calendaring System," page 8) in which the plaintiffs are challenging the constitutionality of North Carolina's criminal calendaring system, several former prosecutors and superior court judges submitted affidavits setting forth the problems they had experienced. One former superior court judge stated:

The unilateral ability to determine when a case is calendared for trial, when a case is called for trial, when a charge is dismissed for later recharging and recalendaring constitutes the ability to determine when some particular judge either hears a case or some particular judge does not hear a case. This cannot be a fair and impartial proceeding with the scales of justice evenly balanced.

[affidavit of the Honorable Robert A. Collier]

Another former judge noted:

I have also known the prosecutors to use the calendaring power to select the presiding judge. For example, in one county where I presided, I noticed that I got all the cases for trial, while another judge presiding in a different courtroom got all the guilty pleas. I found out later from the prosecutor that because I was considered to be a more severe sentencer than the other judge, it was the prosecutor's common practice to tell defense counsel that their client could either plead guilty in front of the other judge, or be tried in front of me. Evidently, this was considered an incentive to plead guilty. [affidavit of the Honorable James H. Pou Bailey]

Finally, the Uniform Rules of Criminal Procedure, drafted by the National Conference of Uniform State Laws, contain a provision derived from the ABA rule on calendaring. In addition to placing calendar control in the court, the uniform rules suggest that courts determine the priority of cases on the calendar by weighing several factors, including whether the defendant is incarcerated.²⁷

Constitutional Problems with North Carolina's Practice

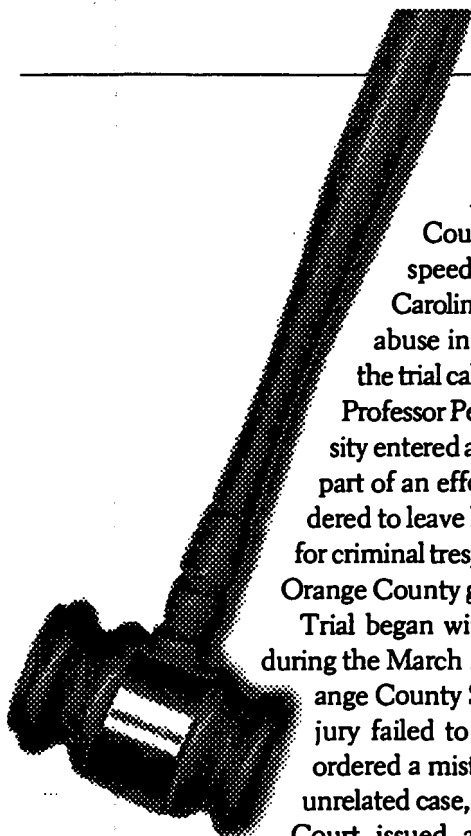
Until recently Louisiana gave its prosecutors calendaring powers similar to those granted to prosecutors in North Carolina. In 1989, however, the Louisiana Supreme Court found the system unconstitutional.²⁸ North Carolina's system suffers from similar constitutional infirmities. Placing total control of the criminal court calendar in the hands of the prosecutor makes too easy the denial of a criminal defendant's right to a speedy trial, undermines a defendant's due process rights, and compromises the inherent constitutional powers of the judiciary.

The Right to a Speedy Trial

When prosecutors can decide when to place a case on the calendar—and when not to—they need never seek

a continuance or articulate a reason for delay. The accused, with criminal charges pending, waits in jail or suffers a cloud of uncertainty while out on bail. This practice can undermine a criminal defendant's right to a speedy trial, guaranteed by the Sixth Amendment to the United States Constitution and applicable to the states by force of the Fourteenth Amendment.²⁹ The Declaration of Rights in the North Carolina Constitution contains a similar guarantee of a speedy trial, providing that justice "will be administered without favor, denial or delay."³⁰

The United States Supreme Court has identified four factors in evaluating whether a defendant has been denied a speedy trial: length of delay, reason for delay, prejudice resulting from delay, and whether the defendant demanded a speedy trial. No single factor is controlling when weighing a defendant's claim that his or her right to a speedy trial has been denied.³¹ Indeed, prejudice to the defendant's case is not even the chief consideration. Why? Because, as the U.S. Supreme Court has recognized, "the major evils protected against by the speedy trial guarantee exist quite apart from actual or possible prejudice to the accused's defense."³² Those evils are "the possibility of lengthy incarceration prior to trial, . . . [the] impairment of liberty imposed on an accused while released on bail, . . . [and] the disruption of life caused by arrest and the presence of unresolved criminal charges."³³



A landmark U.S. Supreme Court case on the right to a speedy trial, originating in North Carolina, illustrates the potential for abuse in the prosecutor's control of the trial calendar.³⁴ On January 3, 1964, Professor Peter Klopfer of Duke University entered a restaurant in Chapel Hill as part of an effort to integrate it. When ordered to leave he refused. He was arrested for criminal trespass and later indicted by an Orange County grand jury.

Trial began with "admirable promptness" during the March 1964 criminal session of Orange County Superior Court.³⁵ When the jury failed to reach a verdict, the court ordered a mistrial. That December, in an unrelated case, the United States Supreme Court issued a decision that effectively barred criminal prosecution of civil rights demonstrators such as Klopfer.³⁶ Nonetheless, the prosecutor refused to dismiss Klopfer's case, yet he did not place the matter back on the trial calendar.

When the calendar for the August 1965 session of court did not list Klopfer's case, he filed a motion to have the matter "permanently concluded," noting that the pendency of the action interfered with his professional activities and his travel plans. The trial court considered Klopfer's motion but ultimately granted a *nolle prosequi* with leave, that is, gave the prosecutor permission to dismiss the case with the right to reinstate it at a later time, at the prosecutor's discretion and without approval of the court.³⁷

On appeal to the North Carolina Supreme Court, Klopfer argued that the entry of a *nolle prosequi* with leave deprived him of a speedy trial. In a two-page opinion, the court summarily rejected this contention and held that the right to a speedy trial does not afford protection for unjustified postponement of trial of an accused *not in custody*.³⁸

The U.S. Supreme Court reversed, focusing on the oppressive nature of the North Carolina *nolle prosequi* practice. Chief Justice Warren observed for the majority:

The pendency of the indictment may subject [a defendant] to public scorn and deprive him of employment, and almost certainly will force curtailment of his speech, association and participation in unpopular causes. By indefinitely prolonging this oppression, as well as the "anxiety and concern accompanying public accusation," the criminal procedure condoned in this case by the Supreme Court of North Carolina clearly denies the petitioner the right to a speedy trial.³⁹ (footnote omitted)

Justice Harlan, in a short concurring opinion, wrote that he voted to find the North Carolina procedure unconstitutional not on speedy trial grounds but because

This unusual North Carolina procedure, which in effect allows state prosecuting officials to put a person under the cloud of an unliquidated criminal charge for an indeterminate period, violates the requirement of fundamental fairness assured by the Due Process Clause of the Fourteenth Amendment.⁴⁰

Although the *nolle prosequi* with leave procedure is no longer part of North Carolina criminal procedure, the vice that the Supreme Court condemned survives in the criminal calendaring statutes. Prosecutors can still dismiss cases before trial only to reinstate them later. And nothing prevents a prosecutor from moving a case on and off the trial calendar. Likewise, no provision protects a defendant, especially an unrepresented defendant, from the disruptive effects of repeated court appearances. Were Professor Klopfer prosecuted today, he could be subjected to oppressive measures similar to those used against him in 1964.

Unfairness and Due Process

North Carolina's rule permitting the prosecutor to choose the date on which a case will be tried—and consequently the judge before whom it will be heard—severely tests the fairness component of the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution.

The Due Process Clause requires fundamental fairness, that is, a fair trial in a fair tribunal.⁴¹ As the Supreme Court of Louisiana held in finding unconstitutional the prosecutor's power to control criminal trial calendars:

Capital and other felony cases must be allotted for trial to the various divisions of the court, or to judges assigned criminal court duty, on a random or rotating basis or under some other procedure adopted by the court which does not vest the district attorney with power to choose the judge to whom a particular case is assigned.⁴²

The result reached by the Louisiana Supreme Court is consistent with the U.S. Supreme Court's longstanding recognition that "justice must satisfy the appearance of justice."⁴³ A prosecutor must be permitted to enforce the law with zeal,⁴⁴ but adversarial fairness requires that he or she play no part in selecting the judge before whom a matter will be heard. A wealth of case law makes clear that no litigant has a right to choose the judge who will hear his or her case.⁴⁵

Reciprocity of advantage between the prosecutor and defendant is a key element of adversarial fairness. For

example, statutes that require disclosures by the defendant in the discovery process (part of the pretrial stage of legal action) without requiring similar disclosures by the prosecution have been held to violate due process.⁴⁶ It follows that neither party should hold an advantage with respect to selection of judges and court dates.

Interference with Judges' Powers under State Constitution

Judges in North Carolina are state constitutional officers. So are prosecutors. The constitution both establishes and limits their authority. The constitution also contains a "separation of powers" clause protecting the judiciary's power from interference by other branches of government. It provides: "The General Assembly shall have no power to deprive the judicial department of any power or jurisdiction that rightfully pertains to it as a co-ordinate department of government."⁴⁷

The statutes granting control of the criminal trial calendar to prosecutors arguably violate this separation of powers provision. As U.S. Supreme Court Justice Benjamin Cardozo observed, there is

power inherent in every court to control the disposition of cases on its docket with economy of time and effort for itself, for counsel and for litigants. How this can best be done calls for the exercise of judgment which must weigh competing interests and maintain an even balance.⁴⁸

The scheduling of cases is widely recognized as a power that "rightfully pertains" to the judiciary. Prosecutors obviously are not judges—their function is to prosecute cases, not preside over them. Nor are prosecutors subject to direct judicial supervision as trial court administrators are—the office of district attorney is an independent constitutional office.⁴⁹

Perhaps because there is wide acceptance that courts—not prosecutors—should control dockets, there are few cases addressing the tension between control by the court and control by the prosecutor. One arose in New York.⁵⁰ The judges in one county there adopted a rule that the presiding judge was to assign cases for trial. The district attorney, who traditionally had selected the judge in each case, challenged the rule. The New York court treated the question as one of "power, not policy."⁵¹ It reviewed the constitutional and statutory grants of authority to the district attorney and the courts. As in North Carolina, the district attorney had the statutory duty to conduct criminal prosecutions, whereas judges and judicial officials with the power to regulate trials. The district attorney maintained that in preparing the

calendar he assessed the experience and diligence of the trial judges. The court responded:

It is the people's prerogative, not the District Attorney's to say who will preside over the County Court of Kings County. If the people want a lenient judge, or a severe one, it is for them to determine, not the District Attorney. It can never be the duty or prerogative of the District Attorney to weigh the experience and diligence of the judges before whom he appears as attorney for one of the litigants.⁵²

In addition to defining the limits of the district attorney's authority, the court set forth cogent reasons for denying the district attorney any authority over the trial calendar:

A court dealing with the life and liberty of the people must be free from outside control. Just because Kings County has an honest, efficient and fair District Attorney, and that he will deal with individual rights justly is no guarantee that one less efficient, less honest, less fair would not use unusual power to further his own ends, be they political or otherwise. That a judge should ever be burdened with the thought that his assignment depended on the district attorney is unthinkable in American jurisprudence. Ours is a government of laws and not of men, as John Adams wrote in the Massachusetts Constitution, pt. 1, art. 30.⁵³

The New York court's reasoning applies with equal force in North Carolina, which has long subscribed to the constitutional theory of separation of powers. Separation of powers is an empty guarantee when a prosecutor may determine that a duly elected superior court judge is not competent to preside over a given case because of its complexity or because the judge is too lenient in sentencing.

The current calendar statute, with no obligation on the prosecutor to place a case on the calendar, effectively allows unilateral judge shopping by the prosecution. Former superior court judges attest to this practice.⁵⁴ (See "Abuses of Calendaring System," page 4.) Assigning to the prosecutor control of the criminal calendar unconstitutionally deprives judges of power as members of a co-equal branch of government. Regardless of whether the prosecutor is considered "quasi-judicial" or a member of the executive branch, control of the criminal calendar, indeed the work of the court, is the province of the judiciary, and such power should not be delegated to the prosecutor.

Proposals for Reform

Because most jurisdictions have adopted criminal trial calendar systems that do *not* vest absolute power in the prosecutor, there is a wealth of precedent from which

Current Reviews of Calendaring System

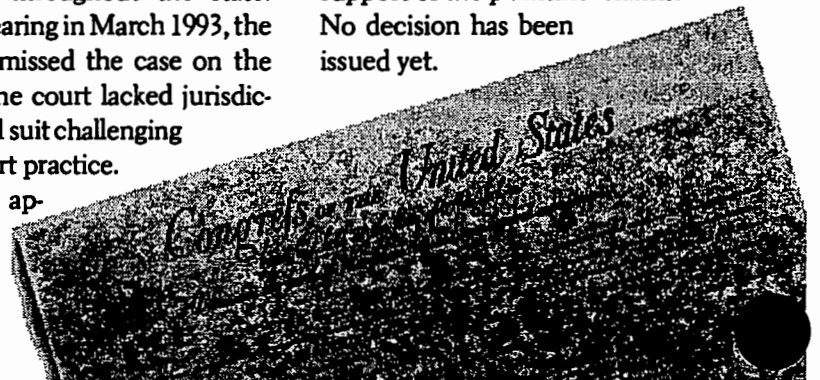
Two reviews currently under way—one legislative and one judicial—could result in changes in North Carolina's system of criminal case calendaring. The legislative review, conducted by the General Assembly's Legislative Research Commission, was begun in September 1993 and may report suggested changes in the law to the 1995 legislative session.

The other effort is ongoing in the courts. In October 1992 a class action suit was filed challenging the calendaring practices of the Durham County District Attorney's Office. (Originally *Simeon et al. v. Stephens*, No. 92-CVS-4318, Super. Ct., the case name was changed to *Simeon et al. v. Hardin* to reflect the name of the new district attorney in Durham County.) Brought on

behalf of all persons subject to criminal prosecution in Durham County, the suit alleges that the district attorney's calendaring practices violate both the United States and North Carolina constitutions. Technically, the suit is limited to Durham County, but it seeks broad injunctive and declaratory relief and, if successful, would affect calendaring practices throughout the state. Following a hearing in March 1993, the trial court dismissed the case on the ground that the court lacked jurisdiction over a civil suit challenging a criminal court practice.

The case was appealed to the North Carolina Court of Appeals (No.

93-14SC589, Ct. App.), but before the court could rule, the North Carolina Supreme Court assumed jurisdiction of the case (No. 267PA93, S. Ct.). The North Carolina Bar Association, the North Carolina Academy of Trial Lawyers, and the National Association of Criminal Defense Attorneys have filed *amicus* briefs with the supreme court in support of the plaintiffs' claims. No decision has been issued yet.



North Carolina can draw reforms. Reforms can be tailored to address the major concerns that have been raised about prosecutor control of the criminal calendar: adversarial fairness and the system's failure to dispose of cases swiftly and efficiently.

Empirical studies demonstrate that calendar control is best vested in the court, either in judges or in professional trial court administrators who are answerable to judges. (North Carolina already has trial court administrators in several judicial districts for the purpose of scheduling civil cases.) Where the court is active in case management—including setting pretrial hearings and firm trial dates—delay is minimized. Also, "breakdowns" in the calendar (that is, days when no cases are ready to be tried and precious court time is wasted) are reduced.⁵⁵ Court-directed calendars would not inconvenience witnesses; in fact, if courts controlled the calendaring process, the timely trial of cases would be more likely to occur. Furthermore, the North Carolina General Assembly already has enacted legislation creating victim and witness coordinators for each prosecutorial district, thus eliminating the most compelling reason for permitting prosecutors to control the trial calendar.⁵⁶

Calendar reform can be accomplished by legislation, court rule, or both. Consider the following proposals:

Place control of the criminal trial calendar in the trial court administrator. Trial court administrators, already in place in several counties, could be given authority to set the trial calendar, within set guidelines. Minnesota's statute directs the trial court administrator to prepare a calendar of pending indictments and directs the order in which cases are to be tried, with priority assigned to cases in which a defendant is in custody.⁵⁷

Place control of the criminal calendar in the clerk of superior court. In counties that do not yet have a trial court administrator, the superior court clerk could prepare the trial calendar. Clerks had this responsibility before enactment of the present statute. In Alabama, Nevada, and Virginia, statutes specifically assign to the clerk the duty of compiling a docket or calendar.⁵⁸

Adopt a calendar statute modeled on Rule 50 of the Federal Rules of Criminal Procedure. Rule 50 simply requires courts to provide for placing proceedings on appropriate calendars, with preference for criminal matters. Such a rule clearly establishes the court's authority over the trial calendar while leaving to each district the responsibility for developing a plan for the prompt disposition of criminal cases. Several jurisdictions have adopted a version of Rule 50. Tennessee's version provides the following:

Trial courts shall provide by rule for the setting of cases for trial. . . . The trial of defendants in custody and defendants whose pretrial liberty is reasonably believed to present unusual risks shall be given preference over other criminal matters.⁵⁹

Permit use of assignment judges. Some jurisdictions use assignment judges who determine at arraignment which judge will hear a case.⁶⁰ The judge assigned is then responsible for setting trial dates and determining when motions will be heard.

Set discovery deadlines, motion deadlines, pretrial conferences, and firm trial dates at the time of arraignment. If all deadlines are set at arraignment,⁶¹ all parties know the status of the case and the likelihood of realistic plea bargains is enhanced.

Permit the court in each district, in consultation with the bar, to establish local calendar rules. Because the size of dockets varies throughout the state, local rules may better accommodate the needs of defendants, defense counsel, and district attorneys. These rules should follow statewide guidelines on the priority of various kinds of cases.⁶²

Establish a preference for the trial of defendants in custody. Regardless of whether the clerk, court administrator, or other person prepares the calendar, there should be a stated preference for the trial of defendants who are in custody.⁶³

Establish rules that ensure the prompt trial of defendants not in custody. Cases of defendants not in custody should be placed on the calendar only if there is a reasonable likelihood that they will be called for trial. If a case is not called for trial during a certain session, its level of priority should be advanced for succeeding trial calendars. If a case is not called for, say, three sessions, it should be removed from the calendar for six months (or some other designated time) except that if the defendant is in custody or requests that the case remain on the calendar, the case should continue to advance in priority.

Enact a "speedy trial by demand" statute. For several years North Carolina had a speedy trial statute that proved unwieldy and largely ineffective. Rather than burden the prosecution with time periods in every case, North Carolina should adopt a speedy trial statute that is triggered only when the defendant files a "certificate of readiness." At that time, the court would set a firm date for trial.⁶⁴

Permit defendants to remain on standby status during sessions in which their cases are awaiting trial. As mentioned earlier, the current system allows prosecutors to require repeated, unnecessary appearances in court by defendants not in custody. A defendant whose case is

not fixed for a day certain should be allowed to be placed on call on the condition that he or she will appear in court within an hour.

Permit a defendant to have motions calendared and heard. Under the present system there is no mechanism by which a defendant may have pretrial motions calendared and heard. Because prosecutors control the trial calendar, they effectively determine when and if bond motions will be heard. Defendants should be permitted to be heard on bond and other issues upon filing a motion with reasonable notice to the prosecutor.

Conclusion

North Carolina prosecutors are granted, indeed required to exercise, a power over the criminal docket that is unmatched in the United States. The current system, aside from its inefficiencies, likely violates the guarantees of speedy trial and due process that protect all citizens. Moreover, a system by which the prosecutor selects the judge who will hear a case effectively permits unelected assistant district attorneys to pass upon the qualifications of duly elected superior court judges, violating constitutional separation of powers.

As the public increasingly demands swift and efficient administration of justice, it is time to reform our criminal trial calendaring practice so that courts may control their own criminal dockets. The proposals described above are by no means exhaustive but rather suggest possible avenues of reform. Reforming the calendar system would enhance the integrity and effectiveness of the entire criminal justice system. ♦

Notes

1. National Center for State Courts, *Case Docketing and Calendaring and Rotation of North Carolina Superior Court Judges, Final Report* (National Center for State Courts, Southern Regional Office, Aug. 1978) (conducted for the North Carolina Bar Association Foundation).

2. See *State v. Mitchell*, 298 N.C. 549, 259 S.E.2d 254 (1978) (Carlton, J., concurring).

3. See "Deadliest DA Stays Unfazed by Accusations of Unfairness," *Wilmington Sunday Star-News*, May 12, 1985; "Prosecutors Too Powerful" (editorial), *News and Observer* (Raleigh), Oct. 12, 1992, 8A.

4. 1915 N.C. Pub.-Local Laws ch. 60 (Rockingham); 1917 N.C. Pub.-Local and Private Laws ch. 375 (Forsyth); 1921 N.C. Pub. Laws ch. 195 (Guilford and Rowan); 1921 N.C. Pub. Laws ch. 150 (Durham); 1921 N.C. Pub. Laws, Ext. Sess. ch. 30 (Davidson); 1921 N.C. Pub. Laws, Ext. Sess. ch. 54 (Alamance); 1923 N.C. Pub. Laws ch. 153 (Surry); 1924 N.C. Pub., Pub.-Local and Private Laws, Ext. Sess. ch. 139 (Harnett); 1925 N.C. Pub.-Local and Private Laws ch. 407 (Chatham); 1925 N.C.

Pub.-Local and Private Laws ch. 55 (Catawba); 1927 N.C. Pub. Laws ch. 105 (Caswell); 1927 N.C. Pub. Laws ch. 112 (Orange); 1929 N.C. Pub. Laws ch. 22 (Randolph); 1933 N.C. Pub.-Local and Private Laws ch. 313 (Columbus); 1935 N.C. Pub.-Local and Private Laws ch. 70 (Burke); 1935 N.C. Pub.-Local and Private Laws ch. 140 (Craven); 1935 N.C. Pub.-Local and Private Laws ch. 219 (Cleveland); 1935 N.C. Pub.-Local and Private Laws ch. 242 (Cabarrus); 1935 N.C. Pub.-Local and Private Laws ch. 275 (Cumberland); 1937 N.C. Pub.-Local and Private Laws ch. 211 (Greene).

5. 1921 N.C. Pub. Laws ch. 195.

6. 1935 N.C. Pub.-Local and Private Laws ch. 70.

7. S. Res. 23, 1947 N.C. Sess. Laws.

8. "The Improvement of the Administration of Justice in North Carolina: Report of the Special Commission," *Popular Government* 15 (Jan. 1949): 1 (hereinafter cited as Report of the Special Commission).

9. A BILL TO BE ENACTED TO REQUIRE A CALENDAR FOR ALL TERMS OF THE SUPERIOR COURT FOR THE TRIAL OF CRIMINAL CASES.

SECTION 1. At least one week before the beginning of any term of the Superior Court for the trial of criminal cases, the solicitor shall file with the Clerk of the Superior Court a calendar of the cases he intends to call for trial at that term. The calendar shall fix a day for the trial of each case included thereon.

SECTION 2. The solicitor may place on the calendar for the first day of the term all cases which will require consideration by the grand jury without obligation to call such cases for trial on that day.

SECTION 3. No case on the calendar may be called for trial before the day fixed by the calendar except by consent or by order of the court.

SECTION 4. All cases docketed after the calendar has been made and filed with the Clerk of Superior Court may be placed on the calendar at the discretion of the solicitor.

SECTION 5. All witnesses shall be subpoenaed to appear on the date listed for the trial of the case on which they are witnesses.

SECTION 6. Witnesses shall not be entitled to prove their attendance for any days prior to the day on which the case in which they are witnesses is set for trial unless otherwise ordered by the presiding judge.

SECTION 7. Nothing in this Act shall be construed to affect the authority of the court in the call of cases for trial.

SECTION 8. All laws and clauses in conflict with this Act are hereby repealed.

10. Report of the Special Commission, 14.

11. Fed. R. Crim. P. 50(a).

12. Federal Speedy Trial Act, 18 U.S.C. § 3161.

13. Alaska R. Crim. P. 45; Ark. R. Crim. P. 27.2; Colo. R. Crim. P. 50; Del. R. Crim. P. 50; Haw. R. Penal P. 50; Idaho R. Crim. 50; N.D. R. Crim. P. 50; S.D. Cod. Laws Ann. § 23A-44-11 (1988); Tenn. Ct. R. 50; W. Va. R. Crim. P. 50; Wy. R. Crim. P. 50.

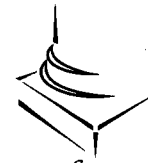
14. Ala. Code § 15-14-1 (1982) (duty of clerk to set cases for particular day), Ala. R. Crim. P. 8.2 (prosecutor to inform court of facts relevant in determining order of cases on docket); Ariz. R. Crim. P. 8.1 (sets forth priorities for cases on

criminal calendar); Cal. Penal Code § 1048 (Deering 1997) (preference given to cases where defendant in custody); Cal. R. Ct. 227.4 (court sets date for trial and motions at arraignment); Conn. R. Ct. 977-78 (court sets trial date); D.C. Sup. Ct. R. 101 *et seq.* (provides for calendar control judge); Ga. Code Ann. § 17-8-1 (Michie 1990) (cases on criminal docket shall be called in order in which they stand on docket unless the defendant is in jail or otherwise in the sound discretion of the court); St. Josephs County Indiana Super. Ct. R. 7 (judge maintains trial calendar); Iowa Code Ann. §813.2, R. 27 (1994); Iowa R. Crim. P. 8.1 (court or its designees shall set the date and time for trial); Md. Ct. R. 4-271 (trial date set by circuit court); Mich. Ct. R. 6.004(b) (trial court has responsibility to establish and control a trial calendar with preference to cases where defendant in custody, or where defendant's liberty presents great risk); Minn. Stat. Ann. §§ 630.35-36 (West 1994 Pocket Part) (court administrator prepares calendar; trial priority to cases where defendant in custody); Miss. Unif. Crim. R. Cir. Ct. Proc. (docket prepared by clerk); Nev. Rev. Stat. Ann. §§ 178.592-94 (Michie 1992) (clerk prepares calendar; priority to cases where defendant in custody); N.H. Sup. Ct. R. 96-A (court sets schedule in each case, including deadlines for discovery, plea negotiations, and trial); N.J. Rules Governing Crim. Practice 3:25-2 (assignment judge may order case upon specific day); N.Y. Unif. R. Trial Ct. §§ 200.11-12 (assignment judge sets forth date for completion of discovery, hearing of motions, and trial); Ohio R. for Superintendence of Cts., R. 4 (assignment judge); Or. Unif. Tr. Ct. R. 7.010 (court sets date); Pa. R. Crim. P. 1100 (1997) (court calls cases for trial); Tex. Code Crim. Proc. Ann. § 33.08 (Vernon 1989) (courts have control over dockets as to settings of criminal cases); Va. Code Ann. §§ 19.2-240-41 (1990) (clerk prepares criminal docket, court fixes day for trial); Vt. R. Crim. P. 50 (administrative judge to establish how criminal cases shall be scheduled); Wash. Crim. R. 3.3(f) (trial judge sets date); Wis. R. Crim. P. 971.10 (court to schedule case upon demand by defendant).

15. *People v. Stanley*, 452 N.E.2d 105 (Ill. App. Ct. 1983) ("it is the trial judge, not the State's Attorney, who has discretion to grant or deny a continuance"); *State v. Wells*, 443 A.2d 60 (Me. 1982) (court's inherent authority to dismiss for failure to prosecute); *State v. Ridge*, 236 S.E.2d 401 (S.C. 1977) (solicitor has authority to call cases subject to the overall broad supervision of the trial judge).

16. Ariz. R. Crim. P. 8.2; Ark. R. Crim. P. 28.1; Cal. Penal Code 1049.5 (Deering 1993); Colo. Rev. Stat. § 18-1-405 (1993 Cum. Supp.); Conn. R. Ct. 956B; Fla. R. Crim. P. 3.191 (1993); Ga. Code Ann. 17-7-70 (Michie 1990); Haw. R. Penal P. 48; Idaho Code § 19-3501 (1979 and 1992 Supp.); Ill. Rev. Stat. ch. 38:103-5 (1980 and 1992 Supp.); Ind. R. Crim. P. 4; Iowa Code Ann. § 813.2 R. 27 (1994); Kan. Stat. Ann. 22-3401 *et seq.* (1975); La. Code Crim. P. § 701 (1981 and 1994 Supp.); Md. Ann. Code § 27-591 (1993); Mass. R. Crim. P. 36; Mich. Ct. R. 6.004; Miss. Code Ann. § 99-17-1 (1991); Mo. Ann. Stat. § 545.890 (West 1987); Neb. Rev. Stat. § 29-1207 (1989); Nev. Rev. Stat. § 178.556 (1992); N.M. R. Crim. P. 5-604; N.Y. Crim. Pro. Law § 30.20 (West 1992); Ohio Rev. Code Ann. § 2945.7 (Anderson 1987); Pa. R. Crim. P. 1100; S.D. Cod. Laws Ann. § 23A-44-5.1 (1993 Pocket Part); Va. Code Ann. § 19.2-243 (1990); Wash. Crim. R. 3.3; Wis. R. Crim. P. 971.10.

17. See, e.g., Conn. R. Ct. § 977 (judicial authority to set trial date upon entry of not guilty plea).
18. See, e.g., Fla. R. Crim. P. 3.191(a)(1) (if demand for speedy trial lodged, trial court to hold calendar call for the express purpose of setting a trial date); see also R.I. R. Crim. P. 12 (when motion for speedy trial filed, same will be heard on daily criminal calendar).
19. Ariz. R. Crim. P. 8.1; Neb. Rev. Stat. § 29-1205 (1989) (duty of county attorney to advise court of relevant facts in determining order of cases to be tried).
20. Bishop v. State, 482 S.2d 1322 (Ala. Crim. App. 1985).
21. Ohio R. for Superintendence of Courts, R. 4 (assignment by lot to judge who controls all matters); N.Y. Unif. R.—Trial Courts § 200.11 (1992) (upon commencement of action clerk assigns case to judge by method of random selection authorized by chief administrator; thereafter, assignment judge conducts preliminary conferences and sets forth deadlines and date for commencement of trial); State v. Simpson, 551 So. 2d 1303 (La. 1989).
22. Prosecution Standards § 15.1(c) (National District Attorneys Ass'n 1977).
23. American Bar Association Standards for Criminal Justice (2d ed. 1986); see also, William J. Jameson, "The Beginning: Background and Development of the ABA Standards for Criminal Justice," *American Criminal Law Review* 12 (1974): 255.
24. Prosecution Function Standards § 3-5.1 (American Bar Association 3d ed. 1993) (hereinafter cited as ABA Prosecution Function Standards).
25. ABA Prosecution Function Standards.
26. Speedy Trial Standards § 12-1.2 Commentary (American Bar Association 2d ed. 1986).
27. Unif. R. Crim. P. § 721, 10 U.L.A. 153 (1992 Supp.).
28. State v. Simpson, 551 So. 2d 1303 (La. 1989).
29. U.S. Const. amend. VI; Klopfer v. North Carolina, 386 U.S. 213 (1967).
30. N.C. Const. art. I § 18.
31. Barker v. Wingo, 407 U.S. 514 (1972).
32. United States v. Marion, 404 U.S. 320 (1971).
33. United States v. MacDonald, 456 U.S. 1 (1982).
34. Klopfer v. North Carolina, 386 U.S. 213 (1967).
35. Klopfer, 386 U.S. at 217.
36. Hamm v. City of Rock Hill, 379 U.S. 306 (1964).
37. The procedure permitting a *nolle prosequi* with leave was codified in former G.S. 15-175, which was repealed in 1973.
38. State v. Klopfer, 266 N.C. 349, 145 S.E.2d 909 (1966).
39. Klopfer, 386 U.S. at 221-22.
40. Klopfer, 386 U.S. at 226-27.
41. Turner v. Louisiana, 379 U.S. 466 (1965).
42. State v. Simpson, 551 So. 2d 1303 (La. 1989); see also State v. Payne, 556 So. 2d 47 (La. 1990) (finding method of criminal case allocation unconstitutional where state has authority to make unchecked motions for trial dates, thereby selecting the judge to try the matter).
43. Offutt v. United States, 348 U.S. 11, 14 (1954).
44. Marshall v. Jerico, Inc., 446 U.S. 238 (1980).
45. See State v. Peterson, A.2d 672, 678 (Md. 1989) (collectases).
46. Wardius v. Oregon, 412 U.S. 470 (1973).
47. N.C. Const. art. IV § 1.
48. Landis v. North American Co., 299 U.S. 248, 254-55 (1936).
49. State v. Camacho, 329 N.C. 589, 593, 406 S.E.2d 868, 870 (1991).
50. McDonald v. Goldstein, 83 N.Y.S.2d 620 (N.Y. Sup. Ct. 1948), *aff'd*, 79 N.Y.S.2d 690 (N.Y. App. Div. 1948). See also Note, *Columbia Law Review* 48 (1948): 613; *In re Pending Cases*, Augusta Judicial Circuit, 215 S.E.2d 473 (Ga.1975) (separation of powers not violated by superior court order to district attorney to furnish list of cases in which indictment has been returned).
51. McDonald, 83 N.Y.S.2d at 625.
52. McDonald, 83 N.Y.S.2d at 626.
53. McDonald, 83 N.Y.S.2d at 626.
54. See Simeon et al. v. Hardin (originally Simeon et al. v. Stephens), 92-CVS-4318 (Super. Ct.) (Affidavit of the Honorable Robert Collier).
55. John Goerd, *Examining Court Delay: The Pace of Litigation in 26 Urban Trial Courts* (Williamsburg, Va.: National Center for State Courts, 1989), 88; Thomas W. Church, *Justice Delayed: The Pace of Litigation in Urban Trial Courts* (Williamsburg, Va.: National Center for State Courts, 1978); Barry Mahoney and Dale Anne Snipes, "Toward Better Management of Criminal Litigation," *Judicature* 72 (June/July 1988): 29.
56. G.S. 7A-347; see also G.S. 15A-825(8), which directs that prosecutors make a reasonable effort to notify witnesses that a court proceeding to which they have been subpoenaed will not occur as scheduled.
57. Minn. Stat. Ann. §§ 630.35-36 (1992 Pocket Part).
58. Ala. Code § 15-14-1 (1991); Nev. Rev. Stat. Ann. § 178.592 *et. seq.* (1986); Va. Code Ann. § 19.2-240 (1990).
59. Tenn. Ct. R. 50.
60. See N.J. R. Governing Crim. Practice, 3:25-2; N.Y. Unif. R.—Trial Cts. § 200.11 (1992) (provides that clerk upon commencement of action assigns case to judge by method of random selection; thereafter, assignment judge sets dates for hearing motions and fixing a date for trial).
61. N.H. Ct. R. 96-A (providing for case scheduling orders to encompass discovery and motion deadlines).
62. See Commentary to Tenn. Ct. R. 50 (directing that courts establish local rules to account for variations in local practices, subject to state-mandated priorities).
63. See, e.g., Ark. R. Crim. P. 27.1 (priorities in scheduling cases); Cal. Penal Code § 1048 (granting trial preference to defendants in custody); Mass. R. Crim. P. 36(a)(2) (court determines sequence of trial calendar after cases are selected by the district attorney; priorities are given to those in custody and those whose pretrial liberty presents unusual risks); Mont. Code Ann. § 46-16-101 (1991) (prosecutions against those in custody must be disposed of prior to prosecutions of those on bail, unless otherwise determined by the court for good cause).
64. See, e.g., Fla. R. Crim. P. 3.191 (demand by accused for trial shall be a pleading that he or she has investigated the case and is ready for trial; the court will set trial date not less than five days nor more than forty-five days from demand); Mo. Ann. Stat. § 545.780 (West 1987) (if defendant announces he is ready for trial, the court shall set trial date as soon as reasonably possible thereafter).



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The University of North Carolina at Chapel Hill

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MINUTES

HOUSE JUDICIARY I COMMITTEE

The House Committee on JUDICIARY I met in Room 1228/1327 of the Legislative Building on July 9, 1998 at 10:00 A.M. Representative Daughtry, Co-Chairman, presided at the meeting. Other members present were: Representative Hardy, Co-Chairman, and Representative(s) Alexander, Arnold, Braswell, Bryant, Blue, Capps, Clary, Ellis, Hall, Hurley, Michaux, Miller, Sherrill and Thompson. Staff Counsels Steven Ross and Karen Cochran-Brown were also present.

HB 1549 AN ACT TO INCREASE THE FINE FOR DRIVING A VEHICLE ON THE BEACH IN CURRITUCK COUNTY was the only bill considered.

Representative Daughtry called the meeting to order. He introduced the pages for the day – Ashley Davidson of Henderson County and John of Lapp of Henderson County.

Representative Daughtry also welcomed Representative Bryant, the new representative from the 49th District who replaces Representative R. Hunter. She will fill the remainder of Representative Hunter's term.

Representative Daughtry said that the parties involved in HB 1314 are here and are negotiating and we will hear on that bill next week. Representative Daughtry said that HB 268 has been taken off the calendar at the request of the sponsor.

Representative Daughtry said that left one bill to discuss. He called the bill sponsor, Representative Owens to explain HB 1549.

Representative Owens said that this bill was requested by the Currituck County Commissioners. He said that currently there is a \$50 fine for driving on the beach and going across the dunes. He said that motorists don't even slow down. The Commissioners are asking for a maximum of a \$500 fine. He said the people rent cottages in the area for \$5,000 - \$7,000/ week, and that \$50 doesn't mean anything to them.

Representative Hall moved a favorable report.

Representative Justus asked if the law was being enforced now. Representative Owens said it is as much as possible, but the law needs to have more teeth in it.

Representative Blue wondered if we give this authority already to municipalities is there a reason why we don't give this broad authority to counties. Mr. Rose said he was not sure why, but there is not a general power like that given to counties.

Representative Blue wondered if we give this authority already to municipalities is there a reason why we don't give this broad authority to counties. Mr. Rose said he was not sure why, but there is not a general power like that given to counties.

Representative Ellis asked how many tickets were issued last year. Representative Owens did not know. Representative Ellis said that \$500 was a lot of money. The committee was told that authorities generally give a warning the first time.

Representative Miller said that the present law allows the authorities to put them in jail for 30 days and that would attract their attention. He said the problem is that we think we are doing something when we increase the fines, but we aren't enforcing what we have got on the books already. He said he will support the bill but doesn't think this is the answer.

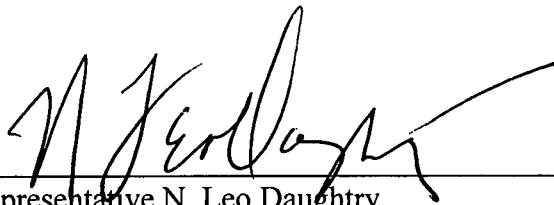
Representative Owens said that having a sign that says \$500 and not \$50 will get their attention more. Representative Miller said that putting "30 days" on a sign would get their attention.

Representative Owens said that Representative Blue was correct in pointing out that cities have more latitude to set laws than counties do and maybe we need to look at letting counties have as much authority as cities.

Representative Michaux asked why this is not a class 3 misdemeanor. Mr. Rose said it was because this is the way it was written in 1985 and passed in 1986, and was not changed when structured sentencing went into effect. The class 3 misdemeanor maximum fine is \$200.

The motion to give this bill a favorable report was passed.

Representative Daughtry adjourned the meeting at 10:25 A.M.



Representative N. Leo Daughtry
Co-chairman



Betty Wickham
Committee Clerk

ATTACHMENTS:

Exhibit A - NOTICE OF THE MEETING

Exhibit B - AGENDA

Exhibit C - VISITOR REGISTRATION

Exhibit D - COMMITTEE REPORT for HB 1549

Exhibit E - HB 1549

Exhibit F - STAFF REPORT for HB 1549

**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE**

You are hereby notified that the Committee on **JUDICIARY I** will meet as follows:

DAY & DATE: **Thursday, July 9, 1998**

TIME: **10:00 A.M.**

LOCATION: **Room 1228/1327 LB**

The following bills will be considered (Bill # & Short Title):

3	HB 268	~~Divide District 22~~	~~Sponsor - Rep. Brawley~~
✓	HB 1314	~~Cemetery-Consumer Protection (HCS)~~	~~Sponsor - Rep. Allred~~
✓	HB 1357	~~Best-Value-Info. Tech. Procurements (HCS)~~	~~Sponsor - Rep. Reynolds~~
✓	HB 1549	Currituck/Beach Driving Penalty	Sponsor - Rep. Owens

Respectfully,

Representative N. Leo Daughtry, Co-Chairman
Representative Edwin Hardy, Co-Chairman

I hereby certify this notice was filed by the committee clerk at the following offices at
12:00 p.m. on July 7, 1998.

____ Principal Clerk
____ Reading Clerk - House Chamber

Betty Wickham, Committee Clerk

**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE**

Corrected Notice :

Change in Agenda Items

You are hereby notified that the Committee on JUDICIARY I will meet as follows:

DAY & DATE: **Thursday, July 9, 1998**

TIME: **10:00 A.M.**

LOCATION: **Room 1228/1327 LB**

The following bills will be considered (Bill # & Short Title):

HB 268	Divide District 22	Sponsor - Rep. Brawley

HB 1314	Cemetery Consumer Protection (PCS)	Sponsor - Rep. Allred

✓ HB 1549	Currituck/Beach Driving Penalty	Sponsor - Rep. Owens

Respectfully,

Representative N. Leo Daughtry, Co-Chairman
Representative Edwin Hardy, Co-Chairman

I hereby certify this notice was filed by the committee clerk at the following offices at
12:00 p.m. on July 8, 1998.

____Principal Clerk
____Reading Clerk - House Chamber

Betty Wickham, Committee Clerk

AGENDA

HOUSE COMMITTEE ON JUDICIARY I

July 9, 1998
Room 1228/1327 LB
10:00 AM

Representative N. Leo Daughtry, Co-Chairman
Representative Edwin (Sandy) Hardy, Co-Chairman

BILLS TO BE CONSIDERED:

HB 1549	Currituck/Beach Driving Penalty	Sponsor - Rep. Owens
HB 268	Divide District 22	Sponsor - Rep. Brawley
BH 1314	Cemetery Consumer Protection (CS)	Sponsor - Rep. Allred

(Proposed House Committee Substitute for HB 1317 **AMEND CONTESTED CASE PROCEDURES***/Sponsor-Representative C. Wilson, was placed in a subcommittee at June 4th meeting for member study [Rep. Arnold, Chr.; Blue, Braswell, Clary, Morgan, Sherrill])*

ADJOURNMENT

VISITOR REGISTRATION SHEET

Judiciary 1 July 9 1998

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

	NAME	FIRM OR AGENCY
1.	<u>Matt Mason</u>	<u>Capital Group</u>
2.	<u>Therese</u>	<u>Off. of the Gov.</u>
3.	<u>Kim Smith</u>	<u>NCLM</u>
4.	<u>Ed Eden</u>	<u>Loewen Group</u>
5.	<u>Ch. Hirsch</u>	<u>Atty Gen's Office</u>
6.	<u>John Gunt</u>	<u>PR 103</u>
7.	<u>Andice Giff</u>	<u>AOC</u>
8.	<u>Wayne Bonds</u>	<u>AOC</u>
9.	<u>Natie Adams</u>	<u>CCNC</u>
10.	_____	_____
11.	_____	_____
12.	_____	_____
13.	_____	_____
14.	_____	_____
15.	_____	_____
16.	_____	_____
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28.	_____	_____
29.	_____	_____
30.	_____	_____
31.	_____	_____

**1998 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative(s) **Daughtry and Hardy** for the Committee on **JUDICIARY I.**

☐ Committee Substitute for

H.B. 1549 A BILL TO BE ENTITLED AN ACT TO INCREASE THE FINE FOR
DRIVING A VEHICLE ON THE BEACH IN CURRITUCK 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 BILL 1549

Short Title: Currituck/Beach Driving Penalty.

(Local)

Sponsors: Representative Owens.

Referred to: Local & Regional Government I, if favorable, Judiciary I.

May 27, 1998

1 A BILL TO BE ENTITLED
2 AN ACT TO INCREASE THE FINE FOR DRIVING A VEHICLE ON THE
3 BEACH IN CURRITUCK COUNTY.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 153A-139.1(a), as enacted by Chapter 875 of the 1985
6 Session Laws, reads as rewritten:

7 "**§ 153A-139.1. Regulation of motor vehicles at beaches.**

8 (a) A county may by ordinance regulate, restrict, and prohibit the use of dune or
9 beach buggies, jeeps, motorcycles, cars, trucks, or any other form of power-driven
10 vehicle specified by the governing body of the county on the foreshore, beach strand,
11 and the barrier dune system. Violation of any ordinance adopted by the governing
12 body pursuant to this section is a misdemeanor, punishable by a fine of not more
13 than ~~fifty dollars (\$50.00)~~, five hundred dollars (\$500.00), or by imprisonment for not
14 more than 30 days, or both in the discretion of the court."

15 Section 2. This act becomes effective December 1, 1998, and applies to
16 offenses committed on or after that date.



**North Carolina General Assembly
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July 10, 1998

MEMORANDUM

TO: House Judiciary I Committee

FROM:  **Steven Rose, Committee Counsel**

RE: House Bill 1549; Currituck County Beach Driving Penalty

House Bill 1549 is a local act amending G.S. 153A-139.1(a), as enacted by Chapter 875 of the 1995 Session Laws.

Under the current local act, Currituck County may by ordinance regulate the use of power driven vehicles on the beach. A violation of such ordinance under current law is a misdemeanor punishable by a fine of not more than \$50.00 or imprisonment for not more than 30 days or both. The amendment would increase the maximum fine to \$500.00.

The act is effective December 1, 1998 and applies to offenses committed on or after that date.

It should be pointed out that G.S. 160A-308 is a statewide law giving similar authority to municipalities. Violation of an ordinance adopted under G.S. 160A-308 is a Class 3 misdemeanor.

H1549-SMRL-001

AN ACT TO PERMIT THE COUNTY OF CURRITUCK TO REGULATE
MOTOR VEHICLES OPERATION ON PUBLIC BEACHES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 153A of the General Statutes is amended by adding a new section to read:

"§ 153A-139.1. *Regulation of motor vehicles at beaches.*—(a) A county may by ordinance regulate, restrict, and prohibit the use of dune or beach buggies, jeeps, motorcycles, cars, trucks, or any other form of power-driven vehicle specified by the governing body of the county on the foreshore, beach strand, and the barrier dune system. Violation of any ordinance adopted by the governing body pursuant to this section is a misdemeanor, punishable by a fine of not more than fifty dollars (\$50.00), or by imprisonment for not more than 30 days, or both in the discretion of the court.

(b) A county shall not prohibit the use of the specified vehicles from the foreshore, beach strand, and the barrier dune system by commercial fishermen for commercial activities. Commercial fishermen, however, shall abide by all other regulations or restrictions duly enacted by counties pursuant to this section.

(c) Notwithstanding G.S. 153A-122, a city may not take any action to limit the applicability of any ordinance adopted pursuant to this section on land within the county that is also within the city limits."

Sec. 2. This act applies to Currituck County only.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified, this the 3rd day of July, 1986.

MINUTES

HOUSE JUDICIARY I COMMITTEE

The House Committee on JUDICIARY I met in Room 1228/1327 of the Legislative Building on July 14, 1998 at 10:00 A.M. Representative Hardy, Co-Chairman, presided at the meeting. Other members present were: Representative Daughtry, Co-Chairman, and Representative(s) Alexander, Braswell, Bryant, Blue, Capps, Hall, Hurley, Jeffus, Justus, Miller, Sherrill and Thompson. Staff Counsels Steven Ross and Karen Cochrane-Brown were also present.

Representative Hardy called the meeting to order. He introduced the pages for the day – Mary Beth Webster of Charlotte and Chip Burti of Farmville.

Representative Hardy also welcomed Representative Bryant, the new representative from the 49th District.

The following two bills were considered by the Committee.

HB 1357 AN ACT TO PROVIDE FOR "BEST VALUE" INFORMATION TECHNOLOGY PROCUREMENTS.

The bill sponsor, Representative Reynolds, explained the bill which comes from the Technology Study Committee. He said that this bill is already policy but there were some agency people who were hesitant in using best value purchasing procedures.

Representative Reynolds said that in the information technology arena of big numbers, instead of purchasing the lowest price item this policy allows them to purchase the best value. If they do not take the low bid, there must be documentation showing why.

Representative Reynolds gave an example relating to the year 2000 where a vendor did not back their computers to make them year 2000 compliant. The department had to go to another computer company to solve the problem, and ended up buying a whole new system. Representative Reynolds said he never wants to see the state purchase from that vendor again. This bill would allow agencies to skip over those companies with bad track records and take the next lower bid.

Representative Alexander said she thought that for state purchases we could already do this.

Representative Reynolds said that this is the unwritten policy, but it is not in the statute.

Representative Hall moved a favorable report and the motion passed.

HB 1391 AN ACT TO AMEND THE CONSTITUTION OF NORTH CAROLINA TO PROVIDE FOR GUBERNATORIAL NOMINATION OF JUSTICES OF THE SUPREME COURT AND JUDGES OF THE COURT OF APPEALS, LEGISLATIVE CONFIRMATION, AND RETENTION BY VOTE OF THE PEOPLE.

Representative Daughtry began to discuss this bill. He recognized Representative Capps who presented an amendment. (See attachment I.)

Representative Daughtry said the amendment takes out the Superior Court judges. He said this bill only applies to Appellate Court judges, both the Court of Appeals and the Supreme Court judges, and does not apply to Superior Court or District Court judges.

Representative Sherrill wanted to know why the change is being recommended.

Representative Daughtry said this amendment was presented at his request. He does not believe that appointing Superior Court judges is the right thing to do. He said they are the judges who are closest to the people, along with the District Court judges. He said the bill as amended will only apply to members of the Supreme Court and members of the Court of Appeals, because they are the ones that people know little about. The chance that special interest groups such as insurance companies or trial lawyers might influence how they are elected is eliminated.

Representative Daughtry said this bill does not require the appointment of judges. He said it simply gives the people the right to decide whether or not they want judges appointed or elected.

The Capps amendment passed.

Representative Braswell asked what is the schedule for voters to decide on this issue.

Representative Daughtry said the vote will occur in the November, 1998 election. If the voters choose in favor of this, then the General Assembly will have the right to confirm the appointment.

Representative Hall asked how it will improve the selection of our judges over what we have done in the past to concentrate power in the hands of the judicial committee that makes the recommendation.

Representative Daughtry said that historically we have had excellent judges in our Supreme Court, and all of them were appointed by the Governor. He said that recently politics has gotten into the judiciary, at the state and national levels.

Representative Daughtry said that when voters do not know their judges, special interest groups could have influence on who become justices. Many voters know the Superior Court and District Court judges, but do not know who sits on the Court of Appeals. In these cases, the party with the most money will buy the judge.

Representative Hall wondered if we could have a provision added to this bill that if a person has been disciplined by the bar association and runs for Superior Court or District Court, then that information would have to be released.

Representative Daughtry pointed out that Section (b) on page 4, line 39 says that the committee shall be allowed to inspect the files of the Judicial Standards Commission by the request of the chair of the committee.

Representative Sherrill asked who had censured Judge Martin. Representative Daughtry said that the Judicial Standards Commission did so twice.

Representative Hall said that just because they have the right to inspect doesn't mean they will release the information. He thinks if the General Assembly is going to confirm then they ought to have that information.

Representative Miller called attention to page 2, line 6-7. He said that tradition has been that the Governor selects the Chief Justice from the sitting judges, although nothing says it has to be done this way. He said that under this bill, if the Governor fills a Chief Justice vacancy with an Associate Justice then it must come back to the General Assembly as if it was a new appointment. He doesn't understand the reason for that.

Representative Miller also expressed concern about confirmation of the nominees by the General Assembly.

Representative Daughtry said if Justice Mitchell were to leave the bench the process to replace him should be the same process as any other vacancy, and he does not think that to limit the selection of a replacement to those remaining on the bench is a wise move. The Governor could select one of those remaining, but also has an opportunity to select someone who is not on the bench.

Representative Miller said he agrees that the Governor should have sole discretion in making that nomination as he does now. He went on to say that should the Governor decide to nominate an Associate Justice to replace the Chief Justice, under this bill that person would have to come before the General Assembly for confirmation.

Representative Miller said that even though we say we are taking the political process out of the selection of judges, if the confirmation process is through the General Assembly then politics is going to be put back into the selection of the judiciary. Representative Miller said that if the political realities of the appointee are not going to be the subject of that debate, then he is not in the political process.

In summary, he said we will be electing the Chief Justice through the political process and it will be so controlled that the people will not be involved. Only those who are in the political majority will be the ones making that decision. Representative Miller said that as long as subsection (3) is in the bill, he is going to vote against it.

Representative Daughtry said that he believes that this body has as much insight to see good people as the Governor. He said he likes it better than going straight from the Governor to the bench. Representative Miller said that the process that we have through the appointment by our Governor and the court has worked pretty good and we are about to undo that.

Representative Hall said we are not going to be able to remove the political process. The question is which is better – being divided up among several people or concentrated in just one person.

Representative Capps said that he thinks the best way to make it non-political is to have the Chief Justice nominated by the other justices of the Supreme Court and confirmed by the General Assembly. He thinks they are in a position to know the members of that body better than anybody.

Representative Daughtry said he did not agree that that is the best way. He said it should go through the same process as the others, that the General Assembly will have the right to look at their ethical conduct, health, work habits, etc. He thinks these are the kinds of issues that we ought to discuss. It will be open and the public will know.

Representative Hall moved to amend the bill as discussed earlier by striking the words "be allowed to" on p. 4, l. 39. (See Attachment J.)

Representative Blue asked if whoever sits on a special confirmation committee of the General Assembly will have free reign to look at all claims that have ever been leveled, whether or not there was a basis.

Representative Daughtry said the bill also says that the nominee shall be given the opportunity to bring any information that the nominee deems to be appropriate. This means that if there is a frivolous charge, he would have the opportunity to present that.

Representative Blue asked in a follow-up if there was any specific confidentiality representation with regard to what people can say to the judges investigating or looking at

what their fellow judges are doing. Representative Daughtry said he was not aware of any.

The vote on the Hall amendment was favorable.

Representative Miller again explained his concern about the confirmation process in the bill. Representative Miller wondered would happen what if the General Assembly is not in session.

Representative Daughtry said that on page 2 the bill says the Governor may convene the General Assembly in extra session for the purpose of considering the confirmation of the nominee.

Representative Braswell wondered about the two day limit, assuming a nomination is made after the General Assembly adjourns *Sine Die* and the Governor calls them back in for a special session. Also, he wondered if during that two day period this nominating committee must conduct its investigation and make a recommendation before the full body. Representative Daughtry answered in the affirmative.

Representative Braswell asked if this two day investigation would include examination of their judicial standards record and everything that is relevant to making a recommendation to the full body. He wondered again if this entire process is going to take place in two days. Representative Daughtry said that from a practical standpoint, the committee would probably meet prior to the convening of the session and have the opportunity at that time to make the investigation and to advise the General Assembly.

Representative Daughtry said the bill says that each house of the General Assembly shall vote on the nomination within 60 calendar days of the date of nomination.

Representative Braswell said when we are between sessions you don't count those 60 days. The point he is trying to make is that if the Governor makes a nomination and we are not in session and he calls us back in for an extra session, will that investigative committee have to authority to begin investigations prior to our being summoned back to Raleigh.

Ms. Cochrane-Brown said that the constitutional amendment doesn't specifically address that. However, she said the General Assembly has the ability to convene its committees at any time during the interim: The houses of the General Assembly could create a joint confirmation committee at any point in time and begin to perform their investigation.

Representative Braswell said that the reason he raised this point is that under the confirmation procedure on page 4 it doesn't say that they can begin their work prior to the reconvening of the General Assembly. Representative Daughtry said that it doesn't say

that, but the General Assembly has its own rule making authority. He thinks it would be better not to spell this out in a constitutional amendment.

Representative Sherrill said that if the voters agree to this, she is sure this body will look at the process and will enact legislation that will address Representative Braswell's concerns, if necessary. She doesn't think this matter should be in this bill.

Representative Hall proposed to let the Governor appoint a person and let him serve as judge until this body meets and makes the decision in a regular session.

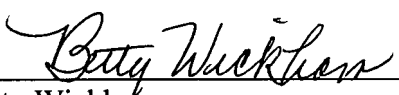
Representative Capps wondered, in line with what we did earlier, do we not need to change on page 4, line 32 the word "may" to "shall." This amendment was not put in writing, but the vote on the amendment was favorable.

The previous motion to roll the bill into a committee substitute, unfavorable to the original, favorable to the committee substitute was voted on. The motion passed.

Representative Hardy adjourned the meeting at 10.:55 A.M.



Representative Edwin M. Hardy
Co-chairman



Betty Wickham
Committee Clerk

ATTACHMENTS:

Exhibit A - NOTICE OF THE MEETING

Exhibit B - AGENDA

Exhibit C - VISITOR REGISTRATION

Exhibit D - COMMITTEE REPORT for HB 1357

Exhibit E - HB 1357

Exhibit F - STAFF REPORT for HB 1357

Exhibit G - COMMITTEE REPORT for HB 1391

Exhibit H - PROPOSED COMMITTEE SUBSTITUTE for HB 1391

Exhibit I - PROPOSED AMENDMENT to HB 1391 (Capps)

Exhibit J - PROPOSED AMENDMENT to HB 1391 (Hall)

Exhibit K - HB 1391

Exhibit L - STAFF REPORT for HB 1391

**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE**

You are hereby notified that the Committee on JUDICIARY I will meet as follows:

DAY & DATE: Tuesday, July 14, 1998

TIME: 10:00 A.M.

LOCATION: Room 1228/1327 LB

The following bills will be considered (Bill # & Short Title):

(4) HB 1314 ~~Cemetery Consumer Protection (CS)~~ ~~Sponsor - Rep. Allred~~
✓ (1) HB 1357 Best Value Info. Tech. Procurements (CS) Sponsor - Rep. Reynolds
✓ (1) HB 1391 Judicial Appt./Voter Retention Sponsor - Daughtry
(1) HB 1442 ~~Exempt Transport Agric. Products~~ ~~Sponsor - Mitchell~~

Respectfully,

Representative N. Leo Daughtry, Co-Chairman
Representative Edwin Hardy, Co-Chairman

I hereby certify this notice was filed by the committee clerk at the following offices at
12:20 p.m. on July 9, 1998.

___ Principal Clerk
___ Reading Clerk - House Chamber

Betty Wickham, Committee Clerk

AGENDA

HOUSE COMMITTEE ON JUDICIARY I

July 14, 1998
Room 1228/1327 LB
10:00 AM

Representative N. Leo Daughtry, Co-Chairman
Representative Edwin (Sandy) Hardy, Co-Chairman

BILLS TO BE CONSIDERED:

- ✓ HB 1357 *favorable report* Best Value Info. Tech. Procurements (CS) Sponsor - Rep. Reynolds
- HB 1442 ~~Exempt Transport Agric. Products~~ Sponsor - Rep. Mitchell
- ✓ HB 1391 *prop. 65 favor report* Judicial Appt./Voter Retention Sponsor - Rep. Daughtry
- HB 1314 ~~Cemetery Consumer Protection (CS)~~ Sponsor - Rep. Allred

(Proposed House Committee Substitute for HB 1317 AMEND CONTESTED CASE
PROCEDURES/Sponsor-Representative C. Wilson, was placed in a subcommittee at
June 4th meeting for member study [Rep. Arnold, Chr.; Blue, Braswell, Clary, Morgan,
Sherrill])

ADJOURNMENT

VISITOR REGISTRATION SHEET

Judiciary 1
Name of Committee

July 14 1998
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME

FIRM OR AGENCY AND ADDRESS

Betty Lorette JD	SE'S EXCAVATING 2207 WIGGINS ST BURLINGTON, N.C. NC 7th
Steve Woodson	NC Farm Bureau Federation
MICHAEL CROWELL	COURTS FUTURES Comm'n
Charles Cromer	NCATL
Harcy Flannery	Non Profit Homes for the Aging
Carrie Altman	NC Science & Tech
by Hester	Office of the Gov.
Patsy Reynolds	visiting Dennis Reynolds
Josh Wyatt	Parker Poe Allen & Bernstein
Raquel Whiting	" "
C. Parker	Bone & Assoc.
Lu-Ann Coe	777
Joseph	NEPC
L. Roberts	DENK
jeanne Bonds	AOC

VISITOR REGISTRATION SHEET

Name of Committee

7272

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME

FIRM OR AGENCY AND ADDRESS

[illegible]

**1998 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative(s) **Daughtry and Hardy** for the Committee on **Judiciary I.**

☒ Committee Substitute for

H.B. 1357 A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR "BEST VALUE"
INFORMATION TECHNOLOGY PROCUREMENTS.

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

3/25/98

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

2

HOUSE BILL 1357*
Committee Substitute Favorable 6/22/98

Short Title: Best Value Info. Tech. Procurements.

(Public)

Sponsors:

Referred to:

May 20, 1998

- 1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR "BEST VALUE" INFORMATION TECHNOLOGY
3 PROCUREMENTS.
4 The General Assembly of North Carolina enacts:
5 Section 1. Chapter 143 of the General Statutes is amended by adding a
6 new section to read:
7 "§ 143-135.9. 'Best Value' information technology procurements.
8 (a) For purposes of this section:
9 (1) 'Information technology' includes electronic data processing and
10 telecommunications goods and services, microelectronics, software,
11 information processing, office systems, any services related to the
12 foregoing, and consulting or other services for design and/or
13 redesign of business processes.
14 (2) 'Best Value' procurement means the selection of a contractor
15 based on a determination of which proposal offers the best trade-
16 off between price and performance, where quality is considered an
17 integral performance factor. The award decision is made based on
18 multiple factors, including: total cost of ownership, meaning the
19 cost of acquiring, operating, maintaining, and supporting a product
20 or service over its projected lifetime; the evaluated technical merit
21 of the vendor's proposal; the vendor's past performance; and the
22 evaluated probability of performing the requirements stated in the
23 solicitation on time, with high quality, and in a manner that

1 accomplishes the stated business objectives and maintains industry
2 standards compliance.

3 (3) 'Solution-Based Solicitation' means a solicitation in which the
4 requirements are stated in terms of how the product or service
5 being purchased should accomplish the business objectives, rather
6 than in terms of the technical design of the product or service.

7 (4) 'Government-Vendor Partnership' means a mutually beneficial
8 contractual relationship between State government and a
9 contractor, wherein the two share risk and reward, and value is
10 added to the procurement of complex technology.

11 (b) The intent of 'Best Value' Information Technology procurement is to enable
12 contractors to offer and the agency to select the most appropriate solution to meet the
13 business objectives defined in the solicitation and to keep all parties focused on the
14 desired outcome of a procurement. Business process reengineering, system design,
15 and technology implementation may be combined into a single solicitation.

16 (c) The acquisition of information technology by the State of North Carolina shall
17 be conducted using the 'Best Value' procurement method. For acquisitions which
18 the procuring agency and the Division of Purchase and Contracts deem to be highly
19 complex or determine that the optimal solution to the business problem at hand is
20 not known, the use of Solution-Based Solicitation and Government-Vendor
21 Partnership is authorized and encouraged."

22 Section 2. The Division of Purchase and Contracts shall develop and
23 implement no later than December 31, 1998, policies and procedures to ensure the
24 use of "Best Value" Procurement and, as applicable, Solution-Based Procurement and
25 Government-Vendor Partnership in the procurement of information technology by
26 State agencies.

27 Section 3. The Division of Purchase and Contracts and the Department
28 of Commerce, Information Technology Services, shall jointly develop and implement
29 no later than December 31, 1998, policies, procedures, and/or programs to ensure that
30 agency and Division of Purchase and Contracts personnel involved in the
31 development of solicitations, development of specifications, evaluation of proposals,
32 selection of vendors, administration of contracts, and management of information
33 technology projects receive high-quality training in the principles of "Best Value"
34 Procurement, Solution-Based Procurement, Government-Vendor Partnership,
35 contract administration, and project management.

36 Section 4. The Division of Purchase and Contract and the Department of
37 Commerce, Information Technology Services, shall report to the Technology
38 Committee of the House of Representatives and the comparable committee in the
39 Senate on the results of the implementation of G.S. 143-135.9 at its first meeting
40 during the 1999 Session of the General Assembly.

41 Section 5. Section 1 of this act becomes effective July 1, 1998. The
42 remaining sections of this act are effective when this act becomes law.



**North Carolina General Assembly
Legislative Services Office**

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Terrence D. Sullivan, Director
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Raleigh, NC 27603-5925
(919) 733-2578

July 6, 1998

MEMORANDUM

TO: Representatives Leo Daughtry and Edwin Hardy, Co-Chairmen,
House Judiciary I Committee.

FROM: Karen Cochrane Brown, Committee Co-Counsel *KCB*

RE: House Bill 1357 - Best Value Info. Tech. Procurement.

House Bill 1357 is a recommendation of the LRC Information Technology Committee. The Committee found that information technology is more complex, more volatile, and often considerably more expensive than most commodities purchased by the State, and therefore, should be acquired differently. The Committee found that the traditional means of selecting vendors were not appropriate in this area, but rather the selection should be evaluated on the basis of "best value", meaning the best tradeoff between price and performance, where quality is considered an integral performance factor. The award decision is made based on multiple factors, including: total cost of ownership, meaning the cost of acquiring, operating, maintaining, and supporting a product or service over its projected lifetime; the evaluated technical merit of the vendor's proposal; the vendor's past performance; and the evaluated probability of performing the requirements stated in the solicitation on time, with high quality, and in a manner that accomplishes the stated business objectives and maintains industry standards compliance.

Section 1 of the bill adds a new section to Chapter 143 of the General Statutes which directs that the acquisition of information technology by the State be conducted using the "Best Value" procurement method. This section also authorizes the uses of "Solution-Based Solicitation" and "Government-Vendor Partnership" for acquisitions deemed highly complex or where the optimal solution to the business problem is not known.

Section 2 of the bill requires the Division of Purchase and Contracts to develop and implement by December 31, 1998, policies and procedures to ensure the use of "Best Value" procurement practices by State agencies.

Section 3 requires the Division of Purchase and Contracts and the Department of Commerce's Information Technology Services organization to jointly develop and implement by December

31, 1998, policies, procedures and programs to ensure that agency personnel involved in information technology procurement and project management receive high quality training in "Best Value" procurement, contract administration, and project management principles.

Section 4 of the bill directs the Division of Purchase and Contracts and the Information Technology Services organization to report the results of implementation of this act to the House Technology Committee and the appropriate Senate Committee at their first meetings during the 1999 Session.

Section 1 of this act becomes effective July 1, 1998, and the remaining sections are effective when they become law.

**1998 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative(s) **Daughtry and Hardy** for the Committee on **JUDICIARY I.**

☐ Committee Substitute for

H.B. 1391 A BILL TO BE ENTITLED AN ACT TO AMEND THE CONSTITUTION OF NORTH CAROLINA TO PROVIDE FOR GUBERNATORIAL NOMINATION OF JUSTICES OF THE SUPREME COURT AND JUDGES OF THE COURT OF APPEALS, LEGISLATIVE CONFIRMATION, AND RETENTION BY VOTE OF THE PEOPLE.

☐ 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 1391*
Proposed Committee Substitute H1391-PCS8361-RO001

Short Title: Judicial Appt./Voter Retention.

(Public)

Sponsors:

Referred to:

May 21, 1998

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE CONSTITUTION OF NORTH CAROLINA TO
3 PROVIDE FOR GUBERNATORIAL NOMINATION OF JUSTICES OF THE
4 SUPREME COURT AND JUDGES OF THE COURT OF APPEALS,
5 LEGISLATIVE CONFIRMATION, AND RETENTION BY VOTE OF THE
6 PEOPLE.
7 The General Assembly of North Carolina enacts:
8 Section 1. Section 16 of Article IV of the North Carolina Constitution
9 reads as rewritten:
10 ~~"Sec. 16. Terms of office and election of Justices of the Supreme Court, Judges of~~
11 ~~the Court of Appeals, and Judges of the Superior Court. Selection and tenure of~~
12 ~~Justices of the Supreme Court and Judges of the Court of Appeals; election of Judges~~
13 ~~of the Superior Court.~~
14 ~~Justices of the Supreme Court, Judges of the Court of Appeals, and regular (1)~~
15 Judges of the Superior court shall be elected by the qualified voters and shall hold
16 office for terms of eight years and until their successors are elected and qualified.
17 ~~Justices of the Supreme Court and Judges of the Court of Appeals shall be elected by~~
18 ~~the qualified voters of the State.~~ Regular Judges of the Superior Court may be
19 elected by the qualified voters of the State or by the voters of their respective
20 districts, as the General Assembly may prescribe.
21 (2) General principles. Justices and judges of the Appellate Division should be
22 selected for and continue to hold office solely upon the basis of personal and
23 professional fitness to administer right and justice wisely, according to law, and

1 without favor, denial, or delay, to all persons who come into the courts. While their
2 continuation in office should be periodically subject to approval by the people, both
3 their initial selection and continuation in office should be free, so far as may be, from
4 the influences and necessities of partisan political activity.

5 (3) Nomination, confirmation, appointment retention election, and terms of
6 justices and judges. On and after January 1, 1999, when a vacancy occurs in the
7 office of Chief Justice, Associate Justice, or Judge of the Appellate Division, the
8 Governor shall nominate a person to fill the vacancy. Prior to appointment, such
9 nominations by the Governor shall be subject to confirmation of the General
10 Assembly by three-fifths of the members of each house present and voting prior to
11 appointment. For the purposes of this section, creation of a new judgeship within the
12 Appellate Division creates a vacancy.

13 Each house of the General Assembly shall vote on confirmation within 60 calendar
14 days of the date of nomination, except that no day shall be included within that
15 calculation if it is:

16 (a) Between sine die adjournment of one regular session and
17 convening of the next regular session; or

18 (b) During any period when the General Assembly has adjourned a
19 regular session for more than 30 days jointly as provided under
20 Section 20 of Article II of this Constitution.

21 If a nomination is made during either of the periods listed in subdivision (a) or (b)
22 of this subsection, the Governor may convene the General Assembly in extra session
23 for the purpose of considering confirmation of the nomination. No action of that
24 extra session shall be valid after the second calendar day of that session, and that
25 extra session may not consider any matters other than rules for the extra session,
26 confirmation of the nomination, and adjournment sine die. The nomination may not
27 be confirmed in any extra session other than one called under this subsection.

28 The term of office by appointment as Chief Justice, Associate Justice, or Judge of
29 the Appellate Division extends through June 30 after the next statewide election for
30 members of the General Assembly that is held more than 18 months after the
31 nomination is confirmed. At that election, a person holding by appointment the
32 office of Chief Justice, Associate Justice, or Judge of the Appellate Division who
33 desires to continue in office shall be subject to approval by nonpartisan ballot, by a
34 majority of the votes cast on the issue of the Justice's or Judge's retention. A Chief
35 Justice, Associate Justice, or Judge of the Appellate Division then approved for
36 retention serves a regular term.

37 The regular terms of office of the Chief Justice, Associate Justices, and Judges of
38 the Appellate Division are eight years and expire on June 30.

39 At the last statewide election for members of the General Assembly held before
40 the expiration of a regular term of office, a Chief Justice, Associate Justice, or Judge
41 of the Appellate Division who desires to continue in office shall be subject to
42 approval by nonpartisan ballot, by a majority of the votes cast on the issue of the
43 Justice's or Judge's retention.

1 If the voters fail to approve the retention in office of a Chief Justice, Associate
2 Justice, or Judge of the Appellate Division serving an appointed or regular term, the
3 office shall become vacant at the end of the term of office, and it shall be filled by
4 nomination, confirmation, and appointment as prescribed in this section. In such
5 case, the Governor may only nominate a person of the same political affiliation as the
6 justice or judge who has not been retained in office. For the purpose of this section,
7 the political affiliation of a nominee for justice or judge is determined as of 24
8 months preceding the date of the vacancy for which the nomination is made.

9 Voting in a retention election on the Chief Justice, Associate Justices, and Judges
10 of the Appellate Division shall be the qualified voters of the whole State.

11 (4) Transition provisions. The term of office of a person who has been elected
12 before January 1, 1999, to the office of Chief Justice, Associate Justice, or Judge of
13 the Appellate Division for a term which extends beyond January 1, 1999, and who is
14 in office on January 1, 1999, is extended through June 30 of the year following the
15 eighth year after the date any such justice or judge was last elected to the office. If
16 the person so elected continues to serve for the remainder of the term, that person
17 may stand for retention in the office for a succeeding regular term as provided in this
18 section. If the person continues to serve for the remainder of the term but does not
19 stand for retention election, a vacancy is created in the office upon expiration of the
20 term, and this vacancy shall be filled by nomination, confirmation, and appointment
21 as provided in this section.

22 The term of office of a person who has been appointed before January 1, 1999, to
23 the office of Chief Justice, Associate Justice, or Judge of the Appellate Division for a
24 term which extends beyond January 1, 1999, and who is in office on January 1, 1999,
25 shall end on June 30, 2001. If the person so appointed continues to serve for the
26 remainder of the term, that person may stand for retention in the office for a regular
27 term as provided by this section at the statewide election for members of the General
28 Assembly held in 2000.

29 Upon the death, resignation, removal, or retirement of any incumbent justice or
30 judge on or after January 1, 1999, and before the expiration of his term of office, the
31 resulting vacancy shall be filled by nomination, confirmation, and appointment as
32 provided in this section.

33 Vacancies in judicial offices in the Appellate Division occurring before January 1,
34 1999, and not filled by that date, shall be filled by nomination, confirmation, and
35 appointment as provided in this section.

36 From the date any incumbent described in this subsection is continued in office by
37 retention vote for a term next succeeding the term in progress on January 1, 1999, or
38 is succeeded in office by another person, the office is held subject to the provisions of
39 this section.

40 (5) The General Assembly may implement this section by general law."

41 Section 2. The amendment set out in Section 1 of this act shall be
42 submitted to the qualified voters of the State at the general election in November
43 1998, which election shall be conducted under the laws then governing elections in

1 the State. Ballots, voting systems, or both may be used in accordance with Chapter
2 163 of the General Statutes.

3 "[] FOR [] AGAINST

4 Constitutional amendment to replace the present practice of selecting
5 justices and judges of the Appellate Division by gubernatorial appointment, followed
6 by partisan elections, with a method by which justices and judges of the Appellate
7 Division will be nominated by the Governor, confirmed by the General Assembly,
8 and then serve for limited terms after which the question of the justice's or judge's
9 retention in office is regularly submitted for approval or disapproval by nonpartisan
10 vote of the people at general elections."

11 Section 3. If a majority of votes cast on the question are in favor of the
12 amendment set out in Section 1 of this act, the State Board of Elections shall certify
13 the amendment to the Secretary of State. The amendment becomes effective upon
14 this certification. The Secretary of State shall enroll the amendment so certified
15 among the permanent records of that office.

16 Section 3.1. Chapter 7A of the General Statutes is amended by adding a
17 new Article to read:

18 "ARTICLE 1A.

19 "Appointment and Confirmation of Justices and Judges.

20 "Retention Elections.

21 "§ 7A-4.1. Nomination of justices and judges by Governor and confirmation by
22 General Assembly.

23 (a) The offices of Chief Justice and Justice of the Supreme Court and Judge of the
24 Court of Appeals are filled by nomination by the Governor subject to confirmation
25 by the General Assembly in accordance with Section 16 of Article IV of the
26 Constitution.

27 (b) Nominees are subject to confirmation as provided in this subsection. A
28 nominee is confirmed by passage of a joint resolution of the General Assembly. The
29 Governor may withdraw a nomination at any time.

30 "§ 7A-4.2. Confirmation procedures.

31 (a) A legislative committee to which the issue of confirmation is referred shall
32 conduct an investigation of the nominee. The investigation may include an
33 evaluation of the nominee's ethical conduct, the nominee's knowledge of and
34 application of the law, the nominee's management of the courts over which he has
35 presided, the nominee's work habits, the nominee's health, and the nominee's
36 judicial demeanor. The nominee or judge shall be given an opportunity to present to
37 the committee any information that the nominee determines to be appropriate.

38 (b) The committee shall inspect the files of the Judicial Standards Commission by
39 request of the chair of the committee. Notwithstanding the provisions of G.S. 7A-
40 377, the files of the Judicial Standards Commission shall be made available to the
41 committee. Testimony and other evidence presented to the committee is privileged
42 in any action for defamation.

43 "§ 7A-4.3. Governor to issue commissions to justices and judges.

Every person duly nominated by the Governor as Chief Justice of the Supreme Court, Associate Justice of the Supreme Court, or Judge of the Court of Appeals and duly confirmed by the General Assembly shall be appointed by the Governor and shall procure from the Governor a commission attesting that fact, which the Governor shall issue upon receipt of a certification by the Secretary of State of the joint resolution of confirmation.

When a judge is retained in office by vote of the people, the Governor shall issue a commission attesting that fact, which the Governor shall issue upon receipt of a certification by the Secretary of State of the results of the election.

"§ 7A-4.4. No elections in 1999.

No partisan election as previously provided by law for Chief Justice or Associate Justice of the Supreme Court, or Judge of the Court of Appeals, shall be held in 1999 or thereafter.

"§ 7A-4.5. Retention elections.

(a) As provided by Section 16 of Article IV of the Constitution of North Carolina, a Chief Justice or Associate Justice of the Supreme Court or Judge of the Court of Appeals desiring to continue in office shall be subject to approval by nonpartisan ballot, by a majority of votes cast on the issue of the justice's or judge's retention.

(b) A person subject to subsection (a) of this section shall indicate the desire to continue in office by filing a notice to that effect with the State Board of Elections no later than 12:00 noon on the first business day of July in the year of the election. The notice shall be on a form approved by the State Board of Elections. Notice can be withdrawn at any time prior to the deadline for filing notice under this subsection.

(c) Retention elections shall be conducted and canvassed in accordance with rules of the State Board of Elections in the same general manner as general elections under Chapter 163 of the General Statutes, except that the retention election is nonpartisan. The form of the ballot shall be determined by the State Board of Elections.

(d) Retention elections shall be placed at the top of the ballot above all other elections or matters for decision, whether partisan, nonpartisan, or otherwise.

(e) If a person who has filed a notice calling a retention election dies or is removed from office prior to the time that the ballots are printed, the retention election is cancelled. If a person who has filed a notice calling a retention election dies or is removed from office after the ballots are printed, the State Board of Elections may cancel the election if it determines that the ballots can be reprinted without significant expense. If the ballots cannot be reprinted, then the results of the election shall be ineffective."

Section 3.2. G.S. 163-140(a) reads as rewritten:

"(a) Kinds of General Election Ballots; Right to Combine. -- For purposes of general elections, there shall be seven kinds of official ballots entitled:

- (1) Ballot for presidential electors
- (2) Ballot for United States Senator
- (3) Ballot for member of the United States House of Representatives
- (4) State ballot
- (5) County ballot

(6) Repealed by Session Laws 1973, c. 793, s. 56

(7) Ballot for constitutional amendments and other propositions submitted to the people

(8) Judicial ballot for superior court.

Use of official ballots shall be limited to the purposes indicated by their titles. The printing on all ballots shall be plain and legible but, unless large type is specified by this section, type larger than 10-point shall not be used in printing ballots. All general election ballots shall be prepared in such a way as to leave sufficient blank space beneath each name printed thereon in which a voter may conveniently write the name of any person for whom he may desire to vote.

Unless prohibited by this section, the board of elections, State or county, charged by law with printing ballots may, in its discretion, combine any two or more official ballots. Whenever two or more ballots are combined, the voting instructions for the State ballot set out in subsection (b)(4) of this section shall be used, except that if the two ballots being combined do not contain a multi-seat race, then the second sentence of instruction b. shall not appear on the ballot.

Contests in the general election for seats in the State House of Representatives and State Senate shall be on ballots that are separate from ballots containing non-legislative contests, except where the voting system used makes separation of ballots impractical. State House and State Senate contests shall be on the same ballot, unless one is a single-seat contest and the other a multi-seat contest.

~~All candidates for the Appellate Division shall appear on the same ballot."~~

Section 3.3. For purpose of Section 1 of this act, terms of justices and judges covered by Section 2 of Chapter 98 of the 1995 Session Laws are as provided by that act.

Section 3.4. G.S. 7A-10(a) reads as rewritten:

"(a) The Supreme Court shall consist of a Chief Justice and six associate justices, ~~elected by the qualified voters of the State for terms of eight years~~ selected as provided by Article 1A of this Chapter. Before entering upon the duties of his office, each justice shall take an oath of office. Four justices shall constitute a quorum for the transaction of the business of the court. Sessions of the court shall be held in the city of Raleigh, and scheduled by rule of court so as to discharge expeditiously the court's business."

Section 3.5. G.S. 7A-16 reads as rewritten:

"§ 7A-16. Creation and organization.

~~The Court of Appeals is created effective January 1, 1967. It shall consist initially of six judges, elected by the qualified voters of the State for terms of eight years. The Chief Justice of the Supreme Court shall designate one of the judges as Chief Judge, to serve in such capacity at the pleasure of the Chief Justice. Before entering upon the duties of his office, a judge of the Court of Appeals shall take the oath of office prescribed for a judge of the General Court of Justice.~~

~~The Governor on or after July 1, 1967, shall make temporary appointments to the six initial judgeships. The appointees shall serve until January 1, 1969. Their successors shall be elected at the general election for members of the General~~

~~1 Assembly in November, 1968, and shall take office on January 1, 1969, to serve for
2 the remainder of the unexpired term which began on January 1, 1967.~~

~~3 Upon the appointment of at least five judges, and the designation of a Chief Judge,
4 the court is authorized to convene, organize, and promulgate, subject to the approval
5 of the Supreme Court, such supplementary rules as it deems necessary and
6 appropriate for the discharge of the judicial business lawfully assigned to it.~~

~~7 Effective January 1, 1969, the number of judges is increased to nine, and the
8 Governor, on or after March 1, 1969, shall make temporary appointments to the
9 additional judgeships thus created. The appointees shall serve until January 1, 1971.
10 Their successors shall be elected at the general election for members of the General
11 Assembly in November, 1970, and shall take office on January 1, 1971, to serve for
12 the remainder of the unexpired term which began on January 1, 1969.~~

~~13 Effective January 1, 1977, the number of judges is increased to 12; and the
14 Governor, on or after July 1, 1977, shall make temporary appointments to the
15 additional judgeships thus created. The appointees shall serve until January 1, 1979.
16 Their successors shall be elected at the general election for members of the General
17 Assembly in November, 1978, and shall take office on January 1, 1979, to serve the
18 remainder of the unexpired term which began on January 1, 1977.~~

~~19 The Court of Appeals shall consist of 12 judges, selected as provided in Article 1A
20 of this Chapter. The Chief Justice of the Supreme Court shall designate one of the
21 judges as Chief Judge to serve in such capacity at the pleasure of the Chief Justice.
22 Before entering upon the duties of his office, a judge of the Court of Appeals shall
23 take the oath of office prescribed for a judge of the General Court of Justice.~~

~~24 The Court of Appeals shall sit in panels of three judges each. The Chief Judge
25 insofar as practicable shall assign the members to panels in such fashion that each
26 member sits a substantially equal number of times with each other member. He shall
27 preside over the panel of which he is a member, and shall designate the presiding
28 judge of the other panel or panels.~~

~~29 Three judges shall constitute a quorum for the transaction of the business of the
30 court, except as may be provided in G.S. 7A-32.~~

~~31 In the event the Chief Judge is unable, on account of absence or temporary
32 incapacity, to perform the duties placed upon him as Chief Judge, the Chief Justice
33 shall appoint an acting Chief Judge from the other judges of the Court, to
34 temporarily discharge the duties of Chief Judge."~~

~~35 Section 3.6. G.S. 163-106(c) reads as rewritten:~~

~~36 "(c) Time for Filing Notice of Candidacy. -- Candidates seeking party primary
37 nominations for the following offices shall file their notice of candidacy with the State
38 Board of Elections no earlier than 12:00 noon on the first Monday in January and no
39 later than 12:00 noon on the first Monday in February preceding the primary:~~

~~40 Governor~~

~~41 Lieutenant Governor~~

~~42 All State executive officers~~

~~43 Justices of the Supreme Court, Judges of the Court of Appeals~~

~~44 Judges of the district courts~~

1 United States Senators
2 Members of the House of Representatives of the United States
3 District attorneys
4 Candidates seeking party primary nominations for the following offices shall file
5 their notice of candidacy with the county board of elections no earlier than 12:00
6 noon on the first Monday in January and no later than 12:00 noon on the first
7 Monday in February preceding the primary:

8 State Senators
9 Members of the State House of Representatives
10 All county offices."

11 Section 3.7. G.S. 163-106(d) reads as rewritten:

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

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

25 Section 3.8. G.S. 163-107(a) reads as rewritten:

26 "(a) Fee Schedule. -- At the time of filing a notice of candidacy, each candidate
27 shall pay to the board of elections with which he files under the provisions of G.S.
28 163-106 a filing fee for the office he seeks in the amount specified in the following
29 tabulation:

30	31 Office Sought	32 Amount of Filing Fee
33	Governor	One percent (1%) of the annual
34		salary of the office sought
35	Lieutenant Governor	One percent (1%) of the annual
36		salary of the office sought
37	All State executive offices	One percent (1%) of the annual
38		salary of the office sought
39	All ~~Justices, Judges, and~~	One percent (1%) of the annual
40	<u>Superior Court Judges,</u>	salary of the office sought
41	<u>District Court Judges,</u>	
42	District Attorneys of the	
43	General Court of Justice	
44		

1	United States Senator	One percent (1%) of the annual salary of the office sought
2		
3	Members of the United States	One percent (1%) of the annual salary of the office sought
4	House of Representatives	
5	State Senator	One percent (1%) of the annual salary of the office sought
6		
7	Member of the State House of	One percent (1%) of the annual salary of the office sought
8	Representatives	
9	All county offices not	One percent (1%) of the annual salary of the office sought
10	compensated by fees	
11	County commissioners, if	Ten dollars (\$10.00)
12	compensated entirely by fees	
13	Members of county board of	Five dollars (\$5.00)
14	education, if compensated	
15	entirely by fees	
16	Sheriff, if compensated	Forty dollars (\$40.00), plus one
17	entirely by fees	percent (1%) of the income of the
18		office above four thousand
19		dollars (\$4,000)
20	Clerk of superior court, if	Forty dollars (\$40.00), plus one
21	compensated entirely by fees	percent (1%) of the income of the
22		office above four thousand
23		dollars (\$4,000)
24	Register of deeds, if	Forty dollars (\$40.00), plus one
25	compensated entirely by fees	percent (1%) of the income of the
26		office above four thousand
27		dollars (\$4,000)
28	Any other county office, if	Twenty dollars (\$20.00), plus one
29	compensated entirely by fees	percent (1%) of the income of the
30		office above two thousand dollars
31		(\$2,000)
32	All county offices compensated	One percent (1%) of the first
33	partly by salary and partly	annual salary to be received
34	by fees	(exclusive of fees)."

35 Section 3.9. G.S. 163-107.1(b) reads as rewritten:

36 "(b) If the candidate is seeking the office of United States Senator, Governor,
 37 Lieutenant Governor, or any State executive officer, ~~Justice of the Supreme Court or~~
 38 ~~Judge of the Court of Appeals~~, the petition must be signed by 10,000 registered voters
 39 who are members of the political party in whose primary the candidate desires to
 40 run, except that in the case of a political party as defined by G.S. 163-96(a)(2) which
 41 will be making nominations by primary election, the petition must be signed by ten
 42 percent (10%) of the registered voters of the State who are affiliated with the same
 43 political party in whose primary the candidate desires to run, or in the alternative,
 44 the petition shall be signed by no less than 10,000 registered voters regardless of the

1 voter's political party affiliation, whichever requirement is greater. The petition must
2 be filed with the State Board of Elections not later than 12:00 noon on Monday
3 preceding the filing deadline before the primary in which he seeks to run. The names
4 on the petition shall be verified by the board of elections of the county where the
5 signer is registered, and the petition must be presented to the county board of
6 elections at least 15 days before the petition is due to be filed with the State Board of
7 Elections. When a proper petition has been filed, the candidate's name shall be
8 printed on the primary ballot."

9 Section 3.10. G.S. 163-111(c)(1) reads as rewritten:

10 "(1) A candidate who is apparently entitled to demand a second
11 primary, according to the unofficial results, for one of the offices
12 listed below, and desiring to do so, shall file a request for a second
13 primary in writing or by telegram with the Executive Secretary-
14 Director of the State Board of Elections no later than 12:00 noon
15 on the seventh day (including Saturdays and Sundays) following
16 the date on which the primary was conducted, and such request
17 shall be subject to the certification of the official results by the
18 State Board of Elections. If the vote certification by the State
19 Board of Elections determines that a candidate who was not
20 originally thought to be eligible to call for a second primary is in
21 fact eligible to call for a second primary, the Executive Secretary-
22 Director of the State Board of Elections shall immediately notify
23 such candidate and permit him to exercise any options available to
24 him within a 48-hour period following the notification:

25 Governor,

26 Lieutenant Governor,

27 All State executive officers,

28 ~~Justices, Judges, or~~ Superior Court Judges, District Court

29 Judges, or District Attorneys of the General Court of
30 Justice, other than superior court judge,

31 United States Senators,

32 Members of the United States House of

33 Representatives,

34 State Senators in multi-county senatorial
35 districts, and

36 Members of the State House of Representatives
37 in multi-county representative districts."

38 Section 3.11. G.S. 163-177 reads as rewritten:

39 "**§ 163-177. Disposition of duplicate abstracts.**

40 Within six hours after the returns of a primary or election have been canvassed
41 and the results judicially determined, the chairman of the county board of elections
42 shall mail, or otherwise deliver, to the State Board of Elections the duplicate-original
43 abstracts prepared in accordance with G.S. 163-176 for all offices and referenda for

- 1 which the State Board of Elections is required to canvass the votes and declare the
2 results including:
- 3 President and Vice-President of the United States
 - 4 Governor, Lieutenant Governor, and all other State executive officers
 - 5 United States Senators
 - 6 Members of the House of Representatives of the United States Congress
 - 7 ~~Justices, Judges, and Superior Court Judges, District Court Judges and~~ District
 - 8 Attorneys of the General Court of Justice
 - 9 State Senators in multi-county senatorial districts
 - 10 Members of the State House of Representatives in multi-county representative
 - 11 districts
 - 12 Constitutional amendments and propositions submitted to the voters of the State.
- 13 One duplicate abstract prepared in accordance with G.S. 163-176 for all offices and
14 referenda for which the county board of elections is required to canvass the votes and
15 declare the results (and which are listed below) shall be retained by the county board,
16 which shall forthwith publish and declare the results; the second duplicate abstract
17 shall be mailed to the chairman of the State Board of Elections, to the end that there
18 be one set of all primary and election returns available at the seat of government.
- 19 All county offices
 - 20 State Senators in single-county senatorial districts
 - 21 Members of the State House of Representatives in single-county representative
 - 22 districts
 - 23 Propositions submitted to the voters of one county.
- 24 If the chairman of the county board of elections fails or neglects to transmit
25 duplicate abstracts to the chairman of the State Board of Elections within the time
26 prescribed in this section, he shall be guilty of a misdemeanor. Provided, that the
27 penalty shall not apply if the chairman was prevented from performing the prescribed
28 duty because of sickness or other unavoidable delay, but the burden of proof shall be
29 on the chairman to show that his failure to perform was due to sickness or
30 unavoidable delay."
- 31 Section 3.12. G.S. 163-192 reads as rewritten:
- 32 **"§ 163-192. State Board of Elections to prepare abstracts and declare results of**
33 **primaries and elections.**
- 34 (a) After Primary. -- At the conclusion of its canvass of the primary election, the
35 State Board of Elections shall prepare separate abstracts of the votes cast:
- 36 (1) For Governor and all State ~~officers, justices of the Supreme Court,~~
37 ~~judges of the Court of Appeals, officers~~ and United States
38 Senators.
 - 39 (2) For members of the United States House of Representatives for the
40 several congressional districts in the State.
 - 41 (3) For district court judges for the several district court districts in the
42 State.
 - 43 (3a) For superior court judges for the several superior court districts in
44 the State.

(4) For district attorney in the several prosecutorial districts in the State.

(5) For State Senators in the several senatorial districts in the State composed of more than one county.

(6) For members of the State House of Representatives in the several representative districts in the State composed of more than one county.

Abstracts prepared by the State Board of Elections under this subsection shall state the total number of votes cast for each candidate of each political party for each of the various offices canvassed by the State Board of Elections. They shall also state the name or names of the person or persons whom the State Board of Elections shall ascertain and judicially determine by the count to be nominated for each office.

Abstracts prepared under this subsection shall be signed by the members of the State Board of Elections in their official capacity and shall have the great seal of the State affixed thereto.

(b) After General Election. -- At the conclusion of its canvass of the general election, the State Board of Elections shall prepare abstracts of the votes cast:

(1) For President and Vice-President of the United States, when an election is held for those offices.

(2) For Governor and all State ~~officers, justices of the Supreme Court, judges of the Court of Appeals,~~ officers and United States Senators.

(3) For members of the United States House of Representatives for the several congressional districts in the State.

(4) For district court judges for the several district court districts as defined in G.S. 7A-133 in the State.

(4a) For superior court judges for the several superior court districts in the State.

(5) For district attorney in the several prosecutorial districts in the State.

(6) For State Senators in the several senatorial districts in the State composed of more than one county.

(7) For members of the State House of Representatives in the several representative districts in the State composed of more than one county.

(8) For and against any constitutional amendments or propositions submitted to the people.

Abstracts prepared by the State Board of Elections under this subsection shall state the names of all persons voted for, the office for which each received votes, and the number of legal ballots cast for each candidate for each office canvassed by the State Board of Elections. They shall also state the name or names of the person or persons whom the State Board of Elections shall ascertain and judicially determine by the count to be elected to each office.

1 Abstracts prepared under this subsection shall be signed by the members of the
2 State Board of Elections in their official capacity and shall have the great seal of the
3 State affixed thereto.

4 (c) Disposition of Abstracts of Returns. -- The State Board of Elections shall file
5 with the Secretary of State the original abstracts of returns prepared by it under the
6 provisions of subsections (a) and (b) of this section, and also the duplicate county
7 abstracts transmitted to the State Board of Elections under the provisions of G.S. 163-
8 177. Upon the request of the Legislative Services Office, the Secretary of State shall
9 submit a copy of the original abstracts to that Office."

10 Section 3.13. G.S. 163-194 reads as rewritten:

11 **"§ 163-194. Governor to issue commissions to certain elected officials.**

12 Every person duly elected to one of the offices listed below, upon obtaining a
13 certificate of his election from the Secretary of State under the provisions of G.S.
14 163-193, shall procure from the Governor a commission attesting his election to the
15 specified office, which the Governor shall issue upon production of the Secretary of
16 State's certificate:

17 Members of the United States House of Representatives,

18 ~~Justices, Judges, and Superior Court Judges, District Court Judges and~~ District
19 Attorneys of the General Court of Justice."

20 Section 3.14. G.S. 163-1 is amended in the table by deleting the entries
21 for "Justices and Judges of the Appellate Division".

22 Section 3.15. G.S. 163-9 reads as rewritten:

23 **"§ 163-9. Filling vacancies in ~~State and~~ district judicial offices.**

24 (a) Vacancies occurring in the ~~offices of Justice of the Supreme Court, judge of~~
25 ~~the Court of Appeals, and office of~~ judge of the superior court for causes other than
26 expiration of term shall be filled by appointment of the Governor. An appointee to
27 the office of Justice of the Supreme Court or judge of the Court of Appeals shall
28 hold office until January 1 next following the election for members of the General
29 Assembly that is held more than 60 days after the vacancy occurs, at which time an
30 election shall be held for an eight-year term and until a successor is elected and
31 qualified.

32 (b) Except for judges specified in the next paragraph of this subsection, an
33 appointee to the office of judge of superior court shall hold his place until the next
34 election for members of the General Assembly that is held more than 60 days after
35 the vacancy occurs, at which time an election shall be held to fill the unexpired term
36 of the office.

37 Appointees for judges of the superior court from any district:

38 (1) With only one resident judge; or

39 (2) In which no county is subject to section 5 of the Voting Rights Act
40 of 1965,

41 shall hold the office until the next election of members of the General Assembly that
42 is held more than 60 days after the vacancy occurs, at which time an election shall be
43 held to fill an eight-year term.

1 (c) When the unexpired term of the office in which the vacancy has occurred
2 expires on the first day of January succeeding the next election for members of the
3 General Assembly, the Governor shall appoint to fill that vacancy for the unexpired
4 term of the office.

5 (d) Vacancies in the office of district judge which occur before the expiration of a
6 term shall not be filled by election. Vacancies in the office of district judge shall be
7 filled in accordance with G.S. 7A-142."

8 Section 3.16. Sections 3.1 through 3.15 of this act are effective only if the
9 constitutional amendment proposed by Section 1 of this act is approved by the
10 qualified voters in accordance with Section 2 of this act.

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



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1391

AMENDMENT NO. 41 Capps
(to be filled in by
Principal Clerk)
Page 1 of

H1391-ARO-001

Date , 1998

Comm. Sub. ☐
Amends Title ☐

1 moves to amend the bill on page 1, lines 15-20,
2 by rewriting the lines to read:
3
4 "Judges of the Superior Court shall be elected by the qualified
5 voters and shall hold office for terms of eight years and until
6 their successors are elected and qualified. ~~Justices of the Supreme~~
7 ~~Court and Judges of the Court of Appeals shall be elected by the~~
8 ~~qualified voters of the State.~~ Regular Judges of the Superior Court
9 may be elected by the qualified voters of the State or by the voters
10 of their respective districts, as the General Assembly may
11 prescribe."
12
13 and on page 4, lines 10-11, by rewriting the lines to read:
14 "vote of the people at general elections."
15

SIGNED
Amendment Sponsor

SIGNED
Committee Chair if Senate Committee Amendment

ADOPTED

FAILED

TABLED

PLEASE PRESS HARD - 5 COPIES

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____

DATE _____

S. B. No. _____

Amendment No. _____

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)

Sen.)

Hall

1 moves to amend the bill on page 4, line 39

2 () WHICH CHANGES THE TITLE

3 by striking the words

4

5 " be allowed to "

6

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SIGNED

Bobby R. Hall

ADOPTED ✓ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 1391*

Short Title: Judicial Appt./Voter Retention.

(Public)

Sponsors: Representatives Daughtry, Neely, R. Hunter; Goodwin, Baddour, and Culpepper.

Referred to: Judiciary I.

May 21, 1998

1 A BILL TO BE ENTITLED

2 AN ACT TO AMEND THE CONSTITUTION OF NORTH CAROLINA TO
3 PROVIDE FOR GUBERNATORIAL NOMINATION OF JUSTICES OF THE
4 SUPREME COURT AND JUDGES OF THE COURT OF APPEALS,
5 LEGISLATIVE CONFIRMATION, AND RETENTION BY VOTE OF THE
6 PEOPLE.

7 The General Assembly of North Carolina enacts:

8 Section 1. Section 16 of Article IV of the North Carolina Constitution
9 reads as rewritten:

10 ~~"Sec. 16. Terms of office and election of Justices of the Supreme Court, Judges of~~
11 ~~the Court of Appeals, and Judges of the Superior Court. Selection and tenure of~~
12 ~~Justices of the Supreme Court and Judges of the Court of Appeals; election of Judges~~
13 ~~of the Superior Court.~~

14 ~~Justices of the Supreme Court, Judges of the Court of Appeals, and regular (1)~~
15 ~~Judges of the Superior court shall be elected by the qualified voters and shall hold~~
16 ~~office for terms of eight years and until their successors are elected and qualified.~~
17 ~~Justices of the Supreme Court and Judges of the Court of Appeals shall be elected by~~
18 ~~the qualified voters of the State. Regular Judges of the Superior Court may shall be~~
19 ~~elected by the qualified voters of the State or by the voters of their respective~~
20 ~~districts, as the General Assembly may prescribe. districts.~~

21 (2) General principles. Justices and judges of the Appellate Division should be
22 selected for and continue to hold office solely upon the basis of personal and
23 professional fitness to administer right and justice wisely, according to law, and

1 without favor, denial, or delay, to all persons who come into the courts. While their
2 continuation in office should be periodically subject to approval by the people, both
3 their initial selection and continuation in office should be free, so far as may be, from
4 the influences and necessities of partisan political activity.

5 (3) Nomination, confirmation, appointment retention election, and terms of
6 justices and judges. On and after January 1, 1999, when a vacancy occurs in the
7 office of Chief Justice, Associate Justice, or Judge of the Appellate Division, the
8 Governor shall nominate a person to fill the vacancy. Prior to appointment, such
9 nominations by the Governor shall be subject to confirmation of the General
10 Assembly by three-fifths of the members of each house present and voting prior to
11 appointment. For the purposes of this section, creation of a new judgeship within the
12 Appellate Division creates a vacancy.

13 Each house of the General Assembly shall vote on confirmation within 60 calendar
14 days of the date of nomination, except that no day shall be included within that
15 calculation if it is:

16 (a) Between sine die adjournment of one regular session and
17 convening of the next regular session; or

18 (b) During any period when the General Assembly has adjourned a
19 regular session for more than 30 days jointly as provided under
20 Section 20 of Article II of this Constitution.

21 If a nomination is made during either of the periods listed in subdivision (a) or (b)
22 of this subsection, the Governor may convene the General Assembly in extra session
23 for the purpose of considering confirmation of the nomination. No action of that
24 extra session shall be valid after the second calendar day of that session, and that
25 extra session may not consider any matters other than rules for the extra session,
26 confirmation of the nomination, and adjournment sine die. The nomination may not
27 be confirmed in any extra session other than one called under this subsection.

28 The term of office by appointment as Chief Justice, Associate Justice, or Judge of
29 the Appellate Division extends through June 30 after the next statewide election for
30 members of the General Assembly that is held more than 18 months after the
31 nomination is confirmed. At that election, a person holding by appointment the
32 office of Chief Justice, Associate Justice, or Judge of the Appellate Division who
33 desires to continue in office shall be subject to approval by nonpartisan ballot, by a
34 majority of the votes cast on the issue of the Justice's or Judge's retention. A Chief
35 Justice, Associate Justice, or Judge of the Appellate Division then approved for
36 retention serves a regular term.

37 The regular term of office of the Chief Justice, Associate Justices, and Judges of
38 the Appellate Division is eight years and expires on June 30.

39 At the last statewide election for members of the General Assembly held before
40 the expiration of a regular term of office, a Chief Justice, Associate Justice, or Judge
41 of the Appellate Division who desires to continue in office shall be subject to
42 approval by nonpartisan ballot, by a majority of the votes cast on the issue of the
43 Justice's or Judge's retention.

1 If the voters fail to approve the retention in office of a Chief Justice, Associate
2 Justice, or Judge of the Appellate Division serving an appointed or regular term, the
3 office shall become vacant at the end of the term of office, and it shall be filled by
4 nomination, confirmation, and appointment as prescribed in this section. In such
5 case, the Governor may only nominate a person of the same political affiliation as the
6 justice or judge who has not been retained in office. For the purpose of this section,
7 the political affiliation of a nominee for justice or judge is determined as of 24
8 months preceding the date of the vacancy for which the nomination is made.

9 Voting in a retention election on the Chief Justice, Associate Justices, and Judges
10 of the Appellate Division shall be the qualified voters of the whole State.

11 (4) Transition provisions. The term of office of a person who has been elected
12 before January 1, 1999, to the office of Chief Justice, Associate Justice, or Judge of
13 the Appellate Division for a term which extends beyond January 1, 1999, and who is
14 in office on January 1, 1999, is extended through June 30 of the year following the
15 eighth year after the date any such justice or judge was last elected to the office. If
16 the person so elected continues to serve for the remainder of the term, that person
17 may stand for retention in the office for a succeeding regular term as provided in this
18 section. If the person continues to serve for the remainder of the term but does not
19 stand for retention election, a vacancy is created in the office upon expiration of the
20 term, and this vacancy shall be filled by nomination, confirmation, and appointment
21 as provided in this section.

22 The term of office of a person who has been appointed before January 1, 1999, to
23 the office of Chief Justice, Associate Justice, or Judge of the Appellate Division for a
24 term which extends beyond January 1, 1999, and who is in office on January 1, 1999,
25 shall end on June 30, 2001. If the person so appointed continues to serve for the
26 remainder of the term, that person may stand for retention in the office for a regular
27 term as provided by this section at the statewide election for members of the General
28 Assembly held in 2000.

29 Upon the death, resignation, removal, or retirement of any incumbent justice or
30 judge on or after January 1, 1999, and before the expiration of his term of office, the
31 resulting vacancy shall be filled by nomination, confirmation, and appointment as
32 provided in this section.

33 Vacancies in judicial offices in the Appellate Division occurring before January 1,
34 1999, and not filled by that date, shall be filled by nomination, confirmation, and
35 appointment as provided in this section.

36 From the date any incumbent described in this subsection is continued in office by
37 retention vote for a term next succeeding the term in progress on January 1, 1999, or
38 is succeeded in office by another person, the office is held subject to the provisions of
39 this section.

40 (5) The General Assembly may implement this section by general law."

41 Section 2. The amendment set out in Section 1 of this act shall be
42 submitted to the qualified voters of the State at the general election in November
43 1998, which election shall be conducted under the laws then governing elections in

1 the State. Ballots, voting systems, or both may be used in accordance with Chapter
2 163 of the General Statutes.

3 "[] FOR [] AGAINST

4 Constitutional amendment to replace the present practice of selecting
5 justices and judges of the Appellate Division by gubernatorial appointment, followed
6 by partisan elections, with a method by which justices and judges of the Appellate
7 Division will be nominated by the Governor, confirmed by the General Assembly,
8 and then serve for limited terms after which the question of the justice's or judge's
9 retention in office is regularly submitted for approval or disapproval by nonpartisan
10 vote of the people at general elections, and to provide for election of superior court
11 judges in their districts."

12 Section 3. If a majority of votes cast on the question are in favor of the
13 amendment set out in Section 1 of this act, the State Board of Elections shall certify
14 the amendment to the Secretary of State. The amendment becomes effective upon
15 this certification. The Secretary of State shall enroll the amendment so certified
16 among the permanent records of that office.

17 Section 3.1. Chapter 7A of the General Statutes is amended by adding a
18 new Article to read:

19 "ARTICLE 1A.

20 "Appointment and Confirmation of Justices and Judges,
21 Retention Elections.

22 "§ 7A-4.1. Nomination of justices and judges by Governor and confirmation by
23 General Assembly.

24 (a) The office of Chief Justice and Justice of the Supreme Court and Judge of the
25 Court of Appeals are filled by nomination by the Governor subject to confirmation
26 by the General Assembly in accordance with Section 16 of Article IV of the
27 Constitution.

28 (b) Nominees are subject to confirmation as provided in this subsection. A
29 nominee is confirmed by passage of a joint resolution of the General Assembly. The
30 Governor may withdraw a nomination at any time.

31 "§ 7A-4.2. Confirmation procedures.

32 (a) A legislative committee to which the issue of confirmation is referred may
33 conduct an investigation of the nominee. The investigation may include an
34 evaluation of the nominee's ethical conduct, the nominee's knowledge of and
35 application of the law, the nominee's management of the courts over which he has
36 presided, the nominee's work habits, the nominee's health, and the nominee's
37 judicial demeanor. The nominee or judge shall be given an opportunity to present to
38 the committee any information that the nominee determines to be appropriate.

39 (b) The committee shall be allowed to inspect the files of the Judicial Standards
40 Commission by request of the chair of the committee. Notwithstanding the
41 provisions of G.S. 7A-377, the files of the Judicial Standards Commission shall be
42 made available to the committee. Testimony and other evidence presented to the
43 committee is privileged in any action for defamation.

44 "§ 7A-4.3. Governor to issue commissions to justices and judges.

Every person duly nominated by the Governor as Chief Justice of the Supreme Court, Associate Justice of the Supreme Court, or Judge of the Court of Appeals and duly confirmed by the General Assembly shall be appointed by the Governor and shall procure from the Governor a commission attesting that fact, which the Governor shall issue upon receipt of a certification by the Secretary of State of the joint resolution of confirmation.

When a judge is retained in office by vote of the people, the Governor shall issue a commission attesting that fact, which the Governor shall issue upon receipt of a certification by the Secretary of State of the results of the election.

"§ 7A-4.4. No elections in 1999.

No partisan election as previously provided by law for Chief Justice or Associate Justice of the Supreme Court, or Judge of the Court of Appeals, shall be held in 1999 or thereafter.

"§ 7A-4.5. Retention elections.

(a) As provided by Section 16 of Article IV of the Constitution of North Carolina, a Chief Justice or Associate Justice of the Supreme Court or Judge of the Court of Appeals desiring to continue in office shall be subject to approval by nonpartisan ballot, by a majority of votes cast on the issue of the justice's or judge's retention.

(b) A person subject to subsection (a) of this section shall indicate the desire to continue in office by filing a notice to that effect with the State Board of Elections no later than 12:00 noon on the first business day of July in the year of the election. The notice shall be on a form approved by the State Board of Elections. Notice can be withdrawn at any time prior to the deadline for filing notice under this subsection.

(c) Retention elections shall be conducted and canvassed in accordance with rules of the State Board of Elections in the same general manner as general elections under Chapter 163 of the General Statutes, except that the retention election is nonpartisan. The form of the ballot shall be determined by the State Board of Elections.

(d) Retention elections shall be placed at the top of the ballot above all other elections or matters for decision, whether partisan, nonpartisan, or otherwise.

(e) If a person who has filed a notice calling a retention election dies or is removed from office prior to the time that the ballots are printed, the retention election is cancelled. If a person who has filed a notice calling a retention election dies or is removed from office after the ballots are printed, the State Board of Elections may cancel the election if it determines that the ballots can be reprinted without significant expense. If the ballots cannot be reprinted, then the results of the election shall be ineffective."

Section 3.2 G.S. 163-140(a) reads as rewritten:

"(a) Kinds of General Election Ballots; Right to Combine. -- For purposes of general elections, there shall be seven kinds of official ballots entitled:

- (1) Ballot for presidential electors
- (2) Ballot for United States Senator
- (3) Ballot for member of the United States House of Representatives
- (4) State ballot
- (5) County ballot

(6) Repealed by Session Laws 1973, c. 793, s. 56

(7) Ballot for constitutional amendments and other propositions submitted to the people

(8) Judicial ballot for superior court.

Use of official ballots shall be limited to the purposes indicated by their titles. The printing on all ballots shall be plain and legible but, unless large type is specified by this section, type larger than 10-point shall not be used in printing ballots. All general election ballots shall be prepared in such a way as to leave sufficient blank space beneath each name printed thereon in which a voter may conveniently write the name of any person for whom he may desire to vote.

Unless prohibited by this section, the board of elections, State or county, charged by law with printing ballots may, in its discretion, combine any two or more official ballots. Whenever two or more ballots are combined, the voting instructions for the State ballot set out in subsection (b)(4) of this section shall be used, except that if the two ballots being combined do not contain a multi-seat race, then the second sentence of instruction b. shall not appear on the ballot.

Contests in the general election for seats in the State House of Representatives and State Senate shall be on ballots that are separate from ballots containing non-legislative contests, except where the voting system used makes separation of ballots impractical. State House and State Senate contests shall be on the same ballot, unless one is a single-seat contest and the other a multi-seat contest.

~~All candidates for the Appellate Division shall appear on the same ballot."~~

Section 3.3. For purpose of Section 1 of this act, terms of justices and judges covered by Section 2 of Chapter 98 of the 1995 Session Laws are as provided by that act.

Section 3.4. G.S. 7A-10(a) reads as rewritten:

"(a) The Supreme Court shall consist of a Chief Justice and six associate justices, ~~elected by the qualified voters of the State for terms of eight years~~ selected as provided by Article 1A of this Chapter. Before entering upon the duties of his office, each justice shall take an oath of office. Four justices shall constitute a quorum for the transaction of the business of the court. Sessions of the court shall be held in the city of Raleigh, and scheduled by rule of court so as to discharge expeditiously the court's business."

Section 3.5. G.S. 7A-16 reads as rewritten:

"§ 7A-16. Creation and organization.

~~The Court of Appeals is created effective January 1, 1967. It shall consist initially of six judges, elected by the qualified voters of the State for terms of eight years. The Chief Justice of the Supreme Court shall designate one of the judges as Chief Judge, to serve in such capacity at the pleasure of the Chief Justice. Before entering upon the duties of his office, a judge of the Court of Appeals shall take the oath of office prescribed for a judge of the General Court of Justice.~~

~~The Governor on or after July 1, 1967, shall make temporary appointments to the six initial judgeships. The appointees shall serve until January 1, 1969. Their successors shall be elected at the general election for members of the General~~

~~1 Assembly in November, 1968, and shall take office on January 1, 1969, to serve for
2 the remainder of the unexpired term which began on January 1, 1967.~~

~~3 Upon the appointment of at least five judges, and the designation of a Chief Judge,
4 the court is authorized to convene, organize, and promulgate, subject to the approval
5 of the Supreme Court, such supplementary rules as it deems necessary and
6 appropriate for the discharge of the judicial business lawfully assigned to it.~~

~~7 Effective January 1, 1969, the number of judges is increased to nine, and the
8 Governor, on or after March 1, 1969, shall make temporary appointments to the
9 additional judgeships thus created. The appointees shall serve until January 1, 1971.
10 Their successors shall be elected at the general election for members of the General
11 Assembly in November, 1970, and shall take office on January 1, 1971, to serve for
12 the remainder of the unexpired term which began on January 1, 1969.~~

~~13 Effective January 1, 1977, the number of judges is increased to 12, and the
14 Governor, on or after July 1, 1977, shall make temporary appointments to the
15 additional judgeships thus created. The appointees shall serve until January 1, 1979.
16 Their successors shall be elected at the general election for members of the General
17 Assembly in November, 1978, and shall take office on January 1, 1979, to serve the
18 remainder of the unexpired term which began on January 1, 1977.~~

19 The Court of Appeals shall consist of 12 judges, selected as provided in Article 1A
20 of this Chapter. The Chief Justice of the Supreme Court shall designate one of the
21 judges as Chief Judge to serve in such capacity at the pleasure of the Chief Justice.
22 Before entering upon the duties of his office, a judge of the Court of Appeals shall
23 take the oath of office prescribed for a judge of the General Court of Justice.

24 The Court of Appeals shall sit in panels of three judges each. The Chief Judge
25 insofar as practicable shall assign the members to panels in such fashion that each
26 member sits a substantially equal number of times with each other member. He shall
27 preside over the panel of which he is a member, and shall designate the presiding
28 judge of the other panel or panels.

29 Three judges shall constitute a quorum for the transaction of the business of the
30 court, except as may be provided in G.S. 7A-32.

31 In the event the Chief Judge is unable, on account of absence or temporary
32 incapacity, to perform the duties placed upon him as Chief Judge, the Chief Justice
33 shall appoint an acting Chief Judge from the other judges of the Court, to
34 temporarily discharge the duties of Chief Judge."

35 Section 3.6. G.S. 163-106(c) reads as rewritten:

36 "(c) Time for Filing Notice of Candidacy. -- Candidates seeking party primary
37 nominations for the following offices shall file their notice of candidacy with the State
38 Board of Elections no earlier than 12:00 noon on the first Monday in January and no
39 later than 12:00 noon on the first Monday in February preceding the primary:

40 Governor

41 Lieutenant Governor

42 All State executive officers

43 ~~Justices of the Supreme Court, Judges of the Court of Appeals~~

44 Judges of the district courts

1 United States Senators

2 Members of the House of Representatives of the United States

3 District attorneys

4 Candidates seeking party primary nominations for the following offices shall file
5 their notice of candidacy with the county board of elections no earlier than 12:00
6 noon on the first Monday in January and no later than 12:00 noon on the first
7 Monday in February preceding the primary:

8 State Senators

9 Members of the State House of Representatives

10 All county offices."

11 Section 3.7. G.S. 163-106(d) reads as rewritten:

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

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

25 Section 3.8. G.S. 163-107(a) reads as rewritten:

26 "(a) Fee Schedule. -- At the time of filing a notice of candidacy, each candidate
27 shall pay to the board of elections with which he files under the provisions of G.S.
28 163-106 a filing fee for the office he seeks in the amount specified in the following
29 tabulation:

30 Office Sought	31 Amount of Filing Fee
32 Governor	33 One percent (1%) of the annual
	34 salary of the office sought
35 Lieutenant Governor	36 One percent (1%) of the annual
	37 salary of the office sought
38 All State executive offices	39 One percent (1%) of the annual
	40 salary of the office sought
41 ~~All Justices, Judges, and~~	42 One percent (1%) of the annual
43 <u>Superior Court Judges,</u>	44 salary of the office sought
45 <u>District Court Judges,</u>	
46 District Attorneys of the	
47 General Court of Justice	

1	United States Senator	One percent (1%) of the annual salary of the office sought
2		
3	Members of the United States	One percent (1%) of the annual salary of the office sought
4	House of Representatives	
5	State Senator	One percent (1%) of the annual salary of the office sought
6		
7	Member of the State House of	One percent (1%) of the annual salary of the office sought
8	Representatives	
9	All county offices not	One percent (1%) of the annual salary of the office sought
10	compensated by fees	
11	County commissioners, if	Ten dollars (\$10.00)
12	compensated entirely by fees	
13	Members of county board of	Five dollars (\$5.00)
14	education, if compensated	
15	entirely by fees	
16	Sheriff, if compensated	Forty dollars (\$40.00), plus one
17	entirely by fees	percent (1%) of the income of the
18		office above four thousand
19		dollars (\$4,000)
20	Clerk of superior court, if	Forty dollars (\$40.00), plus one
21	compensated entirely by fees	percent (1%) of the income of the
22		office above four thousand
23		dollars (\$4,000)
24	Register of deeds, if	Forty dollars (\$40.00), plus one
25	compensated entirely by fees	percent (1%) of the income of the
26		office above four thousand
27		dollars (\$4,000)
28	Any other county office, if	Twenty dollars (\$20.00), plus one
29	compensated entirely by fees	percent (1%) of the income of the
30		office above two thousand dollars
31		(\$2,000)
32	All county offices compensated	One percent (1%) of the first
33	partly by salary and partly	annual salary to be received
34	by fees	(exclusive of fees).

35 Section 3.9. G.S. 163-107.1(b) reads as rewritten:

36 "(b) If the candidate is seeking the office of United States Senator, Governor,
 37 Lieutenant Governor, or any State executive officer, ~~Justice of the Supreme Court or~~
 38 ~~Judge of the Court of Appeals~~, the petition must be signed by 10,000 registered voters
 39 who are members of the political party in whose primary the candidate desires to
 40 run, except that in the case of a political party as defined by G.S. 163-96(a)(2) which
 41 will be making nominations by primary election, the petition must be signed by ten
 42 percent (10%) of the registered voters of the State who are affiliated with the same
 43 political party in whose primary the candidate desires to run, or in the alternative,
 44 the petition shall be signed by no less than 10,000 registered voters regardless of the

1 voter's political party affiliation, whichever requirement is greater. The petition must
2 be filed with the State Board of Elections not later than 12:00 noon on Monday
3 preceding the filing deadline before the primary in which he seeks to run. The names
4 on the petition shall be verified by the board of elections of the county where the
5 signer is registered, and the petition must be presented to the county board of
6 elections at least 15 days before the petition is due to be filed with the State Board of
7 Elections. When a proper petition has been filed, the candidate's name shall be
8 printed on the primary ballot."

9 Section 3.10. G.S. 163-111(c)(1) reads as rewritten:

10 "(1) A candidate who is apparently entitled to demand a second
11 primary, according to the unofficial results, for one of the offices
12 listed below, and desiring to do so, shall file a request for a second
13 primary in writing or by telegram with the Executive Secretary-
14 Director of the State Board of Elections no later than 12:00 noon
15 on the seventh day (including Saturdays and Sundays) following
16 the date on which the primary was conducted, and such request
17 shall be subject to the certification of the official results by the
18 State Board of Elections. If the vote certification by the State
19 Board of Elections determines that a candidate who was not
20 originally thought to be eligible to call for a second primary is in
21 fact eligible to call for a second primary, the Executive Secretary-
22 Director of the State Board of Elections shall immediately notify
23 such candidate and permit him to exercise any options available to
24 him within a 48-hour period following the notification:

25 Governor,

26 Lieutenant Governor,

27 All State executive officers,

28 ~~Justices, Judges, or~~ Superior Court Judges, District Court

29 Judges or District Attorneys of the General Court of Justice,

30 other than superior court judge,

31 United States Senators,

32 Members of the United States House of

33 Representatives,

34 State Senators in multi-county senatorial

35 districts, and

36 Members of the State House of Representatives

37 in multi-county representative districts.

38 Section 3.11. G.S. 163-177 reads as rewritten:

39 "§ 163-177. Disposition of duplicate abstracts.

40 Within six hours after the returns of a primary or election have been canvassed
41 and the results judicially determined, the chairman of the county board of elections
42 shall mail, or otherwise deliver, to the State Board of Elections the duplicate-original
43 abstracts prepared in accordance with G.S. 163-176 for all offices and referenda for

1 which the State Board of Elections is required to canvass the votes and declare the
2 results including:

- 3 President and Vice-President of the United States
- 4 Governor, Lieutenant Governor, and all other State executive officers
- 5 United States Senators
- 6 Members of the House of Representatives of the United States Congress
- 7 ~~Justices, Judges, and Superior Court Judges, District Court Judges and District~~
- 8 ~~Attorneys of the General Court of Justice~~
- 9 State Senators in multi-county senatorial districts
- 10 Members of the State House of Representatives in multi-county representative
- 11 districts
- 12 Constitutional amendments and propositions submitted to the voters of the State.
- 13 One duplicate abstract prepared in accordance with G.S. 163-176 for all offices and
- 14 referenda for which the county board of elections is required to canvass the votes and
- 15 declare the results (and which are listed below) shall be retained by the county board,
- 16 which shall forthwith publish and declare the results; the second duplicate abstract
- 17 shall be mailed to the chairman of the State Board of Elections, to the end that there
- 18 be one set of all primary and election returns available at the seat of government.
- 19 All county offices
- 20 State Senators in single-county senatorial districts
- 21 Members of the State House of Representatives in single-county representative
- 22 districts
- 23 Propositions submitted to the voters of one county.

24 If the chairman of the county board of elections fails or neglects to transmit
25 duplicate abstracts to the chairman of the State Board of Elections within the time
26 prescribed in this section, he shall be guilty of a misdemeanor. Provided, that the
27 penalty shall not apply if the chairman was prevented from performing the prescribed
28 duty because of sickness or other unavoidable delay, but the burden of proof shall be
29 on the chairman to show that his failure to perform was due to sickness or
30 unavoidable delay."

31 Section 3.12. G.S. 163-192 reads as rewritten:

32 **"§ 163-192. State Board of Elections to prepare abstracts and declare results of**
33 **primaries and elections.**

34 (a) After Primary. -- At the conclusion of its canvass of the primary election, the
35 State Board of Elections shall prepare separate abstracts of the votes cast:

- 36 (1) For Governor and all State officers, ~~justices of the Supreme Court,~~
- 37 ~~judges of the Court of Appeals,~~ and United States Senators.
- 38 (2) For members of the United States House of Representatives for the
- 39 several congressional districts in the State.
- 40 (3) For district court judges for the several district court districts in the
- 41 State.
- 42 (3a) For superior court judges for the several superior court districts in
- 43 the State.

(4) For district attorney in the several prosecutorial districts in the State.

(5) For State Senators in the several senatorial districts in the State composed of more than one county.

(6) For members of the State House of Representatives in the several representative districts in the State composed of more than one county.

Abstracts prepared by the State Board of Elections under this subsection shall state the total number of votes cast for each candidate of each political party for each of the various offices canvassed by the State Board of Elections. They shall also state the name or names of the person or persons whom the State Board of Elections shall ascertain and judicially determine by the count to be nominated for each office.

Abstracts prepared under this subsection shall be signed by the members of the State Board of Elections in their official capacity and shall have the great seal of the State affixed thereto.

(b) After General Election. -- At the conclusion of its canvass of the general election, the State Board of Elections shall prepare abstracts of the votes cast:

(1) For President and Vice-President of the United States, when an election is held for those offices.

(2) For Governor and all State officers, ~~justices of the Supreme Court, judges of the Court of Appeals,~~ and United States Senators.

(3) For members of the United States House of Representatives for the several congressional districts in the State.

(4) For district court judges for the several district court districts as defined in G.S. 7A-133 in the State.

(4a) For superior court judges for the several superior court districts in the State.

(5) For district attorney in the several prosecutorial districts in the State.

(6) For State Senators in the several senatorial districts in the State composed of more than one county.

(7) For members of the State House of Representatives in the several representative districts in the State composed of more than one county.

(8) For and against any constitutional amendments or propositions submitted to the people.

Abstracts prepared by the State Board of Elections under this subsection shall state the names of all persons voted for, the office for which each received votes, and the number of legal ballots cast for each candidate for each office canvassed by the State Board of Elections. They shall also state the name or names of the person or persons whom the State Board of Elections shall ascertain and judicially determine by the count to be elected to each office.

1 Abstracts prepared under this subsection shall be signed by the members of the
2 State Board of Elections in their official capacity and shall have the great seal of the
3 State affixed thereto.

4 (c) Disposition of Abstracts of Returns. -- The State Board of Elections shall file
5 with the Secretary of State the original abstracts of returns prepared by it under the
6 provisions of subsections (a) and (b) of this section, and also the duplicate county
7 abstracts transmitted to the State Board of Elections under the provisions of G.S. 163-
8 177. Upon the request of the Legislative Services Office, the Secretary of State shall
9 submit a copy of the original abstracts to that Office."

10 Section 3.13. G.S. 163-194 reads as rewritten:

11 **"§ 163-194. Governor to issue commissions to certain elected officials.**

12 Every person duly elected to one of the offices listed below, upon obtaining a
13 certificate of his election from the Secretary of State under the provisions of G.S.
14 163-193, shall procure from the Governor a commission attesting his election to the
15 specified office, which the Governor shall issue upon production of the Secretary of
16 State's certificate:

17 Members of the United States House of Representatives,
18 ~~Justices, Judges, and~~ Superior Court Judges, District Court Judges and District
19 Attorneys of the General Court of Justice."

20 Section 3.14. G.S. 163-1 is amended in the table by deleting the entries
21 for "Justices and Judges of the Appellate Division".

22 Section 3.15. G.S. 163-9 reads as rewritten:

23 **"§ 163-9. Filling vacancies in State ~~and~~ district judicial offices.**

24 (a) Vacancies occurring in the ~~offices of Justice of the Supreme Court, judge of~~
25 ~~the Court of Appeals, and~~ office of judge of the superior court for causes other than
26 expiration of term shall be filled by appointment of the Governor. An appointee to
27 the office of Justice of the Supreme Court or judge of the Court of Appeals shall
28 hold office until January 1 next following the election for members of the General
29 Assembly that is held more than 60 days after the vacancy occurs, at which time an
30 election shall be held for an eight-year term and until a successor is elected and
31 qualified.

32 (b) Except for judges specified in the next paragraph of this subsection, an
33 appointee to the office of judge of superior court shall hold his place until the next
34 election for members of the General Assembly that is held more than 60 days after
35 the vacancy occurs, at which time an election shall be held to fill the unexpired term
36 of the office.

37 Appointees for judges of the superior court from any district:

- 38 (1) With only one resident judge; or
39 (2) In which no county is subject to section 5 of the Voting Rights Act
40 of 1965,

41 shall hold the office until the next election of members of the General Assembly that
42 is held more than 60 days after the vacancy occurs, at which time an election shall be
43 held to fill an eight-year term.

1 (c) When the unexpired term of the office in which the vacancy has occurred
2 expires on the first day of January succeeding the next election for members of the
3 General Assembly, the Governor shall appoint to fill that vacancy for the unexpired
4 term of the office.

5 (d) Vacancies in the office of district judge which occur before the expiration of a
6 term shall not be filled by election. Vacancies in the office of district judge shall be
7 filled in accordance with G.S. 7A-142."

8 Section 3.16. Sections 3.1 through 3.15 of this act are effective only if the
9 constitutional amendment proposed by Section 1 of this act is approved by the
10 qualified voters in accordance with Section 2 of this act.

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



North Carolina General Assembly Legislative Services Office

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June 3, 1998

MEMORANDUM

TO: Representatives Leo Daughtry and Edwin Hardy, Co-Chairs,
House Judiciary I Committee

FROM: Karen Cochrane Brown, Committee Co-Counsel *KCB*

RE: House Bill 1391 - Judicial Appt./ Voter Retention.

House Bill 1391 is a recommendation of the North Carolina Courts Commission. The bill provides that subject to voter approval in the 1998 election, the North Carolina Constitution is to be amended to provide that on and after January 1, 1999, the Governor shall nominate persons to fill vacancies in the offices of Chief Justice, Associate Justice, or judges of the Court of Appeals. Appointments by the Governor are subject to confirmation of the General Assembly by three-fifths of the members of each house present and voting. The amendment would replace the present practice of selecting justices and judges by gubernatorial appointment, followed by partisan elections. Selection of Superior Court judges would continue to be by local election.

The terms of the justices and judges appointed by the Governor under the proposed amendment, extends through June 30 after the next statewide election for members of the General Assembly that is held more than eighteen months after the date of appointment. Appointed justices and judges who wish to continue in office must be approved by voters for a regular term of eight years in a nonpartisan election.

The bill provides that the term of elected appellate judges who are in office on January 1, 1999, and whose term extends beyond that date is extended through June 30 of the year following the eighth year after the date the justice or judge was last elected to office. The term of appointed appellate judges in office on January 1, 1999, whose term extends beyond that date shall end on June 30, 2001. These judges may stand for retention for a regular term at the 2000 election for members of the General Assembly.

The bill also contains implementing statutes and several conforming changes to existing law. The act would become effective when it becomes law subject to voter approval of the constitutional amendment in the 1998 election.

MINUTES

HOUSE JUDICIARY I COMMITTEE

The House Committee on JUDICIARY I met in Room 1228/1327 of the Legislative Building on July 21, 1998 at 10:00 A.M. Representative Daughtry, Co-Chairman, presided at the meeting. Other members present were: Representative Hardy, Co-Chairman, and Representative(s) Alexander, Bryant, Capps, Ellis, Esposito, Hurley, Jeffus, Justus, Miller, and Thompson. Staff Counsels Steven Ross and Karen Cochrane-Brown were also present.

Representative Daughtry called the meeting to order. He introduced the pages for the day – Heather Wilson from Sampson County and Martin Jernigan from Sampson County.

HB 1314 AN ACT TO MAKE CERTAIN CHANGES TO REGULATIONS REGARDING CEMETERIES TO PROVIDE FOR CONSUMER PROTECTION, BASED ON RECOMMENDATIONS OF THE LEGISLATIVE RESEARCH COMMISSION'S STUDY COMMITTEE ON CEMETERY ISSUES was the only bill considered.

The bill sponsor, Representative Allred, explained the bill. He said he was co-chairman of the Cemetery Issues Study Commission. He said it was a lively commission because it costs a lot of money to die. He said they dealt with a large number of consumer complaints. The number of changes in the cemetery industry has prompted this legislative review because many family owned cemeteries are being taken over by large conglomerates.

Representative Daughtry introduced a committee substitute and moved adopting the committee substitute for discussion. Representative Allred said he would like to know what the committee substitute says. (See Attachment F.)

Representative Allred said that the upcoming video that aired on Channel 5 locally pinpoints a lot of the complaints that they have received. This video was shown to the committee.

Representative Allred drew the committee's attention to the next video of a CBS "60 Minutes" program which helps to explain the problem, particularly the part where the funeral home director says it only costs \$150 to open and close a grave. He said the basic problem is that people buy a plot or interment rights in a cemetery or mausoleum and then they are denied access to their property. The cemetery prohibits you from having a responsible party dig the grave and requires you to use their service. They monopolize that service and charge whatever they want to charge.

Representative Allred also said cemeteries are prohibiting access with respect to monuments. If you don't buy the monument from the private cemetery, then many charge an exorbitant installation or inspection fee of \$600 or \$700. He said they also set up rules and regulations that if you buy the monument from an outside company then you will have to do the weed control around the monument.

The committee was then shown the "60 Minutes" program dealing with these issues.

Representative Daughtry explained that he made a mistake directing discussion to the draft of a committee substitute to this bill. He said the substitute came from Representative Jeffus and that Representative Allred's bill was the appropriate one to be under discussion.

Representative Capps made a motion to return discussion to Representative Allred's original bill. This motion passed.

Representative Allred returned to a discussion of his bill. He said it addresses only the private, for-profit, cemeteries, has nothing to do with church cemeteries or city-owned cemeteries. The reason for the latter is that cities have a board of elected officials that have to answer to the people of that city. The reason for the former is that churches are exempt because of constitutional reasons.

Representative Allred said the video from "60 Minutes" talks about issues that the bill does not address. He said the bill is a simple bill that does two things. First, it requires contract disclosure so that the person buying knows what they are getting and what they will be subjected to in terms of future charges, and lets them know they have 30 days to cancel the contract which is now the law. Second, it requires the Attorney General to enforce the antitrust laws. He said that contrary to what was stated in the video from Channel 5, the attorney general does have jurisdiction.

Mr. Eugene Peterson, licensed mortician and owner of a monument company that has operated in the Burlington area since 1911, spoke as a proponent of the bill. He said he has worked in the death care industry for the last 25 years and has seen the differences between publicly held, non-profit, and privately held, for-profit, cemeteries. He has had a locally owned and privately held memorial park in Burlington for many years. Several years ago, this park became part of a national chain of for-profit cemeteries. When the rate increases started he realized that this chain placed the bottom line before the customer and their personal choice. Mr. Peterson said he is not an advocate of big government but there are times when guidelines need to be set by independent parties, and this is such a time. He said that the committee must act to ensure fair competition.

Mr. Alan Hirsch from the Attorney General's office spoke next. He said the AG's office does not have a formal position although he thinks there are some good things in the bill. He said that although the AG's office has the authority to look into these

problems, traditionally it refers complaints from individuals to the Cemetery Commission. He said his office did follow the legislative commission that met prior to the convening of the General Assembly. As a result of that his office has stopped referring complaints to the Cemetery Commission and is now handling those complaints in house. He said the video was correct, with the exception of the utility industry, when it stated that no one in North Carolina has the ability to regulate prices. Mr. Hirsch went on to say that the concern was that we do not have free competition. He said that they are concerned that the cemetery owners are not letting others offer services in their cemeteries. Mr. Hirsch said the current bill is much milder than what came out of the study commission. He said it does two things: it provides some disclosures, the opportunity for people who are buying things to know what they are buying. Second, there is a provision that asks that the Attorney General enforce the antitrust laws. He said the AG office is going to enforce these laws and has already begun discussions with the industry.

Mr. Billy Lovett, Alamance County grave digger, spoke in favor of the bill. He said it is not only the elderly who have a problem. He said he charges \$325 for opening and closing a grave. He said he sometimes drives 40 miles to the cemetery with a one ton truck pulling a piece of equipment and 2 men. This contrasts with the privately owned cemeteries who are on the premises and do not have these extra costs.

Representative Miller asked of Mr. Lovett who his clients were. The answer was that he represents seven different funeral homes around Alamance County and digs for one privately owned park in Julian, NC. He said they do not get into the privately owned parks that are owned by large corporations.

Representative Miller asked if his fees were the same for whoever is buying the service. The answer was in the affirmative.

Representative Jeffus apologized to Representative Allred. She said this came to her attention late yesterday and that she and the others were in appropriations meetings until early this morning and were late getting here and there was not an opportunity to get the draft bill to him. She said that the draft committee substitute was done quickly, but there were so many small changes that this seemed to be the way to go. She asked for the opportunity to explain her draft bill at the appropriate time.

Representative Miller asked Mr. Hirsch who had said that the Attorney General's office does not have the authority to enforce the Chapter 75.

Mr. Hirsch said that the Attorney General's office absolutely has the authority and regardless of what happens in the General Assembly the AG office is going to enforce it. He said they have only deferred action until they see where this legislation goes.

Representative Miller said he is concerned to hear that the AG's office is deferring anything to the industry. He said he was also concerned about deferring to the Cemetery

Commission. He wondered if they have the same enforcement authority that Chapter 75 gives to the Attorney General.

Mr. Hirsch answered in the negative. He also said that the AG's office gets about 150,000 phone calls per year. He said they have found that the folks who have specific authority and understand an industry best are sometimes more effective. But once it became clear that there were issues of competition here, his office spoke with counsel for the industry, but the next step will be production of documents, etc. They are currently waiting to see what will happen in the General Assembly.

Representative Miller asked if there was any movement with regards to federal law at this time.

Mr. Hirsch said the Federal Trade Commission is now considering some changes in the funeral rules. With respect to the antitrust laws, he said there has been an examination by the federal government and by the association of attorney generals. About 10 years ago nearly 90 percent of funeral homes were locally owned. Now about 50 percent are owned by some major corporation. Under the antitrust laws we are not yet at the place where the statistical calculations make that illegal but all across the country authorities are becoming concerned.

Representative Hurley asked if this bill tracks what other states are doing at this time.

Representative Allred said that as far as he knows there is only one other state that has instituted any kind of legislation to regulate the private, for-profit, cemeteries.

Representative Alexander asked what was the state. Representative Allred responded Idaho. Mr. Hirsch said that Florida has a recent, strict statute as well.

Representative Miller asked how the preneed issue has been resolved.

Representative Ellis moved a favorable report to HB 1314 and then spoke to the motion. He said that the bill has two sections. The first section authorizes the Cemetery Commission to investigate. He gave an example of why this is needed from a constituent's experience. This man bought a mausoleum space and when his wife died she was placed in that space. About two weeks after the funeral he found out that the mausoleum space was used because the cemetery had built a new mausoleum and moved the members with money out of the old one and into the new one. This man was devastated that his wife was in a "used spot." The Attorney General's office, when contacted, said this was a matter for the Cemetery Commission. When Representative Ellis called the Cemetery Commission they said they had no power to do anything.

Representative Ellis explained why the first section was needed using the example of his own grandmother. He said about a month ago his grandmother passed away. He

said in 1953 she had buried her husband in a cemetery near Garner that has recently been purchased by a corporate entity. The family buried her next to his plot and went to select the headstone. The quoted price from the cemetery was in the \$1300-\$1500 range. A local monument company offered the same headstone for \$500, but when they went to do the work they found out there was a \$750 inspection fee for an unauthorized contractor to come on the grounds. Also, Representative Ellis was told that if he placed his own monument there he would then have to assume the responsibility of maintenance. He said he was a free market person. The problem is that once you have made the commitment, when they change the rules you have no recourse. This is a display of greed and total disrespect for people at the most difficult time of their lives.

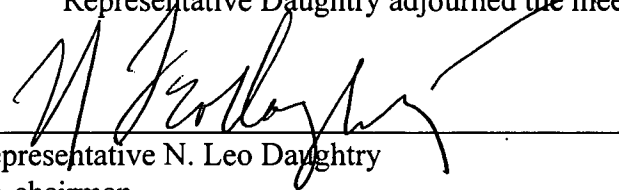
Representative Jeffus asked Representative Ellis to withdraw his motion so that she could explain her draft bill. (See Attachment F.) She said that her bill is a better bill and clarifies some things. She thanked Representative Allred for what he has done. She listed the changes that occurred from the original committee substitute to her draft bill.

Representative Hurley said pre-need is opposed to at need.

Representative Daughtry asked why both needs should not be entitled to the same protection. Representative Jeffus said that a contract would only deal with pre-need.

Representative Miller said that the way it is written now, one could have the burial and 30 days later the contract could be canceled.

Representative Daughtry adjourned the meeting at 10:55 A.M.



Representative N. Leo Daughtry
Co-chairman



Betty Wickham
Committee Clerk

ATTACHMENTS

Exhibit A - NOTICE OF THE MEETING

Exhibit B - AGENDA

Exhibit C - VISITOR REGISTRATION

Exhibit D - HB 1314

Exhibit E - STAFF REPORT for HB 1357

Exhibit F - DRAFT OF A COMMITTEE SUBSTITUTE H1314-CSRO-001 (Introduced by Representative Jeffus)

**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE**

Corrected Notice :

Change in Agenda Items

You are hereby notified that the Committee on **JUDICIARY I** will meet as follows:

DAY & DATE: **Tuesday, July 21, 1998**

TIME: **10:00 A.M.**

LOCATION: **Room 1228/1327 LB**

The following bill will be considered (Bill # & Short Title):

HB 1314 Cemetery Consumer Protection (PCS) Sponsor - Rep. Allred

Respectfully,

Representative N. Leo Daughtry, Co-Chairman
Representative Edwin Hardy, Co-Chairman

I hereby certify this notice was filed by the committee clerk at the following offices at
9:30 p.m. on July 20, 1998.

____Principal Clerk
____Reading Clerk - House Chamber

Betty Wickham, Committee Clerk

AGENDA

HOUSE COMMITTEE ON JUDICIARY I

July 21 1998
Room 1228/1327 LB
10:00 AM

Representative N. Leo Daughtry, Co-Chairman
Representative Edwin (Sandy) Hardy, Co-Chairman

BILLS TO BE CONSIDERED:)

#1

CS for HB 1314 CEMETERY CONSUMER PROTECTION

Sponsor-Representative Allred

fav. not. Rep. Keller

(Proposed House Committee Substitute for HB 1317 AMEND CONTESTED CASE

PROCEDURES/Sponsor-Representative C. Wilson, was placed in a subcommittee at June 4th Meeting for member study [Rep. Arnold, Chr.; Blue, Braswell, Clary, Morgan & Sherrill].)

ADJOURNMENT

VISITOR REGISTRATION SHEET

Judiciary I, July 21 1998
Name of Committee Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME

FIRM OR AGENCY AND ADDRESS

<u>Math Brumble</u>	<u>The Woodlawn Group.</u> <u>P.O. Box 15148 DURNAM, N.C. 27704</u>
<u>✓ M. Eugene Petersen</u>	<u>ASHCO-PETERSEN Monuments</u> <u>Burlington, NC</u>
<u>Kim Smith</u>	<u>NCLM</u>
<u>Lucius Pullen</u>	<u>Attorney</u> <u>North Carolina Cemetery Assoc.</u>
<u>Rusty Lynn</u>	<u>© Crestwood Memorial Gardens</u>
<u>Jack Cozart</u>	<u>Parker Poe Adam & Denton</u>
<u>J. Edgar</u>	<u>Loewen Group</u>
<u>Dick Canis</u>	<u>LOEWEN GROUP</u>
<u>Wm</u>	<u>NCCC</u>
<u>Becki P. Stunt</u>	<u>Parker Poe Adam & Bernstein</u>
<u>Mary Murphree</u>	<u>Payne & Spruill</u>
<u>Marilyn E Medina</u>	<u>Oleander Memorial Gardens Wilmington NC</u>
<u>Kenneth Bowers</u>	<u>Brown Wynne F.H. - Raleigh NC</u>
<u>K.D. Sturgis</u>	<u>Attorney General's Office</u>
<u>✓ Alan Hise</u>	<u>74 14 1-1</u>

VISITOR REGISTRATION SHEET

Name of Committee

Date _____

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME

FIRM OR AGENCY AND ADDRESS

Jon Carr

Jordan Price (NCFDA)

Steve Woodson

NC Farm Bureau Federation

E. Regan

N.C. Assoc. of Co. Commissioners

Free

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

H

2

HOUSE BILL 1314
Committee Substitute Favorable 6/8/98 #1

Short Title: Cemetery Consumer Protection.

(Public)

Sponsors:

Referred to:

May 18, 1998

- 1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE CERTAIN CHANGES TO REGULATIONS REGARDING
3 CEMETERIES TO PROVIDE FOR CONSUMER PROTECTION, BASED ON
4 RECOMMENDATIONS OF THE LEGISLATIVE RESEARCH COMMISSION'S
5 STUDY COMMITTEE ON CEMETERY ISSUES.
6 The General Assembly of North Carolina enacts:
7 Section 1. G.S. 65-53 is amended by inserting a new subdivision to read:
8 "(3a) Investigate, upon its own initiative or upon a verified complaint in
9 writing, whether a particular contract for the sale of personal
10 property or services, whether preneed or at-need, contains the
11 disclosure required pursuant to G.S. 65-66(d) and adopt temporary
12 rules pursuant to Chapter 150B of the General Statutes, if
13 necessary, to implement this subdivision until such time as
14 permanent rules are adopted."
15 Section 2. G.S. 65-66(d) reads as rewritten:
16 "(d) Any contract for the sale of personal property ~~and/or~~ or services services,
17 whether preneed or at-need, shall state disclose separate costs the following:
18 (1) The cost for each item of personal property, property and for each
19 act of installation or other service required by the contract, and for
20 each other item of services included in the contract. including any
21 costs for interment, entombment, or inurnment;
22 (2) Specification of (i) whether opening and closing of a grave space,
23 mausoleum space, or columbarium space is included in the

1 contract, and, if not, the current prices for opening and closing and
2 a statement that these prices are subject to change and (ii) whether
3 the grave space, mausoleum space, or columbarium space is new or
4 used;

5 (3) Any requirements or costs relating to memorial markers, including
6 any duties of the grave space, mausoleum space, or columbarium
7 space owner if the owner desires to have an outside provider
8 provide the marker and any costs relating to having an outside
9 provider provide and place a marker;

10 (4) A statement describing, in language that is readable and
11 understandable by a person of average intelligence, experience,
12 and education, the nature of the property right in the grave space,
13 mausoleum space, or columbarium space; and

14 (5) A statement that a purchaser has, pursuant to G.S. 65-66(m), 30
15 days following the execution of a contract to cancel the contract by
16 giving written notice to the seller and that the seller may cancel
17 the contract, upon default by the purchaser, by giving written
18 notice to the purchaser."

19 Section 3. G.S. 65-53 is amended by adding a new subdivision to read:

20 "(9) The Commission shall keep records of the complaints received and
21 the action taken by the Commission on each complaint. These
22 records shall be kept for at least five years after receipt of the
23 complaint."

24 Section 4. The Department of Justice through the Office of the Attorney
25 General, Consumer Protection Division, shall ensure that private, for-profit cemetery
26 companies operate within Article 1 of Chapter 75 of the General Statutes, titled
27 "Monopolies, Trusts, and Consumer Protection", and the federal antitrust and unfair
28 trade practices laws.

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



**North Carolina General Assembly
Legislative Services Office**

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July 6, 1998

MEMORANDUM

TO: Representatives Leo Daughtry and Edwin Hardy, Co-Chairman,
House Judiciary I Committee

FROM: Karen Cochrane Brown, Committee Co-Counsel *KCB*

RE: House Bill 1314 - Cemetery Consumer Protection.

House Bill 1314 is based on a recommendation of the LRC Committee on Cemetery Issues. The Committee found that in some cases, consumers believed themselves to be unfairly treated at a very vulnerable time in their lives, particularly in cases involving preneed contract disclosures and pricing. The Committee recommended increasing the duties of the Cemetery Commission, and that all cemetery contracts contain clear disclosures regarding products, services and costs.

Section 1 of the bill authorizes the Cemetery Commission to investigate, upon its own initiative or upon a verified complaint in writing, whether a particular contract for the sale of personal property or services contains the disclosures required by section 2 of the bill. It also authorizes the Commission to adopt any necessary temporary rules to implement this section.

Section 2 of the bill requires that all contracts for the sale of cemetery personal property or services, whether preneed or at-need, disclose the following:

- a. the cost of each item and of each service, including any cost of internment, entombment, or inurnment;
- b. specification of whether opening and closing of a burial space, or similar space, is included in the contract, and if not, the current prices for opening and closing and a statement that these prices are subject to change, and whether the grave space is new or used;
- c. any requirements or costs relating to memorial markers, including any duties of the burial space owner if the owner desires to have an outside provider provide the marker and any related costs;
- d. a clear and readable statement describing the nature of the property right in the burial space.
- e. a statement that the purchaser has 30 days following execution of the contract to cancel by giving written notice and the seller may cancel, upon default by the purchaser, by giving written notice.

Section 3 of the bill directs the Cemetery Commission to keep records of the complaints received and the action taken by the Commission on each complaint. Records must be kept for at least five years.

Section 4 of the bill directs the Consumer Protection Division of the Attorney General's Office to ensure that private for-profit cemetery companies operate within the state and federal antitrust and unfair trade practices laws.

The act would become effective when it becomes law.

DRAFT

Rep. Jeffers
J-I
7.21-98

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 1314
Committee Substitute Favorable 6/8/98
Proposed Committee Substitute
H1314-CSRO-001
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION.

Short Title: Cemetery Consumer Protection.

(Public)

Sponsors:

Referred to:

May 18, 1998

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE CERTAIN CHANGES TO REGULATIONS REGARDING
3 CEMETERIES TO PROVIDE FOR CONSUMER PROTECTION, BASED ON
4 RECOMMENDATIONS OF THE LEGISLATIVE RESEARCH COMMISSION'S STUDY
5 COMMITTEE ON CEMETERY ISSUES.
6 The General Assembly of North Carolina enacts:
7 Section 1. G.S. 65-53 is amended by inserting a new
8 subdivision to read:
9 "(3a) Investigate, upon its own initiative or upon a
10 verified complaint in writing, whether a
11 particular contract for the sale of personal
12 property or services, whether preneed or at-
13 need, contains the disclosure required
14 pursuant to G.S. 65-66(d) and adopt temporary
15 rules pursuant to Chapter 150B of the General
16 Statutes, if necessary, to implement this
17 subdivision until such time as permanent rules
18 are adopted."
19 Section 2. G.S. 65-66(d) reads as rewritten:

1 "(d) Any contract for the sale of personal property ~~and/or or~~
2 ~~services~~ services, whether preneed or at-need, shall state
3 disclose ~~separate costs~~ the following:

4 (1) The cost for each item of personal property,
5 property and for each act of installation or other
6 service ~~required by~~ specified to be provided to the
7 purchaser under the contract, and ~~for each other~~
8 item of services included in the contract,
9 including any costs for the right of interment,
10 entombment, or inurnment;

11 (2) Specification of whether opening and closing of a
12 grave space, mausoleum space, or columbarium space
13 is included in the contract, and, if not, the
14 current prices for opening and closing and a
15 statement that these prices are subject to change;

16 (3) Any requirements or costs relating to memorial
17 markers, including any obligations of the grave
18 space, mausoleum space, or columbarium space owner
19 if the owner desires to have an outside provider
20 provide the marker and any costs relating to having
21 an outside provider provide and place a marker;

22 (4) A statement describing, in language that is
23 readable and understandable by a person of average
24 intelligence, experience, and education, the nature
25 of the property right in the grave space, mausoleum
26 space, or columbarium space; and

27 (5) A statement that a pre-need purchaser has, pursuant
28 to G.S. 65-66(m), 30 days following the execution
29 of a contract to cancel the contract by giving
30 written notice to the seller and that the seller
31 may cancel the contract, upon default by the
32 purchaser, by giving written notice to the
33 purchaser."

34 Section 3. G.S. 65-53 is amended by adding a new
35 subdivision to read:

36 "(9) The Commission shall keep records of the complaints
37 received and the action taken by the Commission on
38 each complaint. These records shall be kept for at
39 least five years after receipt of the complaint."

40 Section 4. The Department of Justice through the Office
41 of the Attorney General, Consumer Protection Division, shall
42 ensure that private, for-profit cemetery companies operate within
43 Article 1 of Chapter 75 of the General Statutes, titled

1 "Monopolies, Trusts, and Consumer Protection", the antitrust and
2 unfair trade practices laws.

3 Section 5. This act is effective January 1, 1999.

MINUTES

HOUSE JUDICIARY I COMMITTEE

The House Committee on JUDICIARY I met in Room 1228/1327 of the Legislative Building on July 28, 1998 at 10:00 A.M. Representative Daughtry, Co-Chairman, presided at the meeting. Other members present were: Representative(s) Alexander, Arnold, Bryant, Capps, Clary, Ellis, Hall, Hardaway, Hurley, Jeffus, Justus, Michaux, and Miller. Staff Counsels Steven Ross and Karen Cochrane-Brown were also present.

Representative Daughtry called the meeting to order. He introduced the pages for the day – Craven Casper from Nash County and Nathan Barber of Wake County.

HB 1314 AN ACT TO MAKE CERTAIN CHANGES TO REGULATIONS REGARDING CEMETERIES TO PROVIDE FOR CONSUMER PROTECTION, BASED ON RECOMMENDATIONS OF THE LEGISLATIVE RESEARCH COMMISSION'S STUDY COMMITTEE ON CEMETERY ISSUES was discussed by the committee for the second day.

Representative Daughtry invited anyone in the audience to speak for or against the bill.

Mr. Lucius Pullen, for the N.C. Cemetery Association, passed out written statements. (See Attachments H and I.) Mr. Pullen said that his group thinks the bill is unnecessary as outlined in the statements.

Mr. Pullen read the statement by Mr. Rusty Tysor which is the position of the NCCA legislative committee. It states that the NCCA already meets the disclosure requirements except that they will begin to put the 30 day cancellation period on their contracts.

Mr. Pullen credited Representative Allred and Mr. Gladden, chief administrator of the Cemetery Commission, with bringing these matters to their attention. He said they all use preprinted contracts which include the 3-day right to rescind required by the Federal Trade Commission.

Representative Arnold spoke in favor of the bill. He wondered who would supervise the perpetual care cemeteries who are not members of the NCCA and what is there to indicate that the cemeteries will do better if they are supervised by the NCCA, a voluntary organization, than by state laws.

He pointed to the fact that a member, Alamance Memorial Park, had some rules they were not aware of and that NCCA did not support. He wondered about the 66 others who are not members and who the NCCA can do nothing about. Some sort of state law is needed to make sure that these people don't take advantage of the customer.

Representative Arnold questioned staff. His brother was asked if he was interested in purchasing some services. His brother wondered who would guarantee refunding if the payments were not used or the family would get the benefit of them. The response was that the state of North Carolina guarantees funds held in escrow. He asked if this was correct and would it be legal that a cemetery company could put the state in debt. Staff responded in the negative.

Mr. Pullen said that is what Chapter 65 is all about. Some prominent North Carolinians who organized these first family cemeteries decided, after someone in Virginia took trust money and ran away with it, that this would not happen in North Carolina. They worked out this chapter which says that money placed in trust is supervised by the North Carolina Cemetery Commission.

Representative Capps said he sees nothing wrong with the proposal in the bill which only asks for disclosure. Unless people have something to hide he does not know how they can object to it.

Mr. Pullen said that the point of the statement is that more than 99 percent of their people are hardworking and honest. On the front of their contracts they have exactly what they are selling and the cost. Mr. Pullen said that they do not need to regulate everybody because a few individuals have had a problem.

Representative Capps said that if there is not an existing problem then they should not have a problem with a bill to give the Cemetery Commission the authority to investigate complaints.

Mr. Pullen said that it is the job of Alan Hirsch, Director of the Consumer Protection Division of the Attorney General's Office, to investigate these complaints. Mr. Pullen said he was pleased in the last meeting that Mr. Hirsch said from now on he was going to do it.

Representative Justus said that most of the cemetery owners' complaints concern someone else opening and closing the grave. He said he doesn't see anything in the bill requiring insurance of those outside people for the amount of the damages they might do. He said that someone with a back hoe in close proximity of other graves can do a lot of damage. He thought a compromise might be that outside operators would have to carry insurance to cover any damage they might cause in being there.

Mr. Pullen said that is required under rules and regulations adopted by the cemetery commission. He said they don't all have the same rules and regulations and

prices because the FTC will get upset with them as they have with the bar associations and state CPA boards.

Representative Ellis confirmed they were on the original committee substitute and not on the draft committee substitute. He then asked Mr. Pullen if he was opposed to Representative Jeffus' draft committee substitute that was introduced last week. The answer was in the affirmative.

Representative Ellis said he now knows why some of the opponents to the original committee substitute are in favor of the draft committee substitute. He said that Mr. Pullen's material was enlightening on this point. They say that recent antitrust cases show a trend toward upholding cemetery rules unless the cemetery conspired with others to adopt restrictive trade. Representative Ellis said they are in favor of Representative Jeffus' draft substitute because they are already complying with it. Representative Ellis called for a bill with some teeth.

Representative Alexander asked how many national organizations have come into the North Carolina cemeteries. Mr. Pullen said that in his organization there are 108 members and about 40% are owned by the large companies and over 50% are operated by families.

Representative Michaux said that he owns a perpetual care cemetery and is one of the 66 who doesn't belong to the NCCA. He said he would never allow an outsider to come in and dig a grave in his memorial gardens. He said they allow people to purchase markers outside their organization but they must meet standards. He also said they put them down and charge by the square inch. He said they set a price for opening and closing and the price has not changed in five years. He said the only thing this bill does is to require some type of disclosure, but we already have disclosure.

Representative Michaux drew attention to the 30-day right of rescission. Suppose someone purchases two sights, buries someone in the first one, and within the 30-day period rescinds on the second sight.

Mr. Richard Hatch, the Capital City coordinator for the AARP, said that the bill addresses issues of importance to the AARP. He said the bill would be more attractive if it (the draft committee substitute) were amended to add in the disclosure section to read "including whether the purchaser may transfer the purchaser's rights to another person or organization or the purchaser may receive a refund of part of all of the purchase price if the purchaser should move from this state to another state or country." Also, he said the original form of the bill included language which they recommend which is "a cemetery company shall not prohibit providers of cemetery products of services from providing these products or services to persons having rights in a grave space nor shall any cemetery company impose excessive requirements on providers of cemetery products so long as the provider is properly bonded and qualified to provide the product or service."

Representative Arnold set up an amendment which would make failure to comply with disclosure requirements a class 3 misdemeanor. (This amendment was never voted on but became part of the final committee substitute.)

Representative Jeffus offered new draft committee substitute #2. (See Attachment G.) She said it has changed a little since last week. She then explained the differences between this draft and Representative Allred's bill.

Representative Allred responded to each of her changes. He said he that adding "pre-need" would preclude any ability to negate contract on a monument. Representative Jeffus wondered what if someone purchased a monument and had it partially engraved would that partially negate what he is saying.

Representative Ellis moved adoption of the draft committee substitute for purposes of discussion.

Representative Michaux asked if paragraph 5 applied to monument sellers and cemetery owners. Mr. Rose said that this refers to G.S. 65 and 66 which would include monuments.

Representative Michaux asked if that personal property ever changes into real property. Mr. Rose said anything permanently attached to the ground would become real property.

Representative Hall said he is concerned about selling two sites and then cancellation after one person is buried. He thinks that situation needs to be protected against. He also said that need to protect the monument makers who engrave within 30 days and then face a cancellation.

Representative Ellis had several questions to ask Representative Jeffus. First, he wondered where she was going with the words "right of interment" as opposed to just "interment" on p. 2, Section 1. Mr. Jack Cozort, attorney with Parker, Poe, Adam and Bernstein which represents the Loewen Cemetery Group, responded for her and spoke in favor of the new draft committee substitute #2 (See Attachment G).

He said that the purpose was make sure the bill states what a person is buying. They buy the right of interment and entombment, not any piece of real property. Representative Daughtry asked if someone buys a grave site is he buying a "right" or is he buying a grave site. Mr. Cozort said the person is buying a "right" to have his human remains disposed in that site. Representative Daughtry asked if he was buying two things – the real estate as one purchase and the right to be buried there as a second purchase. Mr. Cozort said it was his understanding that he is not buying real estate, i.e. a tract of land that he pays taxes on.

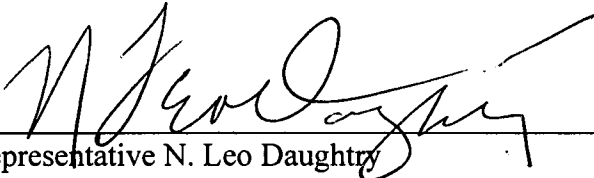
Representative Michaux said that he gives a cemetery deed with restrictive covenants to the person who purchases no matter the number of grave spaces. As far as he is concerned it is a real property transfer. He said it is up to the purchaser if the deed is recorded.

Representative Ellis referred to p. 2, l. 1 of draft #2 where it indicates that the purchaser will not end up with any real property. He said he sees the need for an amendment.

Second, Representative Ellis said he was sympathetic to the "pre-need" terminology later in the bill because someone could order a headstone and then back out. There is a need to define irreversible costs specifically. Mr. Rose said there is a provision in G.S. 65-66 (m) that talks about what happens in the event the 30 day cancellation right is exercised. It says that a person is entitled to a refund of the principle amount deposited in the trust account for his benefit of any undelivered merchandise or services.

Third, Representative Ellis asked about l. 16-20 of p. 2. He wondered who is the owner of those spaces. He said we need to define that better.

Representative Daughtry adjourned the meeting at 10:55 A.M.


Representative N. Leo Daughtry
Co-chairman
Betty Wickham
Committee Clerk

ATTACHMENTS

Exhibit A - NOTICE OF THE MEETING

Exhibit B - AGENDA

Exhibit C - VISITOR REGISTRATION

Exhibit D - HB 1314

Exhibit E - STAFF REPORT for HB 1357

Exhibit F - DRAFT OF A COMMITTEE SUBSTITUTE H1314-CSRO-001 (Introduced by Representative Jeffus)

Exhibit G - DRAFT OF A COMMITTEE SUBSTITUTE H1314-CSRO-002 (Introduced by Representative Jeffus)

Exhibit H - COLLECTION OF MATERIAL FROM LUCIUS PULLEN

Exhibit I - STATEMENT OF MR. TYSOR

**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE**

You are hereby notified that the Committee on **JUDICIARY I** will meet as follows:

DAY & DATE: **Tuesday, July 28, 1998**

TIME: **10:00 A.M.**

LOCATION: **Room 1228/1327 LB**

The following bill will be considered (Bill # & Short Title):

HB 1314 Cemetery Consumer Protection (CS) Sponsor - Rep. Allred

Respectfully,

Representative N. Leo Daughtry, Co-Chairman
Representative Edwin Hardy, Co-Chairman

I hereby certify this notice was filed by the committee clerk at the following offices at
1:20 p.m. on July 23, 1998.

____Principal Clerk
____Reading Clerk - House Chamber

Betty Wickham, Committee Clerk

AGENDA

HOUSE COMMITTEE ON JUDICIARY I

July 28, 1998
Room 1228/1327 LB
10:00 AM

Representative N. Leo Daughtry, Co-Chairman
Representative Edwin (Sandy) Hardy, Co-Chairman

BILLS TO BE CONSIDERED:

HB 1314 Cemetery Consumer Protection (CS) Sponsor - Rep. Allred

(Proposed House Committee Substitute for HB 1317 **AMEND CONTESTED CASE PROCEDURES***/Sponsor-Representative C. Wilson, was placed in a subcommittee at June 4th meeting for member study [Rep. Arnold, Chr.; Blue, Braswell, Clary, Morgan, Sherrill])*

ADJOURNMENT

VISITOR REGISTRATION SHEET

Judiciary 1 July 28, 1998

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY

1. Ken Bowers	Brown Wynne F.H. - Raleigh, NC
2. Mary Murrell	Payne & Spradell
3. Jack C. C. C.	Parker Pol
4. Richard C. R. R.	AARP
5. O. O. O.	Atty Gen's Office
6. J. J. J.	Loeferen Group
7. Steve Woodson	Nc Farm Bureau
8. Kim Smith	NCLM
9. G. G. G.	UNC-CH
10. M. M. M.	Attorney
11. Ben Kuhn	Kilpatrick Stockton
12. Ron Burgen	Bell & Co.
13. Steve Kinis	BMI
14. Allyson Duncan	Kilpatrick Stockton
15.	
16.	
17.	
18.	
19.	
20.	
21.	

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

2

HOUSE BILL 1314
Committee Substitute Favorable 6/8/98

Short Title: Cemetery Consumer Protection.

(Public)

Sponsors:

Referred to:

May 18, 1998

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE CERTAIN CHANGES TO REGULATIONS REGARDING
3 CEMETERIES TO PROVIDE FOR CONSUMER PROTECTION, BASED ON
4 RECOMMENDATIONS OF THE LEGISLATIVE RESEARCH COMMISSION'S
5 STUDY COMMITTEE ON CEMETERY ISSUES.

6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 65-53 is amended by inserting a new subdivision to read:
8 "(3a) Investigate, upon its own initiative or upon a verified complaint in
9 writing, whether a particular contract for the sale of personal
10 property or services, whether preneed or at-need, contains the
11 disclosure required pursuant to G.S. 65-66(d) and adopt temporary
12 rules pursuant to Chapter 150B of the General Statutes, if
13 necessary, to implement this subdivision until such time as
14 permanent rules are adopted."

15 Section 2. G.S. 65-66(d) reads as rewritten:

16 "(d) Any contract for the sale of personal property ~~and/or or services~~ services,
17 whether preneed or at-need, shall state disclose separate costs the following:

18 (1) The cost for each item of personal property, property and for each
19 act of installation or other service required by the contract, and for
20 each other item of services included in the contract, including any
21 costs for interment, entombment, or inurnment;

22 (2) Specification of (i) whether opening and closing of a grave space,
23 mausoleum space, or columbarium space is included in the

1 contract, and, if not, the current prices for opening and closing and
2 a statement that these prices are subject to change and (ii) whether
3 the grave space, mausoleum space, or columbarium space is new or
4 used;

5 (3) Any requirements or costs relating to memorial markers, including
6 any duties of the grave space, mausoleum space, or columbarium
7 space owner if the owner desires to have an outside provider
8 provide the marker and any costs relating to having an outside
9 provider provide and place a marker;

10 (4) A statement describing, in language that is readable and
11 understandable by a person of average intelligence, experience,
12 and education, the nature of the property right in the grave space,
13 mausoleum space, or columbarium space; and

14 (5) A statement that a purchaser has, pursuant to G.S. 65-66(m), 30
15 days following the execution of a contract to cancel the contract by
16 giving written notice to the seller and that the seller may cancel
17 the contract, upon default by the purchaser, by giving written
18 notice to the purchaser."

19 Section 3. G.S. 65-53 is amended by adding a new subdivision to read:

20 "(9) The Commission shall keep records of the complaints received and
21 the action taken by the Commission on each complaint. These
22 records shall be kept for at least five years after receipt of the
23 complaint."

24 Section 4. The Department of Justice through the Office of the Attorney
25 General, Consumer Protection Division, shall ensure that private, for-profit cemetery
26 companies operate within Article 1 of Chapter 75 of the General Statutes, titled
27 "Monopolies, Trusts, and Consumer Protection", and the federal antitrust and unfair
28 trade practices laws.

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



North Carolina General Assembly Legislative Services Office

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(919) 733-7044

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16 W. Jones Street
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Terrence D. Sullivan, Director
Research Division
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300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

July 6, 1998

MEMORANDUM

TO: Representatives Leo Daughtry and Edwin Hardy, Co-Chairman,
House Judiciary I Committee

FROM: Karen Cochrane Brown, Committee Co-Counsel *KCB*

RE: House Bill 1314 - Cemetery Consumer Protection.

House Bill 1314 is based on a recommendation of the LRC Committee on Cemetery Issues. The Committee found that in some cases, consumers believed themselves to be unfairly treated at a very vulnerable time in their lives, particularly in cases involving preneed contract disclosures and pricing. The Committee recommended increasing the duties of the Cemetery Commission, and that all cemetery contracts contain clear disclosures regarding products, services and costs.

Section 1 of the bill authorizes the Cemetery Commission to investigate, upon its own initiative or upon a verified complaint in writing, whether a particular contract for the sale of personal property or services contains the disclosures required by section 2 of the bill. It also authorizes the Commission to adopt any necessary temporary rules to implement this section.

Section 2 of the bill requires that all contracts for the sale of cemetery personal property or services, whether preneed or at-need, disclose the following:

- a. the cost of each item and of each service, including any cost of internment, entombment, or inurnment;
- b. specification of whether opening and closing of a burial space, or similar space, is included in the contract, and if not, the current prices for opening and closing and a statement that these prices are subject to change, and whether the grave space is new or used;
- c. any requirements or costs relating to memorial markers, including any duties of the burial space owner if the owner desires to have an outside provider provide the marker and any related costs;
- d. a clear and readable statement describing the nature of the property right in the burial space.
- e. a statement that the purchaser has 30 days following execution of the contract to cancel by giving written notice and the seller may cancel, upon default by the purchaser, by giving written notice.

Section 3 of the bill directs the Cemetery Commission to keep records of the complaints received and the action taken by the Commission on each complaint. Records must be kept for at least five years.

Section 4 of the bill directs the Consumer Protection Division of the Attorney General's Office to ensure that private for-profit cemetery companies operate within the state and federal antitrust and unfair trade practices laws.

The act would become effective when it becomes law.

DRAFT

Rep. Jeffery #1
J-I
7.21.98

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 1314
Committee Substitute Favorable 6/8/98
Proposed Committee Substitute
H1314-CSRO-001

ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION.

Short Title: Cemetery Consumer Protection.

(Public)

Sponsors:

Referred to:

May 18, 1998

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE CERTAIN CHANGES TO REGULATIONS REGARDING
3 CEMETERIES TO PROVIDE FOR CONSUMER PROTECTION, BASED ON
4 RECOMMENDATIONS OF THE LEGISLATIVE RESEARCH COMMISSION'S STUDY
5 COMMITTEE ON CEMETERY ISSUES.
6 The General Assembly of North Carolina enacts:
7 Section 1. G.S. 65-53 is amended by inserting a new
8 subdivision to read:
9 "(3a) Investigate, upon its own initiative or upon a
10 verified complaint in writing, whether a
11 particular contract for the sale of personal
12 property or services, whether preneed or at-
13 need, contains the disclosure required
14 pursuant to G.S. 65-66(d) and adopt temporary
15 rules pursuant to Chapter 150B of the General
16 Statutes, if necessary, to implement this
17 subdivision until such time as permanent rules
18 are adopted."
19 Section 2. G.S. 65-66(d) reads as rewritten:

1 "(d) Any contract for the sale of personal property ~~and/or or~~
2 ~~services~~ services, whether preneed or at-need, shall state
3 disclose ~~separate costs~~ the following:

- 4 (1) The cost for each item of personal property,
5 property and for each act of installation or other
6 service ~~required by~~ specified to be provided to the
7 purchaser under the contract, and ~~for each other~~
8 ~~item of services included in the contract.~~
9 including any costs for the right of interment,
10 entombment, or inurnment;
11 (2) Specification of whether opening and closing of a
12 grave space, mausoleum space, or columbarium space
13 is included in the contract, and, if not, the
14 current prices for opening and closing and a
15 statement that these prices are subject to change;
16 (3) Any requirements or costs relating to memorial
17 markers, including any obligations of the grave
18 space, mausoleum space, or columbarium space owner
19 if the owner desires to have an outside provider
20 provide the marker and any costs relating to having
21 an outside provider provide and place a marker;
22 (4) A statement describing, in language that is
23 readable and understandable by a person of average
24 intelligence, experience, and education, the nature
25 of the property right in the grave space, mausoleum
26 space, or columbarium space; and
27 (5) A statement that a pre-need purchaser has, pursuant
28 to G.S. 65-66(m), 30 days following the execution
29 of a contract to cancel the contract by giving
30 written notice to the seller and that the seller
31 may cancel the contract, upon default by the
32 purchaser, by giving written notice to the
33 purchaser."

34 Section 3. G.S. 65-53 is amended by adding a new
35 subdivision to read:

- 36 "(9) The Commission shall keep records of the complaints
37 received and the action taken by the Commission on
38 each complaint. These records shall be kept for at
39 least five years after receipt of the complaint."

40 Section 4. The Department of Justice through the Office
41 of the Attorney General, Consumer Protection Division, shall
42 ensure that private, for-profit cemetery companies operate within
43 Article 1 of Chapter 75 of the General Statutes, titled

1 "Monopolies, Trusts, and Consumer Protection", the antitrust and
2 unfair trade practices laws.

3 Section 5. This act is effective January 1, 1999.

DRAFT

Rep. Jeffers #2
g I
7/28/98

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 1314
Committee Substitute Favorable 6/8/98
Proposed Committee Substitute
H1314-CSRO-002
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION.

Short Title: Cemetery Consumer Protection.

(Public)

Sponsors:

Referred to:

May 18, 1998

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE CERTAIN CHANGES TO REGULATIONS REGARDING
3 CEMETERIES TO PROVIDE FOR CONSUMER PROTECTION, BASED ON
4 RECOMMENDATIONS OF THE LEGISLATIVE RESEARCH COMMISSION'S STUDY
5 COMMITTEE ON CEMETERY ISSUES.
6 The General Assembly of North Carolina enacts:
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8 subdivision to read:
9 "(3a) Investigate, upon its own initiative or upon a
10 verified complaint in writing, whether a
11 particular contract for the sale of personal
12 property or services, whether preneed or at-
13 need, contains the disclosures required
14 pursuant to G.S. 65-66(d) and to adopt
15 temporary rules pursuant to Chapter 150B of
16 the General Statutes, if necessary, to
17 implement this subdivision until such time as
18 permanent rules are adopted."
19 Section 2. G.S. 65-66(d) reads as rewritten:

1 "(d) Any contract for the sale of ~~personal~~ property and/or or
2 ~~services~~ services, whether preneed or at-need, shall state
3 disclose separate costs the following:

4 (1) The cost for each item of ~~personal~~ property,
5 property and for each act of installation or other
6 service required by the contract, and for each
7 other item of services included in the contract,
8 including any costs for the right of interment,
9 entombment, or inurnment;

10 (2) Specification of whether opening and closing of a
11 grave space, mausoleum space, or columbarium space
12 is included in the contract, and, if not, the
13 current prices for opening and closing and a
14 statement that these prices are subject to change;

15 (3) Any requirements or costs relating to memorial
16 markers, including any obligations of the grave
17 space, mausoleum space, or columbarium space owner
18 if the owner desires to have an outside provider
19 provide the marker and any costs relating to having
20 an outside provider provide and place a marker;

21 (4) A statement describing, in language that is
22 readable and understandable by a person of average
23 intelligence, experience, and education, the nature
24 of the property right in the grave space, mausoleum
25 space, or columbarium space; and

26 (5) A statement that a pre-need purchaser has, pursuant
27 to G.S. 65-66(m), 30 days following the execution
28 of a contract to cancel the contract by giving
29 written notice to the seller and that the seller
30 may cancel the contract, upon default by the
31 purchaser, by giving written notice to the
32 purchaser."

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36 received and the action taken by the Commission on
37 each complaint. These records shall be kept for at
38 least five years after receipt of the complaint."

39 Section 4. The Department of Justice through the Office
40 of the Attorney General, Consumer Protection Division, shall
41 ensure that private, for-profit cemetery companies operate within
42 Article 1 of Chapter 75 of the General Statutes, titled
43 "Monopolies, Trusts, and Consumer Protection", the antitrust and
44 unfair trade practices laws.

1 Section 5. This act is effective January 1, 1999.
2 Section 1 of this act is applicable to contracts entered into on
3 or after the effective date of this act.

*Judiciary I
July 28, 1998.*

**TO: Judiciary I Committee Members
House of Representatives**

**FROM: Lucius W. Pullen, Attorney/Lobbyist for
The North Carolina Cemetery Association(NCCA)**

**DATE: July 21, 1998
House J I Committee Meeting**

The NCCA objects to Committee Substitute for House Bill 1314 on several important legal grounds. They are summarized, as follows:

1. The Bill is Unnecessary, Overlapping and Duplicative Regulatory Legislation.
2. No Adequate Justification.
3. Consumer Protection Exists.
4. NCCA Members and the Monument Builders Agreement.

1. Unnecessary, Overlapping, and Duplicative - First, there are no cartels and monopolies in the cemetery business in North Carolina to my knowledge. Cartels and monopolies in the cemetery business are illegal both under Federal law, the Sherman Antitrust Act, and under State law in Chapter 75 of the North Carolina General Statutes, entitled "Monopolies, Trusts and Consumer Protection". That Chapter contains what North Carolina lawyers refer to as the "Little Sherman Act". It is the State Law, adopted as early as 1913, to prohibit in North Carolina "Every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce in the State of North Carolina." Any violation of the Federal or State statute is a felony.

In addition to the very severe criminal penalty applicable to antitrust violations, GS 75-15.2 allows the Attorney General to seek a civil penalty. Also, any person sued for violating the North Carolina Antitrust Law or the Federal Antitrust Law can be liable to any plaintiff aggrieved for treble damages. Every corporation marketing anything is very careful not to violate the terms of the Sherman Act or the Little Sherman Act, because of the severe criminal and civil law threats.

As an Attorney representing several companies marketing several products in interstate and international commerce, I have had, in the past, the responsibility for constantly educating marketing people about the meaning of the antitrust laws and for monitoring their activities to be certain that such laws were not violated. While I am a little far removed from that practice now, I know that attorneys representing companies selling any kind of product in commerce, and particularly in-house

corporate counsel, a function I performed for 12 years, are very determined to be certain that their companies do not violate the Federal or State antitrust laws or the Federal or State Unfair and Deceptive Practices Act.

The Federal Law prohibiting Unfair and Deceptive Business Practices is part of the Federal Trade Commission Act. That is just one of the many Federal laws which regulate activities in interstate commerce. I have attached a long list of the Federal Statutes and Regulations affecting cemetery operations, prepared by the General Counsel of the International Cemetery and Funeral Association, formerly known as the American Cemetery Association. I have also attached some information on legal rulings from that same source. Between the Federal Statutes and the Federal Court cases dealing with cemeteries, it appears to be fairly clear that the Courts understand the cemetery business and the need for the cemetery to control its own activities and provide reasonable rules and regulations for the use of its property. On the other hand, good cemetery operators know that they should not violate Federal Law, that it leads to lawsuits and great expense, and most good operators, and good business people in any area of commerce, would generally refrain from engaging in borderline conduct which would lead to expensive lawsuits. The market seems to be regulating itself. From advertising in local newspapers under "Cemetery Lots & Monuments", a regular feature in the Classified Advertising Section of the News and Observer, it appears that the cemetery and monument business are both highly competitive, and market driven. With respect to cemeteries, it appears that the many low cost burial options available to the public, such as church and public cemeteries, family cemeteries, or Fraternal Order cemeteries, drive the competitive pricing. A few calls to cemetery lot or crypt advertisers will indicate that. Many sales are being made by former purchasers, some at a profit, and many of them lower than market price.

The State Unfair and Deceptive Practices Act is included in NCGS Section 75-1.1. The heart of the law reads "Unfair methods of competition in or affecting commerce, and unfair and deceptive practices in or affecting commerce, are declared unlawful." Again, any person who believes they have been damaged by a violation of this law, can bring a civil action under NCGS Section 75-16 and collect treble damages from the offending party. This law appears to have been very effective in North Carolina in policing the market place. If under State law, anyone can point to business practices violating the prohibitions in Chapter 75 of the General Statutes, the Attorney General of North Carolina has the duty under NCGS Section 75-9, and the power under NCGS Section 75-10, to investigate and stamp out such unlawful practices.

Finally, Funeral Industry Practices have been the subject of extensive investigations and hearings in recent years by the Federal Trade Commission(FTC). That is the Federal agency charged with administering the Federal Unfair and Deceptive Practices Act, 15 U.S.C. 45, and other Consumer Protection Laws. As another addendum, attached is information from FTC Reports about the adoption of the "Funeral Rule", the findings that it was unnecessary to adopt a "Cemetery Rule", and that the Funeral Industry and Cemetery Industry, while overlapping to some extent, were entirely different industries. In the July, 1990 Report, I call attention to these interesting excerpts:

"However, the record contains very few consumer complaints against

cemeteries.....Mishandling of burial arrangements is the most frequent type of consumer complaint against cemeteries, followed by maintenance problems, and difficulties encountered in attempting to liquidate cemetery property. Only 55 complaints were received from over 30 million AARP members in response to a recent special solicitation for such complaints. Of the 55 complaints received none related to installation fees.....it is concluded that cemeteries should not be made subject to the Rule."

All of the information from the FTC hearings leads to the conclusion that the FTC is doing a good job of handling consumer complaints in the Funeral trade. Overlapping, costly, State regulation is not needed.

2. No Adequate Justification - H.B. 1314 is unfair, because it is placed in Article 9, Chapter 65, which regulates only the activities of 174 State licensed Peptual Care Cemeteries. It does not impose any similar limitations and costly regulations on all of the other 26,000 cemeteries in North Carolina. The cemetery business is highly competitive. Most of the sales of cemetery plots are made by Municipal Cemeteries, a tax subsidized business; church cemeteries, which purportedly are subsidized by tax free, charitable contributions to the church; and Fraternal Order Cemeteries, which also have many rights and few obligations. The one thing all of the cemeteries probably share in common is that they cannot engage in unlawful anti-competitive conduct, nor can they engage in unfair and deceptive practices in the cemetery business. Like many other lines of commerce, they are all subject to the same regulatory limitations at present. The few complaints we have heard about some State licensed cemeteries does not appear to be adequate justification for imposing any additional regulatory burdens on all of the 174 State Licensed Peptual Care Cemeteries.

Even after several television appearances by the Principal Sponsor of H.B. 1314, and Memoranda urging support of additional regulatory legislation affecting the Article 9, Chapter 65 Cemeteries, less than 50 complaints have been received from the 7,500,000 people in North Carolina. We think that it is significant that there has been no mass outpouring of sentiment for further regulation of this very small segment of the cemetery business in North Carolina. The number of complaints has increased, we believe, because of the LRC Cemetery Issues Study Committee focus. Complaints prior to that were far less each year. We did not really have a satisfactory mechanism for handling those complaints, and we are now pleased that the Consumer Protection Division of the Office of the Attorney General is doing so.

We think it is ironic, and must call attention to the fact, that invitations for proponents of H.B. 1314 to come and speak out at legislative meetings, has resulted in appearances by an unlicensed Grave Digger from Alamance County, and an unlicensed Monument Dealer from Alamance County, coming to support additional regulatory burdens on State licensed companies. We do not, by that statement, mean to belittle the Grave Digger and the Monument Dealer who came to speak in support of H.B. 1314, and we hasten to add that they are subject to the same

existing regulation under the Federal Trade Commission Act, the Sherman Antitrust Act, and Chapter 75 of the North Carolina General Statutes, as are State licensed cemeteries, and all other companies, such as Funeral Homes. When the FTC conducted its investigation of the Death Industry, it decided to adopt the "Funeral Rule" to regulate Funeral Homes, but it declined to adopt a similar rule regulating cemeteries and monument dealers, because there were not adequate complaints or sufficient evidence to warrant further rules.

Parenthetically, NCCA has publicly stated that it would support licensing by the State for Monument Dealers. It might also be appropriate to take a look at regulating, and licensing, Grave Diggers by the State, so that consumers dealing with people and companies in those disciplines would be certain that they are dealing with reputable firms and individuals meeting minimum standards of responsibility to their employees and to consumers. We strongly suspect that some of the Grave Diggers and Monument Dealers who boast about their lower prices may not have to comply with OSHA, substantial wages, employee benefits, and other costs and obligations which we believe our State licensed cemeteries must incur.

3. Consumer Protection Exists - NCCA was pleased with the statement on July 21, 1998 by Alan S. Hirsch, Director, Consumer Protection Division, of the Office of the N.C. Attorney General that it will handle all consumer complaints about cemeteries in North Carolina. We believe that many good cemeteries in North Carolina have been maligned by a few complaints and unfair conduct by a few. This has been extrapolated into a Statewide emergency and need for regulation of all of the State licensed cemeteries. Complaints about one percent (1%) of the cemeteries should not be justification for additional, costly regulation, of the other ninety-nine percent (99%) of the cemeteries. The many should not be required to pay for the sins of the few. If there are problems with unfair trade practices, the NCCA is confident that the problems will be ferreted out and properly dealt with by the Consumer Protection Division. Attached is a highly complimentary article from the Saturday, May 30, 1998 News and Observer about our Consumer Protection Division, its 12 lawyers, nine investigators, and \$1.4 million, budget available to handle complaints about underhanded business dealings. We think it is far better for that agency to handle such complaints than to impose additional regulatory duties on the North Carolina Cemetery Commission, which was created to perform a very narrow function of protecting the integrity of Trust Funds established for Pertutual Care Cemeteries licensed under Article 9, Chapter 65 of the General Statutes. It is our understanding that this Agency, within the N.C. Department of Commerce, has only three employees, and a very limited annual budget. If that small Agency is given additional statutory powers and duties, it obviously must receive funding commensurate with such powers and duties.

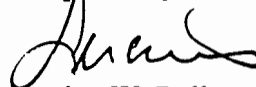
The first choice of the NCCA would be to have the North Carolina Cemetery Commission continue to perform its limited statutory functions, and not be distracted, or have its resources exhausted, by taking on additional responsibilities similar to the policing obligations already imposed by Chapter 75 of the N.C. General Statutes on the Office of the Attorney General.

4. NCCA Members and Monument Builders Agreement - The NCCA and the Monument Builders of the Carolinas have had a long standing agreement as to how best to serve the needs of the public. A copy of the 1987 "Memorandum of Understanding Between the North Carolina Cemetery Association and the Monument Builders of the Carolinas" is attached. The Agreement outlines the mutual and respectful agreement of an appropriate way for cemeteries and monument dealers to interface to serve consumers.

During hearings by the LRC Study Committee on Cemetery Issues, we heard from an Alamance Monument Company about a restrictive rule adopted by the Alamance Memorial Park Cemetery. As soon as we learned about the rule, the NCCA Board of Directors met with a representative of the owner of the Alamance Memorial Park. The Board informed the Alamance Park Owner that it believed the Rule regarding maintenance around a monument by others, where the monument was supplied by a local monument dealer, was unfair. The NCCA cannot, and will not, support such a rule. The Alamance Park Owner responded immediately by repealing the unfair rule and notifying all members of the LRC Cemetery Issues Study Committee of its action. We were informed that several efforts to reach Representative Cary Allred by phone were unsuccessful.

The Rule about the family "weedeating around monuments" is long gone. It should not be an issue anymore.

Respectfully submitted,



Lucius W. Pullen

LWP/nc

Federal Statutes and Regulations Affecting Cemetery Operations

* Affecting Maintenance

U.S. Dept. of Treasury/IRS

IRC Sec. 453C Repeal of Installment Method
IRC Sec. 460 Construction Contracts
IRC Sec. 501(c)(13) Tax-Exempt Cemeteries
IRC Sec. 642(f) Perpetual Care Funds *
IRC Sec. 3508 Direct Sellers
Rev. Rul 87-41 Independent Contractors
Rev. Rul. 87-127 Prerecorded Trust Income

U.S. Dept. of Labor/OSHA

The Occupational Health & Safety Act of 1970, generally
29 U.S.C. 651, et seq. *
29 CFR Part 1910, et seq. General Industry Guides *
29 CFR Part 1910.1030 Bloodborne Pathogens Standard
29 CFR Part 1910.1048 Formaldehyde Standard
29 CFR Part 1910.1200 Hazard Communication Standard *
29 CFR Part 1926, Sub.P Excavation Standard *

Family and Medical Leave Act of 1993, P.L. 103-3,
29 CFR 825

U.S. Department of Justice

Americans with Disabilities Act of 1990
42 U.S.C. 12101, et seq. *

28 CFR Part 36 ADA Title III, Public Accommodations *

Equal Employment Opportunity Commission

Civil Rights Act of 1991
42 U.S.C. 1981, et seq.

Americans with Disabilities Act of 1990
42 U.S.C. 12101, et seq.

29 CFR Part 1630 ADA Title I Employment

U.S. Environmental Protection Agency

Resource Conservation and Recovery Act
42 U.S.C. 6901, et seq.

Comprehensive Environmental Response, Compensation, and Liability Act of 1980
42 U.S.C. 9601, et seq.

40 CFR Parts 280 and 281 Underground Storage Tanks *

Medical Waste Tracking Act of 1988
42 U.S.C. 6901

Clean Air Act Amendments of 1990
42 U.S.C. 7401, et seq.

40 CFR Part 259 Medical Waste Standards

Federal Trade Commission

Federal Trade Commission Act
15 U.S.C. 45, Unfair and Deceptive Business Practices

16 CFR Part 453 Funeral Industry Practices Trade Rule

16 CFR Part 429 Cooling-off Period for Door-to-Door Sales

16 CFR Part 433 Preservation of Consumers' Claims

U.S. Dept. of Veterans Affairs

National Cemeteries Act of 1973
38 U.S.C. 2301, et seq. Burial Benefits
38 U.S.C. 2401, et seq. National Cemeteries

Federal Communications Commission

Telephone Consumer Protection Act of 1991
47 U.S.C. 227

47 CFR Parts 64 and 68 Telemarketing

Federal Reserve Board

Truth in Lending Act
15 U.S.C. 1601, et seq.

12 CFR Part 226 Regulation Z

Statutes Subject to Private Enforcement

Sherman Antitrust Act
15 U.S.C. 1-7

Clayton Act
15 U.S.C. 12-27

Copyright Act of 1978
17 U.S.C. 101, 500

Where Are We Headed?

Antitrust Law and Cemeteries

By Malcolm C. Mallette, with the assistance of Sandra L. Blevins

Cemeteries all have rules. Without them, our perpetual care cemeteries would become modern "Boo Hills," merely places where the remains of anyone, or anyone's pet, could be buried anywhere and in any manner. Without rules about maintenance, visitors, the memorials and markers permitted, and who or what can be buried there, cemeteries soon would look like junk yards and not dignified final resting places.

The problem with rules is enforcing them. A party may object to a specific cemetery regulation for reasons having nothing to do with the proper operation of the cemetery. In the business world, the possibility of increasing profits or obtaining a bonanza in damages can influence a party's decision to challenge a cemetery's rules in court. Experience has shown that a cemetery rarely has its rules challenged by a customer; the cemetery's competitors are the most likely ones to go to court in an attempt to invalidate a cemetery rule.

Let's look at an example. Suppose one of the new super pet marts that has thousands of items for your family dog decides to add to its inventory of goods and services a dog casket and burial service. The casket is designed so the remains of the faithful dog can be buried at the foot of his master's grave. Of course, the first Flido that the pet store tries to bury in a cemetery for humans will be rejected because the cemetery permits only the interment of human remains. Hopefully, the cemetery has such a rule. Hopefully, also, the deed to the interment rights contains a provision requiring the owner of the rights to comply with the cemetery rules.

After being shown a copy of the cemetery rules and told he cannot bury the dog there, the pet shop owner consults his attorney. The attorney declares



Malcolm C. Mallette

there must be an antitrust violation because the cemetery is depriving the pet store of a chance to make money. The attorney explains that a successful plaintiff will be awarded treble damages and attorneys' fees under the federal antitrust laws and advises that litigation should be considered.

That sounds great to the pet store owner, but what does it take to win this type of case? By what standards will the case be determined? The case will be determined by application of the federal antitrust laws, primarily the Sherman Antitrust Act 15 U.S.C. § 1. This article will discuss the current status of the federal antitrust laws as they relate to cemetery regulations.

Until rather recently, it appeared that it was open season on cemetery rules. During the pendency of a recent antitrust case in Indiana, in which I was counsel for one of the defendant cemeteries, an industry publication (unrelated to ACA, I might add) predicted the case would be lost because of the decisions in prior antitrust cases. That case involved a challenge by a funeral home to a cemetery rule that only the

cemetery staff could open and close graves in the cemetery.

That case is over insofar as my client is concerned. The settlement agreement between my client and the funeral home is private. However, the parties to the settlement have agreed they may state as follows:

The claims between the parties in the litigation were settled to the mutual satisfaction of the parties. The cemetery shall continue to open and close all graves in its cemetery.

The settlement of that case still leaves unresolved the published suggestion that cemetery rules are likely to be overturned under the antitrust laws. Here come the pet caskets! Fortunately, recent developments in cemetery antitrust cases show a trend toward upholding cemetery rules unless the cemetery conspired with other cemeteries to adopt uniform rules restricting trade. While these decisions deal with third-party marker sales and installations in cemeteries, industry members and their attorneys should use these decisions as a "blueprint" for interpreting their application to other types of cemetery regulations.

The first case that appeared to open the floodgates of antitrust litigation against cemeteries is *Moore v. Jas. H. Matthews & Co.*, 550 F.2d 1207 (9th Cir. 1977), on remand, 1979 WL 1644, 1979-1 Trade Cases, ¶ 62,716 (D.Or., May 3, 1979), rev'd, 682 F.2d 830 (9th Cir. 1982). In all, Moore was in the U.S. Court of Appeals for the Ninth Circuit three times on three different appeals from orders of the trial court dismissing the case or otherwise ruling in favor of the cemeteries. Every time the trial judge ruled in favor of the cemeteries, dismissing the case or granting sum-

mary judgment, the plaintiff appealed and the trial court was reversed.

The defendant cemeteries in *Moore* had rules that required grave markers to be purchased through the cemetery and rules permitting only the cemetery workers to install grave markers. Both rules were held to be an illegal "tying arrangement" that tied the sale of grave markers and also the service of installing grave markers to the sale of interment rights.

The Sherman Antitrust Act, Section 1, 15 U.S.C. § 1, prohibits contracts in restraint of trade. By court decision, certain contracts are presumptively illegal. Tying contracts are among those presumed to be illegal by the courts. A tying contract is one in which the seller of goods or services requires the buyer of one item to agree to purchase another item from the seller. An example would be the only gas station in a small town refusing to sell gas to customers that did not purchase tires from that station.

The requirements for showing that a contract is an illegal tying contract are as follows:

1. There must be tying between two distinct products or services. A shoe store that sells shoes only in pairs is not illegally tying the sale of the right shoe to the left. The pair of shoes is one product.

2. The defendant must have sufficient economic power in the tying market to impose significant restrictions in the tied product market. Take the example of the only gas station in town. Because that station has the only gas in town (the tying product), it can force customers to buy its tires (the tied product) from its station if the station will not sell gas to customers who buy tires from competitors.

3. The amount of interstate commerce in the tied product market "must not be insubstantial" (the U.S. Supreme Court's language). In this article, we are referring to federal antitrust laws, and to be liable under those laws, a business must have a certain amount of impact on interstate commerce. How much impact is beyond the scope of this article.

The first requirement, that there be two products or services with the pur-

chase of one tied to the other, may be met in some situations involving cemetery rules. However, the pet shop wanting to bury pet remains in a cemetery probably will not be able to claim a presumptively invalid tying arrangement. The cemetery is not requiring that its customers purchase pet burials from the cemetery. The cemetery is forbidding pet burial by anyone.

To take our hypothetical case one step further, as the pet burial ban is not a presumptively illegal tying arrangement, the pet shop would have to show

Recent antitrust cases show a trend toward upholding cemetery rules unless the cemetery conspired with others to adopt rules restricting trade.

it is a restraint of trade that is invalid under the rule of reason. The "rule of reason" generally means that there must be a valid business reason for a restriction that impacts third parties sufficient to outweigh the restriction on commerce. The reasons behind a ban on the burial of pets are obvious. For example, other families may not want their loved ones' remains buried next to someone's pet. Therefore, an argument that the ban amounts to an illegal restraint of trade is unlikely to succeed. Claims of tying the sales of other goods or services to the sale of interment rights often are made to avoid having to show that the restriction is unreasonable.

It should be very difficult in most instances for a plaintiff to meet the second requirement of proving a presumptively illegal tying arrangement, showing that a defendant cemetery has sufficient economic power in the market for the tying product.

A plaintiff usually claims that the sale of markers or other burial items is tied to the sale of interment rights. A

plaintiff might argue that, because the contract for the sale of interment rights requires that the owner abide by the rules of the cemetery, any rule that requires that owner to purchase other services or goods from the cemetery ties the sale of those items to the sale of interment rights. For example, a plaintiff might contend that a cemetery rule providing that only cemetery staff can install markers in its own cemetery ties the sale of marker installation to the sale of interment rights.

Such a plaintiff assumes, however, that a particular cemetery has economic power in the sale of interment rights. This assumption falls in most instances. Heavy competition between cemeteries prevents domination in the market by one cemetery. Interment rights sold by one cemetery usually comprise only a small fraction of the total interment rights sold in the market area.

In *Moore*, the court of appeals held that the defendant cemeteries had sufficient economic power in the market of the sale of interment rights. The trial court so found only after the court of appeals had reversed an earlier summary judgment for the cemeteries. The *Moore* decisions do not clearly state the basis of the determination that the defendant cemeteries had market power.

Finally, the third element a plaintiff must prove to show an illegal tying contract is that the amount of interstate commerce in the tied market (grave markers and installation in *Moore*) must not be insubstantial. In some states, all markers or monuments may be imported from other states, making the connection to interstate commerce in the tied market clear. In *Moore*, the interstate commerce in markers alone was substantial, thereby establishing the third element.

Therefore, the court in *Moore* held that all three elements of a presumptively illegal tying violation existed. One product or service (markers) was tied to the sale of another product or service (the sale of interment rights); the defendants had market power in the market for the product or service (interment rights) to which the other product and service (markers) were tied; and the

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market in the tied product (markers) involved a substantial amount of interstate commerce.

Taken as a whole, the *Moore* case clearly tells a cemetery owner that it is not wise to require customers to purchase markers or monuments exclusively from the cemetery. At least the Ninth Circuit Court of Appeals—which encompasses Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana, Nevada, Northern Mariana Islands, Oregon and Washington—has indicated by its decisions in *Moore* that it will not hesitate to strike down such a requirement.

In Indiana, a cemetery is prohibited by state law from requiring anyone to purchase items exclusively from the cemetery to be installed in the cemetery. The Indiana statute does permit the cemetery to require installation by

the cemetery of items purchased from outside sources for the same fee it would charge to install the same item if purchased from the cemetery. (Indiana Code § 23-14-1-13). However, a cemetery must comply with federal antitrust laws as well as state law. An action forbidden under federal law is illegal even if there is a state law permitting, but not requiring, such action.

Though the decision in *Moore* is a clear signal from the courts that a cemetery should not require its customers to purchase markers or monuments exclusively from the cemetery, I believe it is a mistake to expand the holding in *Moore* beyond that. The *Moore* court's holding that it is illegal for the cemetery to prohibit others from installing markers in the cemetery became the "law of the case" after a reversal by the Ninth Circuit Court of Appeals of a summary judgment in favor of the cemetery. The court was able to dispose of the case on a procedural basis rather than making a more considered examination of the installation claims and the cemetery's defenses.

At this point I should make one thing clear. I do not advocate a cemetery refusing to let others install markers and monuments in the cemetery unless there is a compelling reason to do so. However, any such installation may and, unless state law prohibits such a requirement, should be conditioned on the posting of a bond or, in the alternative, the purchase of an adequate insurance policy naming the cemetery and its staff as additional insureds (to protect the cemetery from liability claims) and the payment of a reasonable fee to the cemetery for inspection of the work. (The *Rosebrough* decision, discussed below, is the inspiration for these considerations.) However, be sure to have competent legal counsel check your state law and regulations for prohibitions on these requirements (e.g., Florida). Regardless, it is worth remembering that the cost of defending an antitrust lawsuit may be greater than the cost of dealing with third-party installers.

The cost of defense aside, the recent trend in the law is that a cemetery acting alone should prevail in an action by outsiders seeking to challenge rules adopted by a particular cemetery. In

Rosebrough Monument Co. v. Memorial Park Cemetery, 666 F.2d 1130 (8th Cir. 1981), cert. denied, 457 U.S. 1111 (1982), on remand, 572 F.Supp. 92 (E.D. Mo. 1983), aff'g, 736 F.2d 441 (8th Cir. 1984), cert. denied, 469 U.S. 981 (1984), the defendant cemeteries had joined together in an association and adopted the association's policy that only a cemetery could prepare and place foundations for monuments in the cemetery. Monument dealers obtained a judgment against the cemeteries under the federal antitrust laws.

In this case, there were two distinct products—monument foundations and interment rights—meeting the first part of the tying test under the Sherman Antitrust Act. The association policy was followed by all cemeteries in the area; therefore, the court found that the cemeteries had conspired together and collectively had economic power in the tying market (the sale of lots), which met the second test. Finally, the third test was met because the court held that there was a not insubstantial impact of the tied market (preparation of foundations) on interstate commerce.

Rosebrough was hailed by some as the vehicle to attack any cemetery regulation. The case dealt with the issue of preparing and placing monument foundations, which did have some impact on the condition of the cemetery, although the cemetery was not trying to force anyone to buy the monument from the cemetery. Those who hailed the decision failed to take into account that *Rosebrough* was a conspiracy case. *Rosebrough* spawned litigation in several jurisdictions.

One of the significant industry cases filed after the *Rosebrough* decision was *Baxley-DeLamar Monuments, Inc., v. American Cemetery Association*, 938 F.2d 846 (8th Cir. 1991). In *Baxley*, several defendant cemeteries located in Arkansas had adopted rules that prohibited installation of markers or monuments in their cemeteries by third parties. A monument dealer brought this action against the American Cemetery Association, the state cemetery association and the cemeteries, claiming a conspiracy

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to adopt or maintain an exclusive marker installation rule. In a prior appeal in the same case, the U.S. Court of Appeals for the Eighth Circuit had decided the plaintiffs were entitled to a trial. The Eighth Circuit is the same court that decided *Rosebrough* just a few years earlier, so at first things looked bleak for the *Baxley* cemeteries.

At the trial, the judge instructed the jury that they could find for the monument dealer and against the cemeteries only if there had been a conspiracy between the cemeteries to adopt the exclusive installation rule. There was no evidence of a conspiracy, and the jury found for the cemeteries. The monument dealer appealed, asking for a new trial on the grounds that the trial judge refused to instruct the jury that it could find for the monument dealer even if each cemetery had adopted the rule alone and without a conspiracy.

The Eighth Circuit Court of Appeals held that the trial judge had properly instructed the jury that it could find against the cemeteries only if there was a conspiracy. The court of appeals noted that the largest cemetery defendant had a small market share. The market shares of the defendant cemeteries could not be added together to show market power unless there was a conspiracy. Without a finding by the jury that there was a conspiracy, the second test as to tying arrangements was not met because there was no proof of sufficient economic power by each individual cemetery in the tying market (interment rights).

A single cemetery usually makes less than 30 percent of the interment rights sales in the area it serves. The U.S. Supreme Court suggested in a recent case involving hospital rules and restrictions that a defendant that has less than 30 percent of the market in the area it serves does not have market power. Therefore, if *Baxley* is adopted by other

federal courts, cemeteries that do not conspire with other cemeteries to adopt uniform or "model" rules should have powerful defenses to an antitrust challenge of their rules, as an individual cemetery usually has less than 30 percent of the market for interment rights and therefore has no market power. The ACA turned a potentially damaging outcome in *Baxley* into a landmark decision for cemeteries.

Baxley has been followed in *Sillworth v. The Cedar Hill Cemetery, Inc.*, 1993 WL 122104, 1993-1 OCH Trade Cases, ¶ 70,166 (Md. App., February 11, 1993), cert. denied, 626 A.2d 371 (Md. 1993). In that case, the plaintiff claimed that the defendant cemeteries sold monuments and interment rights as a package and made it difficult for others to sell monuments to lot owners. The sale of the monuments allegedly was tied to the sale of lots. The case was brought under a Maryland state law similar to the Sherman Antitrust Act.

The Maryland Court of Special Appeals cited *Baxley* and held that the plaintiff had not stated a claim. The plaintiff alleged no conspiracy and none of the defendant cemeteries alone had sufficient economic power in the tying market (interment rights). The market shares of the defendants could not be added together because there was no allegation of a conspiracy.

Even prior to *Baxley*, a U.S. District Court had dismissed a complaint by a monument dealer against a cemetery claiming that the cemetery violated the antitrust laws by requiring those who purchased burial plots to buy markers and marker installation from the cemetery. The court held that the monument dealer did not even allege that the cemetery had market power in the local market for the sale of burial lots. A claim of conspiracy with other cemeteries was dismissed because the monument dealer did not specifically allege the facts that made up the conspiracy, as required by a

prior order of the court. See *Florida Monument Builders v. All Faiths Memorial Gardens*, 605 F.Supp.1320 (S.D.Fla. 1984).

This brings us to some important lessons. Each cemetery should make its own independent rules, relying for advice on its own attorney. Cemetery associations—national, state or local—should never make or suggest specific model rules. And cemetery rules that can cause competitors to be placed at a disadvantage should never be discussed between competing cemeteries. If a cemetery acts alone, at least in the Eighth Circuit states of Missouri, Arkansas, Iowa, Minnesota, North Dakota, South Dakota and Nebraska, it should be able to defend against federal antitrust claims attacking the cemetery's rules.

I suspect that the prospect of collecting treble damages and attorney's fees are powerful incentives to claim that cemetery regulations violate federal antitrust law. In addition, there are state an-

titrust and trade regulation laws in many of the 50 states, some of which have treble damages. I have not attempted to deal with state laws in this article because they differ; however, cemetery owners and their attorneys need to be aware of the laws and regulations in their states.

Additionally, a violation of the federal antitrust laws constitutes the commission of a criminal offense. The Department of Justice can prosecute companies and individuals for criminal violations under the federal antitrust laws. Individuals found guilty of violations have been sentenced to pay substantial fines and serve prison terms. Sentences for antitrust criminal violations are now determined under the Federal Sentencing Guidelines. Criminal prosecutions and penalties under the federal antitrust laws fall outside the scope of this article.

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The elements of an antitrust claim are, of course, somewhat more complicated than the cursory explanation set forth above. In addition to the defenses mentioned, a host of other possible defenses exist to antitrust cases, ranging from lack of impact on interstate commerce by a cemetery to a rule-of-reason argument that the rule challenged is necessary to the operation of the cemetery and the maintenance of its goodwill. There also are cases holding that property owners can govern who provides services on their property. For example, it has been held that the owner of a facility can freely determine which cab companies can pick up passengers on the owner's property.

In addition, damages in an antitrust lawsuit against a cemetery often are difficult if not impossible to prove. It should be remembered that the prevailing

monument company in the Rosebrough case was awarded only \$3 in nominal damages because of its failure to prove the amount of damages. There is simply insufficient space in this article to outline all of the possible defenses by a cemetery to an antitrust action. It does appear that the most recent decisions of U.S. Courts of Appeal indicate that cemeteries which do not control the market for interment rights can adopt their own reasonable rules for operation.

In conclusion, cemeteries should adopt their own rules without consulting other cemeteries' rules as a model, and cemetery trade associations should not prepare "model rules." Competitors, including competing cemeteries, should never discuss with each other their prices, rules or practices that may affect customers or other vendors.

A cemetery owner should obtain competent legal advice before adopting or enforcing a rule that requires the cus-

tomers to buy a monument, vault or other items exclusively from the cemetery. Such practices are likely to find judicial disapproval and result in court decisions that damage all cemeteries. However, an exception might occur if a state, by law, has required the cemetery to so act and has prohibited others from selling items to be installed in the cemetery.

A cemetery should consider the cost of defending antitrust litigation before it decides to restrict the installation of markers, memorials and monuments to the cemetery alone. Is installing the monument yourself important enough to spend years in court to defend that rule?

Finally, I believe that a cemetery should not hesitate to adopt rules that are necessary to the proper conduct of the cemetery. Recent court decisions indicate that such rules will be upheld.

Malcolm Malleus is an attorney with the law firm Krieger, DeVault, Alexander & Capehart in Indianapolis, Indiana.

FUNERAL INDUSTRY PRACTICES

MANDATORY REVIEW

16 CFR Part 453



FINAL STAFF REPORT

TO THE

FEDERAL TRADE COMMISSION

With Proposed Amended Trade Regulation Rule

BUREAU OF CONSUMER PROTECTION
JUNE 1990

since the *Rosebrough* case, there has been a much smaller percentage requiring that now than there used to be.⁵⁸⁷

Subsequently, the ACA and the MBNA in 1986 agreed to compromise "Recommended Installation Guidelines" that affirm consumers' right to purchase memorials and installation services from monument retailers and permit cemeteries to charge an inspection fee based on actual labor costs when a retailer installs a memorial.⁵⁸⁸ The ACA represents 1,500 of the 7,500 commercial cemeteries in the nation.⁵⁸⁹

* Arguments for a Separate Proceeding

Some cemeterians argued that the Commission should commence a separate investigation of cemeteries if it intends to regulate them, and not lump cemeteries into the Funeral Rule.⁵⁹⁰ Paul Elvig, a California Cemetery Board official, stated that the Funeral Rule would impose financial strains on small cemeteries.⁵⁹¹ Kansas State Representative Ginger Barr, who is also a cemeterian, testified that "I don't have any problem with that [regulation] if it is shown that there is truly a problem out there."⁵⁹²

* Staff Conclusions on Expansion to Other Industries

The staff concludes from its review of the record that the evidence does not establish that sellers of funeral goods or services, particularly cemeteries and crematories that do not sell funeral goods, are engaged in the type of abuses addressed by the Rule (lack of price disclosure, forced bundling of goods and services and misrepresentations of funeral goods and services). The services generally provided by those sellers are not comparable to funeral home services, because they do not include a similar wide variety of different services and goods that are "packaged" into a single "funeral." The "bundling" issue that is the primary practice addressed by the Funeral Rule is thus not apparent in those industries, at least in the same magnitude, as it is in the funeral home industry.

The evidence indicates generally that cemeteries itemize and disclose prices for outer burial containers, the primary merchandise sold in competition with funeral homes, and caskets, which several cemeteries offer on a pre-need basis. The evidence also shows that the overwhelming

⁵⁸⁷ Rex, Tr. Vol. I, 459.

⁵⁸⁸ See R-E-5 at 16, Exhibit G, Diack, Tr. Vol. III, 520.

⁵⁸⁹ Daly, Tr. Vol. III, 660, 679-680.

⁵⁹⁰ Dronza, Tr. Vol. II, 933-934 ("I wouldn't be opposed, but I would like to see it -- if we are going to have a rule that includes cemeteries, to have it specifically called the "Cemetery Rule" and have it apply specifically to cemetery things"); Neel, Tr. Vol. I, 587 ("I did not say that I agreed that you could extend the Funeral Rule over cemeteries. What I said was that if the FTC feels that cemeteries need to be regulated, then they have to go back to square one and design a rule that encompasses our [practices] and regulate us under that rule").

⁵⁹¹ Tr. Vol. III, 413.

⁵⁹² Tr. Vol. III, 1518.

majority of consumer complaints to the Commission, the AARP, and state and industry regulators about cemetery practices do not relate to bundling, lack of price disclosure, or misrepresentation, but to such things as gravesite maintenance and liquidation of cemetery property.

Complaints and other evidence regarding alleged cemetery practices of exclusive sale and installation of monuments and markers, and excessive installation and inspection fees when the marker is installed by third parties, also did not reliably establish that those practices are widespread, or that current industry guidelines and federal court decisions prohibiting most of the alleged practices do not sufficiently address any problems.

The MBNA survey did not provide enough reliable data to permit the staff to conclude that a significant number of cemeteries prevent third-party monument retailers from installing monuments in their cemeteries, charge excessive inspection fees, or charge discriminatory installation fees. Even if the MBNA survey had indicated that such practices were prevalent, the staff would be concerned that the survey cover letter could have biased the results by disclosing to the respondents that the survey would be used to persuade the Commission to regulate the competitive practices of cemeteries.

Substantial evidence does establish that most crematories do not deal directly with the public, and the record contains little, if any, evidence that those crematories that do deal with consumers are not currently subject to the Rule or fail to disclose prices or misrepresent their goods and services.

2. To Remove Restrictive State Laws

During the hearings, the PAA and several witnesses provided evidence that a myriad of state laws exist that unnecessarily restrict competition in the funeral industry.⁵⁹³ The PAA argues that those restraints limit the Funeral Rule's ability to affect price competition in the industry.⁵⁹⁴ A few witnesses asserted, for example, that state laws prohibiting joint ownership of funeral homes and cemeteries raise consumer costs and provide no benefits.⁵⁹⁵ One witness stated that consumers would save approximately \$500 if he were able to build a joint operation.⁵⁹⁶ Those witnesses asserted that state laws prohibiting joint ownership are

⁵⁹³ See generally R-M-12 (FAA Findings) at 36-62, summarized at 84-86.

⁵⁹⁴ *Id.* at 89, 95.

⁵⁹⁵ Graf, Tr. Vol. II, 594; Nelson, Tr. Vol. II, 193; and Daly, Tr. Vol. III, 677 ("Our combined operating costs are substantially lower than the two operations standing independently, particularly in the funeral home operation. At Evergreen-Washelli, our average adult standard funeral in 1988 was less than 1,800 dollars").

⁵⁹⁶ Sparks, Tr. Vol. II, 367.

FEDERAL TRADE COMMISSION

**REPORT OF THE PRESIDING OFFICER ON
A TRADE REGULATION RULE PROCEEDING:****REVIEW OF THE FUNERAL INDUSTRY PRACTICES TRADE
REGULATION RULE****16 CFR PART 453****Public Record (215-55)**

This report required by 16 CFR 1.13(f) of the Commission's Rules of Practice contains the Presiding Officer's recommended decision based upon his findings and conclusions as to the relevant and material evidence in the rulemaking record. It has not been reviewed or approved by the Commission or the Bureau of Consumer Protection.

**HENRY B. CABELL
PRESIDING OFFICER****JULY 1990**

13. Consumer advisors, including those providing assistance to the elderly and the economically disadvantaged who must arrange funerals, unanimously supported the continuation of the Rule in effect. This support was based on their respective conclusions that the Rule has provided some benefits to consumers and that its potential for benefit has not been fully realized. Findings 109-113, 161.

E. Proposals for extension of the Rule. *

1. The record does not support extension of the scope of the Rule to include operators of cemeteries or to providers of funeral goods or services. Providers subject to the Rule do not suffer any competitive disadvantage by reason of the fact that some sellers of funeral goods or services are not covered by the Rule. Findings 294-296.

2. Cemeteries commonly engage in the sale of funeral products. This places them in direct competition with independent monument builders who make, engrave, and install grave monuments and markers. Finding 305. The record shows that some cemeteries have adopted and employ unfair and restrictive business practices which hamper the sale and installation of monuments by the independent monument builders or businesses not connected with the cemetery. Findings 306, 310, 313. These restrictive practices have a real and substantial potential for both consumer and competitive injury. Findings 322, 323, 330, 322, 323. However, the record contains very few consumer ← * complaints against cemeteries. Finding 300. None of these

* → involved the use of practices subject to the Rule. Mishandling of burial arrangements is the most frequent type of consumer complaint against cemeteries, followed by maintenance problems, and difficulties encountered in attempting to liquidate cemetery property. Only 55 complaints against cemeteries were received from over 30 million AARP members in response to a recent special solicitation for such complaints. Of the 55 complaints received none related to installation fees. Findings 300, 301, 303.

* 3. Funeral providers now subject to the Rule are privately owned. By way of contrast many cemeteries are publicly owned, and many others are owned and operated by presumably nonprofit religious organizations. Finding 297. Extension of the Rule to apply to cemeteries would impose formidable jurisdiction problems which the Commission would have to overcome in order to achieve a uniform level of compliance. It is probable that some cemeteries would be subject to the Rule, and others would not. Because of this and the other considerations noted, it is concluded that cemeteries should not be made subject to the Rule. Findings 298, 329-332.

6. Although evidence was received on the question about the inclusion in the Rule of standards for cremation practices, it was concluded that those issues were beyond the scope of this rulemaking review proceeding. Finding 334. This evidence was the subject of findings in section II.D.3.a. of this Report. However, no action is warranted with respect to that evidence or findings. Finding 346.

7. Similarly the Rule should not include standards for alternative containers. See, section II.D.3.b. of this Report. The record shows that industry standards for these containers have been adopted and that the majority of industry members comply with them. Findings 355, 360, 361. The use of unacceptable containers appears to more of a health issue than one involving the use of unfair or undeceptive practices. Findings 351, 353.

8. There was no significant record support for exempting pre-need sales from the scope of the Rule. Finding 381. There is considerable evidence in the record showing that pre-need sales are increasing at a rapid rate (Findings 364-365) and that funeral director trade associations have been successful in obtaining state legislation aimed at restricting competition in the area of pre-need sales. For these reasons there were a number of suggestions for extension of the Rule to prohibit such market restraints. Finding 385. However, the consideration or adoption of additional Rule provisions prohibiting market restraints on the pre-need sales of funeral goods and services was determined to be beyond the scope of this rulemaking. Accordingly no conclusions respecting that subject have been made. See, Section II.D.4. of this Report and Findings 362-387.

9. The Commission Staff and the Pre-Arrangement Association of America recommended the addition of a provision to the Rule which would clearly and precisely forbid the imposition of casket handling fees by a funeral provider in situations in which the

consumer has made available a casket purchased from a third party. Finding 421. Although the adoption of such a provision might result in an increase in the non-declinable fees for the professional services of the funeral director and staff, it would also result in a decrease in the price paid for caskets made available by funeral homes. Finding 423. Such an extension would also be in furtherance of the purpose of the anti-tying provisions of the Rule. Finding 417, 424. It is concluded that the Staff proposed amendment to section 452.4(b)(ii) which would have the effect of prohibiting casket handling fees should be adopted instead of the PAA recommended additions.

F. Proposed modifications of the Rule.

Findings, conclusions, and recommendations regarding proposed modifications of the Rule are set forth in Section II.E. of this report and in the references cited therein. These may be summarized as follows:

1. The requirement for affirmative disclosure of the availability of price information over the telephone should be eliminated. Findings 239, 240.

2. Although the record does not support either an abolition of the general price list requirement or the adoption in the Rule of a model price list, modification of certain of the Rule provisions about the content of the GPL are warranted. These modifications are mainly concerned with clarifying the meaning and scope of the permissible non-declinable professional service fee. Findings 468, 472.

REASONS TO GRIPE

North Carolina citizens filed 14,502 complaints last year of underhanded business dealings in 42 categories. Motor vehicles and credit spawned the most complaints of any categories over the past five years — 9,996 and 7,850, respectively — but pyramid schemes and chain letters edged credit problems for the No. 2 spot last year. Here's the list of last year's top 10:

Category	No. of complaints
1. Motor vehicles	1,936
2. Pyramid schemes/chain letters	1,904
3. Credit	1,636
4. Miscellaneous	763
5. Mail orders	721
6. Travel/transportation	703
7. Home appliances	679
8. Utilities	621
9. Home improvement	620
10. Home furnishings	609

If you have a computer, go to the Consumer Protection Division Web site at www.jus.state.nc.us/Justice/cpsmain/ for more information. Call 716-6000 during business hours to speak with a representative or to have a complaint form mailed.



Jane Feather, an investigator for the state Consumer Protection Division, holds a hand-drawn sweepstakes sent by a consumer who wanted them checked.

STAFF PHOTO BY JIM BOUNDS

State lawyers, investigators track down scammers

By CAROL FREY
STAFF WRITER

RALEIGH — Folks who live in the comfortable homes on Sussex Road can't name any of the 12 lawyers and nine investigators who work in the state Consumer Protection Division.

They just know that the scammers haven't been back.

After one of their neighbors wrote checks for \$18,000 to men who offered to cut two trees felled by Hurricane Fran, Attorney General Mike Easley mobilized his consumer SWAT team.

Easley understands the power of one such widely publicized arrest to alert the public and prevent losses to unscrupulous businesses. It's also a strategy that buys a lot of law enforcement

on a budget.

"We realize that there's no way to protect people against all the poor choices they can make, but we can inform them," Easley said.

By making connections between the Sussex Road case and others, Assistant Attorney General David Kirkman and two investigators, along with local, state and federal agencies, rounded up more than two dozen people last fall.

Like most, the case began with a phone call.

The division gets 150,000 phone calls a year. 14,000 become formal complaints. Three-quarters of those are settled in mediation, and most of the rest are resolved in civil complaints against businesses the division believes violated the state consumer protection laws.

SEE CONSUMER, PAGE 6D

BUSINESS

www.newsobserver.com/biz/

CONSUMER

CONTINUED FROM PAGE 1D

prohibiting unfair and deceptive trade practices, Deputy Assistant Attorney General Alan Hirsch said. Cases of business people preying on the weak are referred to district attorneys for criminal prosecution.

Susan Sink said her reclusive neighbor had paid big money for home repairs once before Fran hit on Sept. 6, 1996.

"An SBI agent told us about the lists of older ripoff people these guys have," Sink said. "That's why they came here after Fran. We thought it was because this was a nice area."

The same crew that took two checks for \$18,000 from their neighbor quoted the Sinks a price of \$600 per tree. When Sink learned about the checks, she called Nations-Bank to stop payment, and the bank alerted authorities.

"That particular case came through the typical complaint process," Hirsch said. "When I mentioned it to the attorney general, he said, 'You go get that person now.' So we sent agents out in about one minute and had him arrested."

The man arrested that day, Marshall D. Everette of Macclesfield, recently pleaded guilty to a felony charge, got a suspended jail sentence and was ordered to make restitution. He will be on probation, subject to warrant-less searches for drugs, for 2½ years, said Wake Assistant District Attorney Shelley Desvousges.

Under Easley, the division places top priority on cases involving one person cheated out of his life savings, then on losses suffered by large numbers of con-

sumers, on blatant violations of law and on noncompetitive business practices that affect nearly everyone, Hirsch said.

With its \$1.4 million budget, the division returned \$8 million to North Carolina consumers last year, he said.

Although many state residents are unaware of its work, the division has built a scrappy reputation outside its borders. "North Carolina is one of the states that do as much as possible with the resources they have available," said Helen MacMurray, chief of Ohio's consumer protection section. "Twelve lawyers is not a bad staff. Some have only two or three."

More important is the size of the investigative staff, she said. North Carolina has nine. Ohio has 20, eight assigned to making cases against telemarketing fraud.

"Ohio, like North Carolina, is a victim state," MacMurray said. "Boiler rooms in New York and California make their calls into rural states with big elderly populations."

Here, Kirkman and investigator Jane Feather do the job.

"We were one of the first states to go after Canadian telemarketing scams, in 1994," Kirkman said.

Companies called people on sucker lists telling them they had won a sweepstakes but would have to buy \$500 worth of bumper stickers to get their prizes. "In the end, they get worthless vacation certificates, jewelry, artwork," he said. "Victims will have basements full of this stuff."

Telemarketers got \$212,000 out of a Durham woman in 1992. Three years later, a Goldsboro woman gave \$102,000 to a telemarketer before he was arrested in Ontario.

"Home repair scammers do almost the same thing. The parallels are striking," Kirkman said.

The division has long pursued pyramid schemes, which make money charging people to sell products rather than sales of the products themselves. "They prey on people's desire to be successful," Hirsch said.

Long before International Heritage Inc. ran up against the Securities and Exchange Commission, the Consumer Protection Division called the company a pyramid scheme. In June 1997, the state ordered IHI to stop charging people to join its sales force and refund \$1 million to those who had paid.

Raleigh-based IHI, which has prompted more than 1,500 complaints, has helped drive pyramid schemes back to No. 2 on the division's consumer problems list.

"We're still in the peak of the pyramid cycle," said Assistant Attorney General Kristine Lanning, who is assigned to pyramid schemes. "We're starting to see federal action, though. The postal inspectors, Federal Trade Commission, SEC and the FBI are recognizing that this is a growing problem." North Carolina won court rulings in four cases last year that have become a model for prosecuting pyramid schemes, said Robert FitzPatrick, author of a book about pyramid schemes called "False Profits."

"People see our office as the top cop. They really don't know what we do outside of that," Easley said. "We help those least able to help themselves. That's what our people in consumer do."

Carol Frey can be reached at 829-8979 and cfrey@nando.com

MEMORANDUM OF UNDERSTANDING BETWEEN THE
NORTH CAROLINA CEMETERY ASSOCIATION AND THE
MONUMENT BUILDERS OF ~~XXXXXX~~ THE CAROLINAS

It is recognized that both perpetual care cemeteries and monument companies provide a worthwhile service to the public. It is also recognized that both type businesses offer bronze memorials to be used to mark graves in perpetual care cemeteries. We further agree that the public is best served when, under the free enterprise system, the customer makes his decisions based on value, price, quality and reputation in an atmosphere of truthfulness and honesty.

It is a point of agreement that a marker is not required in a perpetual care cemetery if the family chooses not to mark the grave.

It is acknowledged that the perpetual care fee charged at the time the lot was sold is reflective of the fact that the grass will be cut on the grave spaces without the family ever having to cut the grass or concern themselves with cutting the grass on the grave space.

It is agreed that when a grave marker is placed on the lot that the care and maintenance of that lot has to be done more slowly, more deliberately, with more care, with different equipment and different procedures so as not to damage the marker, vase or base with conventional large commercial mowing equipment.

It is agreed that it would be unfair to the public to penalize the lot owner who chooses not to mark the grave by making all lot owners pay an increased care and maintenance charge before or unless they actually place a marker on the grave.

Conversely, it would be unreasonable to expect a lot owner who places a marker on a grave not to pay a reasonable care and maintenance charge in advance to off set the additional expense that the placing of the marker will cause the cemetery to incur. Such care and maintenance charge, in order to be equitable, should be based on the square inch size of the total area.

It is further agreed that the care and maintenance requirements for memorials sold by the cemetery be broken out separately and should be the same amount as those charged the lot owner who purchases his marker from a monument dealer or other outside vendor.

Care and maintenance referred to above includes but is not limited to:

- a) removal of floral arrangements when becoming dirty or unsightly.
- b) all work reasonable to insure a good general appearance of the marker.
- c) re-aligning and leveling markers when necessary.
- d) resetting of markers caused by ground swell or freeze as required.
- e) removal and reinstallation of marker if required for future interments.
- f) assume responsibility of reasonable repair or replacement if damaged beyond repair.
- g) recording of required administrative information in records of the cemetery.

It is reasonable to expect that the cemetery, in accordance with its overall covenant with the public and its lot owners, has the right to regulate the size, quantity, quality and material of all memorials on any grave or lot within its cemetery grounds through its lawful rules and regulations. Nothing in a cemetery's rules and regulations should, however, deny a customer from employing a monument company to do the installation of a marker.

Installation of markers and foundations is defined but not limited to:

- 1) recording of required administrative information in records of the cemetery office.
- 2) locating and surveying location of marker foundation placement in accordance with specifications.
- 3) aligning of markers and foundations with existing memorials and foundations in accordance with specifications.
- 4) placement of markers and foundations at proper ground level and aligning with specifications.
- 5) removal to specified area all excess dirt from excavation, complete clean up of lots surrounding placement area, repair of any property damage to surrounding area of placement, clean up of marker and foundation installed.
- 6) complete final inspection of finished work.

Because of their ongoing responsibility both now and in the future for the correctness of work done, a cemetery reserves the right to locate and properly identify the lot location for placement of the memorial and foundation, and record administrative information in the records of the cemetery for memorials and foundations to be installed by sources other than by cemetery employees. A reasonable survey and administrative fee must be paid to the cemetery in advance by the outside installer, and this fee should be posted in the cemetery office.

Cemeteries should inspect the completed work as outlined to determine if work was performed completely and in accordance with cemetery standards.

All work done in a cemetery will be during regular weekday cemetery working hours. At least twenty-four hours advance notice of actual work to be performed is required by cemeteries. Work will be performed at a mutually agreed time.

Outside installers must furnish documentation of said memorial and foundation to a cemetery for record keeping purposes prior to installation.

A written notice of the lot owner authorizing the installation of a marker must be furnished a cemetery, if it request it. If the lot owners are deceased the administrator or executor of his estate must give written approval to place the memorial prior to installation along with a copy of the probate letter of testamentary naming the administrator or executor. Many cemeteries have a separate document to cover their care and maintenance agreements that a customer would be required to sign before a memorial installation would be permitted.

A cemetery is not responsible for any defect, errors, omissions, or future lettering or scrolls for any memorial purchased from outside sources.

Memorials that are to be installed by an outside installer must show proof of current coverage, in advance, of:

- 1) workers compenstion.
- 2) automobile liability insurance: comprehensive automobile liability insurance covering owned, non-owned, borrowed, and hired vehicles. Minimum coverage of each occurrence of bodily injury and property damage required in the amount of \$300,000.00.
- 3) Comprehensive liability insurance: standard comprehensive general liability insurance covering premises operation, contractual liability, products, and completed operations is required. Minimum coverage of each occurrence of bodily injury and property damage required in the amount of \$300,000.

An outside installer must agree to indemnify the cemetery in the following manner:

- 1) the outside installer shall be responsible for all liabilities arising out of its employees and/or its employees work at the cemetery.

- 2) the installer agrees to indemnify and save harmless the cemetery, including those of bodily injury, property damage, or professional negligence which occurs due to actual or alleged charges in connection with the performance of and arising from acts of the installer, his employees, agents, sub-contractors, except for injury or damage resulting from the sole negligence of a cemetery..

A cemetery is to be notified by the installers insurance carrier thirty days in advance of any cancellation or material changes made in the installers coverage.

Where there are complaints or disputes between members of the North Carolina Cemetery Association and the Monument Builders of the Carolinas over fees charged, requirements of rules and regulations or any other matters of difficulty, these should be presented and investigated by the president of each of the above named associations and the designated representative of each organization in conjunction with the liaison committees of the two associations.

For the North Carolina Cemetery Association

<u><i>[Signature]</i></u>	<u><i>[Signature]</i></u>	<u>10-3-87</u>
Name	Title	Date
<u><i>[Signature]</i></u>	<u>Secretary</u>	<u>9-28-87</u>
Name	Title	Date
<u><i>[Signature]</i></u>	<u>Director</u>	<u>10-3-87</u>
Name	Title	Date

For the Monument Builders of the Carolinas

<u><i>[Signature]</i></u>	<u><i>[Signature]</i></u>	<u>10-3-87</u>
Name	Title	Date
<u><i>[Signature]</i></u>	<u>Secretary</u>	<u>10-3-87</u>
Name	Title	Date
<u><i>[Signature]</i></u>	<u>Director</u>	<u>10-3-87</u>
Name	Title	Date

July 28, 1998
J. Rustin Tysor

STATEMENT OF ANDREW RUSTIN TYSOR, OWNER AND OPERATOR OF
CRESTWOOD MEMORIAL GARDENS AND THE EXECUTIVE VICE
PRESIDENT OF THE NORTH CAROLINA CEMETERY ASSOCIATION.

Co-Chairmen, and members of the Judiciary Committee, I am an independent owner of a perpetual care cemetery, Crestwood Memorial Gardens in State Road, NC, a small community in Surry County. I am also the Executive Vice President of the North Carolina Cemetery Association (NCCA) and a consultant currently working with Pugh Funeral Home in Asheboro, NC who is developing a new perpetual care cemetery in Asheboro. I am a second generation cemeterian. My father, Fred Tysor, who is recently deceased owned and operated several cemeteries throughout the State in his over forty years in the industry. He was also a past president of the North Carolina Cemetery Association and very active in the industry on a local and national level. Throughout both my fathers and my own career, never once has a family we have served accused us of gouging, taking advantage, or ripping them off. Instead families have come to us on many occasions and thanked us after the funeral service for helping them on the most difficult day of their life and because of this service, we have built life long relationships with our families. I am very proud of the profession that I have chosen, and so was my father.

My role as Executive Vice President of the NCCA is managing the day to day affairs of this association - the NCCA. The NCCA is a voluntary, non-profit Association. the NCCA was formed in 1949 to provide educational and training activities for members and employees of perpetual care cemeteries, and to participate in governmental relations activities affecting their particular segment of the cemetery industry. The NCCA regularly conducts seminars for members dealing with administration, maintenance and care of cemeteries, labor law issues and similar areas of knowledge important to owners of such perpetual care cemeteries.

There are approximately 174 perpetual care cemeteries licensed by the state of North Carolina under the North Carolina Cemetery act, adopted by the General Assembly in 1975, Chapter 65 of the General Statutes of North Carolina. Approximately 108 of those cemeteries licensed by the State are members of the NCCA. Companies with business relationships with perpetual care cemetery owners can affiliate as Supplier Members. There are approximately 26 of these. Cemeteries operated by municipal corporations and churches can be Associate

Members. There are approximately 9 such members at present. NCCA has members spread all across the state from Wilmington and Morehead City in the East to Murphy in Western North Carolina.

I would like to point out that there has been a statement raised that there are cemeteries in North Carolina that do not allow outside vendors to sell or install memorials in some cemeteries, this past winter the NCCA conducted a survey and one of the questions asked - do you prohibit outside vendors from selling and installing memorials in your cemetery and all respondents answered unequivocally and unanimously no, they do not prohibit outside monument dealers.

I also understand that a particular cemetery in question that being Alamance Memorial Park owned by Equity Corporation International (ECI) has rescinded its rules and regulations that may have discouraged outside monument dealers. The NCCA does not support or endorse such rules and regulations.

We are opposed to the legislation you have in front of you. We feel it is unnecessary and duplicative legislation. We also feel we are already meeting the disclosure requirements you are asking for in this bill disclosed on the fronts and backs of our contracts supported by our rules and regulations given to all our families upon purchase and through our issuance of our certificates of interment rights.

I have investigated and found that my contracts, which were printed in 1988, does not include the 30 day cancellation period required by GS 65 - 66 (m) and because of this we are going to recommend to our members who do not have this on their contracts to have this included.

We feel we are already overregulated and we ask that you vote against HB 1314.

Respectfully submitted,

A handwritten signature in cursive script, reading "Andrew Rustin Tysor".

Andrew Rustin Tysor

MINUTES

HOUSE JUDICIARY I COMMITTEE

The House Committee on JUDICIARY I met in Room 1228/1327 of the Legislative Building on August 4, 1998 at 10:00 A.M. Representative Daughtry, Co-Chairman, presided at the meeting. Other members present were: Representative(s) Alexander, Arnold, Braswell, Bryant, Capps, Crawford, Ellis, Esposito, Hall, Hurley, Jeffus, Justus, Michaux, Miller, Sherrill and Thompson. Staff Counsels Steven Ross and Karen Cochrane-Brown were also present.

Representative Daughtry called the meeting to order. He introduced the pages for the day – Alston Hight from Vance County and Rebecca Finch from Granville County.

HB 1314 AN ACT TO MAKE CERTAIN CHANGES TO REGULATIONS REGARDING CEMETERIES TO PROVIDE FOR CONSUMER PROTECTION, BASED ON RECOMMENDATIONS OF THE LEGISLATIVE RESEARCH COMMISSION'S STUDY COMMITTEE ON CEMETERY ISSUES was discussed by the committee for the third day.

Representative Daughtry said there was a subcommittee formed after the last meeting consisting of Representative Ellis, Representative Jeffus, and Representative Arnold.

Representative Ellis gave a subcommittee report. He said they met a couple of times trying to address some of the questions that were asked earlier. One of the things the committee recommended is that the Cemetery Issues Committee, still viable after the session ends, answer some of the issues they did not feel could be answered in this bill. For example, does the cemetery sell rights or real property. They recommended that the Cemetery Commission continue to meet to define whether or not North Carolina wants to say that you cannot sell rights or real property. He said the draft they have before them is the result of these meetings. Representative Ellis moved adoption for discussion of the committee substitute. (See Attachment F.)

Staff counsel Ms. Cochrane-Brown listed the number of changes made in this draft from the original committee substitute. First, on page 2 in subdivision 5 that subdivision previously included a provision that required disclosure of the 30-day rescission provision already in the law. She said that language has been expanded to require that the contract include a statement of whether the purchaser may transfer their rights in the property to another person or organization and also whether the seller will refund all or part of the purchase price in the event the purchaser's residence changes to another state after the 30-day period expires.

The next change is the addition of subdivision 6 which was not included in the past drafts. This language was intended to cover the issue of old vs. new space. This language requires disclosure of the resale of a space that has been used for some purpose before.

She said that subdivision 7 is also new. It requires a statement in the contract disclosing the identity of the person or legal entity that owns the cemetery or provides the services including whether the entity is wholly or partially owned by another corporation.

Subdivision 8 is also added. This requires that if the purchaser is allowed to use property or services from an outside provider and the purchaser elects to do so, the contract must disclose any fees or assessments charged to that outside provider. This is contrasted with page 2, subdivisions 2 and 3, which require disclosure of costs to the purchaser if any outside services are provided.

Section 4 on page 3 includes what was Representative Arnold's amendment which makes it a class 3 misdemeanor to fail to make the disclosures required in section 2. (This amendment was discussed at the July 28th meeting but was never voted on and the amendment form is not part of these records.)

Section 6 on page 3 is the new section that Representative Ellis referred to that directs the LRC Committee on Cemetery Issues when it resumes deliberations to consider some additional questions including the nature of the property interests, the extent to which there is overlap among agencies which regulate the health care industry and whether other providers of burial products should be regulated as well.

Representative Arnold asked about Section 5, line 38, on page 2 if we are limited to state to state with this language or would it cover a person who wanted to move from Raleigh to Charlotte. If we were to remove the "state to state" would that be more in line with what we are trying to accomplish which is to allow refunds to people who move within the state.

Staff counsel Cochrane-Brown cautioned that this does not require that the contract provide for that. It simply says that if the parties agree to that then it must be disclosed in the contract. It is not making it mandatory that these contracts must allow for a refund. Representative Arnold proposed putting forth an amendment to remove "from this state to another state" on line 38.

Representative Alexander returned to the idea discussed in the last meeting where somebody bought two plots, buried someone and then didn't want the other plot. She asked if this bill covers that problem. Representative Daughtry answered in the negative. She suggested that this problem might be solved if Section 5 stopped on line 37 after the word "made." She said that would leave it open to whatever the people would like to put in their contract – state to state, city to city, or whatever.

Staff counsel Cochrane-Brown read a proposed amendment to incorporate Representative Alexander's idea which would delete "if the purchaser's residence changes from this state to another state" on lines 37 and 38. She said this would allow for refunds under any conditions agreed to by the parties but it would not be in the law any specific condition under which a refund could be negotiated. Again, she said if the parties agreed to it then it would have to be disclosed in the contract.

Representative Justus said most people buy in pairs and she asked about the situation where one gravesite is undesirable and people want their money back. Staff said this bill will require that if the seller provides for refunds it will have to be disclosed in the contract.

Staff said that one of the issues before the Cemetery Committee is that they often have a set of rules or by-laws by which the cemetery company operates, and much of this information is often contained in those rules. Part of the purpose of the bill is to require by law that some of those provisions be included and specifically disclosed in the contract.

Representative Michaux asked how this bill defines the grave site itself. Staff Counsel said it does not. He asked what gives the person who purchases the right to sell it to somebody else if they have no property rights. Representative Daughtry said there is nothing in the bill to address that.

Representative Ellis said that this issue is addressed in Section 6 on page 3 of the bill. The question of how you deed the property if you sell. He said the question of whether you sell real pieces of property or rights to pieces of property needs further research. We have asked that the Cemetery Issues Subcommittee go back and answer that after this session because different cemeteries deal with this issue in different ways and all of it is by contract.

Representative Daughtry asked if this bill would cloudy the water rather than clear it. Representative Ellis said the bill does not address the issue of real property or rights to real property. What it does do is require disclosure of internal rules of operation. Representative Ellis said that is where a large percent of the problem is. Instead of trying to make a bill that extends across all funeral services we have decided to deal first with the contract issues. We want to make sure that people know what they have done.

Representative Allred, referring to line 32, page 2 of draft #4, wondered if the sentence "The statement shall include whether the purchaser may transfer the purchaser's rights in the property..." means that a statement must be in the contract saying that the purchaser may or may not transfer.

Ms. Cochrane-Brown said Section 5 requires in these contracts a statement identifying the rights that already exist under G.S.65-66 (m) of the 30-day right to rescind. That statement shall also include indication of whether the purchaser may

transfer the right of the property to other persons or organizations and whether the seller will refund all or part. She would read it to mean that the contract has to include whether one of those things is true.

Representative Allred said he thinks the words "whether or not" should be in there.

Representative Arnold proposed an amendment. Mr. Rose explained the amendment. He said it changes Section 5 of draft #4. (For the agreed upon changes, compare Section 5 on page 2 of Attachment E with the same section of Attachment F.)

Representative Arnold emphasized that that section means there must be a disclosure whether or not there will be a refund and under what conditions.

Representative Michaux wondered what if cemeteries discount notes to banks. He wondered who has control over the rights at that point. Representative Daughtry answered by saying if the interest given by the cemetery to bank is ahead of the buyer's then the bank win. Representative Michaux wondered if the bank was bound by the conditions set up under this.

Representative Arnold said that under existing law the cemetery owns all of these services and real estate until it is paid for. Only when it is paid for does title transfer to the owner.

Representative Thompson asked if someone moved from one side of Raleigh to the other side of Raleigh and wanted to change cemeteries can they get a refund. Representative Arnold answered in the affirmative and said that all this is doing is disclosing what you have and do not have.

The committee voted on Representative Arnold's amendment and because it was rolled into a committee substitute the amendment is not included in these materials.

Representative Capps proposed an amendment to paragraph 8 on page 3, line 8 which he said is needed because draft #4 says "charged to the outside provider." He said his amendment would also make the change Representative Allred was concerned about in paragraph 5, page 2, line 32 to insert the words "or not" after "whether."

Ms. Cochrane-Brown said that on the first point it was intended that the language relate to disclosing fees and assessments to the outside provider because sometime the fees are not necessarily charged to the purchaser, at least with regard to opening and closing grave space and to memorial markers. In contract, she said that disclosure of costs to the purchaser are required by subdivisions 2 and 3 on page 2. She said if the cemetery assesses the fees to the provider then the subdivision 8 requires disclosure to the purchaser.

Representative Ellis spoke on the last point in the Capps amendment. He wondered if the rules of the cemetery say "they may not" do such and such, does that have to be disclosed under the current language. The Capps amendment was not voted on and is not included in these materials.

Representative Jeffus said she was on the subcommittee which met twice. She said she was opposed to some of the provisions that were added. She said she found out that the law is very unclear. She said it is hard to put some of these ideas into the correct wording. She said this bill has been through three committees. Most of the ideas that were added in this subcommittee are new. She said she will have a hard time supporting this committee substitute. She would like to go back to the original version.

Representative Arnold said there is a great deal of confusion in the wording, but the people who spoke on the bill earlier would like us to go back to the original bill. He said this bill at least puts in some disclosure. He said this is an absolutely necessary piece of legislation.

Representative Ellis spoke in support of the committee substitute. He said he called every monument dealer in the phone book. He said they said their worst problem was rules that prohibit them from coming onto the site. The customers don't know these rules exist. The dealers say that the rules are arbitrary. They don't know how much the alignment and inspection fee is going to cost them. The consumer is not presented with this information. It does not regulate the industry other than to require that they disclose these fees.

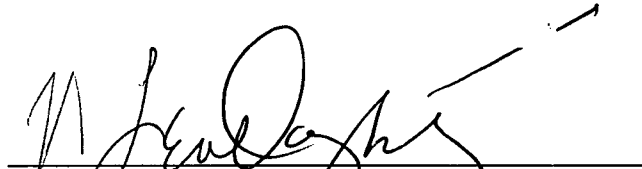
Mr. William "Bill" Gladden, administrator of the N.C. Cemetery Commission, was asked some questions by Representative Ellis. He said that every consumer he has talked to who has called the Cemetery Commission has been told that the Commission has no ability to do anything.

Mr. Gladden said that on the questions they are dealing with they really don't have any authority and that is why the Legislative Study Committee was formed. Representative Ellis said there was some power for his agency to investigate these cemeteries. He said they have their own study committee in place which came before the one by the General Assembly and he will put that issue before them.

Representative Jeffus spoke against the bill once more.

Representative Ellis moved that the amendments be rolled into a Committee Substitute for HB 1314, unfavorable to the original bill, and favorable to this bill. The motion passed.

Representative Daughtry adjourned the meeting at 10:55 A.M.



Representative N. Leo Daughtry
Co-chairman



Betty Wickham
Committee Clerk

ATTACHMENTS:

Exhibit A - NOTICE OF THE MEETING

Exhibit B - AGENDA

Exhibit C - VISITOR REGISTRATION

Exhibit D - COMMITTEE REPORT for HB 1314

Exhibit E - COMMITTEE SUBSTITUTE for HB 1314

Exhibit F - DRAFT OF A COMMITTEE SUBSTITUTE #004 (Introduced by Subcommittee)

Exhibit G - HB 1314

**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE**

You are hereby notified that the Committee on **JUDICIARY I** will meet as follows:

DAY & DATE: **Tuesday, August 4, 1998**

TIME: **10:00 A.M.**

LOCATION: **Room 1228/1327 LB**

The following bill will be considered (Bill # & Short Title):

HB 1314 Cemetery Consumer Protection (CS) Sponsor - Rep. Allred

Respectfully,

Representative N. Leo Daughtry, Co-Chairman
Representative Edwin Hardy, Co-Chairman

I hereby certify this notice was filed by the committee clerk at the following offices at
1:10 p.m. on July 30, 1998.

____ Principal Clerk
____ Reading Clerk - House Chamber

Betty Wickham, Committee Clerk

AGENDA

HOUSE COMMITTEE ON JUDICIARY I

August 4, 1998
Room 1228/1327 LB
10:00 AM

Representative N. Leo Daughtry, Co-Chairman
Representative Edwin (Sandy) Hardy, Co-Chairman

BILLS TO BE CONSIDERED:

HB 1314 Cemetery Consumer Protection (CS) Sponsor - Rep. Allred

(Proposed House Committee Substitute for HB 1317 **AMEND CONTESTED CASE PROCEDURES***/Sponsor-Representative C. Wilson, was placed in a subcommittee at June 4th meeting for member study [Rep. Arnold, Chr.; Blue, Braswell, Clary, Morgan, Sherrill])*

ADJOURNMENT

VISITOR REGISTRATION SHEET

Judiciary I

Name of Committee

Aug

1998

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME

FIRM OR AGENCY AND ADDRESS

Jack Gust	Parker Poe Adams & Renner
Mary Monahan	Poyner + Spruill
Alida Gregory	Poyner & Spruill
LUCIAS PULLEN	ATTORNEY
LYMAN COOPER	CSX CORP.
J. Randolph Cheatham	CSX Corp.
John Phelps	NC League of Municipalities
J. Bill Coe	LOEWEN GROUP
Jan P Gray	DOJ
IC Sturgis	DOJ
Claud R. Whitener ^{III}	DOJ
WM Edwards	NCCC

**1998 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative(s) **Daughtry and Hardy** for the Committee on **JUDICIARY I.**

☒ Committee Substitute for

H.B. 1314 A BILL TO BE ENTITLED AN ACT TO MAKE CERTAIN CHANGES TO REGULATIONS REGARDING CEMETERIES TO PROVIDE FOR CONSUMER PROTECTION, BASED ON RECOMMENDATIONS OF THE LEGISLATIVE RESEARCH COMMISSION'S STUDY COMMITTEE ON CEMETERY ISSUES.

☐ 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 (# 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.

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

3/25/98

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 1314
Committee Substitute Favorable 6/8/98
Proposed Committee Substitute H1314-PCS1604-RO005

Short Title: Cemetery Consumer Protection.

(Public)

Sponsors:

Referred to:

May 18, 1998

- 1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE CERTAIN CHANGES TO REGULATIONS REGARDING
3 CEMETERIES TO PROVIDE FOR CONSUMER PROTECTION, BASED ON
4 RECOMMENDATIONS OF THE LEGISLATIVE RESEARCH COMMISSION'S
5 STUDY COMMITTEE ON CEMETERY ISSUES.
6 The General Assembly of North Carolina enacts:
7 Section 1. G.S. 65-53 is amended by inserting a new subdivision to read:
8 "(3a) Investigate, upon its own initiative or upon a verified complaint in
9 writing, whether a particular contract for the sale of personal
10 property or services, whether preneed or at-need, contains the
11 disclosures required pursuant to G.S. 65-66(d) and to adopt
12 temporary rules pursuant to Chapter 150B of the General Statutes,
13 if necessary, to implement this subdivision until such time as
14 permanent rules are adopted."
15 Section 2. G.S. 65-66(d) reads as rewritten:
16 "(d) Any contract for the sale of personal property ~~and/or or services~~ services,
17 whether preneed or at-need, shall state disclose separate costs the following:
18 (1) The cost for each item of personal property, property and for each
19 act of installation or other service required by the contract, and for
20 each other item of services included in the contract. including any
21 costs for the right of interment, entombment, or inurnment;

- 1 (2) Specification of whether opening and closing of a grave space,
2 mausoleum space, or columbarium space is included in the
3 contract, and, if not, the current prices for opening and closing and
4 a statement that these prices are subject to change;
- 5 (3) Any requirements or costs relating to memorial markers, including
6 any obligations of the grave space, mausoleum space, or
7 columbarium space owner if the owner desires to have an outside
8 provider provide the marker and any costs relating to having an
9 outside provider provide and place a marker;
- 10 (4) A statement describing, in language that is readable and
11 understandable by a person of average intelligence, experience,
12 and education, the nature of the property right in the grave space,
13 mausoleum space, or columbarium space;
- 14 (5) A statement that a preneed purchaser has, pursuant to G.S. 65-
15 66(m), 30 days following the execution of a contract to cancel the
16 contract by giving written notice to the seller and that the seller
17 may cancel the contract, upon default by the purchaser, by giving
18 written notice to the purchaser. The statement shall include (i)
19 whether or not the purchaser may transfer the purchaser's rights in
20 the property to another person or organization and (ii) whether or
21 not the seller will refund all or part of the purchase price and the
22 conditions under which a refund will be made, after the 30-day
23 period, including the purchaser moving from one locale to another;
- 24 (6) If the grave space, mausoleum space, or columbarium space has
25 been previously sold by the cemetery company to a purchaser and
26 the space was used in the final disposition interment, entombment,
27 or inurnment of human remains and has since returned to the
28 inventory of available spaces, a statement that the space has been
29 used for a prior interment, entombment, or inurnment;
- 30 (7) A statement identifying the person or legal entity which owns the
31 cemetery or provides the property or services, including whether
32 the entity is wholly or partially owned by another corporation; and
- 33 (8) If the purchaser may obtain property and services from an outside
34 provider and elects to do so, a statement disclosing any fees or
35 assessments charged to the outside provider.

36 Section 3. G.S. 65-53 is amended by adding a new subdivision to read:

- 37 "(9) The Commission shall keep records of the complaints received and
38 the action taken by the Commission on each complaint. These
39 records shall be kept for at least five years after receipt of the
40 complaint."

41 Section 4. G.S. 65-71 is amended by adding a new subsection to read:

- 42 "(c) Failure to comply with the disclosure requirements contained in G.S. 65-
43 66(d) shall be punishable as a Class 3 misdemeanor."

1 Section 5. The Department of Justice through the Office of the Attorney
2 General, Consumer Protection Division, shall ensure that private, for-profit cemetery
3 companies operate within Article 1 of Chapter 75 of the General Statutes, titled
4 "Monopolies, Trusts, and Consumer Protection", the antitrust and unfair trade
5 practices laws.

6 Section 6. When the Legislative Research Commission Committee on
7 Cemetery Issues resumes its deliberations after the 1998 Regular Session, it shall
8 consider the following issues, in addition to the issues contained in its original charge:
9 (i) whether a purchaser of a grave space, mausoleum space, or columbarium space
10 obtains a transfer of real property or merely burial rights; (ii) whether the nature of
11 the property interest or right should be defined in statute; (iii) the extent to which
12 there is overlap among the agencies which regulate the death care industry; and (iv)
13 whether other providers of burial products and services should be regulated.

14 Section 7. This act is effective January 1, 1999, and is applicable to
15 contracts entered into on or after that date.

DRAFT

J-I
Aug. 4, 1998

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

HOUSE BILL 1314
Committee Substitute Favorable 6/8/98
Proposed Committee Substitute
H1314-CSRO-004

ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION.

*1. Arnold's proposed amendment
2. Lanni's proposed amend.
Adopted
copy 2nd amend.
withdrawn*

*Bill of you not
of P.C.S. you
to original*

Short Title: Cemetery Consumer Protection.

(Public)

Sponsors:

Referred to:

May 18, 1998

- 1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE CERTAIN CHANGES TO REGULATIONS REGARDING
3 CEMETERIES TO PROVIDE FOR CONSUMER PROTECTION, BASED ON
4 RECOMMENDATIONS OF THE LEGISLATIVE RESEARCH COMMISSION'S STUDY
5 COMMITTEE ON CEMETERY ISSUES.
6 The General Assembly of North Carolina enacts:
7 Section 1. G.S. 65-53 is amended by inserting a new
8 subdivision to read:
9 "(3a) Investigate, upon its own initiative or upon a
10 verified complaint in writing, whether a
11 particular contract for the sale of personal
12 property or services, whether preneed or at-
13 need, contains the disclosures required
14 pursuant to G.S. 65-66(d) and to adopt
15 temporary rules pursuant to Chapter 150B of
16 the General Statutes, if necessary, to
17 implement this subdivision until such time as
18 permanent rules are adopted."
19 Section 2. G.S. 65-66(d) reads as rewritten:

1 "(d) Any contract for the sale of personal property ~~and/or or~~
2 ~~services services~~, whether preneed or at-need, shall state
3 disclose separate costs the following:

4 (1) The cost for each item of personal property,
5 property and for each act of installation or other
6 service required by the contract, and for each
7 other item of services included in the contract,
8 including any costs for the right of interment,
9 entombment, or inurnment;

10 (2) Specification of whether opening and closing of a
11 grave space, mausoleum space, or columbarium space
12 is included in the contract, and, if not, the
13 current prices for opening and closing and a
14 statement that these prices are subject to change;

15 (3) Any requirements or costs relating to memorial
16 markers, including any obligations of the grave
17 space, mausoleum space, or columbarium space owner
18 if the owner desires to have an outside provider
19 provide the marker and any costs relating to having
20 an outside provider provide and place a marker;

21 (4) A statement describing, in language that is
22 readable and understandable by a person of average
23 intelligence, experience, and education, the nature
24 of the property right in the grave space, mausoleum
25 space, or columbarium space;

26 (5) A statement that a preneed purchaser has, pursuant
27 to G.S. 65-66(m), 30 days following the execution
28 of a contract to cancel the contract by giving
29 written notice to the seller and that the seller
30 may cancel the contract, upon default by the
31 purchaser, by giving written notice to the
32 purchaser. The statement shall include whether (i)
33 the purchaser may transfer the purchaser's rights
34 in the property to another person or organization
35 or (ii) the seller will refund all or part of the
36 purchase price and the conditions under which a
37 refund will be made, if the purchaser's residence
38 changes from this state to another state, after the
39 30-day period;

40 (6) If the grave space, mausoleum space, or columbarium
41 space has been previously sold by the cemetery
42 company to a purchaser and the space was used in
43 the final disposition interment, entombment, or
44 inurnment of human remains and has since returned

1 to the inventory of available spaces, a statement
2 that the space has been used for a prior interment,
3 entombment or inurnment;

4 (7) A statement identifying the person or legal entity
5 which owns the cemetery or provides the property or
6 services, including whether the entity is wholly or
7 partially owned by another corporation; and

8 (8) If the purchaser may obtain property and services
9 from an outside provider and elects to do so, a
10 statement disclosing any fees or assessments
11 charged to the outside provider.

12 Section 3. G.S. 65-53 is amended by adding a new
13 subdivision to read:

14 "(9) The Commission shall keep records of the complaints
15 received and the action taken by the Commission on
16 each complaint. These records shall be kept for at
17 least five years after receipt of the complaint."

18 Section 4. G.S. 65-71 is amended by adding a new
19 subsection to read:

20 (c) Failure to comply with the disclosure requirements
21 contained in G.S. 65-66(d) shall be punishable as a Class 3
22 misdemeanor."

23 Section 5. The Department of Justice through the Office
24 of the Attorney General, Consumer Protection Division, shall
25 ensure that private, for-profit cemetery companies operate within
26 Article 1 of Chapter 75 of the General Statutes, titled
27 "Monopolies, Trusts, and Consumer Protection", the antitrust and
28 unfair trade practices laws.

29 Section 6. When the Legislative Research Commission
30 Committee on Cemetery Issues resumes its deliberations after the
31 1998 Regular Session, it shall consider the following issues, in
32 addition to the issues contained in its original charge: (i)
33 whether a purchaser of a grave space, mausoleum space, or
34 columbarium space obtains a transfer of real property or merely
35 burial rights; (ii) whether the nature of the property interest
36 or right should be defined in statute; (iii) the extent to which
37 there is overlap among the agencies which regulate the death care
38 industry; and (iv) whether other providers of burial products and
39 services should be regulated.

40 Section 7. This act is effective January 1, 1999, and
41 is applicable to contracts entered into on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

2

HOUSE BILL 1314
Committee Substitute Favorable 6/8/98

Short Title: Cemetery Consumer Protection.

(Public)

Sponsors:

Referred to:

May 18, 1998

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE CERTAIN CHANGES TO REGULATIONS REGARDING
3 CEMETERIES TO PROVIDE FOR CONSUMER PROTECTION, BASED ON
4 RECOMMENDATIONS OF THE LEGISLATIVE RESEARCH COMMISSION'S
5 STUDY COMMITTEE ON CEMETERY ISSUES.

6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 65-53 is amended by inserting a new subdivision to read:
8 "(3a) Investigate, upon its own initiative or upon a verified complaint in
9 writing, whether a particular contract for the sale of personal
10 property or services, whether preneed or at-need, contains the
11 disclosure required pursuant to G.S. 65-66(d) and adopt temporary
12 rules pursuant to Chapter 150B of the General Statutes, if
13 necessary, to implement this subdivision until such time as
14 permanent rules are adopted."

15 Section 2. G.S. 65-66(d) reads as rewritten:

16 "(d) Any contract for the sale of personal property ~~and/or or services~~ services,
17 whether preneed or at-need, shall state disclose separate costs the following:

18 (1) The cost for each item of personal property, property and for each
19 act of installation or other service required by the contract, and for
20 each other item of services included in the contract, including any
21 costs for interment, entombment, or inurnment;

22 (2) Specification of (i) whether opening and closing of a grave space,
23 mausoleum space, or columbarium space is included in the

1 contract, and, if not, the current prices for opening and closing and
2 a statement that these prices are subject to change and (ii) whether
3 the grave space, mausoleum space, or columbarium space is new or
4 used;

5 (3) Any requirements or costs relating to memorial markers, including
6 any duties of the grave space, mausoleum space, or columbarium
7 space owner if the owner desires to have an outside provider
8 provide the marker and any costs relating to having an outside
9 provider provide and place a marker;

10 (4) A statement describing, in language that is readable and
11 understandable by a person of average intelligence, experience,
12 and education, the nature of the property right in the grave space,
13 mausoleum space, or columbarium space; and

14 (5) A statement that a purchaser has, pursuant to G.S. 65-66(m), 30
15 days following the execution of a contract to cancel the contract by
16 giving written notice to the seller and that the seller may cancel
17 the contract, upon default by the purchaser, by giving written
18 notice to the purchaser."

19 Section 3. G.S. 65-53 is amended by adding a new subdivision to read:

20 "(9) The Commission shall keep records of the complaints received and
21 the action taken by the Commission on each complaint. These
22 records shall be kept for at least five years after receipt of the
23 complaint."

24 Section 4. The Department of Justice through the Office of the Attorney
25 General, Consumer Protection Division, shall ensure that private, for-profit cemetery
26 companies operate within Article 1 of Chapter 75 of the General Statutes, titled
27 "Monopolies, Trusts, and Consumer Protection", and the federal antitrust and unfair
28 trade practices laws.

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

AGENDA

HOUSE COMMITTEE ON JUDICIARY I

August 18, 1998
Room 1228/1327 LB
10:00 AM

No Tape

Representative N. Leo Daughtry, Co-Chairman
Representative Edwin (Sandy) Hardy, Co-Chairman

BILLS TO BE CONSIDERED:)

HB 1342 Decedent's Safe-deposit Box Sponsor (Representative Brawley)

1st SB 882 Civil Penalties Law Clarified (CS) Sponsor (Senator Winner)

(Proposed House Committee Substitute for HB 1317 **AMEND CONTESTED CASE PROCEDURES**/Sponsor-Representative C. Wilson, was placed in a subcommittee at June 4th Meeting for member study [Rep. Arnold, Chr.; Blue, Braswell, Clary, Morgan & Sherrill].)

ADJOURNMENT

**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE**

You are hereby notified that the Committee on **JUDICIARY I** will meet as follows:

DAY & DATE: **Tuesday, August 18, 1998**

TIME: **10:00 A.M.**

LOCATION: **Room 1228/1327 LB**

The following bill will be considered (Bill # & Short Title):

HB 1342	Decedent's Safe-deposit Box	Sponsor - Representative Brawley

SB 882	Civil Penalties Law Clarified (CS)	Sponsor - Senator Winner

Respectfully,

Representative N. Leo Daughtry, Co-Chairman
Representative Edwin Hardy, Co-Chairman

I hereby certify this notice was filed by the committee clerk at the following offices at
3:30 p.m. on August 12, 1998.

____Principal Clerk
____Reading Clerk - House Chamber

Betty Wickham, Committee Clerk

VISITOR REGISTRATION SHEET

Judiciary 1

Name of Committee

Aug 18 1998

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME

FIRM OR AGENCY AND ADDRESS

Michael Crowell

ATTY, RALEIGH

John Kimmey

Clerk of Superior Court - Wake

T. E. Powell

AOC

J. H. H. H.

TAP/AP

Gene Cauby

E-ECB

Amey Jo Bain

Smith Anderson

Deanne Nimner

NCSBA

Ed Aycock

NC Bankers Assn.

Ally MacIndoe

First Citizens Bank NCAFI

Charles Hawkes

Dept of Revenue

Lisa Leifer

the insider

Rob Ochspichl

NCJWC

Mike Olson

NCAFIW.

Jean M. Boyd

CSC - Crum Co

Sandra Gaskins

CSC - Pitt Co.

VISITOR REGISTRATION SHEET

Name of Committee

Date _____

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME

FIRM OR AGENCY AND ADDRESS

Jeze Harrell

CSC Greene County



North Carolina General Assembly
Legislative Services Office

George R. Hall, Legislative Services Officer
(919) 733-7044

August 18, 1998

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August 17, 1998

MEMORANDUM

TO: Representatives Leo Daughtry and Edwin Hardy, CoChairs,
House Judiciary I Committee.

FROM: Karen Cochrane Brown, Committee Co-Counsel. *KCB*

RE: Senate Bill 882 - Civil Penalties Law Clarified.

Senate Bill 882 adds clarifying language to the statutes of several State agencies directing that the clear proceeds of the civil penalties which the agencies collect are to be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. A list containing the agencies affected by this bill and the penalties to which it applies is attached to this memorandum.

The Civil Penalty and Forfeiture Fund was created by the Appropriations Act of 1997. The Fund consists of the clear proceeds of all civil penalties and civil forfeitures that are collected by a State agency and are payable to the County School Fund pursuant to Article IX, Section 7 of the State Constitution. The Fund is administered by the Office of State Budget and Management, which transfers the money accruing to the Civil Penalty and Forfeiture Fund to the State School Technology Fund. The money is then allocated to local school administrative units on the basis of average daily membership. A copy of Article 31A of Chapter 115C is attached to this memorandum for convenience.

Except as otherwise provided, this act would become effective when it becomes law.

AGENCIES AFFECTED BY SENATE BILL 882 (PCS):

Civil Penalties Clarified

Department of Administration

- Civil penalties assessed for violations of Fair Housing Act - Page 1.
- Civil penalty assessed for damage or sale of archaeological resource in violation of Archaeological Resources Act. - Page 2.

Department of Agriculture and Consumer Services

- Civil penalties assessed for violations of Animal Welfare Act. - Page 3
- Civil penalty for violations of Weights and Measures Act. - Page 3.
- Civil penalty for violations of Structural Pest Control Act - Page 3.
- Refund to consumer of agriculture liming and landplaster material found deficient in the material components claimed by the manufacturer. -Page 4.
- Civil penalties for violations of Wholesale Prescription Drug Distribution Law. - page 5.
- Civil penalties for violation of the Rendering Plants Law. - page 5
- Civil penalties for violation of the Plant Protection Act. - Page 5
- Forfeiture and sale of plants possessed in violation of the Plant Protection and Conservation Act. - Page 5.
- Civil penalties for violations of the Commercial Feed Law. - Page 6.
- Civil penalties for violations of Animal Diseases Control Law. - Page 6.
- Civil penalty for violation of operation of public livestock markets.- Page 6.
- Civil penalty for violating livestock prompt payment law. - Page 7.
- Civil penalty for violations of Livestock Dealers Licensing Act. - Page 7.
- Civil penalty for violations of poultry, hatcheries, and chicken dealers law.
- Civil penalty for violation of meat inspection laws. - Page 7.
- Civil penalties for violation of the law regulating disposal of dead and diseased poultry commercial farms.
- Civil penalty for violations of biological residues in animals law. - Page 9.
- Civil penalty for violation of Honey and Bee Act. - Page 8.
- Civil penalties for violations of the commercial fertilizer law. - Page 9.
- Civil penalties for violation of Gasoline and Oil Inspection Law. - Page 9.
- Civil penalties for violation of Liquefied Petroleum Gases Law. - Page 10.
- Civil penalties for violations of Pesticide Law. - Page 11.

Department of Commerce

- Penalties imposed by the ABC Commission.-.Page 11
- Civil penalties under Chapter 53, Banks.-. Pages 11-14.
- Civil penalties under Chapter 54B, Savings and Loan Associations.-.Page 15.
- Civil penalties under Chapter 54C, Savings Banks.-.Pp 15-16.

- Civil penalty for selling article without required inspection.-Page 16.
- Penalty for commander of vessel for taking articles on board which were not inspected as required.

Department of Environment and Natural Resources

- Civil penalties for violations of Mining Act of 1971.-Page 16.
- Civil penalty for violation of Act controlling exploration for uranium
- Civil penalty for violations of Well Construction Act.-Page 17.
- Penalty for violations of Water Treatment Facilities Certification - Page 17.
- Civil penalty for violation of laws concerning certification of waste management system operators.-Page 17.
- Penalty for violating Radiation Protection Act.-Page 18.
- Forfeiture of bond given by fishery license agents.-Page 18.
- Violation of commercial and sport fisheries licensing law.-Page 19.
- Penalty for violation of Oil and Gas Conservation Act.-Page 19.
- Proceeds from forfeiture and sale of contraband oil, gas, and product.
- Penalty for noncompliance with Sedimentation Control Law.-Page 21.
- Civil penalty for violations of coastal management standards.-Page 21.
- Penalties imposed under Chapter 130A, Public Health.-Pp 22-27.
- Penalties imposed under Chapter 143, State Departments, Institutions, and Commissions.-Pp 27-32.

Department of Health and Human Services

- Penalty for circumvention of self-referrals by health care providers.-Page 32.
- Civil penalty imposed against child day care facilities or homes for violating licensure and standards.-Page 32.
- Civil penalty for failure of payors/employers to comply with employee's child support enforcement orders.-Page 33.
- Civil penalty for violation of certification of adult day care program.-Page 33.
- Civil penalties imposed on adult care homes and nursing facilities.-Page 34.
- Civil penalty imposed on nursing homes.-Page 34.
- Civil penalties for violations of certificate of need law.- Page 34.
- Penalty for violation of solicitations of contributions law.-Page 35.

Department of Insurance

- Penalties imposed under Chapter 58, Insurance.-Pp 35-39.
- Civil penalties for violating laws governing manufactured homes.-Page 39.

Department of Justice

- Civil penalty against judgment creditor - Page 40

- Fine for unlawfully withholding title to an office. - Page 40.
- Civil penalties for violation of lottery and gaming laws.-.Page 41.
- Civil penalties for violations of invention development services law - Page 41.
- Civil penalties for violations laws of private protective services.-.Page 41.
- Civil penalties for violations of monopolies, trusts, and consumer protection laws.-.Page 42.
- Penalty for lender requiring borrower to deal with certain insurer.-.Page 42.
- Civil penalty against debt collectors.-.Page 43
- Civil penalty for violations of Motor Fuel Marketing Act.-.Page 43.

Department of Labor

- Civil penalties for violations of Chapter 95, Department of Labor and Labor Regulations, and Chapter 97, Workers' Compensation Act. - Pp45-47.

Department of Revenue

- Civil penalty for violation of Chapter 105B, Defaulted Student Loan Recovery Act.-.Page 48

Secretary of State

- Civil penalties for violations of the Business Corporation Act, Nonprofit Corporation Act, laws governing foreign trade zones, the NC Securities Act, the NC Investment Advisers Act, the Commodities Act, and the Boxing laws.- Pp 48-52.

Utilities Commission

- Civil penalty for violations of safety standards for gas pipeline facilities and for other violations of Chapter 62, Public Utilities.-.Pp 52-53.

Civil penalties for violations of Alarm Systems Licensing Act, and laws of the State Board of Architecture, Board of CPA Examiners, Board of Elections, Board of Electrical Contractors, Board of Employee Assistance Professionals, Board of Professional Engineers and Land Surveyors, Board of Soil Scientists, Veterinary Medical Board, the Cape Fear River and Morehead City Navigation and Pilotage Commission, and the Real Estate Commission.

the appropriate portion of the amount to the finance officer of each local school administrative unit. Fines and forfeitures shall be apportioned according to the projected average daily membership of each local school administrative unit as determined by and certified to the local school administrative units and the board of county commissioners by the State Board of Education pursuant to G.S. 115C-430. (1975, c. 437, s. 1; 1981, c. 423, s. 1.)

CASE NOTES

The term "penal laws," as used in the context of this section, means laws that impose a monetary payment for their violation. The payment is punitive rather than remedial in nature and is intended to penalize the wrongdoer rather than to compensate a particular party. *Mussallam v. Mussallam*, 321 N.C. 504, 364 S.E.2d 364, rehearing denied, 322 N.C. 115, 367 S.E.2d 915 (1988).

Two Distinct Funds for Public Schools. — The provisions of this section relating to the clear proceeds from penalties, forfeitures and fines identify two distinct funds for the public schools. These are (1) the clear proceeds of all penalties and forfeitures in all cases, regardless of their nature, so long as they accrue to the state, and (2) the clear proceeds of all fines collected for any breach of the criminal laws. *Mussallam*

v. Mussallam, 321 N.C. 504, 364 S.E.2d 364, rehearing denied, 322 N.C. 115, 367 S.E.2d 915 (1988).

Proceeds of Bond Payable to Board of Education. — In custody case in which wife sought to regain custody of child who had been removed outside the country, bond set by superior court judge was to ensure husband's appearance, as the punishment for his failure to so appear would be immediate forfeiture of the bond, and since the terms of the bond specifically made its proceeds payable to the State of North Carolina, should it be forfeited, such bond was penal in nature and accrued to the Board of Education. *Mussallam v. Mussallam*, 321 N.C. 504, 364 S.E.2d 364, rehearing denied, 322 N.C. 115, 367 S.E.2d 915 (1988), reversing 83 N.C. App. 213, 349 S.E.2d 615 (1986).

§§ 115C-453 through 115C-457: Reserved for future codification purposes.

ARTICLE 31A.

Civil Penalty and Forfeiture Fund.

§ 115C-457.1. Creation of Fund; administration.

(a) There is created the Civil Penalty and Forfeiture Fund. The Fund shall consist of the clear proceeds of all civil penalties and civil forfeitures that are collected by a State agency and are payable to the County School Fund pursuant to Article IX, Section 7 of the Constitution.

(b) The Fund shall be administered by the Office of State Budget and Management. The Fund and all interest accruing to the Fund shall be faithfully used exclusively for maintaining free public schools. (1997-443, s. 8.20.)

Editor's Note. — Session Laws 1997-443, s. 8.20(b) made this Article effective September 1, 1997.

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The

Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.4, is a severability clause.

§ 115C-457.2. Remittance of moneys to the Fund.

The clear proceeds of all civil penalties and civil forfeitures that are collected by a State agency and are payable to the County School Fund pursuant to Article IX, Section 7 of the Constitution shall be remitted to the Office of State Budget and Management by the officer having custody of the funds within 10 days after the close of the calendar month in which the revenues were received or collected. Notwithstanding any other law, all funds which are civil penalties or civil forfeitures within the meaning of Article IX, Section 7 of the Constitution shall be deposited in the Civil Penalty and Forfeiture Fund. The clear proceeds of such funds include the full amount of all such penalties and forfeitures collected under authority conferred by the State, diminished only by the actual costs of collection, not to exceed ten percent (10%) of the amount collected. (1997-443, s. 8.20.)

§ 115C-457.3. Transfer of funds to the State School Technology Fund.

The Office of State Budget and Management shall transfer funds accruing to the Civil Penalty and Forfeiture Fund to the State School Technology Fund. These funds shall be allocated to local school administrative units on the basis of average daily membership. (1997-443, s. 8.20.)

ARTICLE 32.

Loans from State Literary Fund.

§115C-458. Loans by State Board from State Literary Fund.

The State Literary Fund includes all funds derived from the sources enumerated in Sec. 6, Article IX, of the Constitution, and all funds that may be hereafter so derived, together with any interest that may accrue thereon. This Fund shall be separate and distinct from other funds of the State.

The State Board of Education, under such rules and regulations as it may deem advisable, not inconsistent with the provisions of this Article, may make loans from the State Literary Fund to the counties for the use of local boards of education under such rules and regulations as it may adopt and according to law for the purpose of aiding in the erection and equipment of school plants, maintenance buildings and transportation garages. No warrant for the expenditure of money for such purposes shall be issued except upon the order of the Superintendent of Public Instruction with the approval of the State Board of Education. (1955, c. 1372, art. 11, s. 1; 1971, c. 704, s. 11; c. 1096; 1981, c. 423, s. 1.)

§ 115C-459. Terms of loans.

Loans made under the provisions of this Article shall be payable in 10 installments, shall bear interest at a uniform rate determined by the State Board of Education not to exceed eight percent (8%),

payable annually, and shall be evidenced by promissory notes executed by the chairman, the clerk of the board of education, and the chairman and secretary of the board of education, and deposited with the State Treasurer. The principal of such loan, together with the interest then due, shall be paid by the local board of education on or before the tenth day of February after the tenth day of August of each year. The interest on such loan, and the remaining installment of principal, shall be paid on the tenth day of February of each subsequent year until all shall have been paid. (1955, c. 1372, art. 11, s. 2; 1971, c. 1094; 1981, c. 423, s. 1.)

§115C-460. How secured and repaid.

At the January meeting of the board of education, the installment shall be due on the next ten days thereafter. The board of education shall set apart out of the funds of the board sufficient to pay such installment and issue its order upon the treasurer of the board of education therefor, who, prior to the tenth day of January, shall deliver to the State Treasurer the amount then due. The State Treasurer shall deliver the amount to the local school administrative unit to pay any interest, or any part of either, when due. The State Board of Education may, at the demand of the State Board of Education, compel the levy and collection of such installment of principal and accrued interest. The State Board of Education may accept payment of any interest accrued thereon before maturity. (1981, c. 423, s. 1.)

§ 115C-461. Loans by county boards of education to districts.

The county board of education, from the funds of the county, may make loans to the districts under the provisions of this Article, may make loans to the districts, and may have levied a local tax sufficient to pay the interest on said loan for the purpose of such loan. The interest on said loan for the purpose of such loan, and the amount so loaned to any district, and the amount so loaned to any district, shall be paid in 10 annual installments, with interest thereon. If the county board of education is paying, paying, or has loaned under the provisions of this law, the county board of education may not be sufficient to pay the installment of principal and accrued interest. The county board of education must supply the current expense fund, and shall make the county budget is made and presented to the State Board of Education. (1955, c. 1372, art. 11, s. 4; 1981, c. 423, s. 975, s. 24.)

§ 115C-462. State Board of Education to accept funding of counties for local Government.

In any case where a loan has heretofore been made from the State Literary Fund or from any special fund,

file

**1998 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative(s) **Daughtry and Hardy** for the Committee on **JUDICIARY I.**

☒ Committee Substitute for

S.B. 882 A BILL TO BE ENTITLED AN ACT TO REQUIRE STATE AGENCIES TO DEPOSIT THE CLEAR PROCEEDS OF CIVIL PENALTIES AND CIVIL FORFEITURES INTO THE CIVIL PENALTY AND FORFEITURE FUND.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

3/25/98

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

J-I
August 18, 1998
favorable rpt

S

2

SENATE BILL 882
Finance Committee Substitute Adopted 7/22/98

Short Title: Civil Penalties Law Clarified.

(Public)

Sponsors:

Referred to:

April 15, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE STATE AGENCIES TO DEPOSIT THE CLEAR
3 PROCEEDS OF CIVIL PENALTIES AND CIVIL FORFEITURES INTO THE
4 CIVIL PENALTY AND FORFEITURE FUND.

5 The General Assembly of North Carolina enacts:

6

7 PART I. DEPARTMENT OF ADMINISTRATION

8 A. CIVIL PENALTIES NOT TO EXCEED \$10,000 OR \$25,000 OF \$50,000
9 ASSESSED FOR VIOLATIONS OF FAIR HOUSING ACT

10 Section 1. G.S. 41A-7(1)(3) reads as rewritten:

11 "(3) The Commission's final decision may be made by a panel
12 consisting of three Commission members appointed by the
13 chairperson of the Commission. If the Commission, in its final
14 decision, finds that a respondent has violated or is about to violate
15 this Chapter, it may order such relief as may be appropriate,
16 including payment to the complainant by the respondent of
17 compensatory damages and injunctive or other equitable relief.
18 The Commission's order may also assess a civil penalty against the
19 respondent:

20 a. In an amount not exceeding ten thousand dollars (\$10,000)
21 if the respondent has not been adjudged to have committed
22 any prior unlawful discriminatory housing practices;

b. In an amount not exceeding twenty-five thousand dollars (\$25,000) if the respondent has been adjudged to have committed one other unlawful discriminatory housing practice during the five-year period ending on the date of the filing of the complaint; or

c. In an amount not exceeding fifty thousand dollars (\$50,000) if the respondent has been adjudged to have committed two or more unlawful discriminatory housing practices during the seven-year period ending on the date of the filing of the complaint.

If the acts constituting the unlawful discriminatory housing practice that is the object of the complaint are committed by the same natural person who has been previously adjudged to have committed acts constituting an unlawful discriminatory housing practice, then the civil penalties set forth in sub-subdivisions b. and c. of this subsection may be imposed without regard to the period of time within which any subsequent discriminatory housing practice occurred.

The clear proceeds of civil penalties assessed pursuant to this subdivision shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

B. CIVIL PENALTY OF NOT MORE THAN \$5,000 ASSESSED IN CONSULTATION WITH DEPARTMENT OF CULTURAL RESOURCES FOR DAMAGE OR SALE OF ARCHAEOLOGICAL RESOURCE IN VIOLATION OF ARCHAEOLOGICAL RESOURCES ACT

Section 2. G.S. 70-16 reads as rewritten:

"§ 70-16. Civil penalties.

A civil penalty of not more than five thousand dollars (\$5,000) may be assessed by the Department of Administration, in consultation with the Department of Cultural Resources, against any person who violates the provisions of G.S. 70-15. In determining the amount of the penalty, the Department shall consider the extent of the harm caused by the violation and the cost of rectifying the damage. Any person assessed shall be notified of the assessment by registered or certified mail. The notice shall specify the reasons for the assessment. If the person assessed fails to pay the amount of the assessment to the Department within 30 days after receipt of notice, the Department may institute a civil action in the Superior Court of Wake County to recover the amount of the assessment.

The Department may use the assessed funds to rectify the damage to archaeological resources ~~or to otherwise effectuate the purposes of this Article.~~ resources. The clear proceeds of all assessed funds not used to rectify the damage shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

1 PART II. DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

2 A. CIVIL PENALTIES NOT TO EXCEED \$5,000 ASSESSED FOR VIOLATIONS
3 OF THE ANIMAL WELFARE ACT

4 Section 3. G.S. 19A-40 reads as rewritten:

5 "§ 19A-40. Civil Penalties.

6 The Director may assess a civil penalty of not more than five thousand dollars
7 (\$5,000) against any person who violates a provision of this Article or any rule
8 promulgated thereunder. In determining the amount of the penalty, the Director shall
9 consider the degree and extent of harm caused by the violation. The clear proceeds
10 of civil penalties assessed pursuant to this section shall be remitted to the Civil
11 Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

12
13 B. CIVIL PENALTY OF NOT MORE THAN \$5,000 IMPOSED FOR WILLFUL
14 VIOLATIONS OF THE WEIGHTS AND MEASURES ACT

15 Section 4. (a) G.S. 81A-30.1 reads as rewritten:

16 "§ 81A-30.1. Civil penalties.

17 A civil penalty of not more than five thousand dollars (\$5,000) for each violation
18 may be assessed by the Commissioner against any person who willfully violates this
19 Chapter. In determining the amount of the penalty, the Commissioner shall consider
20 the degree and extent of harm caused by the violation. No civil penalty shall be
21 assessed under this section unless the person has been given an opportunity for a
22 hearing pursuant to the Administrative Procedure Act. If not paid within 30 days
23 after the effective date of a final decision by the Commissioner, the penalty may be
24 collected by any lawful manner for the collection of a debt.

25 The clear proceeds of civil penalties assessed pursuant to this section shall be
26 remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S.
27 115C-457.2."

28 (b) G.S. 81A-2 reads as rewritten:

29 "§ 81A-2. Administration of these Articles.

30 The provisions of this Chapter shall be administered by the Commissioner or his
31 authorized agent. For the purpose of administering and giving effect to the provisions
32 of this Chapter, the provisions of Handbook 44 as adopted by the National
33 Conference on Weights and Measures, are hereby adopted except insofar as modified
34 or rejected by the North Carolina Board of Agriculture. The North Carolina Board of
35 Agriculture is empowered to make such further rules and regulations as may be
36 necessary to make effective the purposes and provisions of this Chapter. ~~All~~ Except
37 as otherwise provided in G.S. 81A-30.1, all fees or moneys received by the
38 Commissioner pursuant to this Chapter shall be placed in the Department of
39 Agriculture and Consumer Services fund for the purpose of enforcing this Chapter."

40
41 C. CIVIL PENALTIES OF NOT MORE THAN \$2,000 FOR VIOLATIONS OF
42 STRUCTURAL PEST CONTROL ACT

43 Section 5. (a) G.S. 106-65.41 reads as rewritten:

44 "§ 106-65.41. Civil Penalties.

1 A civil penalty of not more than two thousand dollars (\$2,000) may be assessed by
2 the Committee against any person for any one or more of the causes set forth in G.S.
3 106-65.28(a)(1) through (12). In determining the amount of any penalty, the
4 Committee shall consider the degree and extent of harm caused by the violation. No
5 civil penalty may be assessed under this section unless the person has been given an
6 opportunity for a hearing pursuant to Chapter 150B of the General Statutes.
7 Assessments may be collected, following judicial review, if any, of the Committee's
8 final decision imposing the assessment, in any lawful manner for the collection of a
9 debt.

10 The clear proceeds of civil penalties assessed pursuant to this section shall be
11 remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S.
12 115C-457.2."

13 (b) G.S. 106-65.38 reads as rewritten:

14 "**§ 106-65.38. Disposition of fees and charges.**

15 ~~All~~ Except as otherwise provided in G.S. 106-65.41, all fees and charges received
16 by the Division under this Article shall be deposited in the Department of
17 Agriculture and Consumer Services General Fund Budget for the purpose of
18 administration and enforcement of this Article, with proper approved accounting
19 procedures accounting for all expenditures and receipts."

20

21 **D. REFUND TO CONSUMER OF AGRICULTURE LIMING AND LANDPLASTER**
22 **MATERIAL FOUND TO BE DEFICIENT IN THE MATERIAL COMPONENTS**
23 **CLAIMED BY THE MANUFACTURER**

24 Section 6. G.S. 106-92.11 reads as rewritten:

25 "**§ 106-92.11. Deficiencies: refunds to consumer.**

26 Should any of the agricultural liming and landplaster materials defined in this
27 Article be found to be deficient in the components claimed by the manufacturer or
28 registrant thereof, said manufacturer or registrant, upon official notification to [of]
29 such deficiency by the Commissioner of Agriculture, shall, within 90 days, make
30 refunds to the consumers of the deficient materials as follows:

31 In case of 'agricultural liming material' if the deficiency is five percent (5%) of the
32 guarantee or more, there shall be refunded an amount equal to three times the value
33 of such deficiency and in case of 'landplaster,' for deficiencies in excess of one
34 percent (1%) of the guarantee, there shall be refunded an amount equal to three
35 times the value of the deficiency. Values shall be based on the selling price of said
36 materials. When said consumers cannot be found within the above specified time,
37 refunds shall be forwarded to the Commissioner of Agriculture, where said refund
38 shall be held for payment to the proper consumer upon order of the Commissioner. If
39 the consumer to whom the refund is due cannot be found within a period of one
40 year, the clear proceeds of such refund shall revert to the Department of Agriculture
41 and Consumer Services for expenditure by the Commissioner in promoting the
42 agricultural programs of the State. shall be remitted to the Civil Penalty and
43 Forfeiture Fund in accordance with G.S. 115C-457.2."

44

1 E. CIVIL PENALTIES OF NOT MORE THAN \$10,000 MAY BE IMPOSED FOR
2 VIOLATIONS OF THE WHOLESALE PRESCRIPTION DRUG DISTRIBUTORS LAW

3 Section 7. G.S. 106-145.6(c) reads as rewritten:

4 "(c) Civil Penalty. -- The Commissioner may assess a civil penalty of not more
5 than ten thousand dollars (\$10,000) against a person who violates any provision of
6 this Article. In determining the amount of a civil penalty, the Commissioner shall
7 consider the degree and extent of harm caused by the violation. Chapter 150B of the
8 General Statutes governs the assessment of a civil penalty under this subsection. If a
9 civil penalty is not paid within 30 days after the completion of judicial review of a
10 final agency decision by the Commissioner, the penalty may be collected in any
11 manner by which a debt may be collected. ~~Penalties collected shall be credited to the~~
12 ~~General Fund.~~ The clear proceeds of civil penalties assessed pursuant to this section
13 shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S.
14 115C-457.2."

15
16 F. CIVIL PENALTIES OF NOT MORE THAN \$5,000 MAY BE IMPOSED FOR
17 VIOLATION OF THE RENDERING PLANTS LAW OR RELATED RULES

18 Section 8. G.S. 106-168.16 reads as rewritten:

19 "§ 106-168.16. Civil penalties.

20 The Commissioner may assess a civil penalty of not more than five thousand
21 dollars (\$5,000) against any person who violates a provision of this Article or any rule
22 promulgated thereunder. In determining the amount of the penalty, the
23 Commissioner shall consider the degree and extent of harm caused by the violation.

24 The clear proceeds of civil penalties assessed pursuant to this section shall be
25 remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S.
26 115C-457.2."

27
28 G. CIVIL PENALTIES OF NOT MORE THAN \$2,000 MAY BE IMPOSED FOR
29 VIOLATIONS OF THE PLANT PROTECTION ACT

30 Section 9. G.S. 106-202.19(a2) reads as rewritten:

31 "(a2) A civil penalty of not more than two thousand dollars (\$2000) may be
32 assessed by the Board against any person guilty of violating this Article a second or
33 subsequent time. The clear proceeds of civil penalties assessed pursuant to this
34 subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance
35 with G.S. 115C-457.2."

36
37 H. FORFEITURE AND SALE OF PLANTS POSSESSED IN VIOLATION OF G.S.
38 106-202.19

39 Section 10. G.S. 106-202.20 reads as rewritten:

40 "§ 106-202.20. Forfeiture of illegally possessed plants; disposition of plants.

41 Upon conviction of any defendant for a violation of G.S. 106-202.19, the court, in
42 its discretion, may order the defendant to forfeit any plant or plant parts which he
43 possesses in violation of G.S. 106-202.19. The court shall direct disposition of any
44 forfeited plant or plant part by destruction or sale. ~~The proceeds from such a sale~~

1 ~~shall be paid to the North Carolina Department of Agriculture and Consumer~~
2 ~~Services for use in the enforcement of this Article. The clear proceeds of forfeitures~~
3 ~~and sales pursuant to this section shall be remitted to the Civil Penalty and Forfeiture~~
4 ~~Fund in accordance with G.S. 115C-457.2."~~

5
6 **I. CIVIL PENALTIES OF THE SMALLER OF \$25.00 OR THE RETAIL VALUE**
7 **OF THE PRODUCT ASSESSED FOR VIOLATIONS OF THE COMMERCIAL FEED**
8 **LAW**

9 Section 11. G.S. 106-284.42(l) reads as rewritten:

10 "(l) Within 60 days from the date of written notice by the Commissioner or his
11 duly designated agent to the manufacturer, guarantor, dealer or agent, all penalties
12 assessed and collected under this section shall be paid to the purchaser of the lot of
13 feed or canned pet food represented by the sample analyzed. When such penalties are
14 paid, receipts shall be taken and promptly forwarded to the Commissioner of
15 Agriculture. If said consumers cannot be found, the ~~amount~~ clear proceeds of the
16 penalty assessed shall be ~~paid to the Commissioner of Agriculture who shall deposit~~
17 ~~the same in the Department of Agriculture and Consumer Services fund, of which~~
18 ~~the State Treasurer is custodian, for the express purpose of enforcement of this~~
19 ~~Article. remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S.~~
20 ~~115C-457.2."~~

21
22 **J. CIVIL PENALTIES OF NOT MORE THAN \$5,000 ASSESSED FOR**
23 **VIOLATIONS OF THE ANIMAL DISEASES CONTROL LAW**

24 Section 12. G.S. 106-405.20 reads as rewritten:

25 "**§ 106-405.20. Civil penalties.**

26 The Commissioner may assess a civil penalty of not more than five thousand
27 dollars (\$5,000) against any person who violates a provision of this Article or any rule
28 promulgated thereunder. In determining the amount of the penalty, the
29 Commissioner shall consider the degree and extent of harm caused by the violation.

30 The clear proceeds of civil penalties assessed pursuant to this section shall be
31 remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S.
32 115C-457.2."

33
34 **K. CIVIL PENALTY NOT TO EXCEED \$5,000 FOR VIOLATING LAWS**
35 **CONCERNING THE OPERATION OF PUBLIC LIVESTOCK MARKETS**

36 Section 13. G.S. 106-417.1 reads as rewritten:

37 "**§ 106-417.1. Civil penalties.**

38 The Commissioner may assess a civil penalty of not more than five thousand
39 dollars (\$5,000) against any person who violates a provision of this Article or any rule
40 promulgated thereunder. In determining the amount of the penalty, the
41 Commissioner shall consider the degree and extent of harm caused by the violation.

42 The clear proceeds of civil penalties assessed pursuant to this section shall be
43 remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S.
44 115C-457.2."

**L. CIVIL PENALTY NOT TO EXCEED \$5,000 FOR VIOLATING LIVESTOCK
PROMPT PAY LAW**

Section 14. G.S. 106-418.7A reads as rewritten:

"§ 106-418.7A. Civil penalties.

The Commissioner may assess a civil penalty of not more than five thousand dollars (\$5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation.

The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

**M. CIVIL PENALTIES OF NOT MORE THAN \$5,000 ASSESSED FOR
VIOLATIONS OF THE LIVESTOCK DEALERS LICENSING ACT**

Section 15. G.S. 106-418.16 reads as rewritten:

"§ 106-418.16. Civil penalties.

The Commissioner may assess a civil penalty of not more than five thousand dollars (\$5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation.

The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

**N. CIVIL PENALTIES OF NOT MORE THAN \$5,000 ASSESSED FOR
VIOLATIONS OF THE POULTRY, HATCHERIES, AND CHICKEN DEALERS LAW**

Section 16. G.S. 106-549.01 reads as rewritten:

"§ 106-549.01. Civil penalties.

The Department of Agriculture and Consumer Services may assess a civil penalty of not more than five thousand dollars (\$5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Department shall consider the degree and extent of harm caused by the violation.

The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

**O. CIVIL PENALTY OF NOT MORE THAN \$5,000 MAY BE ASSESSED FOR
VIOLATION OF THE MEAT INSPECTION LAWS**

Section 17. G.S. 106-549.35(c) reads as rewritten:

"(c) The Commissioner may assess a civil penalty of not more than five thousand dollars (\$5,000) against any person who violates a provision of this Article or Article 49B, or any rule promulgated thereunder. In determining the amount of the penalty,

1 the Commissioner shall consider the degree and extent of harm caused by the
2 violation.

3 The clear proceeds of civil penalties assessed pursuant to this subsection shall be
4 remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S.
5 115C-457.2."

6
7 **P. CIVIL PENALTIES OF NOT MORE THAN \$5,000 MAY BE ASSESSED FOR**
8 **VIOLATION OF THE LAW OR RULE REGULATING THE DISPOSAL OF DEAD**
9 **AND DISEASED POULTRY COMMERCIAL FARMS**

10 Section 18. G.S. 106-549.72 reads as rewritten:

11 **"§ 106-549.72. Civil penalties.**

12 The Commissioner may assess a civil penalty of not more than five thousand
13 dollars (\$5,000) against any person who violates a provision of this Article or any rule
14 promulgated thereunder. In determining the amount of the penalty, the
15 Commissioner shall consider the degree and extent of harm caused by the violation.

16 The clear proceeds of civil penalties assessed pursuant to this section shall be
17 remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S.
18 115C-457.2."

19
20 **Q. CIVIL PENALTIES OF NOT MORE THAN \$5,000 MAY BE ASSESSED FOR**
21 **VIOLATIONS OF THE BIOLOGICAL RESIDUES IN ANIMALS LAW**

22 Section 19. G.S. 106-549.89 reads as rewritten:

23 **"§ 106-549.89. Civil penalties.**

24 The Commissioner may assess a civil penalty of not more than five thousand
25 dollars (\$5,000) against any person who violates a provision of this Article or any rule
26 promulgated thereunder. In determining the amount of the penalty, the
27 Commissioner shall consider the degree and extent of harm caused by the violation.

28 The clear proceeds of civil penalties assessed pursuant to this section shall be
29 remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S.
30 115C-457.2."

31
32 **R. CIVIL PENALTY OF NOT MORE THAN \$10,000 IMPOSED FOR**
33 **VIOLATION OF THE HONEY AND BEE ACT AND RULES OF THE**
34 **COMMISSIONER**

35 Section 20. G.S. 106-644(b) reads as rewritten:

36 "(b) The Commissioner may assess a civil penalty of not more than ten thousand
37 dollars (\$10,000) against a person who violates this Article or a rule adopted to
38 implement this Article. In determining the amount of the penalty, the Commissioner
39 shall consider the degree and extent of harm caused by the violation. No civil
40 penalty may be assessed under this section unless the person has been given the
41 opportunity for a hearing pursuant to the Administrative Procedure Act, Chapter
42 150B of the General Statutes. If not paid within 30 days after the effective date of a
43 final decision by the Commissioner, the penalty may be collected by any lawful
44 means for the collection of a debt.

1 The clear proceeds of civil penalties assessed pursuant to this subsection shall be
2 remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S.
3 115C-457.2."

4

5 **S. CIVIL PENALTIES OF VARIOUS AMOUNTS ASSESSED FOR VIOLATIONS**
6 **OF THE COMMERCIAL FERTILIZER LAW**

7 Section 21. G.S. 106-665(c) reads as rewritten:

8 "(c) All penalties assessed under this section shall be paid to the consumer of the
9 lot of fertilizer represented by the sample analyzed within three months from the date
10 of notice by the Commissioner to the distributor, receipts taken therefor, and
11 promptly forwarded to the Commissioner; provided, that in no case shall the total
12 assessed penalties exceed the commercial value of the goods to which it applies. If
13 said consumer cannot be found, the ~~amount~~ clear proceeds of the penalty assessed
14 shall be ~~paid to the Commissioner who shall deposit the same in the Department of~~
15 ~~Agriculture and Consumer Services fund, of which the State Treasurer is custodian.~~
16 remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S.
17 115C-457.2. Such sums as shall be found to be payable to consumers on lots of
18 fertilizer against which said penalties were assessed shall not be subject to claim by
19 the consumer after 12 months from the date of assessment."

20

21 **T. CIVIL PENALTIES OF NOT MORE THAN \$5,000 ASSESSED FOR**
22 **VIOLATIONS OF THE STATE BIOLOGICS LAW**

23 Section 22. G.S. 106-715 reads as rewritten:

24 "**§ 106-715. Civil penalties.**

25 The Commissioner may assess a civil penalty of not more than five thousand
26 dollars (\$5,000) against any person who violates a provision of this Article or any rule
27 promulgated thereunder. In determining the amount of the penalty, the
28 Commissioner shall consider the degree and extent of harm caused by the violation.

29 The clear proceeds of civil penalties assessed pursuant to this section shall be
30 remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S.
31 115C-457.2."

32

33 **U. UNSPECIFIED CIVIL PENALTIES ASSESSED FOR VIOLATION OF THE**
34 **GASOLINE AND OIL INSPECTION LAW**

35 Section 23. (a) G.S. 119-26.1(c) reads as rewritten:

36 "(c) The Commissioner of Agriculture may assess and collect civil penalties for
37 violations of rules adopted under G.S. 143-215.107(a)(9) or this section in accordance
38 with G.S. 143-215.114A. The Commissioner of Agriculture may institute a civil action
39 for injunctive relief to restrain, abate, or prevent a violation or threatened violation of
40 rules adopted under G.S. 143-215.107(a)(9) or this section in accordance with G.S.
41 143-215.114C. The assessment of a civil penalty under this section and G.S. 143-
42 215.114A or institution of a civil action under G.S. 143-215.114C and this section
43 shall not relieve any person from any other penalty or remedy authorized under this
44 Article.

1 The clear proceeds of civil penalties assessed pursuant to this subsection shall be
2 remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S.
3 115C-457.2."

4 (b) G.S. 119-23 reads as rewritten:

5 "**§ 119-23. Administration by Commissioner of Agriculture; collection of fees by**
6 **Department of Revenue and payment into State treasury; disposition of moneys by**
7 **State Treasurer.**

8 Gasoline and oil inspection fees or taxes shall be collected by, and reports relating
9 thereto, shall be made to, the Department of Revenue. The administration of the
10 gasoline and oil inspection law shall otherwise be administered by the Commissioner
11 of Agriculture. ~~All~~ Except as provided in G.S. 119-26.1(c) and G.S. 119-39.1, all
12 moneys received under the authority of this Article shall be paid into the State
13 treasury and the State Treasurer shall place to the credit of the 'State Highway Fund'
14 that proportion of said funds representing inspection fees collected on highway use
15 motor fuels, as certified monthly to the State Treasurer by the Secretary of Revenue,
16 and the remainder of said funds shall be credited to the general fund."

17

18 **V. CIVIL PENALTIES OF NOT MORE THAN \$5,000 MAY BE ASSESSED FOR**
19 **VIOLATIONS OF THE GASOLINE AND OIL INSPECTION ACT**

20 Section 24. G.S. 119-39.1 reads as rewritten:

21 "**§ 119-39.1. Civil Penalties.**

22 The Commissioner of Agriculture may assess a civil penalty of not more than five
23 thousand dollars (\$5,000) against any person who violates a provision of this Article
24 or any rule promulgated thereunder. In determining the amount of the penalty, the
25 Commissioner shall consider the degree and extent of harm caused by the violation.

26 The clear proceeds of civil penalties assessed pursuant to this section shall be
27 remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S.
28 115C-457.2."

29

30 **W. CIVIL PENALTIES NOT TO EXCEED \$100.00, \$300.00, OR \$500.00**
31 **ASSESSED FOR VIOLATIONS OF THE LIQUEFIED PETROLEUM GASES LAW**

32 Section 25. G.S. 119-59(c) reads as rewritten:

33 "(c) Civil Penalty. -- The Commissioner may assess a civil penalty against any
34 person who violates a provision of this Article or a rule adopted under it. The
35 penalty may not exceed one hundred dollars (\$100.00) for the first violation, three
36 hundred dollars (\$300.00) for a second violation, and five hundred dollars (\$500.00)
37 for a third or subsequent violation. In determining the amount of a penalty, the
38 Commissioner shall consider the degree and extent of harm or potential harm that
39 has resulted or could have resulted from the violation.

40 The Commissioner may not assess a civil penalty against a person until the
41 Commissioner has notified the person of the alleged violation and has given the
42 person at least 45 days to correct or cease the alleged violation. A notice may be
43 served by any means authorized by G.S. 1A-1, Rule 4. ~~Civil penalties assessed under~~
44 ~~this subsection shall be credited to the General Fund as nontax revenue. The clear~~

1 proceeds of civil penalties assessed pursuant to this subsection shall be remitted to the
2 Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

3

4 **X. CIVIL PENALTIES OF NOT MORE THAN \$500.00 OR \$2,000 ASSESSED**
5 **FOR VIOLATIONS OF THE PESTICIDE LAW**

6 Section 26. (a) G.S. 143-469 is amended by adding a new subsection to
7 read:

8 "(e) The clear proceeds of civil penalties assessed pursuant to this section shall be
9 remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S.
10 115C-457.2."

11 (b) G.S. 143-468(a) reads as rewritten:

12 "(a) Except as provided in G.S. 143-469 and in subsection (b), all fees and charges
13 received by the Board under this Article shall be credited to the Department of
14 Agriculture and Consumer Services for the purpose of administration and
15 enforcement of this Article."

16

17 **PART III. DEPARTMENT OF COMMERCE**

18 **A. ABC COMMISSION -- PENALTIES UP TO \$500.00, \$750.00 OR \$1,000**
19 **ASSESSED ON PERMIT HOLDERS BY THE ABC COMMISSION FOR**
20 **VIOLATIONS OF ABC LAWS AND REGULATIONS; COMMISSION MAY ALSO**
21 **ACCEPT A COMPROMISE PENALTY OF NOT MORE THAN \$5,000 IN LIEU OF**
22 **REVOKING OR SUSPENDING A PERMIT**

23 Section 27. G.S. 18B-104(c) reads as rewritten:

24 ~~"(c) Fines and Penalties to Treasurer. -- All fines and penalties collected under~~
25 ~~subsections (a) and (b) shall be remitted by the Commission to the State Treasurer~~
26 ~~for the General Fund. The clear proceeds of fines and penalties assessed pursuant to~~
27 ~~this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance~~
28 ~~with G.S. 115C-457.2."~~

29

30 **B. ABC COMMISSION -- MONETARY PENALTY OF UP TO \$15,000 AND**
31 **\$35,000 FOR VIOLATING WINE DISTRIBUTION AGREEMENTS LAWS**

32 Section 28. G.S. 18B-1207(c)(4) reads as rewritten:

33 ~~"(4) Impose a monetary penalty up to fifteen thousand dollars (\$15,000)~~
34 ~~for a first offense and up to thirty-five thousand (\$35,000) for the~~
35 ~~second offense. All monetary penalties imposed by this subsection~~
36 ~~shall be remitted by the Commission to the State Treasurer for the~~
37 ~~General Fund. The clear proceeds of monetary penalties imposed~~
38 ~~pursuant to this subdivision shall be remitted to the Civil Penalty~~
39 ~~and Forfeiture Fund in accordance with G.S. 115C-457.2."~~

40

41 **C. BANKING COMMISSION -- CIVIL PENALTY OF NOT MORE THAN \$500.00**
42 **OR \$1,000 FOR BANK'S VIOLATION OF COMMISSIONER'S CEASE AND DESIST**
43 **ORDERS**

44 Section 29. G.S. 53-107.1(d) reads as rewritten:

1 "(d) The Commissioner may impose a civil money penalty of not more than one
2 thousand dollars (\$1,000) for each violation by any bank, trust company, or subsidiary
3 thereof, or any director, officer, or employee of an order issued under subdivision (1)
4 of subsection (a) of this section. Provided further, the Commissioner may impose a
5 civil money penalty of not more than five hundred dollars (\$500.00) per day for each
6 day that a bank, trust company, or subsidiary thereof, or any director, officer, or
7 employee violates a cease and desist order issued under subdivision (2) of subsection
8 (a) of this section. ~~All civil money penalties collected under this section shall be~~
9 ~~deposited in the General Fund.~~

10 The clear proceeds of civil money penalties imposed pursuant to this section shall
11 be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S.
12 115C-457.2."

13
14 **D. BANKING COMMISSION -- PENALTY OF NOT MORE THAN \$10,000 FOR**
15 **BANK'S VIOLATION OF ANY LAWFUL ORDERS OF THE COMMISSIONER OR**
16 **THE BANKING COMMISSION**

17 Section 30. G.S. 53-107.2(b) reads as rewritten:

18 "(b) Notwithstanding any penalty imposed by the Commissioner of Banks, the
19 Banking Commission may after notice of and opportunity for hearing, impose, enter
20 judgment for, and enforce by appropriate process, a penalty of not more than ten
21 thousand dollars (\$10,000) against any bank, trust company, or subsidiary thereof, or
22 against any of its directors, officers, or employees for violating any lawful orders of
23 the Commission or Commissioner of Banks. ~~All civil money penalties collected~~
24 ~~under this section shall be deposited in the General Fund.~~

25 The clear proceeds of civil money penalties imposed pursuant to this subsection
26 shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S.
27 115C-457.2."

28
29 **E. PENALTY OF \$500.00 FOR BANK ADVERTISING LARGER CAPITAL**
30 **STOCK THAN THAT ACTUALLY PAID IN WITH CASH**

31 Section 31. G.S. 53-133 reads as rewritten:

32 "**§ 53-133. Advertising larger amount than that paid in capital stock.**

33 It shall be unlawful for any bank to advertise in a newspaper, letterhead, or any
34 other way, a larger capital stock than has been actually paid in in cash. Any bank
35 violating this section shall be subject to a penalty of five hundred dollars (\$500.00)
36 for each and every offense. The penalty herein provided for shall be recovered by the
37 State in a civil action in any court of competent jurisdiction, and it shall be the duty
38 of the Attorney General to prosecute all such actions.

39 The clear proceeds of penalties provided for in this section shall be remitted to the
40 Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

41
42 **F. PENALTY OF \$1,000 FOR VIOLATION OF COMMISSIONER'S CEASE AND**
43 **DESIST ORDER UNDER THE BANK HOLDING COMPANY ACT**

44 Section 32. G.S. 53-228 reads as rewritten:

1 "§ 53-228. Cease and desist.

2 Upon a finding that any action of a bank holding company or nonbank subsidiary
3 subject to this Article may be in violation of any North Carolina banking law, the
4 Commissioner, after a reasonable notice to the bank holding company or its nonbank
5 subsidiary and an opportunity for it to be heard, shall have the authority to order it
6 to cease and desist from such action. If the bank holding company or nonbank
7 subsidiary fails to appeal such decision in accordance with G.S. 53-231 hereof and
8 continues to engage in such action in violation of the Commissioner's order to cease
9 and desist such action, it shall be subject to a penalty of one thousand dollars
10 (\$1,000), to be recovered with costs by the Commissioner in any court of competent
11 jurisdiction in a civil action prosecuted by the Commissioner. The penalty provision
12 of this section shall be in addition to and not in lieu of any other provision of law
13 applicable to a bank holding company's or its nonbank subsidiary's failure to comply
14 with an order of the Commissioner.

15 The clear proceeds of penalties provided for in this section shall be remitted to the
16 Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

17
18 **G. PENALTY OF \$1,000 FOR VIOLATION OF COMMISSIONER'S CEASE AND**
19 **DESIST ORDER UNDER N.C. INTERNATIONAL BANKING ACT**

20 Section 33. G.S. 53-232.16 reads as rewritten:

21 "§ 53-232.16. Cease and desist.

22 Upon a finding that any action of an international banking corporation or its
23 international banking agency, international banking branch, or international
24 representative office subject to this Article may be in violation of any North Carolina
25 banking law, the Commissioner, after a reasonable notice to the international banking
26 corporation, international bank agency, international bank branch, or international
27 representative office and an opportunity for it to be heard, may order it to cease and
28 desist from the action. If the international banking corporation, international bank
29 agency, international bank branch, or international representative office fails to
30 appeal the decision in accordance with G.S. 53-232.17 and continues to engage in the
31 action in violation of the Commissioner's order to cease and desist the action, it is
32 subject to a penalty of one thousand dollars (\$1,000), to be recovered with costs by
33 the Commissioner in any court of competent jurisdiction in a civil action prosecuted
34 by the Commissioner. This penalty is in addition to and not in lieu of any other law
35 applicable to the failure of an international banking corporation, international bank
36 agency, international bank branch, or international representative office to comply
37 with an order of the Commissioner. ~~All civil money penalties collected under this~~
38 ~~section shall be deposited in the General Fund.~~

39 The clear proceeds of penalties provided for in this section shall be remitted to the
40 Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

41
42 **H. PENALTY OF \$1,000 FOR MORTGAGE BANKERS OR MORTGAGE**
43 **BROKERS VIOLATING COMMISSIONER'S CEASE AND DESIST ORDER**

44 Section 34. G.S. 53-239(b) reads as rewritten:

1 "(b) If the mortgage banker or mortgage broker fails to appeal such cease and
2 desist order of the Commissioner in accordance with G.S. 53-240 hereof and
3 continues to engage in such action in violation of the Commissioner's order to cease
4 and desist such action, it shall be subject to a penalty of one thousand dollars
5 (\$1,000) for each such action it takes in violation of the Commissioner's order. The
6 penalty provision of this section shall be in addition to and not in lieu of any other
7 provision of law applicable to a mortgage banker or a mortgage broker for the
8 mortgage banker or mortgage broker's failure to comply with an order of the
9 Commissioner.

10 The clear proceeds of civil penalties provided for in this subsection shall be
11 remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S.
12 115C-457.2."

13

14 **I. PENALTY OF \$1,000 FOR EACH ACTION IN VIOLATION OF**
15 **COMMISSIONER'S CEASE AND DESIST ORDER UNDER REFUND**
16 **ANTICIPATION LOAN ACT**

17 Section 35. G.S. 53-251(a) reads as reads as rewritten:

18 "(a) Cease and Desist Order. Upon the finding that any action of a registrant may
19 be in violation of this Article or that the registrant has engaged in an unfair or
20 deceptive act or practice, the Commissioner shall give reasonable notice to the
21 registrant of the suspected violation or unfair or deceptive act or practice, and an
22 opportunity for the registrant to be heard. If, following the hearing, the
23 Commissioner finds that an action of the registrant is in violation of this Article or
24 that the registrant has engaged in an unfair or deceptive act or practice, the
25 Commissioner shall order the registrant to cease and desist from the action.

26 If the registrant fails to appeal a cease and desist order of the Commissioner in
27 accordance with G.S. 53-252 and continues to engage in an action in violation of the
28 Commissioner's order to cease and desist from the action, the registrant shall be
29 subject to a penalty of one thousand dollars (\$1,000) for each action it takes in
30 violation of the Commissioner's order.

31 The clear proceeds of penalties provided for in this subsection shall be remitted to
32 the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

33

34 **J. SAVINGS AND LOANS ASSOCIATIONS -- CIVIL PENALTIES ASSESSED BY**
35 **ADMINISTRATOR UP TO \$20,000 FOR SAVINGS AND LOANS ASSOCIATIONS'**
36 **FAILURE TO COMPLY WITH STATE LAW OR REGULATION GOVERNING**
37 **OPERATIONS OR A CEASE AND DESIST ORDER**

38 Section 36. G.S. 54B-64(a) reads as rewritten:

39 "(a) Except as otherwise provided in this Article, any association which is found
40 to have violated any provision of this Article may be ordered to forfeit and pay a
41 civil penalty of up to twenty thousand dollars (\$20,000). Any association which is
42 found to have violated or failed to comply with any cease and desist order issued
43 under the authority of this Article may be ordered to forfeit or pay a civil penalty of

1 up to twenty thousand dollars (\$20,000) for each day that the violation or failure to
2 comply continues.

3 The clear proceeds of civil penalties provided for in this section shall be remitted
4 to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

5
6 **K. SAVINGS AND LOANS ASSOCIATIONS -- CIVIL PENALTIES ASSESSED BY**
7 **ADMINISTRATOR UP TO \$5,000 FOR FAILURE OF DIRECTORS, OFFICERS OR**
8 **EMPLOYEES OF SAVINGS AND LOANS ASSOCIATIONS TO COMPLY WITH**
9 **STATE LAW OR REGULATION GOVERNING OPERATIONS OR A CEASE AND**
10 **DESIST ORDER**

11 Section 37. G.S. 54B-65(a) reads as rewritten:

12 "(a) Any person, whether a director, officer or employee, who is found to have
13 violated any provision of this Article, whether willfully or as a result of gross
14 negligence, gross incompetency, or recklessness, may be ordered to forfeit and pay a
15 civil penalty of up to five thousand dollars (\$5,000) per violation. Any person who is
16 found to have violated or failed to comply with any cease and desist order issued
17 under the authority of this Article, may be ordered to forfeit and pay a civil penalty
18 of up to five thousand dollars (\$5,000) per violation for each day that the violation or
19 failure to comply continues.

20 The clear proceeds of civil penalties provided for in this section shall be remitted
21 to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

22
23 **L. SAVINGS BANKS -- CIVIL PENALTIES ASSESSED BY ADMINISTRATOR UP**
24 **TO \$20,000 PER VIOLATION PER DAY FOR SAVINGS INSTITUTION'S OR**
25 **SAVINGS BANK'S FAILURE TO COMPLY WITH STATE LAW OR REGULATION**
26 **GOVERNING OPERATIONS OR A CEASE AND DESIST ORDER**

27 Section 38. (a) G.S. 54C-77 reads as rewritten:

28 "§ 54C-77. Civil penalties; State savings banks.

29 (a) Except as otherwise provided in this Article, a savings bank that is found to
30 have violated this Article may be ordered to pay a civil penalty of up to twenty
31 thousand dollars (\$20,000). A savings bank that is found to have violated or failed to
32 comply with any cease and desist order issued under the authority of this Article may
33 be ordered to pay a civil penalty of up to twenty thousand dollars (\$20,000) for each
34 day that the violation or failure to comply continues.

35 The clear proceeds of civil penalties provided for in this section shall be remitted
36 to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

37 (b) G.S. 54C-55(b) reads as rewritten:

38 "(b) All funds and revenue collected by the Division under this section and all
39 other sections of this Chapter that authorize the collection of fees and other funds
40 shall be deposited with the State Treasurer and expended under the terms of the
41 Executive Budget Act, solely to defray expenses incurred by the office of the
42 Administrator in carrying out its supervisory and auditing functions. ~~Civil penalties~~
43 ~~collected under this Chapter shall be credited to the General Fund and may be~~
44 ~~appropriated by the General Assembly for any public purpose."~~

M. SAVINGS BANKS -- CIVIL PENALTIES ASSESSED BY ADMINISTRATOR UP TO \$5,000 PER VIOLATION PER DAY FOR DIRECTORS, OFFICERS, OR EMPLOYEES OF SAVINGS BANK WHO FAIL TO COMPLY WITH STATE LAW OR REGULATION GOVERNING OPERATIONS OR A CEASE AND DESIST ORDER

Section 39. G.S. 54C-78(a) reads as rewritten:

"(a) A person, whether a director, officer, or employee, who is found to have violated this Article, whether willfully or as a result of gross negligence, gross incompetency, or recklessness, may be ordered to pay a civil penalty of up to five thousand dollars (\$5,000) per violation. A person who is found to have violated or failed to comply with any cease and desist order issued under the authority of this Article, may be ordered to pay a civil penalty of up to five thousand dollars (\$5,000) per violation for each day that the violation or failure to comply continues. ~~All civil penalties, plus interest and cost, that are collected under this subsection shall be deposited into the General Fund of the State treasury.~~ The clear proceeds of civil penalties provided for in this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

N. FORFEITURE OF \$100.00 AGAINST PERSON SELLING ARTICLE WITHOUT REQUIRED INSPECTION

Section 40. G.S. 66-5 reads as rewritten:

"§ 66-5. Penalty for sale without inspection.

If any person shall sell any article of forage or provision, of which inspection is required in accordance with this Article, without the same having been inspected as required, he shall, for every offense, forfeit and pay one hundred dollars (\$100.00).

The clear proceeds of penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

O. PENALTY OF \$200.00 FOR MASTER OR COMMANDER OF VESSEL TAKING ARTICLES ON BOARD WHICH WERE NOT INSPECTED AS REQUIRED

Section 41. G.S. 66-6 reads as rewritten:

"§ 66-6. Penalty on master receiving without inspection.

No master or commander of any vessel shall take on board any cask or barrel or other commodity, liable to inspection as aforesaid, without its being inspected and branded as required, under the penalty of two hundred dollars (\$200.00) for each offense.

The clear proceeds of penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

PART IV. DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

A. CIVIL PENALTIES NOT TO EXCEED \$500.00 OR \$5,000 FOR VIOLATIONS OF THE MINING ACT OF 1971

Section 42. G.S. 74-64(a)(4) reads as rewritten:

"(4) ~~All funds collected pursuant to this section shall be credited to the General Fund as nontax revenue. The clear proceeds of civil penalties collected pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.~~"

B. CIVIL PENALTY OF NOT MORE THAN \$5,000 OR \$250.00 FOR VIOLATIONS OF ACT CONTROLLING EXPLORATION FOR URANIUM IN NORTH CAROLINA

Section 43. G.S. 74-87(a)(4) reads as rewritten:

"(4) ~~All funds collected pursuant to this section shall be placed in a special fund and shall be used to carry out the purposes of this Article. The clear proceeds of civil penalties collected pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.~~"

C. CIVIL PENALTY OF NOT MORE THAN \$100.00 PER VIOLATION ASSESSED FOR VIOLATIONS OF THE WELL CONSTRUCTION ACT

Section 44. G.S. 87-94 is amended by adding a new subsection to read:

"(g) The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

D. CIVIL PENALTIES NOT TO EXCEED \$100.00 PER DAY ASSESSED FOR VIOLATIONS OF WATER TREATMENT FACILITIES CERTIFICATION LAW

Section 45. G.S. 90A-30(a) reads as rewritten:

"(a) Upon the recommendation of the Board of Certification, the Secretary of Environment and Natural Resources or a delegated representative may impose an administrative, civil penalty on any person, corporation, company, association, partnership, unit of local government, State agency, federal agency, or other legal entity who violates G.S. 90A-29(a). Each day of a continued violation shall constitute a separate violation. The penalty shall not exceed one hundred dollars (\$100.00) for each day such violation continues. No penalty shall be assessed until the person alleged to be in violation has been notified of the violation.

The clear proceeds of penalties imposed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

E. CIVIL PENALTY NOT TO EXCEED \$1,000 FOR WILLFUL VIOLATION OF LAWS CONCERNING CERTIFICATION OF WASTE MANAGEMENT SYSTEM OPERATORS

Section 46. G.S. 90A-47.5(b) reads as rewritten:

"(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.

1 The clear proceeds of civil penalties levied pursuant to this subsection shall be
2 remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S.
3 115C-457.2."

4
5 **F. ADMINISTRATIVE PENALTIES NOT TO EXCEED \$10,000 PER DAY FOR**
6 **VIOLATING RADIATION PROTECTION ACT.**

7 Section 47. (a) G.S. 104E-24 reads as rewritten:

8 **"§ 104E-24. Administrative penalties.**

9 (a) The Department may impose an administrative penalty on any person:

- 10 (1) Who fails to comply with this Chapter, any order issued hereunder,
11 or any rules adopted pursuant to this Chapter;
12 (2) Who refuses to allow an authorized representative of the Radiation
13 Protection Commission or the Department of Environment and
14 Natural Resources a right of entry as provided for in G.S. 104E-11
15 or impounding materials as provided for in G.S. 104E-14.

16 (b) Each day of a continuing violation shall constitute a separate violation. Such
17 penalty shall not exceed ten thousand dollars (\$10,000) per day. In determining the
18 amount of the penalty, the Department shall consider the degree and extent of the
19 harm caused by the violation. Any person assessed a penalty shall be notified of the
20 assessment by registered or certified mail, and the notice shall specify the reasons for
21 the assessment.

22 (c) The clear proceeds of penalties imposed pursuant to this section shall be
23 remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S.
24 115C-457.2."

25 (b) G.S. 104E-16 reads as rewritten:

26 **"§ 104E-16. Nonreverting Radiation Protection Fund.**

27 (a) There is hereby established under the control and direction of the Department
28 a Nonreverting Radiation Protection Fund which shall be used to defray the expenses
29 of any project or activity for:

- 30 (1) Emergency response to and decontamination of radiation accidents
31 as provided in G.S. 104E-9(a)(5), or
32 (2) Perpetual maintenance and custody of radioactive materials as the
33 Department may undertake.

34 In addition to any moneys that shall be appropriated or otherwise made available
35 to it, the Fund may be maintained by fees, charges, ~~penalties~~ or other moneys paid to
36 or recovered by or on behalf of the Department under the provisions of this
37 ~~Chapter. Chapter, except for the clear proceeds of penalties.~~ Any moneys paid to or
38 recovered by or on behalf of the Department as fees, charges, ~~penalties~~ or other
39 payments authorized by this ~~Chapter Chapter, except for the clear proceeds of~~
40 ~~penalties,~~ shall be paid to the Radiation Protection Fund in an amount equal to the
41 sum expended for the projects or activities in subdivisions (1) and (2) above.

42 (b) Repealed by Session Laws 1987, c. 850, s. 11."
43

44 **G. FORFEITURE OF BOND GIVEN BY FISHERY LICENSE AGENTS**

1 Section 48. G.S. 113-151.1 is amended by adding a new subsection to
2 read:

3 "(a1) The clear proceeds of the forfeiture of a license agent's bond pursuant to this
4 section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with
5 G.S. 115C-457.2."

6
7 **H. FINE OF NOT LESS THAN \$100.00 NOR MORE THAN \$500.00 FOR**
8 **VIOLATION OF THE COMMERCIAL AND SPORT FISHERIES LICENSING LAW**

9 Section 49. G.S. 113-162 is amended by adding a new subsection to read:

10 "(c) The clear proceeds of fines assessed pursuant to this section shall be remitted
11 to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

12
13 **I. PENALTY NOT TO EXCEED \$1,000 PER DAY FOR KNOWINGLY AND**
14 **WILLFULLY VIOLATING THE OIL AND GAS CONSERVATION ACT**

15 Section 50. G.S. 113-410 reads as rewritten:

16 **"§ 113-410. Penalties for other violations.**

17 Any person who knowingly and willfully violates any provision of this law, or any
18 rule or order of the Department made hereunder, shall, in the event a penalty for
19 such violation is not otherwise provided for herein, be subject to a penalty of not to
20 exceed one thousand dollars (\$1,000) a day for each and every day of such violation,
21 and for each and every act of violation, such penalty to be recovered in a suit in the
22 superior court of the county where the defendant resides, or in the county of the
23 residence of any defendant if there be more than one defendant, or in the superior
24 court of the county where the violation took place. The place of suit shall be selected
25 by the Department, and such suit, by direction of the Department, shall be instituted
26 and conducted in the name of the Department by the Attorney General. The
27 payment of any penalty as provided for herein shall not have the effect of changing
28 illegal oil into legal oil, illegal gas into legal gas, or illegal product into legal product,
29 nor shall such payment have the effect of authorizing the sale or purchase or
30 acquisition, or the transportation, refining, processing, or handling in any other way,
31 of such illegal oil, illegal gas or illegal product, but, to the contrary, penalty shall be
32 imposed for each prohibited transaction relating to such illegal oil, illegal gas or
33 illegal product.

34 Any person knowingly and willfully aiding or abetting any other person in the
35 violation of any statute of this State relating to the conservation of oil or gas, or the
36 violation of any provisions of this law, or any rule or order made thereunder, shall be
37 subject to the same penalties as prescribed herein for the violation by such other
38 person.

39 The clear proceeds of penalties provided for in this section shall be remitted to the
40 Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

41
42 **J. PROCEEDS FROM FORFEITURE AND SALE OF CONTRABAND OIL, GAS**
43 **AND PRODUCT**

44 Section 51. G.S. 113-412 reads as rewritten:

1 "§ 113-412. Seizure and sale of contraband oil, gas and product.

2 Apart from, and in addition to, any other remedy or procedure which may be
3 available to the Department, or any penalty which may be sought against or imposed
4 upon any person with respect to violations relating to illegal oil, illegal gas, or illegal
5 product, all illegal oil, illegal gas and illegal product shall, except under such
6 circumstances as are stated herein, be contraband and shall be seized and ~~sold, and~~
7 ~~the proceeds applied as herein provided.~~ sold. Such sale shall not take place unless
8 the court shall find, in the proceeding provided for in this paragraph, that the
9 commodity involved is contraband. Whenever the Department believes that illegal
10 oil, illegal gas or illegal product is subject to seizure and sale, as provided herein, it
11 shall, through the Attorney General, have issued a warrant of attachment and bring a
12 civil action in rem for that purpose in the superior court of the county where the
13 commodity is found, or the action may be maintained in connection with any suit or
14 cross bill for injunction or for penalty relating to any prohibited transaction involving
15 such illegal oil, illegal gas or illegal product. Any interested person who may show
16 himself to be adversely affected by any such seizure and sale shall have the right to
17 intervene in such suit to protect his rights.

18 The action referred to above shall be strictly in rem and shall proceed in the name
19 of the State as plaintiff against the illegal oil, illegal gas or illegal product mentioned
20 in the complaint, as defendant, and no bond or bonds shall be required of the
21 plaintiff in connection therewith. Upon the filing of the complaint, the clerk of the
22 court shall issue a summons directed to the sheriff of the county, or to such other
23 officer or person as the court may authorize to serve process, requiring him to
24 summon any and all persons (without undertaking to name them) who may be
25 interested in the illegal oil, illegal gas, or illegal product mentioned in the complaint
26 to appear and answer within 30 days after the issuance and service of such summons.
27 The summons shall contain the style and number of the suit and a very brief
28 statement of the nature of the cause of action. It shall be served by posting one copy
29 thereof at the courthouse door of the county where the commodity involved in the
30 suit is alleged to be located and by posting another copy thereof near the place where
31 the commodity is alleged to be located. Copy of such summons shall be posted at
32 least five days before the return day stated therein, and the posting of such copy shall
33 constitute constructive possession of such commodity by the State. A copy of the
34 summons shall also be published once each week for four weeks in some newspaper
35 published in the county where the suit is pending and having a bona fide circulation
36 therein. No judgment shall be pronounced by any court condemning such commodity
37 as contraband until after the lapse of five days from the last publication of said
38 summons. Proof of service of said summons, and the manner thereof, shall be as
39 provided by general law.

40 Where it appears by a verified pleading on the part of the plaintiff, or by affidavit,
41 or affidavits, or by oral testimony, that grounds for the seizure and sale exist, the
42 clerk, in addition to the summons or warning order, shall issue a warrant of
43 attachment, which shall be signed by the clerk and bear the seal of the court. Such
44 warrant of attachment shall specifically describe the illegal oil, illegal gas or illegal

1 product, so that the same may be identified with reasonable certainty. It shall direct
2 the sheriff to whom it is addressed to take into his custody, actual or constructive, the
3 illegal oil, illegal gas or illegal product, described therein, and to hold the same
4 subject to the orders of the court. Said warrant of attachment shall be executed as a
5 writ of attachment is executed. No bond shall be required before the issuance of such
6 warrant of attachment, and the sheriff shall be responsible upon his official bond for
7 the proper execution thereof.

8 In a proper case, the court may direct the sheriff to deliver the custody of any
9 illegal oil, illegal gas or illegal product seized by him under a warrant of attachment,
10 to a commissioner to be appointed by the court, which commissioner shall act as the
11 agent of the court and shall give bond with such approved surety as the court may
12 direct, conditioned that he will faithfully conserve such illegal oil, illegal gas or illegal
13 product, as may come into his custody and possession in accordance with the orders
14 of the court; provided, that the court may in its discretion appoint any member of the
15 Department or any agent of the Department as such commissioner of the court.

16 Sales of illegal oil, illegal gas or illegal product seized under the authority of this
17 law, and notices of such sales, shall be in accordance with the laws of this State
18 relating to the sale and disposition of attached property; provided, however, that
19 where the property is in custody of a commissioner of the court, the sale shall be held
20 by said commissioner and not by the sheriff. For his services hereunder, such
21 commissioner shall receive a reasonable fee to be paid out of the proceeds of the sale
22 or sales to be fixed by the court ordering such sale.

23 The court may order that the commodity be sold in specified lots or portions, and
24 at specified intervals, instead of being sold at one time. Title to the amount sold shall
25 pass as of the date of the law which is found by the court to make the commodity
26 contraband. The judgment shall provide for ~~payment of the proceeds of the sale into~~
27 ~~the general fund of the State Treasurer, after first deducting the costs in connection~~
28 ~~with the proceedings and the sale. the clear proceeds of the sales to be remitted to~~
29 the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. The
30 amount sold shall be treated as legal oil, legal gas or legal product, as the case may
31 be, in the hands of the purchaser, but the purchaser and the commodity shall be
32 subject to all applicable laws, rules, and orders with respect to further sale or
33 purchase or acquisition, and with respect to the transportation, refining, processing,
34 or handling in any other way, of the commodity purchased.

35 Nothing in this section shall deny or abridge any cause of action a royalty owner,
36 or a lienholder, or any other claimant, may have, because of the forfeiture of the
37 illegal oil, illegal gas, or illegal product, against the person whose act resulted in such
38 forfeiture. No illegal oil, illegal gas or illegal product shall be sold for less than the
39 average market value at the time of sale of similar products of like grade and
40 character."

41

42 **K. CIVIL PENALTIES IMPOSED FOR FAILURE TO COMPLY WITH**
43 **SEDIMENTATION CONTROL LAWS**

44 Section 52. G.S. 113A-64(a)(5) reads as rewritten:

"(5) ~~Civil~~ The clear proceeds of civil penalties collected by the Department or other State agency under this subsection shall be credited to the General Fund as nontax revenue, remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Civil penalties collected by a local government under this subsection shall be credited to the general fund of the local government as nontax revenue."

L. DIVISION OF COASTAL MANAGEMENT -- CIVIL PENALTIES OF NOT MORE THAN \$250.00 AND \$2,500 ASSESSED FOR VIOLATIONS OF STATE LAWS AND REGULATIONS ESTABLISHING COASTAL MANAGEMENT STANDARDS

Section 53. (a) G.S. 113A-126(d) is amended by adding a new subdivision to read:

"(5) The clear proceeds of penalties assessed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

(b) Section 5 of Chapter 839 of the 1991 Session Laws is repealed.

M. ADMINISTRATIVE PENALTIES IMPOSED FOR VIOLATIONS OF SOLID WASTE (NONHAZARDOUS/MEDICAL) MANAGEMENT REGULATIONS NOT TO EXCEED \$5,000, \$25,000, OR \$50,000 PER DAY DEPENDING UPON EXTENT OF VIOLATION/DIVISION OF ENVIRONMENTAL HEALTH -- CIVIL PENALTIES NOT TO EXCEED \$25,000 PER DAY ASSESSED FOR VIOLATIONS OF STATE LAWS AND REGULATIONS GOVERNING OPERATION OF PUBLIC WATER SYSTEMS/EPIDEMIOLOGY BRANCH -- ADMINISTRATIVE PENALTIES NOT TO EXCEED \$1,000 PER DAY IMPOSED FOR VIOLATIONS OF ASBESTOS MANAGEMENT REGULATIONS -- EPIDEMIOLOGY BRANCH -- ADMINISTRATIVE PENALTIES NOT TO EXCEED \$10,000 PER DAY IMPOSED FOR VIOLATIONS OF ASBESTOS NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS (NESHA) FOR DEMOLITION AND RENOVATION/ADMINISTRATIVE PENALTY NOT TO EXCEED EITHER \$50.00 OR \$300.00 PER DAY FOR VIOLATING WASTEWATER SYSTEMS LAW/DIVISION OF MATERNAL AND CHILD HEALTH -- MONETARY PENALTY ON VENDOR WHO VIOLATES COMMISSION'S RULES REGARDING THE WOMEN, INFANTS, AND CHILDREN (WIC) PROGRAM

Section 54. (a) G.S. 130A-22 reads as rewritten:

"§ 130A-22. Administrative penalties.

(a) The Secretary of Environment and Natural Resources may impose an administrative penalty on a person who violates Article 9 of this Chapter, rules adopted by the Commission pursuant to Article 9, or any order issued under Article 9. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed five thousand dollars (\$5,000) per day in the case of a violation involving nonhazardous waste. The penalty shall not exceed twenty-five thousand

1 dollars (\$25,000) per day in case of a first violation involving hazardous waste as
2 defined in G.S. 130A-290 or involving the disposal of medical waste as defined in
3 G.S. 130A-290 in or upon water in a manner that results in medical waste entering
4 waters or lands of the State; and shall not exceed fifty thousand dollars (\$50,000) per
5 day for a second or further violation involving the disposal of medical waste as
6 defined in G.S. 130A-290 in or upon water in a manner that results in medical waste
7 entering waters or lands of the State. If a person fails to pay a civil penalty within 60
8 days after the final agency decision or court order has been served on the violator,
9 the Secretary of Environment and Natural Resources shall request the Attorney
10 General to institute a civil action in the superior court of any county in which the
11 violator resides or has his or its principal place of business to recover the amount of
12 the assessment. Such civil actions must be filed within three years of the date the final
13 agency decision or court order was served on the violator.

14 (a1) Part 5 of Article 21A of Chapter 143 of the General Statutes shall apply to
15 the determination of civil liability or penalty pursuant to subsection (a) of this
16 section.

17 (b) The Secretary of Environment and Natural Resources may impose an
18 administrative penalty on a person who violates G.S. 130A-325. Each day of a
19 continuing violation shall constitute a separate violation. The penalty shall not exceed
20 twenty-five thousand dollars (\$25,000) for each day the violation continues.

21 (b1) The Secretary may impose an administrative penalty on a person who
22 violates Article 19 of this Chapter or a rule adopted pursuant to that Article. Except
23 as provided in subsection (b2) of this section, the penalty shall not exceed one
24 thousand dollars (\$1,000) per day per violation. Until the Department has notified the
25 person of the violation, a continuing violation shall be treated as one violation. Each
26 day thereafter of a continuing violation shall be treated as a separate violation.

27 In determining the amount of a penalty under this subsection or subsection (b2) of
28 this section, the Secretary shall consider all of the following factors:

- 29 (1) The degree and extent of harm to the natural resources of the
30 State, to the public health, or to private property resulting from the
31 violation.
- 32 (2) The duration and gravity of the violation.
- 33 (3) The effect on air quality.
- 34 (4) The cost of rectifying the damage.
- 35 (5) The amount of money the violator saved by noncompliance.
- 36 (6) The prior record of the violator in complying or failing to comply
37 with Article 19 of this Chapter or a rule adopted pursuant to that
38 Article.
- 39 (7) The cost to the State of the enforcement procedures.
- 40 (8) If applicable, the size of the renovation and demolition involved in
41 the violation.

42 ~~Administrative penalties imposed by the Secretary under this subsection or~~
43 ~~subsection (b2) of this section shall be credited to the General Fund as nontax~~
44 ~~revenue.~~

1 (b2) The penalty for violations of the asbestos NESHAP for demolition and
2 renovation, as defined in G.S. 130A-444, shall not exceed ten thousand dollars
3 (\$10,000) per day per violation. Until the Department has provided the person with
4 written notification of the violation of the asbestos NESHAP for demolition and
5 renovation that describes the violation, recommends a general course of action, and
6 establishes a time frame in which to correct the violations, a continuing violation
7 shall be treated as one violation. Each day thereafter of a continuing violation shall
8 be treated as a separate violation. A violation of the asbestos NESHAP for demolition
9 and renovation is not considered to continue during the period a person who has
10 received the notice of violation is following the general course of action and
11 complying with the time frame set forth in the notice of violation.

12 (b3) The Secretary may impose an administrative penalty on a person who violates
13 Article 19A of this Chapter or any rules adopted pursuant to Article 19A of this
14 Chapter. Each day of a continuing violation is a separate violation. The penalty
15 shall not exceed one thousand dollars (\$1,000) for each day the violation continues.
16 The penalty authorized by this section does not apply to a person who is not required
17 to be certified under this Article.

18 (c) The Secretary of Environment and Natural Resources may impose an
19 administrative penalty on a person who willfully violates Article 11 of this Chapter,
20 rules adopted by the Commission pursuant to Article 11 or any condition imposed
21 upon a permit issued under Article 11. An administrative penalty may not be
22 imposed upon a person who establishes that neither the site nor the system may be
23 improved or a new system installed so as to comply with Article 11 of this Chapter.
24 Each day of a continuing violation shall constitute a separate violation. The penalty
25 shall not exceed fifty dollars (\$50.00) per day in the case of a wastewater collection,
26 treatment and disposal system with a design daily flow of no more than 480 gallons or
27 in the case of any system serving a single one-family dwelling. The penalty shall not
28 exceed three hundred dollars (\$300.00) per day in the case of a wastewater collection,
29 treatment and disposal system with a design daily flow of more than 480 gallons
30 which does not serve a single one-family dwelling.

31 (c1) The Secretary may impose a monetary penalty on a vendor who violates rules
32 adopted by the Commission pursuant to Article 13 of this Chapter when the
33 Secretary determines that disqualification would result in hardship to participants in
34 the Women, Infants, and Children (WIC) program. The penalty shall be calculated
35 using the following formula: multiply five percent (5%) times the average dollar
36 amount of the vendor's monthly redemptions of WIC food instruments for the 12-
37 month period immediately preceding disqualification, then multiply that product by
38 the number of months of the disqualification period determined by the Secretary.

39 (d) In determining the amount of the penalty in subsections (a), (b) and (c), the
40 Secretary and the Secretary of the Department of Environment and Natural
41 Resources shall consider the degree and extent of the harm caused by the violation
42 and the cost of rectifying the damage.

43 (e) A person contesting a penalty shall, by filing a petition pursuant to G.S. 150B-
44 23(a) not later than 30 days after receipt by the petitioner of the document which

1 constitutes agency action, be entitled to an administrative hearing and judicial review
2 in accordance with Chapter 150B of the General Statutes, the Administrative
3 Procedure Act.

4 (f) The Commission shall adopt rules concerning the imposition of administrative
5 penalties under this section.

6 (g) The Secretary or the Secretary of Environment and Natural Resources may
7 bring a civil action in the superior court of the county where the violation occurred
8 or where the defendant resides to recover the amount of an administrative penalty
9 authorized under this section whenever a person:

10 (1) Who has not requested an administrative hearing in accordance
11 with subsection (e) of this section fails to pay the penalty within 60
12 days after being notified of the penalty; or

13 (2) Who has requested an administrative hearing fails to pay the
14 penalty within 60 days after service of a written copy of the final
15 agency decision.

16 (h) A local health director may impose an administrative penalty on any person
17 who willfully violates the wastewater collection, treatment, and disposal rules of the
18 local board of health adopted pursuant to G.S. 130A-335(c) or who willfully violates
19 a condition imposed upon a permit issued under the approved local rules. An
20 administrative penalty may not be imposed upon a person who establishes that
21 neither the site nor the system may be improved or a new system installed so as to
22 comply with Article 11 of this Chapter. The local health director shall establish and
23 recover the amount of the administrative penalty in accordance with subsections (d)
24 and (g). Each day of a continuing violation shall constitute a separate violation. The
25 penalty shall not exceed fifty dollars (\$50.00) per day in the case of a wastewater
26 collection, treatment and disposal system with a design daily flow of no more than
27 480 gallons or in the case of any system serving a single one-family dwelling. The
28 penalty shall not exceed three hundred dollars (\$300.00) per day in the case of a
29 wastewater collection, treatment and disposal system with a design daily flow of more
30 than 480 gallons which does not serve a single one-family dwelling. A person
31 contesting a penalty imposed under this subsection shall be entitled to an
32 administrative hearing and judicial review in accordance with G.S. 130A-24. A local
33 board of health shall adopt rules concerning the imposition of administrative
34 penalties under this subsection.

35 (i) The clear proceeds of penalties assessed pursuant to this section shall be
36 remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S.
37 115C-457.2."

38 (b) G.S. 130A-306 reads as rewritten:
39 "§ 130A-306. Emergency Response Fund.

40 There is established under the control and direction of the Department, an
41 Emergency Response Fund which shall be a nonreverting fund consisting of any
42 money appropriated for such purpose by the General Assembly or available to it
43 from grants, fees, charges, and other money paid to or recovered by or on behalf of
44 the Department pursuant to this Article, except fees and penalties specifically

1 designated by this Article for some other use or purpose. The Emergency Response
2 Fund shall be treated as a special trust fund and shall be credited with interest by the
3 State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-69.3. The Fund shall be used
4 to defray expenses incurred by the Department in developing and implementing an
5 emergency hazardous waste remedial plan and to reimburse any federal, State or
6 local agency and any agent or contractor for expenses incurred in developing and
7 implementing such a plan that has been approved by the Department. These funds
8 shall be used upon a determination that sufficient funds or corrective action cannot
9 be obtained from other sources without incurring a delay that would significantly
10 increase the threat to life or risk of damage to the environment. This Fund may not
11 exceed five hundred thousand dollars (\$500,000); money in excess of five hundred
12 thousand dollars (\$500,000) shall be deposited in the Inactive Hazardous Sites
13 Cleanup Fund. The Secretary is authorized to take the necessary action to recover
14 all costs incurred by the State for site investigation and the development and
15 implementation of an emergency hazardous waste remedial plan, including attorney's
16 fees and other expenses of bringing the cost recovery action from the responsible
17 party or parties. The provisions of G.S. 130A-310.7 shall apply to actions to recover
18 costs under this section except that: (i) reimbursement shall be to the Emergency
19 Response Fund and (ii) the State need not show that it has complied with the
20 provisions of Part 3 of this Article."

21
22 **N. CIVIL PENALTY OF \$50.00 FOR KNOWINGLY DISPOSING OF TIRE**
23 **IMPROPERLY**

24 Section 55. G.S. 130A-309.62 reads as rewritten:

25 **"§ 130A-309.62. Fines and penalties.**

26 Any person who knowingly hauls or disposes of a tire in violation of this Part or
27 the rules adopted pursuant to this Part shall be assessed a civil penalty of fifty dollars
28 (\$50.00) per violation. Each tire hauled or disposed of in violation of this Part or
29 rules adopted pursuant to this Part constitutes a separate violation.

30 The clear proceeds of civil penalties assessed pursuant to this section shall be
31 remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S.
32 115C-457.2."

33
34 **O. CIVIL PENALTY NOT TO EXCEED \$50.00 PER VIOLATION AGAINST**
35 **PERSONS KNOWINGLY DISPOSING OF LEAD-ACID BATTERIES IN VIOLATION**
36 **OF SECTION**

37 Section 56. G.S. 130A-309.70(c) reads as rewritten:

38 "(c) Any person who knowingly places or disposes of a lead-acid battery in
39 violation of this section shall be assessed a civil penalty of not more than fifty dollars
40 (\$50.00) per violation. Each battery improperly disposed of shall constitute a
41 separate violation.

42 The clear proceeds of civil penalties assessed pursuant to this section shall be
43 remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S.
44 115C-457.2."

P. CIVIL PENALTY NOT TO EXCEED \$50.00 PER DAY AGAINST PERSON FAILING TO POST NOTICES CONCERNING RECYCLING AND DISPOSING OF LEAD-ACID BATTERIES

Section 57. G.S. 130A-309.71(c) reads as rewritten:

"(c) Any person who fails to post the notice required by subsection (b) of this section after receiving a written warning from the Department to do so shall be assessed a civil penalty of not more than fifty dollars (\$50.00) per day for each day the person fails to post the required notice.

The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

Q. CIVIL PENALTY OF \$50.00 PER VIOLATION AGAINST WHOLESALERS WHO REFUSE TO ACCEPT LEAD-ACID BATTERIES FROM CUSTOMERS

Section 58. G.S. 130A-309.72(b) reads as rewritten:

"(b) Any person who violates this section shall be assessed a civil penalty of fifty dollars (\$50.00) per violation. Each battery refused by a wholesaler or not removed from the retail point of collection within 90 days shall constitute a separate violation.

The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

R. CIVIL PENALTY UP TO \$100.00 FOR IMPROPER DISPOSAL OF WHITE GOODS

Section 59. G.S. 130A-309.84 reads as rewritten:

"§ 130A-309.84. Civil penalties for improper disposal.

The Department may assess a civil penalty of not more than one hundred dollars (\$100.00) against a person who, knowing it is unlawful, places or otherwise disposes of a discarded white good in a landfill, an incinerator, or a waste-to-energy facility. The Department may assess this penalty for the day the unlawful disposal occurs and each following day until the white good is disposed of properly.

The Department may assess a penalty of up to one hundred dollars (\$100.00) against a person who, knowing it is required, fails to remove chlorofluorocarbon refrigerants from a discarded white good. The Department may assess this penalty for the day the failure occurs and each following day until the chlorofluorocarbon refrigerants are removed.

~~Civil penalties collected under this section shall be credited to the General Fund as nontax revenue.~~ The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

S. AIR AND WATER QUALITY -- CIVIL PENALTIES OF NOT MORE THAN \$25,000 OR \$50,000 FOR VIOLATION AND AN ADDITIONAL \$25,000 OR

1 **\$50,000 FOR EACH ADDITIONAL DAY VIOLATION CONTINUES ASSESSED FOR**
2 **UNLAWFUL DISPOSAL OF MEDICAL WASTE**

3 Section 60. G.S. 143-214.2A(b) is amended by adding a new subdivision
4 to read:

5 "(7) The clear proceeds of civil penalties assessed pursuant to this
6 subsection shall be remitted to the Civil Penalty and Forfeiture
7 Fund in accordance with G.S. 115C-457.2."
8

9 **T. INFRACTION PENALTY OF \$10.00 FOR USING PROHIBITED CLEANING**
10 **AGENTS WHICH CONTAIN PHOSPHORUS**

11 Section 61. G.S. 143-214.4(g) reads as rewritten:

12 "(g) Any person who uses any cleaning agent in violation of the provisions of this
13 section shall be responsible for an infraction for which the sanction is a penalty of not
14 more than ten dollars (\$10.00). Notwithstanding G.S. 143-3.1(a), the clear proceeds
15 of infractions pursuant to this section shall be remitted to the Civil Penalty and
16 Forfeiture Fund in accordance with G.S. 115C-457.2."
17

18 **U. CIVIL PENALTY ASSESSED PURSUANT TO G.S. 143-215.6A(a)(7) & (e)**
19 **AGAINST LOCAL GOVERNMENTS AND PERSONS WHO FAIL TO FOLLOW**
20 **LAWS CONCERNING WATER SUPPLY WATERSHEDS**

21 Section 62. G.S. 143-214.5(g) reads as rewritten:

22 "(g) Civil Penalties. -- A local government that fails to adopt a local water supply
23 watershed protection program as required by this section or willfully fails to
24 administer or enforce the provisions of its program in substantial compliance with the
25 minimum statewide water supply watershed management requirements shall be
26 subject to a civil penalty pursuant to G.S. 143-215.6A(e). In any area of the State that
27 is not covered by an approved local water supply watershed protection program, any
28 person who violates or fails to act in accordance with any minimum statewide water
29 supply watershed management requirement or more stringent management
30 requirement adopted by the Commission for a critical water supply watershed
31 established pursuant to this section shall be subject to a civil penalty as specified in
32 G.S. 143-215.6A(a)(7).

33 The clear proceeds of civil penalties provided for in this section shall be remitted
34 to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."
35

36 **V. CIVIL PENALTIES OF NOT MORE THAN \$10,000 OR \$10,000 PER DAY**
37 **OR \$10,000 PER MONTH FOR VARIOUS WATER POLLUTION CONTROL**
38 **VIOLATIONS**

39 Section 63. G.S. 143-215.6A is amended by adding a new subsection to
40 read:

41 "(h1) The clear proceeds of civil penalties assessed by the Secretary or the
42 Commission pursuant to this section shall be remitted to the Civil Penalty and
43 Forfeiture Fund in accordance with G.S. 115C-457.2."
44

1 W. CIVIL PENALTY OF VARIOUS AMOUNTS FOR VIOLATIONS OF
2 REGULATIONS FOR USE OF WATER RESOURCES

3 Section 64. G.S. 143-215.17(b) is amended by adding a new subdivision
4 to read:

5 "(8) The clear proceeds of civil penalties assessed pursuant to this
6 subsection shall be remitted to the Civil Penalty and Forfeiture
7 Fund in accordance with G.S. 115C-457.2."
8

9 X. LAND RESOURCES DIVISION -- CIVIL PENALTIES NOT TO EXCEED
10 \$100.00 OR \$500.00 ASSESSED FOR VIOLATIONS OF THE DAM SAFETY LAW.
11 IF WILLFUL, NOT TO EXCEED \$500.00 PER DAY FOR EACH DAY OF
12 VIOLATION

13 Section 65. G.S. 143-215.36(b) is amended by adding a new subdivision
14 to read:

15 "(8) The clear proceeds of civil penalties assessed pursuant to this
16 subsection shall be remitted to the Civil Penalty and Forfeiture
17 Fund in accordance with G.S. 115C-457.2."
18

19 Y. CIVIL PENALTY NOT TO EXCEED \$10,000 FOR VIOLATING AIR AND
20 WATER QUALITY REPORTING REGULATIONS

21 Section 66. G.S. 143-215.69(b) reads as rewritten:

22 "(b) Civil Penalties. -- The Commission may assess a civil penalty against a person
23 who violates this Part or a rule of the Commission implementing this Part. For
24 persons subject to the provisions of G.S. 143-215.1, the amount of the penalty shall
25 not exceed the maximum imposed in G.S. 143-215.6A and shall be assessed in
26 accordance with the procedure set out in G.S. 143-215.6A for assessing a civil
27 penalty. For persons subject to the provisions of Title V, G.S. 143-215.108, or G.S.
28 143-215.109, the amount of penalty shall not exceed the maximum imposed in G.S.
29 143-215.114A and shall be assessed in accordance with the procedure set out in G.S.
30 143-215.114A for assessing a civil penalty. ~~Civil~~ The clear proceeds of civil penalties
31 assessed under this subsection shall be credited to the General Fund as nontax
32 revenue; remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S.
33 115C-457.2."
34

35 Z. OIL POLLUTION AND HAZARDOUS SUBSTANCES CONTROL -- CIVIL
36 PENALTIES OF NOT MORE THAN \$5,000 ASSESSED FOR UNLAWFUL
37 DISCHARGE OF OIL

38 Section 67. (a) G.S. 143-215.88A is amended by adding a new subsection
39 to read:

40 "(c) The clear proceeds of civil penalties provided for in this section shall be
41 remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S.
42 115C-457.2."

43 (b) G.S. 143-215.87 reads as rewritten:

44 "§ 143-215.87. Oil or Other Hazardous Substances Pollution Protection Fund.

1 There is hereby established under the control and direction of the Department an
2 Oil or Other Hazardous Substances Pollution Protection Fund which shall be a
3 nonlapsing, revolving fund consisting of any moneys appropriated for such purpose
4 by the General Assembly or that shall be available to it from any other source. The
5 moneys shall be used to defray the expenses of any project or program for the
6 containment, collection, dispersal or removal of oil or other hazardous substances
7 discharged to the land or waters of this State, or discharged into waters outside the
8 territorial limits of the State which affect land and waters or related uses within the
9 State; to assess damages for injury to, destruction of, or loss of use of natural
10 resources; and to develop and implement plans for restoration, rehabilitation,
11 replacement, or acquisition of the equivalent of the natural resources injured by the
12 discharge. In addition to any moneys that shall be appropriated or otherwise made
13 available to it, the fund shall be maintained by fees, charges, ~~penalties~~ or other
14 moneys except for the clear proceeds of civil penalties paid to or recovered by or on
15 behalf of the Department under the provisions of this Part. Any moneys paid to or
16 recovered by or on behalf of the Department as fees, charges, ~~penalties~~ or other
17 payments as damages authorized by this Part except for the clear proceeds of civil
18 penalties shall be paid to the Oil or Other Hazardous Substances Pollution Protection
19 Fund in an amount equal to the sums expended from the fund for the project or
20 activity. ~~Within the meaning of this section, the word "penalties" means civil~~
21 ~~penalties and does not include criminal fines or penalties.~~

22 The clear proceeds of civil penalties provided for in this section shall be remitted
23 to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."
24

25 **AA. CIVIL PENALTY ASSESSED PURSUANT TO G.S. 143-215.94K AGAINST**
26 **OWNER OR OPERATOR OF COMMERCIAL UNDERGROUND STORAGE TANK**
27 **WHO FAILS TO PROPERLY COMMENCE AND COMPLETE CLOSURE**

28 Section 68. G.S. 143-215.94E(i) reads as rewritten:

29 "(i) An owner or operator who notifies the Department of an intention to close or
30 upgrade a commercial underground storage tank as provided in G.S. 143-
31 215.94B(b)(2a) shall commence the closure or upgrade prior to 1 July 1994 and shall
32 complete the closure or upgrade prior to 1 January 1995. An owner who notifies the
33 Department of an intention to close or upgrade a commercial underground storage
34 tank and who fails to commence and complete the closure as specified in this
35 subsection is subject to a civil penalty as provided in G.S. 143-215.94K. The
36 provisions of G.S. 143-215.94B(b)(2a) do not apply if an owner or operator who
37 notifies the Department of an intention to close or upgrade a commercial
38 underground storage tank fails to commence or complete the closure or upgrade
39 within the dates specified in this subsection.

40 The clear proceeds of civil penalties provided for in this subsection shall be
41 remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S.
42 115C-457.2."
43

1 BB. CIVIL PENALTY OF NOT MORE THAN \$10,000 FOR VIOLATING
2 UNDERGROUND STORAGE TANK REGULATIONS. IF VIOLATION IS
3 CONTINUOUS, MAY ASSESS \$10,000 PER DAY NOT TO EXCEED \$200,000

4 Section 69. G.S. 143-215.94W is amended by adding a new subsection to
5 read:

6 "(h) The clear proceeds of civil penalties assessed pursuant to this section shall be
7 remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S.
8 115C-457.2."

9
10 CC. CIVIL PENALTY OF EITHER \$50,000 OR \$250,000 PER DAY FOR
11 FAILURE TO IMMEDIATELY REPORT AN OFFSHORE DISCHARGE

12 Section 70. G.S. 143-215.94GG is amended by adding a new subsection
13 to read:

14 "(c) The clear proceeds of penalties provided for in this section shall be remitted
15 to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

16
17 DD. CIVIL PENALTY NOT TO EXCEED \$10,000 FOR VIOLATIONS OF OIL
18 REFINING FACILITY PERMIT LAWS AND REGULATIONS

19 Section 71. G.S. 143-215.102(a) reads as rewritten:

20 "(a) Civil Penalty. -- Any person who violates any provision of this Part, or any
21 rule, regulation or order made pursuant to this Part, shall incur, in addition to any
22 other penalty provided by law, a civil penalty in an amount not to exceed ten
23 thousand dollars (\$10,000) for every such violation, the amount to be determined by
24 the Secretary after taking into consideration the factors set out in G.S. 143B-282.1(b).
25 The procedures set out in G.S. 143-215.6 and G.S. 143B-282.1 shall apply to civil
26 penalties assessed under this section. The penalty herein provided for shall become
27 due and payable when the person incurring the penalty receives a notice in writing
28 from the Commission describing the violation with reasonable particularity and
29 advising such person that the penalty is due. A person may contest a penalty by
30 filing a petition for a contested case under G.S. 150B-23 within 30 days after
31 receiving notice of the penalty. If any civil penalty has not been paid within 30 days
32 after notice of assessment has been served on the violator, the Secretary shall request
33 the Attorney General to institute a civil action in the Superior Court of any county in
34 which the violator resides or has his or its principal place of business to recover the
35 amount of the assessment, unless the violator contests the assessment, or requests
36 remission of the assessment in whole or in part as provided in G.S. 143-215.6. If any
37 civil penalty has not been paid within 30 days after the final agency decision or court
38 order has been served on the violator, the Secretary shall request the Attorney
39 General to institute a civil action in the Superior Court of any county in which the
40 violator resides or has his or its principal place of business to recover the amount of
41 the assessment.

42 ~~Any sums recovered under this subsection shall be payable to the Oil Pollution~~
43 ~~Protection Fund as established by this Article. The clear proceeds of civil penalties~~

1 provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund
2 in accordance with G.S. 115C-457.2."

3
4 **EE. FORFEITURE OF BONDS FOR NONCOMPLIANCE WITH SPECIAL**
5 **ORDERS CONCERNING AIR POLLUTION CONTROL**

6 Section 72. G.S. 143-215.110(e) reads as rewritten:

7 "(e) Compliance Bonds. -- A special order or other instrument authorized by this
8 section may provide that a bond or other surety be posted to ensure compliance. In
9 determining the amount of such bond the Commission shall consider the degree and
10 extent of harm which may result if the person to whom the special order is directed
11 fails to comply with the terms of the order, the cost of rectifying such harm, the
12 economic consequences to the person to whom the special order is directed if the
13 special order is issued as compared to the consequences of a denial, suspension, or
14 revocation of the special order or permit, and the person's history of compliance with
15 pollution control requirements, other special orders, history of payment of any
16 penalties which may have been previously assessed by the Commission. In the event
17 of noncompliance with the special order or other instrument, the bond shall be
18 forfeited and the ~~entire amount of the bond shall be deposited in the General Fund.~~
19 clear proceeds of the bond shall be remitted to the Civil Penalty and Forfeiture Fund
20 in accordance with G.S. 115C-457.2."

21

22 **FF. CIVIL PENALTY OF NOT MORE THAN \$10,000 FOR VARIOUS AIR**
23 **POLLUTION CONTROL VIOLATIONS**

24 Section 73. G.S. 143-215.114A is amended by adding a new subsection to
25 read:

26 "(h) The clear proceeds of penalties provided for in this section shall be remitted
27 to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

28

29 **PART V. DEPARTMENT OF HEALTH AND HUMAN SERVICES**

30 **A. CIVIL PENALTIES OF NOT MORE THAN \$20,000 AND \$75,000 FOR**
31 **CIRCUMVENTION OF THE SELF-REFERRALS BY HEALTH CARE PROVIDERS**
32 **LAW**

33 Section 74. G.S. 90-407 is amended by adding a new subsection to read:

34 "(d) The clear proceeds of civil penalties provided for in this section shall be
35 remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S.
36 115C-457.2."

37

38 **B. CIVIL PENALTY NOT TO EXCEED \$1,000 IMPOSED UPON CHILD DAY**
39 **CARE FACILITIES OR HOMES FOR VIOLATIONS OF STATE LAW OR**
40 **REGULATION GOVERNING LICENSURE/STANDARDS**

41 Section 75. G.S. 110-103.1 is amended by adding a new subsection to
42 read:

43 "(d) The clear proceeds of penalties provided for in this section shall be remitted
44 to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

**C. CIVIL PENALTIES OF \$100.00 OR \$500.00 OR \$1,000 FOR FAILURE OF
PAYORS/EMPLOYERS TO COMPLY WITH EMPLOYEE'S CHILD SUPPORT
ENFORCEMENT ORDERS**

Section 76. G.S. 110-136.8(e) reads as rewritten:

"(e) Prohibited conduct by payor; civil penalty. Notwithstanding any other provision of law, when a court finds, pursuant to a motion in the cause filed by the initiating party joining the payor as a third party defendant, with 30 days notice to answer the motion, that a payor has willfully refused to comply with the provisions of this section, such payor shall be ordered to commence withholding and shall be held liable to the initiating party for any amount which such payor should have withheld, except that such payor shall not be required to vary the normal pay or disbursement cycles in order to comply with these provisions.

A payor shall not discharge from employment, refuse to employ, or otherwise take disciplinary action against any obligor solely because of the withholding. When a court finds that a payor has taken any of these actions, the payor shall be liable for a civil penalty to be paid to the county school fund. ~~penalty.~~ For a first offense, the civil penalty shall be one hundred dollars (\$100.00). For second and third offenses, the civil penalty shall be five hundred dollars (\$500.00) and one thousand dollars (\$1,000), respectively. Any payor who violates any provision of this paragraph shall be liable in a civil action for reasonable damages suffered by an obligor as a result of the violation, and an obligor discharged or demoted in violation of this paragraph shall be entitled to be reinstated to his former position. The statute of limitations for actions under this subsection shall be one year pursuant to G.S. 1-54 of this section.

The clear proceeds of civil penalties provided for in this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

**D. CIVIL PENALTY NOT TO EXCEED \$100.00 PER VIOLATION FOR
WILLFUL VIOLATION OF PROVISIONS FOR CERTIFICATION OF ADULT DAY
CARE PROGRAM**

Section 77. G.S. 131D-6(c) reads as rewritten:

"(c) The Secretary may impose a civil penalty not to exceed one hundred dollars (\$100.00) for each violation on a person, firm, agency, or corporation who willfully violates any provision of this section or any rule adopted by the Social Services Commission pursuant to this section. Each day of a continuing violation constitutes a separate violation.

In determining the amount of the civil penalty, the Secretary shall consider the degree and extent of the harm or potential harm caused by the violation.

The Social Services Commission shall adopt rules concerning the imposition of civil penalties under this subsection.

The clear proceeds of civil penalties imposed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

E. CIVIL PENALTIES OF VARYING AMOUNTS IMPOSED UPON ADULT CARE HOMES FOR VIOLATIONS OF STATE LAW OR REGULATION GOVERNING LICENSURE AND STANDARDS/ADMINISTRATIVE AND CIVIL PENALTIES OF VARIOUS AMOUNTS IMPOSED UPON NURSING FACILITIES FOR VIOLATIONS OF STATE LAW OR REGULATION GOVERNING LICENSURE AND STANDARDS

Section 78. (a) G.S. 131D-34 is amended by adding a new subsection to read:

"(i) The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

(b) G.S. 131E-129 is amended by adding a new subsection to read:

"(h) The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

(c) G.S. 131E-109 is amended by adding a new subsection to read:

"(e) The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

(d) G.S. 131E-242(a) reads as rewritten:

"(a) The Department shall establish a temporary management contingency fund from the proceeds of penalties collected by the Department under the provisions of ~~G.S. 131E-109 and G.S. 131E-129 for nursing facilities, and G.S. 131D-2 and G.S. 131D-34~~ for adult care homes."

F. CIVIL PENALTY OF \$50.00 PER DAY UP TO \$1,500 PER VIOLATION AGAINST NURSING HOMES FOR NOT GIVING FIRST AVAILABLE BED TO PATIENT WHO LEFT FOR TEMPORARY TREATMENT

Section 79. G.S. 131E-130(b) reads as rewritten:

"(b) If the Department finds that a nursing home has violated the provisions of subsection (a) of this section, the Department may assess a civil penalty of fifty dollars (\$50.00) a day, up to a maximum of one thousand five hundred dollars (\$1,500), against the nursing home, for each violation.

The clear proceeds of penalties provided for in this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

G. CIVIL PENALTIES OF NOT MORE THAN \$20,000 IMPOSED FOR VIOLATIONS OF STATE LAW OR REGULATION REQUIRING ISSUANCE OF AND COMPLIANCE WITH CERTIFICATES OF NEED

Section 80. G.S. 131E-190(f) reads as rewritten:

"(f) The Department may assess a civil penalty of not more than twenty thousand dollars (\$20,000) against any person who knowingly offers or develops any new institutional health service within the meaning of this Article without a certificate of need issued under this Article and the rules pertaining thereto, or in violation of the

1 terms or conditions of such a certificate, whenever it determines a violation has
2 occurred and each time the service is provided in violation of this provision. In
3 determining the amount of the penalty the Department shall consider the degree and
4 extent of harm caused by the violation and the cost of rectifying the damage. A
5 person who is assessed a penalty shall be notified of the penalty by registered or
6 certified mail. The notice shall state the reasons for the penalty. If a person fails to
7 pay a penalty, the Department shall refer the matter to the Attorney General for
8 collection. For the purpose of this subsection, the word 'person' shall not include an
9 individual in his capacity as an officer, director, or employee of a person as otherwise
10 defined in this Article.

11 The clear proceeds of penalties provided for in this subsection shall be remitted to
12 the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."
13

14 **H. ADMINISTRATIVE PENALTIES FOR VIOLATIONS OF THE**
15 **SOLICITATIONS OF CONTRIBUTIONS LAW NOT TO EXCEED \$1,000 PER ACT**
16 **OR OMISSION**

17 Section 81. G.S. 131F-23(g) reads as rewritten:

18 "(g) Disposition of Penalties. -- ~~Penalties collected by the Department under~~
19 ~~subsection (e) of this section shall be credited to the General Fund as nontax~~
20 ~~revenue. The clear proceeds of penalties provided for in subsection (e) of this section~~
21 shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S.
22 115C-457.2."
23

24 **I. CIVIL PENALTIES NOT TO EXCEED \$10,000 FOR VIOLATION OF THE**
25 **SOLICITATIONS OF CONTRIBUTIONS LAW**

26 Section 82. G.S. 131F-24(a) reads as rewritten:

27 "(a) Civil Remedies. -- In addition to other remedies authorized by law, the
28 Attorney General may bring a civil action in superior court to enforce this Chapter.
29 Upon a finding that any person has violated this Chapter, a court may make any
30 necessary order or enter a judgment, including a temporary or permanent injunction,
31 a declaratory judgment, the appointment of a master or receiver, the sequestration of
32 assets, the reimbursement of persons from whom contributions have been unlawfully
33 solicited, the distribution of contributions in accordance with the charitable or
34 sponsor purpose expressed in the registration statement or in accordance with the
35 representations made to the person solicited, the reimbursement of the Department
36 for attorneys' fees and costs, including investigative costs, and any other equitable
37 relief the court finds appropriate. Upon a finding that any person has violated any
38 provision of this Chapter, a court may enter an order imposing a civil penalty in an
39 amount not to exceed ten thousand dollars (\$10,000) per violation.

40 The clear proceeds of penalties imposed pursuant to this subsection shall be
41 remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S.
42 115C-457.2."
43

44 **PART VI. DEPARTMENT OF INSURANCE**

1 A. PENALTIES OF NOT LESS THAN \$100.00 NOR MORE THAN \$1,000
2 ASSESSED AGAINST INSURANCE COMPANIES FOR FAILURE TO COMPLY
3 WITH STATE LAWS AND REGULATIONS/COMMISSIONER MAY IMPOSE A
4 CIVIL PENALTY PURSUANT TO G.S. 58-2-70 IF INSURER FAILS TO NOTICE A
5 CLAIM WITHIN 30 DAYS AFTER RECEIVING WRITTEN NOTICE OF THE
6 CLAIM/ANY INSURER WILLFULLY MISREPRESENTING TERMS, CONDITIONS,
7 OR BENEFITS OF A POLICY IS SUBJECT TO THE PENALTY PROVISIONS OF
8 G.S. 58-2-70/CIVIL PENALTY OF NO MORE THAN \$2,000, PURSUANT TO G.S.
9 58-2-70 FOR INSURERS REFUSING TO PAY CLAIMANTS BECAUSE OF REPAIR
10 SERVICE CHOSEN/CIVIL PENALTY PURSUANT TO G.S. 58-2-70 IMPOSED FOR
11 VIOLATING REINSURANCE INTERMEDIARIES LAW/CIVIL PENALTY AS
12 PROVIDED IN G.S. 58-21-105 FOR SURPLUS LINES LICENSEE OR PRODUCING
13 BROKER WHO FAILS TO PRODUCE PROPER EVIDENCE OF INSURANCE/CIVIL
14 PENALTY PURSUANT TO G.S. 58-2-70 IMPOSED FOR VIOLATING THE SURPLUS
15 LINES ACT/CIVIL PENALTY PURSUANT TO G.S. 58-2-70 IMPOSED FOR
16 KNOWINGLY AND WILLFULLY VIOLATING COMMISSIONER'S ORDERS FOR
17 INSURERS SUPERVISION, REHABILITATION, AND LIQUIDATION/CIVIL
18 PENALTY PURSUANT TO G.S. 58-2-70(d) IMPOSED AGAINST INSURANCE
19 MANAGING GENERAL AGENT WHO HAS NOT MATERIALLY COMPLIED WITH
20 AGENCY AND MANAGEMENT CONTRACTS LAWS/CIVIL PENALTY PURSUANT
21 TO G.S. 58-2-70 IMPOSED FOR VIOLATION OF INSURANCE INFORMATION
22 AND PRIVACY PROTECTION ACT

23 Section 83. (a) G.S. 58-2-70(d) reads as rewritten:

24 "(d) Upon a finding by the Commissioner of a violation as specified in subsection
25 (c) of this section, the Commissioner shall direct the payment of a penalty of not less
26 than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000). In
27 determining the amount of the penalty, the Commissioner shall consider the degree
28 and extent of harm caused by the violation, the amount of money that inured to the
29 benefit of the violator as a result of the violation, whether the violation was
30 committed willfully, and the prior record of the violator in complying or failing to
31 comply with laws, rules, or orders applicable to the violator. ~~The penalty shall be~~
32 ~~payable to the Commissioner, who shall then forward the clear proceeds of which to~~
33 ~~the State Treasurer for deposit in the General Fund of the State. The clear proceeds~~
34 of the penalty shall be remitted to the Civil Penalty and Forfeiture Fund in
35 accordance with G.S. 115C-457.2. Payment of the civil penalty under this section
36 shall be in addition to payment of any other penalty for a violation of the criminal
37 laws of this State."

38 (b) G.S. 58-6-1 reads as rewritten:

39 "~~§ 58-6-1. Commissioner to report taxes, fees, and civil penalties~~ taxes and fees and
40 pay monthly.

41 On or before the 10th day of each month the Commissioner shall furnish to the
42 Auditor a statement in detail of the ~~taxes, fees, and civil penalties~~ taxes and fees
43 received during the previous month, and shall pay the amounts received to the
44 Treasurer. Except as otherwise provided, the amounts shall be credited to the

1 General Fund. The Auditor may examine the accounts of the Commissioner and
2 check them up with said statement."

3

4 **B. CIVIL PENALTY OF \$100.00 PER DAY NOT TO EXCEED \$1,000 FOR**
5 **VIOLATING INSURANCE HOLDING COMPANY SYSTEM REGULATORY ACT**

6 Section 84. G.S. 58-19-50(a) reads as rewritten:

7 "(a) Any person failing, without just cause, to file any registration statement as
8 required in this Article shall pay, after notice and hearing, a civil penalty of one
9 hundred dollars (\$100.00) for each day's delay, not to exceed a total penalty of one
10 thousand dollars (\$1,000), to the ~~Commissioner, who shall forward the clear proceeds~~
11 ~~to the General Fund of this State. Commissioner.~~ The clear proceeds of civil
12 penalties provided for in this section shall be remitted to the Civil Penalty and
13 Forfeiture Fund in accordance with G.S. 115C-457.2."

14

15 **C. PENALTY OF \$1,000 FOR PERSON WHO PLACES SURPLUS LINES**
16 **INSURANCE WITHOUT A VALID SURPLUS LINES LICENSE IN EFFECT**

17 Section 85. G.S. 58-21-65(d) reads as rewritten:

18 "(d) Each surplus lines license shall be issued on September 1 of each year and
19 expire August 31 of the following year unless renewed. Application for renewal shall
20 be made 30 days before the expiration date. The license shall be renewed upon
21 payment of the annual license fee and compliance with the other applicable
22 provisions of this section. Any person who places surplus lines insurance without a
23 valid surplus lines license in effect shall pay a penalty of one thousand dollars
24 (\$1,000) and be subject to such other penalties as provided by law.

25 The clear proceeds of civil penalties provided for in this subsection shall be
26 remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S.
27 115C-457.2."

28

29 **D. CIVIL PENALTY NOT TO EXCEED \$10,000 FOR VIOLATING**
30 **COMMISSIONER'S SUPERVISORY ORDERS**

31 Section 86. G.S. 58-30-60(h) reads as rewritten:

32 "(h) If any person violates any supervision order issued under this section that as
33 to him is then still in effect, he shall be liable to pay a civil penalty imposed by the
34 Court not to exceed ten thousand dollars (\$10,000). The clear proceeds of civil
35 penalties imposed pursuant to this subsection shall be remitted to the Civil Penalty
36 and Forfeiture Fund in accordance with G.S. 115C-457.2."

37

38 **E. FORFEITURE OF \$1,000 OR \$5,000 FOR VIOLATING COMMISSION'S**
39 **FINAL ORDER ABOUT REGULATION OF CREDIT LIFE INSURANCE**

40 Section 87. G.S. 58-57-80 reads as rewritten:

41 "§ 58-57-80. Penalties.

42 In addition to any other penalty provided by law, any person, firm or corporation
43 which willfully violates an order of the Commissioner after it has become final, and
44 while such order is in effect, shall, upon proof thereof to the satisfaction of the court,

1 forfeit and pay to the State of North Carolina a sum not to exceed one thousand
2 dollars (\$1,000) which may be recovered in a civil action, except that if such violation
3 is found to be willful, the amount of such penalty shall be a sum not to exceed five
4 thousand dollars (\$5,000). The clear proceeds of penalties provided for in this
5 section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with
6 G.S. 115C-457.2. The Commissioner, in his discretion, may revoke or suspend the
7 license or certificate of authority of the person, firm or corporation guilty of such
8 willful violation. Such order for suspension or revocation shall be upon notice and
9 hearing, and shall be subject to judicial review as provided in G.S. 58-57-75. Any
10 creditor who requires credit life insurance or credit accident and health insurance, or
11 both, in excess of the amounts set forth in G.S. 58-57-15 or who violates the
12 provisions of G.S. 58-57-65 shall be guilty of a Class 3 misdemeanor, the penalty for
13 which shall only be a fine of two thousand dollars (\$2,000) for each such occurrence
14 or violation."

15

16 **F. MONETARY FORFEITURE NOT LESS THAN \$1,000 NOR MORE THAN**
17 **\$5,000 FOR FAILURE TO COMPLY WITH CEASE AND DESIST ORDER**
18 **CONCERNING UNFAIR TRADE PRACTICE**

19 Section 88. G.S. 58-63-50 reads as rewritten:

20 **"§ 58-63-50. Penalty.**

21 Any person who willfully violates a cease and desist order of the Commissioner
22 under G.S. 58-63-32, after it has become final, and while the order is in effect, shall
23 forfeit and pay to the Commissioner ~~for the use of the public schools of the county or~~
24 ~~counties in which the act or acts complained of occurred~~ the sum of not less than one
25 thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000) for each
26 violation, which if not paid shall be recovered in a civil action instituted in the name
27 of the Commissioner in the Superior Court of Wake County. The clear proceeds of
28 forfeitures provided for in this section shall be remitted to the Civil Penalty and
29 Forfeiture Fund in accordance with G.S. 115C-457.2."

30

31 **G. PENALTY OF NOT LESS THAN \$100.00 OR GREATER THAN \$2,000**
32 **AGAINST COLLECTION AGENCIES FOR VIOLATING COLLECTION OF DEBT**
33 **RULES**

34 Section 89. (a) G.S. 58-70-130 is amended by adding a new subsection to
35 read:

36 "(d) The clear proceeds of civil penalties imposed under this section in suits
37 instituted by the Attorney General shall be remitted to the Civil Penalty and
38 Forfeiture Fund in accordance with G.S. 115C-457.2."

39 (b) G.S. 58-39-95 is amended by adding a new subsection to read:

40 "(c) The clear proceeds of any civil penalties levied pursuant to this section shall
41 be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S.
42 115C-457.2."

43

1 H. CIVIL PENALTIES OF \$250.00 ASSESSED FOR VIOLATION OF BAIL
2 BONDSMEN AND RUNNERS LAW

3 Section 90. G.S. 58-71-80(b) reads as rewritten:

4 "(b) The Commissioner, in lieu of revoking or suspending a license in accordance
5 with the provisions of this Article, may, in any one proceeding, by order, require the
6 licensee to pay ~~to the school fund in the licensee's county of residence~~ a civil penalty
7 of two hundred fifty dollars (\$250.00) for each offense. The Commissioner shall
8 remit the clear proceeds of these civil penalties to the Civil Penalty and Forfeiture
9 Fund in accordance with G.S. 115C-457.2. Upon the licensee's failure to pay the
10 penalty within 20 days after the order is mailed, postage prepaid, registered and
11 addressed to the licensee's last known place of business, unless the order is stayed by
12 an order of the court of competent jurisdiction or unless the Commissioner has
13 already suspended or revoked the license of the licensee, the Commissioner may
14 revoke the license or may suspend the license for any period."

15

16 I. FORFEITURE OF \$500.00 FOR OFFICER ACTING WITHOUT BOND

17 Section 91. G.S. 58-72-5 reads as rewritten:

18 "§ 58-72-5. Penalty for officer acting without bond.

19 Every person or officer of whom an official bond is required, who presumes to
20 discharge any duty of his office before executing such bond in the manner prescribed
21 by law, is liable to a forfeiture of five hundred dollars (\$500.00) to the use of the
22 State for each attempt so to exercise his office. The clear proceeds of forfeitures
23 provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund
24 in accordance with G.S. 115C-457.2."

25

26 J. CIVIL PENALTY NOT LESS THAN \$100.00 NOR MORE THAN \$500.00 FOR
27 VIOLATING MANUFACTURED HOMES WARRANTIES LAW

28 Section 92. G.S. 143-143.13(c) reads as rewritten:

29 "(c) In addition to the authority to deny, suspend, or revoke a license under this
30 Article, the Board also has the authority to impose a civil penalty upon any person
31 violating the provisions of this Article. Upon a finding by the Board of a violation of
32 this Article, the Board shall direct the payment of a penalty of not less than one
33 hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00). In
34 determining the amount of the penalty, the Board shall consider the degree and
35 extent of harm caused by the violation, the amount of money that inured to the
36 benefit of the violator as a result of the violation, whether the violation was
37 committed willfully, and the prior record of the violator in complying or failing to
38 comply with laws, rules, or orders applicable to the violator. Each day during which
39 a violation occurs shall constitute a separate offense. The penalty shall be payable to
40 the Board, ~~which shall then forward the clear proceeds of which to the State~~
41 ~~Treasurer for deposit in the General Fund of the State.~~ Board. The Board shall remit
42 the clear proceeds of penalties provided for in this subsection to the Civil Penalty and
43 Forfeiture Fund in accordance with G.S. 115C-457.2.

1 Payment of the civil penalty under this section shall be in addition to payment of
2 any other penalty for a violation of the criminal laws of this State. Nothing in this
3 subsection shall prevent the Board from negotiating a mutually acceptable agreement
4 with any person as to the status of the person's license or certificate or as to any civil
5 penalty."

6
7 **K. CIVIL PENALTIES NOT TO EXCEED \$1,000 PER VIOLATION IMPOSED**
8 **FOR VIOLATIONS OF THE UNIFORM STANDARDS FOR MANUFACTURED**
9 **HOMES**

10 Section 93. G.S. 143-151(a) reads as rewritten:

11 "(a) Whoever violates (i) the provisions of this Article; or (ii) any rules
12 promulgated under this Article, shall be liable for civil penalty not to exceed one
13 thousand dollars (\$1,000) for each violation. Each such violation shall constitute a
14 separate violation with respect to each manufactured home or with respect to each
15 failure or refusal to allow or perform an act required thereby, except that the
16 maximum civil penalty may not exceed one million dollars (\$1,000,000) for any
17 related series of violations occurring within one year from the date of the first
18 violation. The clear proceeds of civil penalties provided for in this section shall be
19 remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S.
20 115C-457.2."

21
22 **PART VII. DEPARTMENT OF JUSTICE**

23 **A. CIVIL PENALTY OF \$100.00 IMPOSED AGAINST JUDGMENT CREDITOR**
24 **FAILING TO FILE NOTICE OF RECEIPT OF PAYMENT WITH CLERK OF**
25 **SUPERIOR COURT**

26 Section 94. G.S. 1-239(c) reads as rewritten:

27 "(c) Upon receipt by the judgment creditor of any payment of money upon a
28 judgment, the judgment creditor shall within 60 days after receipt of the payment give
29 satisfactory notice thereof to the clerk of the superior court in which the judgment
30 was rendered, and the clerk shall thereafter promptly enter the payment on the
31 judgment docket of the court, and the clerk shall immediately forward a certificate
32 thereof to the clerk of the superior court of each county to whom a transcript of the
33 judgment has been sent, and the clerk of each superior court shall thereafter
34 promptly enter the same on the judgment docket of the court and file the original
35 with the judgment roll in the action. If the judgment creditor fails to file the notice
36 required by this subsection within 30 days following written demand by the debtor,
37 he may be required to pay a civil penalty of one hundred dollars (\$100.00) in
38 addition to attorneys' fees and any loss caused to the debtor by such failure. The
39 clear proceeds of civil penalties provided for in this section shall be remitted to the
40 Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

41
42 **B. FINE NOT TO EXCEED \$2,000 PAID TO COURT FOR UNLAWFULLY**
43 **WITHHOLDING TITLE TO AN OFFICE (QUO WARRANTO)**

44 Section 95. G.S. 1-527 reads as rewritten:

1 "§ 1-527. Judgment in such actions.

2 In every such case judgment shall be rendered upon the right of the defendant, and
3 also upon the right of the party alleged to be entitled, or only upon the right of the
4 defendant, as justice requires. When the defendant, whether a natural person or
5 corporation, against whom the action has been brought, is adjudged guilty of usurping
6 or intruding into, or unlawfully holding or exercising any office, franchise or
7 privilege, judgment shall be rendered that the defendant be excluded from such
8 office, franchise or privilege, and also that the plaintiff recover costs against him. The
9 court may also, in its discretion, fine the defendant a sum not exceeding two
10 thousand dollars (\$2000). The clear proceeds of the fine shall be remitted to the Civil
11 Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

12
13 **C. COURT MAY ASSESS CIVIL PENALTIES AGAINST ANYONE OPERATING**
14 **A PYRAMID OR CHAIN SCHEME IN VIOLATION OF LOTTERY AND GAMING**
15 **LAWS**

16 Section 96. G.S. 14-291.2(c) reads as rewritten:

17 "(c) Any judge of the superior court shall have jurisdiction, upon petition by the
18 Attorney General of North Carolina or district attorney of the superior court, to
19 enjoin, as an unfair or deceptive trade practice, the continuation of the scheme
20 described in subsection (a); in such proceeding the court may assess civil penalties
21 and attorneys' fees to the Attorney General or the District Attorney pursuant to G.S.
22 75-15.2 and 75-16.1; and the court may appoint a receiver to secure and distribute
23 assets obtained by any defendant through participation in any such scheme. The
24 clear proceeds of civil penalties provided for in this subsection shall be remitted to
25 the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

26
27 **D. CIVIL PENALTIES NOT TO EXCEED \$25,000 ASSESSED FOR VIOLATIONS**
28 **OF THE INVENTION DEVELOPMENT SERVICES LAW**

29 Section 97. G.S. 66-216 reads as rewritten:

30 "§ 66-216. Enforcement.

31 The Attorney General shall enforce this Article and may recover a civil penalty
32 not to exceed twenty-five thousand dollars (\$25,000) for each violation of this Article
33 and may seek equitable relief to restrain the violation of this Article. The clear
34 proceeds of civil penalties provided for in this section shall be remitted to the Civil
35 Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

36
37 **E. CIVIL PENALTIES OF NOT MORE THAN \$2,000 ASSESSED FOR**
38 **VIOLATION OF LAWS AND REGULATIONS GOVERNING PRIVATE**
39 **PROTECTIVE SERVICES**

40 Section 98. G.S. 74C-17(c) reads as rewritten:

41 "(c) In lieu of revocation or suspension of a license or permit under G.S. 74C-12,
42 a civil penalty of not more than two thousand dollars (\$2,000) may be assessed by the
43 Board against any person or business who violates any provision of this Chapter or
44 any rule of the Board adopted pursuant to this Chapter. In determining the amount

1 of any penalty, the Board shall consider the degree and extent of harm caused by the
2 violation. The clear proceeds of civil penalties provided for in this subsection shall
3 be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S.
4 115C-457.2."

5
6 **F. CIVIL PENALTIES OF NOT MORE THAN \$5,000 ASSESSED BY THE**
7 **COURTS FOR KNOWING VIOLATIONS OF MONOPOLIES, TRUSTS, AND**
8 **CONSUMER PROTECTION LAWS OR RELATED COURT ORDERS**

9 Section 99. G.S. 75-15.2 reads as rewritten:

10 **"§ 75-15.2. Civil penalty.**

11 In any suit instituted by the Attorney General, in which the defendant is found to
12 have violated G.S. 75-1.1 and the acts or practices which constituted the violation
13 were, when committed, knowingly violative of a statute, the court may, in its
14 discretion, impose a civil penalty against the defendant of up to five thousand dollars
15 (\$5,000) for each violation. In any action brought by the Attorney General pursuant
16 to this Chapter in which it is shown that an action or practice when committed was
17 specifically prohibited by a court order, the Court may, in its discretion, impose a
18 civil penalty of up to five thousand dollars (\$5,000) for each violation. Civil penalties
19 may be imposed in a new action or by motion in an earlier action, whether or not
20 such earlier action has been concluded. In determining the amount of the civil
21 penalty, the court shall consider all relevant circumstances, including, but not limited
22 to, the extent of the harm caused by the conduct constituting a violation, the nature
23 and persistence of such conduct, the length of time over which the conduct occurred,
24 the assets, liabilities, and net worth of the person, whether corporate or individual,
25 and any corrective action taken by the defendant. ~~Any penalty so assessed shall be~~
26 ~~paid to the General Fund of the State of North Carolina.~~ The clear proceeds of
27 penalties so assessed shall be remitted to the Civil Penalty and Forfeiture Fund in
28 accordance with G.S. 115C-457.2."

29
30 **G. FINE UP TO \$2,000 PER PERSON FOR LENDER REQUIRING BORROWER**
31 **TO DEAL WITH A PARTICULAR INSURER OR FOR APPROVING INSURER ON**
32 **DISCRIMINATORY BASIS**

33 Section 100. G.S. 75-19 reads as rewritten:

34 **"§ 75-19. Violators subject to fine and injunction.**

35 The superior court, on complaint by any person that G.S. 75- 17 or 75-18 is being
36 violated, may issue an injunction against such violation and may fine all persons,
37 firms, corporations, and officers, directors, trustees, agents, employees, or affiliates of
38 such up to two thousand dollars (\$2,000) per person for such violation. In event of a
39 disregard of such injunction or other court order, the superior court shall hold such
40 parties in contempt and prescribe such further penalties as the court in its discretion
41 shall so determine. The clear proceeds of fines provided for in this section shall be
42 remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S.
43 115C-457.2."

H. CIVIL PENALTY NOT TO EXCEED \$2,000 FOR DEBT COLLECTORS WHO ATTEMPT TO COLLECT DEBTS IN UNAUTHORIZED MANNER

Section 101. G.S. 75-56 reads as rewritten:

"§ 75-56. Application.

The specific and general provisions of this Article shall exclusively constitute the unfair or deceptive acts or practices proscribed by G.S. 75-1.1 in the area of commerce regulated by this Article. Notwithstanding the provisions of G.S. 75-15.2 and 75-16, in private actions or actions instituted by the Attorney General, civil penalties in excess of two thousand dollars (\$2,000) shall not be imposed, nor shall damages be trebled for any violation under this Article. The clear proceeds of civil penalties imposed in actions instituted by the Attorney General shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

I. CIVIL PENALTY OF \$1,000 FOR KNOWINGLY INDUCING OR ATTEMPTING TO INDUCE SOMEONE TO VIOLATE THE MOTOR FUEL MARKETING ACT

Section 102. G.S. 75-83 reads as rewritten:

"§ 75-83. Unlawful inducement; civil penalty.

It shall be unlawful to knowingly induce, or to knowingly attempt to induce, a violation of this Article, whether by otherwise lawful or unlawful means. In any action initiated by the Attorney General, anyone found to have violated this provision shall be subject to the civil penalty applicable to the sales made in violation of this Article; or, if no sales were made, to a civil penalty of one thousand dollars (\$1,000). The clear proceeds of any civil penalties imposed in any actions initiated by the Attorney General under this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

J. CIVIL PENALTY OF NOT MORE THAN \$1,000 PER OFFENSE FOR ESTABLISHING A PRICE IN VIOLATION OF THE MOTOR FUEL MARKETING ACT

Section 103. G.S. 75-84 reads as rewritten:

"§ 75-84. Separate offenses; injunctions.

Each act of establishing a price in violation of this Article shall constitute a separate offense by the seller and the civil penalty for each offense shall be not more than one thousand dollars (\$1,000). Upon a proper showing by the Attorney General or his delegate, further violations may be temporarily or permanently enjoined.

The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

K. ATTORNEY GENERAL MAY SEEK CIVIL PENALTIES FOR VIOLATIONS OF THE MOTOR FUEL MARKETING ACT

Section 104. G.S. 75-85 reads as rewritten:

"§ 75-85. Investigations by Attorney General.

1 The Attorney General is authorized to investigate any allegation of a violation of
2 this Article made by a motor fuel merchant or by an association or group of motor
3 fuel merchants. If an investigation discloses a violation, the Attorney General may
4 exercise the authority under this Article to seek an injunction and he may also seek
5 civil penalties. The clear proceeds of civil penalties provided for in this section shall
6 be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S.
7 115C-457.2."

8
9 **L. CIVIL PENALTIES OF NOT MORE THAN \$100,000 ASSESSED BY THE**
10 **COURTS FOR UNLAWFUL ACTIVITIES IN CONNECTION WITH CERTAIN**
11 **CORPORATE TRANSACTIONS; COURT MAY TREBLE PENALTY IF CONDUCT IS**
12 **WILLFUL**

13 Section 105. G.S. 75E-5 reads as rewritten:

14 **"§ 75E-5. Civil penalties.**

15 In any suit instituted by the Attorney General in which the defendant is found to
16 have violated G.S. 75E-2, the court may, in its discretion, impose a civil penalty
17 against the defendant of not more than one hundred thousand dollars (\$100,000) for
18 each violation; provided that, if the court shall determine that such violation was
19 willful, it may in its discretion treble such penalty; provided, further, that in either of
20 the foregoing circumstances, the court may in its discretion award to the Attorney
21 General costs and reasonable attorneys' fees. ~~Any penalty assessed pursuant to this~~
22 ~~section shall be paid to the General Fund of the State of North Carolina. The clear~~
23 ~~proceeds of any penalty assessed pursuant to this section shall be remitted to the Civil~~
24 ~~Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."~~

25
26 **M. CIVIL PENALTIES AND FORFEITURE OF PERSONAL AND REAL**
27 **PROPERTY AUTHORIZED IN NUISANCE ACTIONS**

28 Section 106. G.S. 19-6 reads as rewritten:

29 **"§ 19-6. Civil penalty; forfeiture; accounting; lien as to expenses of abatement;**
30 **invalidation of lease.**

31 Lewd matter is contraband, and there are no property rights therein. All personal
32 property, including all money and other considerations, declared to be a nuisance
33 under the provisions of G.S. 19-1.3 and other sections of this Article, are subject to
34 forfeiture to the local government and are recoverable as damages in the county
35 wherein such matter is sold, exhibited or otherwise used. Such property including
36 moneys may be traced to and shall be recoverable from persons who, under G.S.
37 19-2.4, have knowledge of the nuisance at the time such moneys are received by
38 them.

39 Upon judgment against the defendant or defendants in legal proceedings brought
40 pursuant to this Article, an accounting shall be made by such defendant or
41 defendants of all moneys received by them which have been declared to be a
42 nuisance under this Article. An amount equal to the sum of all moneys estimated to
43 have been taken in as gross income from such unlawful commercial activity shall be
44 forfeited to the general funds of the city and county governments wherein such

1 activity took place, to be shared equally, as a forfeiture of the fruits of an unlawful
2 enterprise, and as partial restitution for damages done to the public welfare;
3 provided, however, that no provision of this Article shall authorize the recovery of
4 any moneys or gross income received from the sale of any book, magazine, or
5 exhibition of any motion picture prior to the issuance of a preliminary injunction.
6 Where the action is brought pursuant to this Article, special injury need not be
7 proven, and the costs of abatement are a lien on both the real and personal property
8 used in maintaining the nuisance. Costs of abatement include, but are not limited to,
9 reasonable attorney's fees and court costs.

10 If it is judicially found after an adversary hearing pursuant to this Article that a
11 tenant or occupant of a building or tenement, under a lawful title, uses such place for
12 the purposes of lewdness, assignation, prostitution, gambling, sale or possession of
13 illegal alcoholic beverages or substances proscribed under the North Carolina
14 Controlled Substances Act, such use makes void the lease or other title under which
15 he holds, at the option of the owner, and, without any act of the owner, causes the
16 right of possession to revert and vest in such owner.

17 The clear proceeds of civil penalties and forfeitures provided for in this section,
18 except for penalties and properties that accrue to local governments instead of the
19 State, shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with
20 G.S. 115C-457.2."

21

22 PART VIII. DEPARTMENT OF LABOR

23 A. CIVIL PENALTIES PURSUANT TO G.S. 95-25.23 FOR PERSONS REQUIRED 24 TO COMPLY WITH FAIR LABOR STANDARDS ACT WHO VIOLATE N.C. YOUTH 25 EMPLOYMENT LAW/YOUTH EMPLOYMENT -- CIVIL PENALTIES NOT TO 26 EXCEED \$250.00 PER VIOLATION ASSESSED AGAINST EMPLOYERS FOR 27 VIOLATING YOUTH EMPLOYMENT LAWS

28 Section 107. G.S. 95-25.23(c) reads as rewritten:

29 ~~"(c) Sums collected under this section by the Commissioner shall be paid into the~~
30 ~~General Fund of the State treasury. The clear proceeds of civil penalties provided~~
31 ~~for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in~~
32 ~~accordance with G.S. 115C-457.2."~~

33

34 B. CIVIL PENALTY OF UP TO \$250.00 PER EMPLOYEE NOT TO EXCEED 35 \$1,000 PER INVESTIGATION FOR VIOLATING RECORD-KEEPING 36 REQUIREMENTS OF WAGE AND HOUR ACT

37 Section 108. G.S. 95-25.23A(c) reads as rewritten:

38 ~~"(c) Sums collected under this section by the Commissioner shall be paid into the~~
39 ~~General Fund. The clear proceeds of civil penalties provided for in this section shall~~
40 ~~be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S.~~
41 ~~115C-457.2."~~

42

43 C. PRIVATE PERSONNEL SERVICES -- FINES UP TO \$250.00 AND CIVIL 44 PENALTIES NOT LESS THAN \$50.00 NOR MORE THAN \$100.00 PER DAY, UP

1 TO \$2,000 IMPOSED UPON SERVICES WHICH VIOLATE LAW OR RULES OR
2 OPERATES WITHOUT A LICENSE/CIVIL PENALTIES (LIKE THAT IMPOSED IN
3 G.S. 95-47.9(e)) IMPOSED FOR OPERATING A JOB-LISTING SERVICE WITHOUT
4 A VALID LICENSE

5 Section 109. G.S. 95-47.9(e) reads as rewritten:

6 "(e) Any person who operates as a private personnel service without first
7 obtaining the appropriate license (i) shall be guilty of a Class 1 misdemeanor; and (ii)
8 be subject to a civil penalty of not less than fifty dollars (\$50.00) nor more than one
9 hundred dollars (\$100.00) for each day the private personnel service operates without
10 a license, the penalty not to exceed a total of two thousand dollars (\$2,000). Actions
11 to recover civil penalties shall be initiated by the Attorney General ~~and any such~~
12 ~~penalties collected shall be deposited to the general fund.~~ General. The clear
13 proceeds of civil penalties provided for in this section shall be remitted to the Civil
14 Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

15

16 D. CIVIL PENALTIES NOT TO EXCEED \$1,000 PER DAY OR NOT TO
17 EXCEED \$1,000 ASSESSED FOR VIOLATIONS OF THE AMUSEMENT DEVICE
18 SAFETY ACT

19 Section 110. G.S. 95-111.4(17) reads as rewritten:

20 "(17) To order the payment of all civil penalties provided by this Article.
21 Funds The clear proceeds of funds collected pursuant to a civil
22 penalty order shall be ~~deposited with the State Treasurer;~~ remitted
23 to the Civil Penalty and Forfeiture Fund in accordance with G.S.
24 115C-457.2; and".

25

26 E. OSHA -- CIVIL PENALTIES OF \$7,000 AND CIVIL PENALTIES NOT LESS
27 THAN \$5,000 NOR GREATER THAN \$70,000 ASSESSED AGAINST EMPLOYERS
28 FOR OSHA VIOLATIONS

29 Section 111. G.S. 95-138(b) reads as rewritten:

30 "(b) ~~All~~ The clear proceeds of all civil penalties and interest recovered by the
31 Commissioner, together with the costs thereof, shall be ~~paid into the general fund of~~
32 ~~the State treasury.~~ remitted to the Civil Penalty and Forfeiture Fund in accordance
33 with G.S. 115C-457.2."

34

35 F. CIVIL PENALTIES OF NOT MORE THAN \$1,000 ASSESSED FOR
36 VIOLATIONS OF THE LAWS CONCERNING IDENTIFICATION OF TOXIC OR
37 HAZARDOUS SUBSTANCES/CIVIL PENALTIES (AS PROVIDED IN G.S. 95-195(c))
38 ASSESSED AGAINST EMPLOYER WHICH REFUSES TO LIST CHEMICALS USED
39 OR STORED AT THE EMPLOYMENT FACILITY

40 Section 112. G.S. 95-195(c) reads as rewritten:

41 "(c) If the Commissioner of Labor finds that the employer violated this Article, the
42 Commissioner shall order the employer to comply within 14 days following receipt of
43 written notification of the violation. Employers not complying within 14 days
44 following receipt of written notification of a violation shall be subject to civil

1 penalties of not more than one thousand dollars (\$1,000) per violation imposed by
2 the Commissioner of Labor. There shall be a separate offense for each day the
3 violation continues. The clear proceeds of civil penalties provided for in this section
4 shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S.
5 115C-457.2."

6
7 **G. CONTROLLED SUBSTANCES EXAMINATION ACT -- CIVIL PENALTY UP**
8 **TO \$250.00 PER EXAMINEE NOT TO EXCEED \$1,000 PER INVESTIGATION**
9 **ASSESSED AGAINST EXAMINEES WHO VIOLATE CSE ACT**

10 Section 113. G.S. 95-234(c) reads as rewritten:

11 ~~"(c) Sums collected under this section by the Commissioner shall be paid into the~~
12 ~~General Fund. The clear proceeds of civil penalties provided for in this section shall~~
13 ~~be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S.~~
14 ~~115C-457.2."~~

15
16 **H. \$25.00 CIVIL PENALTY FOR EMPLOYER FAILING TO NOTIFY THE**
17 **INDUSTRIAL COMMISSION AND EMPLOYEE WHEN WORKERS'**
18 **COMPENSATION FINAL PAYMENT HAS BEEN MADE**

19 Section 114. G.S. 97-18(h) reads as rewritten:

20 "(h) Within 16 days after final payment of compensation has been made, the
21 employer shall send to the Commission and the employee a notice, in accordance
22 with a form prescribed by the Commission, stating that such final payment has been
23 made, the total amount of compensation paid, the name of the employee and of any
24 other person to whom compensation has been paid, the date of the injury or death,
25 and the date to which compensation has been paid. If the employer fails to so notify
26 the Commission or the employee within such time, the Commission shall assess
27 against such employer a civil penalty in the amount of twenty-five dollars (\$25.00).
28 The clear proceeds of civil penalties assessed pursuant to this section shall be
29 remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S.
30 115C-457.2."

31
32 **I. INDUSTRIAL COMMISSION -- CIVIL PENALTIES OF \$1.00 PER**
33 **EMPLOYEE, BUT NOT LESS THAN \$50.00 NOR MORE THAN \$100.00 PER DAY**
34 **ASSESSED FOR EMPLOYER'S FAILURE TO SECURE THE PAYMENT OF**
35 **COMPENSATION**

36 Section 115. G.S. 97-94(b) reads as rewritten:

37 "(b) Any employer required to secure the payment of compensation under this
38 Article who refuses or neglects to secure such compensation shall be punished by a
39 penalty of one dollar (\$1.00) for each employee, but not less than fifty dollars
40 (\$50.00) nor more than one hundred dollars (\$100) for each day of such refusal or
41 neglect, and until the same ceases; and the employer shall be liable during
42 continuance of such refusal or neglect to an employee either for compensation under
43 this Article or at law at the election of the injured employee.

1 The penalty herein provided may be assessed by the Industrial Commission
2 administratively, with the right to a hearing if requested within 30 days after notice of
3 the assessment of the penalty and the right of review and appeal as in other cases.
4 Enforcement of the penalty shall be made by the Office of the Attorney General. The
5 clear proceeds of penalties provided for in this subsection shall be remitted to the
6 Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

8 PART IX. DEPARTMENT OF REVENUE

9 A. CIVIL PENALTY OF \$100.00 AND \$1,000 FOR DISCIPLINARY 10 EMPLOYMENT ACTION AGAINST DEBTOR WHO HAS MONEY WITHHELD

11 Section 116. G.S. 105B-4(b) reads as rewritten:

12 "(b) A payor shall not discharge from employment, refuse to employ, or otherwise
13 take disciplinary action against any debtor because of the withholding. When a court
14 finds that a payor has taken any of these actions, the payor shall be liable for a civil
15 ~~penalty to be paid to the county school fund. penalty.~~ For a first offense, the civil
16 penalty shall be one hundred dollars (\$100.00). For second and third offenses, the
17 civil penalty shall be five hundred dollars (\$500.00) and one thousand dollars
18 (\$1,000), respectively. Any payor who violates any provision of this paragraph shall
19 be liable in a civil action for reasonable damages suffered by a debtor as a result of
20 the violation, and a debtor discharged or demoted in violation of this paragraph shall
21 be entitled to be reinstated to his former position. The statute of limitations for
22 actions under this subsection shall be one year pursuant to G.S. 1-54.

23 The clear proceeds of civil penalties provided for in this section shall be remitted
24 to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

26 PART X. SECRETARY OF STATE

27 A. CIVIL PENALTY OF \$10.00 PER DAY NOT TO EXCEED \$1,000 AGAINST 28 FOREIGN CORPORATIONS TRANSACTING BUSINESS WITHOUT AUTHORITY

29 Section 117. G.S. 55-15-02(d) reads as rewritten:

30 "(d) A foreign corporation failing to obtain a certificate of authority as required
31 by this Chapter or by prior acts then applicable shall be liable to the State for the
32 years or parts thereof during which it transacted business in this State without a
33 certificate of authority in an amount equal to all fees and taxes which would have
34 been imposed by law upon such corporation had it duly applied for and received
35 such permission, plus interest and all penalties imposed by law for failure to pay such
36 fees and taxes. In addition, the foreign corporation shall be liable for a civil penalty
37 of ten dollars (\$10.00) for each day, but not to exceed a total of one thousand dollars
38 (\$1,000) for each year or part thereof, it transacts business in this State without a
39 certificate of authority. The Attorney General may bring actions to recover all
40 amounts due the State under the provisions of this subsection.

41 The clear proceeds of civil penalties provided for in this subsection shall be
42 remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S.
43 115C-457.2."

1 **B. CIVIL PENALTY OF \$10.00 PER DAY NOT TO EXCEED \$1,000 AGAINST**
2 **FOREIGN CORPORATIONS FOR CONDUCTING AFFAIRS WITHOUT**
3 **AUTHORITY**

4 Section 118. G.S. 55A-15-02(b) reads as rewritten:

5 "(b) A foreign corporation failing to obtain a certificate of authority as required
6 by this Chapter or by prior acts then applicable shall be liable to the State for the
7 years or parts thereof during which it conducted affairs in this State without a
8 certificate of authority in an amount equal to all fees and taxes which would have
9 been imposed by law upon the corporation had it duly applied for and received such
10 permission, plus interest and all penalties imposed by law for failure to pay such fees
11 and taxes. In addition, the foreign corporation shall be liable for a civil penalty of
12 ten dollars (\$10.00) for each day, but not to exceed a total of one thousand dollars
13 (\$1,000) for each year or part thereof, it conducts affairs in this State without a
14 certificate of authority. The Attorney General may bring actions to recover all
15 amounts due the State under the provisions of this subsection. The clear proceeds of
16 civil penalties provided for in this subsection shall be remitted to the Civil Penalty
17 and Forfeiture Fund in accordance with G.S. 115C-457.2."

18

19 **C. CIVIL PENALTY OF \$10.00 PER DAY NOT TO EXCEED \$1,000 PER YEAR**
20 **AGAINST FOREIGN LLCs FOR TRANSACTING BUSINESS WITHOUT**
21 **AUTHORITY**

22 Section 119. G.S. 57C-7-03(b) reads as rewritten:

23 "(b) A foreign limited liability company failing to obtain a certificate of authority
24 as required by this Chapter shall be liable to the State for the years or parts thereof
25 during which it transacted business in this State without a certificate of authority in
26 an amount equal to all fees and taxes which would have been imposed by law upon
27 the foreign limited liability company had it duly applied for and received such
28 permission, plus interest and all penalties imposed by law for failure to pay such fees
29 and taxes. In addition, the foreign limited liability company shall be liable for a civil
30 penalty of ten dollars (\$10.00) for each day, but not to exceed a total of one thousand
31 dollars (\$1,000) for each year or part thereof, it transacts business in this State
32 without a certificate of authority. The Attorney General may bring actions to recover
33 all amounts due the State under the provisions of this subsection. The clear proceeds
34 of civil penalties provided for in this subsection shall be remitted to the Civil Penalty
35 and Forfeiture Fund in accordance with G.S. 115C-457.2."

36

37 **D. SECURITIES DIVISION -- CIVIL PENALTIES UP TO \$2,500 OR \$25,000**
38 **ASSESSED FOR SINGLE OR MULTIPLE VIOLATIONS OF SECURITIES ACT**

39 Section 120. G.S. 78A-47(c) reads as rewritten:

40 "(c) The Administrator may issue an order against an applicant, registered person,
41 or other person who willfully violates this Chapter or a rule or order of the
42 Administrator under this Chapter:

43 (1) Imposing a civil penalty of up to two thousand five hundred
44 dollars (\$2,500) 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; and

(2) Requiring reimbursement of the costs of investigation.

The clear proceeds of civil penalties imposed under this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Any ~~civil penalty or~~ reimbursement imposed under this subsection shall be paid into the General Fund. No order under this subsection may be entered without prior notice and an opportunity for a hearing conducted pursuant to Article 3 of Chapter 150B of the General Statutes."

E. SECURITIES DIVISION -- CIVIL PENALTIES UP TO \$2,500 OR \$25,000 ASSESSED FOR WILLFUL VIOLATIONS OF THE INVESTMENT ADVISORS ACT OR RELATED RULES AND ORDERS

Section 121. G.S. 78C-28(c) reads as rewritten:

"(c) The Administrator may issue an order against an applicant, registered person, or other person who willfully violates this Chapter or a rule or order of the Administrator under this Chapter:

(1) Imposing a civil penalty of up to two thousand five hundred dollars (\$2,500) 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; and

(2) Requiring reimbursement of the costs of investigation.

The clear proceeds of civil penalties imposed under this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Any ~~civil penalty or~~ reimbursement imposed under this subsection shall be paid into the General Fund. No order authorized by this subsection may be entered without prior notice of an opportunity for a hearing conducted pursuant to Article 3 of Chapter 150B of the General Statutes."

F. SECURITIES DIVISION -- CIVIL PENALTIES UP TO \$2,500 OR \$25,000 ASSESSED FOR WILLFUL VIOLATING INVESTMENT ADVISORS ACT CONCERNING REGULATION OF ATHLETE AGENT OR RELATED RULES AND ORDERS

Section 122. (a) G.S. 78C-79 is amended by adding a new subsection to read:

"(d) The clear proceeds of civil penalties imposed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

(b) G.S. 78C-74 reads as rewritten:

"§ 78C-74. Disposition of fees.

Fees Except as otherwise provided, fees and other funds received under this Article by the Secretary of State shall be deposited in the State treasury to the credit of the General Fund."

G. SECURITIES DIVISION -- CIVIL PENALTIES NOT TO EXCEED \$25,000 OR \$50,000 ASSESSED FOR VIOLATION OF THE COMMODITIES ACT

Section 123. G.S. 78D-22(a) reads as rewritten:

"(a) If the Administrator believes, whether or not based upon an investigation conducted under G.S. 78D-21 that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this Chapter or any rule or order hereunder, the Administrator may:

(1) Issue a cease and desist order;

(2) Issue an order imposing a civil penalty in an amount which may not exceed twenty-five thousand dollars (\$25,000) for any single violation or five hundred thousand dollars (\$500,000) for multiple violations in a single proceeding or a series of related proceedings;

(3) Issue an order requiring reimbursement of the costs of investigation; or

(4) Initiate any of the actions specified in subsection (b) of this section.

The clear proceeds of civil penalties imposed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Any ~~civil penalty~~ or reimbursement of costs imposed by this subsection shall be paid to the General Fund."

H. CIVIL PENALTY IMPOSED AT THE COURT'S DISCRETION NOT TO EXCEED \$25,000 OR \$500,000 FOR VIOLATING COMMODITIES ACT

Section 124. G.S. 78D-23(a) reads as rewritten:

"(a) (1) Upon a proper showing by the Administrator that a person has violated, or is about to violate, any provision of this Chapter or any rule or order of the Administrator, any court of competent jurisdiction may grant appropriate legal or equitable remedies.

(2) Upon showing of violation of this Chapter or a rule or order of the Administrator, the court, in addition to traditional legal and equitable remedies, including temporary restraining orders, permanent or temporary prohibitory or mandatory injunctions, and writs of prohibition or mandamus, may grant the following special remedies:

a. Imposition of a civil penalty in an amount which may not exceed twenty-five thousand dollars (\$25,000) for any single violation or five hundred thousand dollars (\$500,000) for multiple violations in a single proceeding or a series of related proceedings;

b. Disgorgement;

c. Declaratory judgment;

d. Restitution to investors wishing restitution; and

e. Appointment of a receiver or conservator for the defendant or the defendant's assets.

(3) Appropriate remedies when the defendant is shown only about to violate this Chapter or a rule or order of the Administrator shall be limited to:

- a. A temporary restraining order;
- b. A temporary or permanent injunction;
- c. A writ of prohibition or mandamus; or
- d. An order appointing a receiver or conservator for the defendant or the defendant's assets.

The clear proceeds of civil penalties imposed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

I. CIVIL PENALTY OF \$5,000 OR \$25,000 FOR WILLFUL VIOLATION OF PROVISIONS CONCERNING BOXING IN STATE

Section 125. G.S. 143-658(a) reads as rewritten:

"(a) Civil Penalties. -- The 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.

The clear proceeds of civil penalties imposed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

PART XI. UTILITIES COMMISSION

A. UNSPECIFIED CIVIL PENALTY FOR VIOLATING SAFETY STANDARDS FOR GAS PIPELINE FACILITIES. MAXIMUM AMOUNT OF PENALTY NOT TO EXCEED THE MAXIMUM AMOUNT IF PENALTY HAD BEEN IMPOSED BY SECRETARY OF U.S. DEPARTMENT OF TRANSPORTATION UNDER 49 U.S.C. APPROXIMATELY § 1679a(a)/ FORFEITURE OF \$1,000 BY PUBLIC UTILITIES FOR PROVIDING UNAUTHORIZED SERVICES OR FOR FAILURE TO PROVIDE SERVICES AS AUTHORIZED

Section 126. G.S. 62-302(d) reads as rewritten:

"(d) Use of Proceeds. -- A special fund in the office of State Treasurer, the Utilities Commission and Public Staff Fund, is created. The fees collected pursuant to this section and all other funds received by the Commission or the Public Staff Staff, except for the clear proceeds of civil penalties collected pursuant to G.S. 62-50(d) and the clear proceeds of funds forfeited pursuant to G.S. 62-310(a), shall be deposited in the Utilities Commission and Public Staff Fund. The Fund shall be placed in an interest bearing account and any interest or other income derived from

1 the Fund shall be credited to the Fund. Monies in the Fund shall only be spent
2 pursuant to appropriation by the General Assembly.

3 The Utilities Commission and Public Staff Fund shall be subject to the provisions
4 of the Executive Budget Act except that no unexpended surplus of the Fund shall
5 revert to the General Fund. All funds credited to the Utilities Commission and
6 Public Staff Fund shall be used only to pay the expenses of the Commission and the
7 Public Staff in regulating public utilities in the interest of the public as provided by
8 this Chapter.

9 The clear proceeds of civil penalties collected pursuant to G.S. 62-50(d) and the
10 clear proceeds of funds forfeited pursuant to G.S. 62-310(a) shall be remitted to the
11 Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

12 13 **PART XII. ALARM SYSTEM LICENSING BOARD**

14 **A. CIVIL PENALTY OF NOT MORE THAN \$2,000 FOR VIOLATIONS OF** 15 **ALARM SYSTEMS LICENSING ACT OR RULES OF ALARM SYSTEMS** 16 **LICENSING BOARD**

17 Section 127. G.S. 74D-11(d) reads as rewritten:

18 "(d) In lieu of revocation of suspension of a license or registration under G.S.
19 74D-10, a civil penalty of not more than two thousand dollars (\$2,000) may be
20 assessed by the Board against any person who violates any provision of this Chapter,
21 or any rule of the Board adopted pursuant to this Chapter. In determining the
22 amount of any penalty, the Board shall consider the degree and extent of harm
23 caused by the violation. ~~All~~ The clear proceeds of all penalties collected under this
24 section ~~will be deposited in the General Fund.~~ shall be remitted to the Civil Penalty
25 and Forfeiture Fund in accordance with G.S. 115C-457.2."

26 27 **PART XIII. BOARD OF ARCHITECTURE**

28 **A. CIVIL PENALTY OF NOT MORE THAN \$500.00 PER VIOLATION FOR** 29 **DISHONEST, INCOMPETENT OR UNPROFESSIONAL CONDUCT BY A** 30 **REGISTRANT**

31 Section 128. G.S. 83A-15(b) reads as rewritten:

32 "(b) Actions to recover civil penalties against any registrant may be commenced
33 by the Board pursuant to Chapter 150B of the General Statutes. In determining the
34 amount of any civil penalty, the Board shall consider the degree and extent of harm
35 caused by the violation. ~~Any~~ The clear proceeds of any civil penalty collected
36 hereunder shall be ~~deposited to the General Fund.~~ remitted to the Civil Penalty and
37 Forfeiture Fund in accordance with G.S. 115C-457.2."

38 39 **B. CIVIL PENALTIES NOT TO EXCEED \$500.00 PER DAY AUTHORIZED** 40 **AGAINST NONREGISTERED PERSON OR CORPORATION MISREPRESENTING** 41 **THEMSELVES AS AN ARCHITECT OR PRACTICING ARCHITECTURE**

42 Section 129. G.S. 83A-16(a) reads as rewritten:

43 "(a) Any individual or corporation not registered under this Chapter, who shall
44 wrongfully use the title 'Architect' or represent himself or herself to the public as an

1 architect, or practice architecture as herein defined, or seek to avoid the provisions of
2 this Chapter by the use of any other designation than 'Architect': (i) shall be guilty
3 of a Class 2 misdemeanor; and (ii) be subject to a civil penalty not to exceed five
4 hundred dollars (\$500.00) per day of such violation. Each day of such unlawful
5 practice shall constitute a distinct and separate violation. ~~Any~~ The clear proceeds of
6 any civil penalty collected hereunder shall be deposited to the General Fund.
7 remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S.
8 115C-457.2."

9

10 PART XIV. BOARD OF CPA EXAMINERS

11 A. CIVIL PENALTIES NOT TO EXCEED \$1,000 FOR VIOLATION OF RULES 12 OF PROFESSIONAL CONDUCT

13 Section 130. G.S. 93-12(9) reads as rewritten:

14 "(9) Adoption of Rules of Professional Conduct; Disciplinary Action. --
15 The Board shall have the power to adopt rules of professional
16 ethics and conduct to be observed by certified public accountants
17 in this State. The Board shall have the power to revoke, either
18 permanently or for a specified period, any certificate issued under
19 the provisions of this Chapter to a certified public accountant or to
20 censure the holder of any such certificate or to assess a civil
21 penalty not to exceed one thousand dollars (\$1,000) for any one or
22 combination of the following causes:

- 23 a. Conviction of a felony under the laws of the United States
24 or of any state of the United States.
25 b. Conviction of any crime, an essential element of which is
26 dishonesty, deceit or fraud.
27 c. Fraud or deceit in obtaining a certificate as a certified
28 public accountant.
29 d. Dishonesty, fraud or gross negligence in the public practice
30 of accountancy.
31 e. Violation of any rule of professional ethics and professional
32 conduct adopted by the Board.

33 Any disciplinary action taken shall be in accordance with
34 the provisions of Chapter 150B of the General Statutes. ~~Any~~
35 The clear proceeds of any civil penalty assessed under this
36 section shall be collected by the Board and transferred to
37 the State Treasurer for use in the General Fund. remitted to
38 the Civil Penalty and Forfeiture Fund in accordance with
39 G.S. 115C-457.2."

40

41 PART XV. STATE BOARD OF ELECTIONS

42 A. \$500.00 PENALTY FOR FAILURE OF PRESIDENTIAL ELECTOR TO 43 ATTEND AND VOTE FOR PARTY CANDIDATE

44 Section 131. G.S. 163-212 reads as rewritten:

1 "§ 163-212. Penalty for failure of presidential elector to attend and vote.

2 Any presidential elector having previously signified his consent to serve as such,
3 who fails to attend and vote for the candidate of the political party which nominated
4 such elector, for President and Vice-President of the United States at the time and
5 place directed in G.S. 163-210 (except in case of sickness or other unavoidable
6 accident) shall forfeit and pay to the State five hundred dollars (\$500.00), to be
7 recovered by the Attorney General in the Superior Court of Wake County. In
8 addition to such forfeiture, refusal or failure to vote for the candidates of the political
9 party which nominated such elector shall constitute a resignation from the office of
10 elector, his vote shall not be recorded, and the remaining electors shall forthwith fill
11 such vacancy as hereinbefore provided.

12 The clear proceeds of forfeitures provided for in this section shall be remitted to
13 the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

14

15 **PART XVI. ELECTRICAL CONTRACTORS**

16 **A. CIVIL PENALTIES OF NOT MORE THAN \$1,000 IMPOSED FOR**
17 **VIOLATIONS OF RULES AND REGULATIONS GOVERNING ELECTRICAL**
18 **CONTRACTORS**

19 Section 132. G.S. 87-47 reads as rewritten:

20 "§ 87-47. Penalties imposed by Board; enforcement procedures.

21 (a) Repealed by Session Laws 1989, c. 709, s. 9.

22 (a1) The following activities are prohibited:

- 23 (1) Offering to engage or engaging in electrical contracting without
24 being licensed.
25 (2) Selling, transferring, or assigning a license, regardless of whether
26 for a fee.
27 (3) Aiding or abetting an unlicensed person, partnership, firm, or
28 corporation to offer to engage or to engage in electrical
29 contracting.
30 (4) Being convicted of a crime involving fraud or moral turpitude.
31 (5) Engaging in fraud or misrepresentation to obtain a certification,
32 obtain or renew a license, or practice electrical contracting.
33 (6) Engaging in false or misleading advertising.
34 (7) Engaging in malpractice, unethical conduct, fraud, deceit, gross
35 negligence, gross incompetence, or gross misconduct in the practice
36 of electrical contracting.

37 (a2) The Board may administer one or more of the following penalties if the
38 applicant, licensee, or qualified individual has engaged in any activity prohibited
39 under subsection (a1) of this section:

- 40 (1) Reprimand.
41 (2) Suspension from practice for a period not to exceed 12 months.
42 (3) Revocation of the right to serve as a listed qualified individual on
43 any license issued by the Board.
44 (4) Revocation of license.

(5) Probationary revocation of license or the right to serve as a listed qualified individual on any license issued by the Board, upon conditions set by the Board as the case warrants, and revocation upon failure to comply with the conditions.

(6) Revocation of certification.

(7) Refusal to certify an applicant or a qualified individual.

(8) Refusal to issue a license to an applicant.

(9) Refusal to renew a license.

(a3) In addition to administering a penalty under subsection (a2) of this section, the Board may assess a civil penalty of not more than one thousand dollars (\$1,000) against a licensee or a qualified individual who has engaged in an activity prohibited under subsection (a1) of this section or has violated another provision of this Article or a rule adopted by the Board. ~~Civil~~ The clear proceeds of civil penalties collected under this subsection shall be deposited in the General Fund of North Carolina as nontax revenue. remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

In determining the amount of a civil penalty, the Board shall consider:

(1) The degree and extent of harm to the public safety or to property, or the potential for harm.

(2) The duration and gravity of the violation.

(3) Whether the violation was committed willfully or intentionally, or reflects a continuing pattern.

(4) Whether the violation involved elements of fraud or deception either to the public or to the Board, or both.

(5) The violator's prior disciplinary record with the Board.

(6) Whether and the extent to which the violator profited by the violation.

(a4) Any person, including the Board and its staff on their own initiative, may prefer charges pursuant to this section, and such charges must be submitted in writing to the Board. The Board may, without a hearing, dismiss charges as unfounded or trivial. The Board may issue a notice of violation based on the charges, to be served by a member of the Board's staff or in accordance with Rule 4 of the Rules of Civil Procedure, against any person, partnership, firm, or corporation for engaging in an activity prohibited under subsection (a1) of this section or for a violation of the provisions of this Article or any rule adopted by the Board. The person or other entity to whom the notice of violation is issued may request a hearing by notifying the Board in writing within 20 days after being served with the notice of violation. Hearings shall be conducted by the Board or an administrative law judge pursuant to Article 3A of Chapter 150B of the General Statutes. In conducting hearings, the Board may remove the hearings to any county in which the offense, or any part thereof, was committed if in the opinion of the Board the ends of justice or the convenience of witnesses require such removal.

(a5) If the person or other entity does not request a hearing under subsection (a4) of this section, the Board shall enter a final decision and may impose penalties

1 against the person or other entity. If the person or other entity is not a licensee or a
2 qualified individual, the Board may impose penalties under subsection (a2) of this
3 section. If the person or other entity is a licensee or a qualified individual, the Board
4 may impose penalties under subsection (a2) of this section, subsection (a3) of this
5 section, or both.

6 (b) The Board shall adopt and publish rules, in accordance with Chapter 150B of
7 the General Statutes and consistent with the provisions of this Article, governing the
8 matters contained in this section.

9 (c) The Board shall establish and maintain a system whereby detailed records are
10 kept regarding charges and notices of violation pursuant to this section. This record
11 shall include, for each person, partnership, firm, and corporation charged or notified
12 of a violation, the date and nature of each charge or notice of violation, investigatory
13 action taken by the Board, any findings by the Board, and the disposition of the
14 matter.

15 (d) The Board may reinstate a qualified individual's certification and may
16 reinstate a license after having revoked it, provided that one year has elapsed from
17 revocation until reinstatement and that the vote of the Board for reinstatement is by a
18 majority of its members.

19 The Board shall immediately notify the Secretary of State and the electrical
20 inspectors within the licensee's county of residence upon the revocation of a license
21 or the reissuance of a license which had been revoked.

22 (e) In any case in which the Board is entitled to convene a hearing to consider
23 imposing any penalty provided for in subsection (a2) or (a3) of this section, the Board
24 may accept an offer in compromise of the charge, whereby the accused shall pay to
25 the Board a penalty of not more than one thousand dollars (\$1,000). Penalties The
26 clear proceeds of penalties collected by the Board under this subsection shall be
27 deposited in the General Fund of North Carolina as nontax revenue. remitted to the
28 Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

29

30 PART XVII. BOARD OF EMPLOYEE ASSISTANCE PROFESSIONALS

31 A. CIVIL PENALTY NOT TO EXCEED \$50.00 PER DAY FOR EMPLOYER 32 ASSISTANCE PROFESSIONAL WHO FAILS TO BE LICENSED AS REQUIRED

33 Section 133. G.S. 90-506(c) reads as rewritten:

34 "(c) Civil penalties assessed by the Board pursuant to subdivision (3) of subsection
35 (a) of this section are final 30 days after the date the assessment is served upon the
36 alleged violation, unless the alleged violator seeks review by the Board within that
37 time.

38 The clear proceeds of these civil penalties shall be remitted to the Civil Penalty
39 and Forfeiture Fund in accordance with G.S. 115C-457.2."

40

41 PART XVIII. STATE BOARD OF PROFESSIONAL ENGINEERS AND LAND 42 SURVEYORS

43 A. CIVIL PENALTIES NOT TO EXCEED \$2,000 ASSESSED AGAINST 44 PROFESSIONAL ENGINEERS AND LAND SURVEYORS WHO VIOLATE

1 PROVISIONS OF THE ENGINEERING AND LAND SURVEYING ACT/CIVIL
2 PENALTY ASSESSED AGAINST ENGINEERS AND LAND SURVEYORS WHO
3 COMMIT FRAUD, DECEIT, GROSS NEGLIGENCE, INCOMPETENCE,
4 MISCONDUCT OR VIOLATE THE RULES OF PROFESSIONAL CONDUCT

5 Section 134. G.S. 89C-21(c) reads as rewritten:

6 "(c) The Board may levy a civil penalty not in excess of two thousand dollars
7 (\$2,000) for any engineer or land surveyor who violates any of the provisions of
8 subdivisions (1) through (4) of subsection (a) of this section. All The clear proceeds
9 of all civil penalties collected by the Board, including civil penalties collected
10 pursuant to G.S. 89C-22(c), shall be deposited in the General Fund of North
11 Carolina, remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S.
12 115C-457.2."

13

14 PART XIX. NORTH CAROLINA BOARD FOR LICENSING OF SOIL SCIENTIST

15 A. CIVIL PENALTY NOT TO EXCEED \$1,000 FOR VIOLATION OF SOIL
16 SCIENTIST LICENSING ACT

17 Section 135. G.S. 89F-5(c) reads as rewritten:

18 "(c) The Secretary-Treasurer shall deposit funds received by the ~~Board~~ Board,
19 except for the clear proceeds of civil penalties assessed pursuant to G.S. 89F-20(b), in
20 one or more funds in banks or other financial institutions carrying deposit insurance
21 and authorized to do business in the State. Interest earned on funds may remain in
22 the account and may be expended as authorized by the Board to carry out the
23 provisions of this Chapter. The Board may authorize expenditures deemed necessary
24 to carry out the provisions of this Chapter, and all expenses shall be paid upon the
25 warrant of the Secretary-Treasurer. During any fiscal year, expenditures shall not
26 exceed the revenues of the Board.

27 The clear proceeds of civil penalties shall be remitted to the Civil Penalty and
28 Forfeiture Fund in accordance with G.S. 115C-457.2."

29

30 PART XX. VETERINARY MEDICAL BOARD

31 B. CIVIL PENALTY UP TO \$5,000 AGAINST LICENSED VETERINARIES FOR
32 VIOLATING ARTICLE

33 Section 136. 90-187.8(b) reads as rewritten:

34 "(b) The Board may impose and collect from a licensee a civil monetary penalty
35 of up to five thousand dollars (\$5,000) for each violation of this Article or a rule
36 adopted under this Article. The clear proceeds of these civil penalties shall be
37 remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S.
38 115C-457.2.

39 The amount of the civil penalty, up to the maximum, shall be determined upon a
40 finding of one or more of the following factors:

41 (1) The degree and extent of harm to the public health or to the
42 health of the animal under the licensee's care.

43 (2) The duration and gravity of the violation.

- (3) Whether the violation was committed willfully or intentionally or reflects a continuing pattern.
- (4) Whether the violation involved elements of fraud or deception either to the client or to the Board, or both.
- (5) The prior disciplinary record with the Board of the licensee.
- (6) Whether and the extent to which the licensee profited by the violation.

PART XXI. CAPE FEAR RIVER AND MOREHEAD CITY NAVIGATION AND PILOTAGE COMMISSIONS

A. FINES MAY BE ASSESSED FOR PILOTS WHO VIOLATE RULES OF COMMISSIONS

Section 137. (a) G.S. 76A-5(d) reads as rewritten:

"(d) Fine, License Suspension and Cancellation. -- The Commission shall have the power to fine or call in and suspend or cancel the license of any pilot found to be derelict of duty, in violation of the reasonable rules and regulations as set out by the Commission or for other just cause. Grounds for suspension or cancellation shall include but not be limited to: citation by the Coast Guard and/or Commission for careless or neglectful duty resulting in damage to property or personal harm; absence, neglect of duty, absence from duty for a period longer than four weeks without written submission to and written approval from the Commission chairman; other violations of regulations or in actions found by the Commission to be unduly disruptive of the pilotage and service and/or harmful to person or property.

The clear proceeds of fines levied pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

(b) G.S. 76A-35(d) reads as rewritten:

"(d) Fine, License Suspension and Cancellation. -- The Commission shall have the power to fine or call in and suspend or cancel the license of any pilot found to be derelict of duty, in violation of the reasonable rules and regulations as set out by the Commission or for other just cause. Grounds for suspension or cancellation shall include but not be limited to: citation by the Coast Guard and/or Commission for careless or neglectful duty resulting in damage to property or personal harm; absence, neglect of duty, absence from duty for a period longer than four weeks without written submission to and written approval from the Commission Chairman; other violations of regulations or in actions found by the Commission to be unduly disruptive of the pilotage and service and/or harmful to person or property.

The clear proceeds of fines levied pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

PART XXII. REAL ESTATE COMMISSION

A. \$500.00 PENALTY FOR EACH VIOLATION OF TIME SHARE DEVELOPER LAWS

Section 138. G.S. 93A-54 is amended by adding a new subsection to read:

1 "(a1) The clear proceeds of fines collected pursuant to subsection (a) of this
2 section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with
3 G.S. 115C-457.2."

4
5 **PART XXIII. MISCELLANEOUS PROVISIONS**

6 **EFFECT OF HEADINGS**

7 Section 139. The headings to the parts and sections of this act are a
8 convenience to the reader and are for reference only. The headings do not expand,
9 limit, or define the text of this act, except for effective dates referring to a Part.

10
11 **EFFECTIVE DATE**

12 Section 140. Except as otherwise provided, this act is effective when it
13 becomes law.

PCS offered
August 18, 1998
Q-I

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

Not in proper order
D

H

HOUSE BILL 1342
Proposed Committee Substitute H1342-PCS2414-LB

Short Title: Renunciation of Fiduciary Powers.

(Public)

Sponsors:

Referred to:

May 20, 1998

- 1 A BILL TO BE ENTITLED
2 AN ACT TO MODIFY THE RIGHTS OF A DECEDENT'S SPOUSE AND TO
3 PERMIT NOTICE TO CREDITORS IN SUMMARY ADMINISTRATION OF
4 ESTATES, AND TO AMEND AND CLARIFY THE RENUNCIATION OF
5 PROPERTY AND RENUNCIATION OF FIDUCIARY POWERS ACT.
6 The General Assembly of North Carolina enacts:
7 Section 1. Article 1 of Chapter 30 of the General Statutes is repealed.
8 Section 2. Chapter 30 of the General Statutes is amended by adding a
9 new Article to read:
10 "ARTICLE 1A.
11 "Elective Share.
12 "**§ 30-3.1. Right of elective share.**
13 (a) Elective Share. -- The surviving spouse of a decedent who dies domiciled in
14 this State has a right to claim an 'elective share', which means an amount equal to (i)
15 the applicable share of the Total Net Assets, as defined in G.S. 30-3.2(c), less (ii) the
16 value of Property Passing to Surviving Spouse, as defined in G.S. 30-3.3(a). The
17 applicable share of the Total Net Assets is as follows:
18 (1) If the decedent is not survived by any lineal descendants, one-half
19 of the Total Net Assets.
20 (2) If the decedent is survived by one child, or lineal descendants of
21 one deceased child, one-half of the Total Net Assets.
22 (3) If the decedent is survived by two or more children, or by one or
23 more children and the lineal descendants of one or more deceased

1 children, or by the lineal descendants of two or more deceased
2 children, one-third of the Total Net Assets.

3 (b) Reduction of Applicable Share. -- In those cases in which the surviving spouse
4 is a second or successive spouse, and the decedent has one or more lineal
5 descendants surviving by a prior marriage but there are no lineal descendants
6 surviving by the surviving spouse, the applicable share as determined in subsection
7 (a) of this section shall be reduced by one-half.

8 (c) Minimum Applicable Share. -- In no event shall the applicable share of the
9 Total Net Assets be less than twenty-five thousand dollars (\$25,000).

10 (d) Death Taxes. -- Death taxes shall be taken into account as a claim against the
11 estate in determining Total Net Assets only to the extent that such taxes are increased
12 because the assets received by the surviving spouse do not qualify for the federal
13 estate tax marital deduction pursuant to section 2056 of the Code, the North Carolina
14 exemption from inheritance and estate tax pursuant to G.S. 105-3(10) and (11), or
15 similar provisions under the laws of any other applicable taxing jurisdiction.

16 "§ 30-3.2. Definitions.

17 (a) 'Code' means the Internal Revenue Code in effect at the time of the
18 decedent's death.

19 (b) 'Death taxes' means any estate, inheritance, succession, and similar taxes
20 imposed by any taxing authority, reduced by any applicable credits against those
21 taxes.

22 (c) 'Total Net Assets' means, after the payment or provision for payment of the
23 decedent's funeral expenses, year's allowances to persons other than to the surviving
24 spouse, debts, claims, and administration expenses, the sum of the following:

- 25 (1) All property to which the decedent had legal and equitable title
26 immediately prior to death;
- 27 (2) All property received by the decedent's personal representative by
28 reason of the decedent's death;
- 29 (3) All proceeds of insurance on the life of the decedent of which the
30 decedent is the owner, or which is payable to the surviving spouse;
- 31 (4) One-half of the value of any property held by the decedent and the
32 surviving spouse as tenants by the entirety, or as joint tenants with
33 rights of survivorship;
- 34 (5) The entire value of any property held by the decedent and another
35 person, other than the surviving spouse, as joint tenants with right
36 of survivorship, except to the extent that contribution can be
37 proven by clear and convincing evidence;
- 38 (6) The value of any property which would be included in the taxable
39 estate of the decedent pursuant to sections 2033, 2035, 2036, 2037,
40 2038, 2039, 2040, or 2042 of the Code;
- 41 (7) Any donative transfers of property made by the decedent to donees
42 other than the surviving spouse within three years of the
43 decedent's death, excluding:

- 1 a. Any gifts within the annual exclusion provisions of section
2 2503 of the Code; and
3 b. Any gifts to which the surviving spouse consented. A
4 signing of a deed, or income or gift tax return reporting such
5 gift shall be considered consent;
6 (8) Any proceeds of any individual retirement account, pension or
7 profit-sharing plan, or any private or governmental retirement plan
8 or annuity of which the decedent controlled the designation of
9 beneficiary, excluding any benefits under the federal social security
10 system;
11 (9) Any other Property Passing to Surviving Spouse under G.S. 30-3.3;
12 and
13 (10) In case of overlapping application of the same property under
14 more than one provision, the property shall be included only once
15 under the provision yielding the greatest value.
16 (d) 'Nonadverse trustee' means a trustee who would be deemed nonadverse under
17 section 672 of the Code.
18 "§ 30-3.3. Property Passing to Surviving Spouse.
19 (a) Property Passing to Surviving Spouse. -- For purposes of this Article,
20 'Property Passing to Surviving Spouse' means the sum of the following:
21 (1) One-half of the value of any property held by the decedent and the
22 surviving spouse as tenants by the entirety or as joint tenants with
23 rights of survivorship;
24 (2) The value of any interest in property (outright or in trust,
25 including any interest subject to a general power of appointment
26 held by the surviving spouse, as defined in section 2041 of the
27 Code) devised by the decedent to the surviving spouse, or which
28 passes to the surviving spouse by intestacy, or by beneficiary
29 designation, or by exercise of or in default of the exercise of the
30 decedent's testamentary general or limited power of appointment,
31 or by operation of law or otherwise by reason of the decedent's
32 death, excluding any benefits under the federal social security
33 system;
34 (3) Any year's allowance awarded to the surviving spouse;
35 (4) The value of any interest in property, outright or in trust,
36 renounced by the surviving spouse;
37 (5) The value of the surviving spouse's interest, outright or in trust, in
38 any life insurance proceeds on the life of the decedent; and
39 (6) The value of any interest in property, outright or in trust,
40 transferred from the decedent to the surviving spouse during the
41 lifetime of the decedent for which (i) a gift tax return is timely
42 filed reporting such gift, or (ii) the surviving spouse signs a
43 statement acknowledging such a gift. For purposes of this
44 subdivision, any gift to the surviving spouse by the decedent of the

decedent's interest in any property held by the decedent and the surviving spouse as tenants by the entirety or as joint tenants with right of survivorship shall be valued at one-half of the entire value of that property at the time the gift is made.

(b) Special Rule for Spousal Trusts. -- Where the interest in property passing to the surviving spouse is held in trust for the exclusive benefit of the surviving spouse during the surviving spouse's lifetime, and where the trust authorizes a Nonadverse Trustee to utilize the principal and income of the trust for the support and maintenance of the surviving spouse, then the entire value of the trust shall be treated as passing to the surviving spouse.

(c) Death Taxes. -- The value of Property Passing to Surviving Spouse shall be reduced by any death taxes that are a charge against or apportioned against the surviving spouse on property interests included in Property Passing to Surviving Spouse.

(d) No Duplication. -- In case of overlapping application of the same property under more than one provision, the property shall be included only once, under the provision yielding the greatest value.

"§ 30-3.4. Procedure for determining the elective share.

(a) Exercisable Only During Lifetime. -- The right of the surviving spouse to file a claim for an elective share must be exercised during the lifetime of the surviving spouse, by the surviving spouse, the surviving spouse's agent under a power of attorney, or the guardian of the surviving spouse's estate. If a surviving spouse dies before the claim for an elective share has been settled, the surviving spouse's personal representative shall succeed to the surviving spouse's rights to an elective share.

(b) Time Limitations. -- A claim for an elective share must be made within six months after the issuance of letters testamentary or letters of administration by (i) filing a petition with the clerk of superior court of the county in which the primary administration of the decedent's estate lies, and (ii) mailing or delivering a copy of that petition to the personal representative of the decedent's estate. A surviving spouse's incapacity shall not toll the six-month period of limitations.

(c) Time for Hearing. -- Unless waived by the personal representative and the surviving spouse, the clerk shall set the matter for hearing no earlier than two months and no later than six months after the filing of the petition. However, the clerk may extend the time of hearing as the clerk sees fit. The clerk shall give notice of the hearing to the surviving spouse, personal representative, and to any person described in G.S. 30-3.5 who may be required to contribute toward the satisfaction of the elective share.

(d) Preparation of Tax Form. -- In every case in which a petition to determine an elective share has been filed, and within two months of the filing of the petition, the personal representative shall prepare and submit to the clerk a proposed Form 706, federal estate tax return, for the estate, regardless of whether that form is required to be filed with the Internal Revenue Service. The clerk may extend the time for submission of the proposed Form 706 as the clerk sees fit.

1 (e) Valuation. -- The valuation of interests in property for purposes of G.S. 30-3.2
2 and G.S. 30-3.3 shall be determined as follows:

3 (1) Basic principles. -- Each interest shall be valued at its fair market
4 value, reduced by all liens, claims, or encumbrances against the
5 interest. For interests passing at the decedent's death, valuation
6 shall be as of the date of death, and for interests transferred during
7 the decedent's lifetime, valuation shall be as of the date of transfer.

8 (2) Valuation of partial and contingent interests in property. -- The
9 valuation of interests in property, outright or in trust, which are
10 limited to commence or terminate upon the death of one or more
11 persons, upon the expiration of a period of time, or upon the
12 occurrence of one or more contingencies, shall be determined by
13 computations based upon the mortality and annuity tables set forth
14 in G.S. 8-46 and G.S. 8-47, and upon the basis of six percent (6%)
15 of the gross value of the underlying property in which those
16 interests are limited. However, in valuing interests passing to the
17 surviving spouse, the following special rules apply:

18 a. Except as provided in G.S. 30-3.3(b), to the extent that the
19 interest is dependent upon the exercise of discretion by a
20 fiduciary, the interest shall have no value unless the spouse
21 is serving as that fiduciary and the power to distribute the
22 trust property constitutes a general power of appointment
23 held by the spouse, as defined in section 2041 of the Code;

24 b. To the extent that the interest is dependent upon the
25 occurrence of any contingency that is not subject to the
26 control of the surviving spouse and that is not subject to
27 valuation by reference to the mortality and annuity tables
28 set forth in G.S. 8-46 and G.S. 8-47, the contingency will be
29 conclusively presumed to result in the lowest possible value
30 passing to the surviving spouse. However, a life estate or
31 income interest that will terminate only upon the earlier of
32 the surviving spouse's death or remarriage will be valued
33 without regard to the possibility of termination upon
34 remarriage; and

35 c. To the extent that the valuation of an interest is dependent
36 upon the life expectancy of the surviving spouse, that life
37 expectancy shall be conclusively presumed to be no less
38 than 10 years, regardless of the actual attained age of the
39 surviving spouse at the decedent's death.

40 (3) Determination of fair market value. -- The fair market value of
41 each asset comprising Total Net Assets shall be determined as
42 follows:

43 a. Probate assets and assets passing to spouse. -- The value of
44 each probate asset and Property Passing to Surviving

Spouse, other than assets held in trust, shall be established by the good faith agreement of the surviving spouse and the personal representative, unless either (i) the surviving spouse is the personal representative, or (ii) the clerk determines that the personal representative may not be able to represent the estate adversely to the surviving spouse.

b. Trust assets. -- The value of each trust asset shall be established by good faith agreement of the surviving spouse and the trustee, unless either (i) the surviving spouse is the trustee, or (ii) the clerk determines that the trustee may not be able to represent the trust adversely to the surviving spouse.

c. Other assets. -- The value of any other asset shall be established by the good faith agreement of the surviving spouse and each person described in G.S. 30-3.5 who may be required to contribute toward the satisfaction of the elective share because of that person's interest in the asset, unless the clerk determines that valuation under subdivision d. of this subdivision is more appropriate.

d. Use of disinterested persons. -- If the value of any asset is not established by agreement, the clerk shall appoint one or more qualified and disinterested persons to determine a value of each asset. That determination of the value of an asset shall be final for the exclusive purposes of this Article.

(f) Findings and Conclusions. -- After notice and hearing, the clerk shall determine whether or not the surviving spouse is entitled to an elective share, and if so, the clerk shall then determine the elective share and shall order the personal representative to transfer that amount to the surviving spouse. The clerk's order shall recite specific findings of fact and conclusions of law in arriving at the decedent's Total Net Assets, Property Passing to Surviving Spouse, and the elective share.

(g) Appeals. -- Any party in interest may appeal from the decision of the clerk to the superior court, and in such event the procedure shall be the same as in other special proceedings as now provided by law. If an appeal is taken from the decision of the clerk, that appeal shall have the effect of staying the judgment and order of the clerk until the cause is heard and determined by the superior court upon the appeal taken. Upon an appeal taken from the clerk to the superior court, the judge may review the findings of fact by the clerk and may find the facts or take other evidence, but the facts found by the judge shall be final and conclusive upon any appeal to the Appellate Division.

"§ 30-3.5. Recovery of assets by personal representative.

(a) Recovery of Assets. -- The personal representative is entitled to recover proportionately from all persons, other than the surviving spouse, receiving or in possession of any of the decedent's Total Net Assets a sufficient amount to enable the personal representative to pay the elective share. The apportionment shall be made

1 in the proportion that the value of the interest of each person receiving or in
2 possession of any of Total Net Assets bears to Total Net Assets, excluding any
3 Property Passing to Surviving Spouse. The only persons subject to contribution to
4 make up the elective share are (i) original recipients of property comprising the
5 decedent's Total Net Assets, and subsequent gratuitous inter vivos donees or persons
6 claiming by testate or intestate succession to the extent those persons have the
7 property or its proceeds on or after the date of decedent's death, and (ii) a fiduciary,
8 as to the property under the fiduciary's control at or after the time a fiduciary
9 receives notice that a surviving spouse has claimed an elective share. A fiduciary
10 shall not be considered to have notice until it receives notice at its address as shown
11 in the decedent's estate papers in the clerk's office or, if there are no such papers or
12 no such address is shown in those papers, at the fiduciary's residence or the office of
13 its registered agent.

14 The personal representative may withhold from any property of the decedent in
15 his possession, distributable to any person subject to apportionment, the amount of
16 the elective share apportioned to such person. If the property in possession of the
17 personal representative and distributable to any person subject to apportionment is
18 insufficient to satisfy the proportionate amount of the elective share determined to be
19 due from that person, the personal representative may recover the deficiency from
20 that person. If the property is not in possession of the personal representative, the
21 personal representative may recover from the person the amount of the elective share
22 apportioned to that person in accordance with this Article. If the personal
23 representative cannot reasonably collect from any person subject to apportionment
24 the amount of the elective share apportioned to that person, the amount not
25 reasonably recoverable shall, with the approval of the clerk, be apportioned among
26 the other persons who are subject to apportionment. The apportionment shall be
27 made in the proportion that the value of the interest of each remaining person bears
28 to the total value of the interests of all remaining persons.

29 (b) Standstill Order. -- After the filing of the petition demanding an elective
30 share, either the personal representative or surviving spouse may request the clerk to
31 issue an order that any recipients not dispose of any of the decedent's Total Net
32 Assets pending the hearing. The decision to issue such an order shall be in the
33 discretion of the clerk.

34 (c) Satisfaction of Liability. -- A person receiving or in possession of any of the
35 decedent's Total Net Assets may pay his proportionate elective share liability with
36 respect to that property by any of the following methods:

- 37 (1) Conveyance of the property included in the decedent's Total Net
38 Assets;
- 39 (2) Payment of the value of his liability in cash or, upon agreement of
40 the surviving spouse, other property; or
- 41 (3) Partial conveyance and partial payment under subdivisions (1) and
42 (2) of this subsection, provided the value conveyed and paid is
43 equal to his liability.

(d) Expenses. -- The expenses reasonably incurred by the personal representative in connection with the appraisal or recovery of assets shall be apportioned as provided for the elective share under this Article. If the personal representative finds that it is inequitable to apportion the expenses because those expenses were incurred because of the fault of one or more persons subject to apportionment, the personal representative may direct other more equitable apportionment, with the approval of the clerk.

(e) Bond. -- If property held by the personal representative is distributed prior to final apportionment of the elective share, the personal representative may require the distributee to provide a bond or other security for the apportionment liability in the form and amount prescribed by the personal representative, with the approval of the clerk.

"§ 30-3.6. Waiver of rights.

(a) The right of a surviving spouse to claim an elective share may be waived, wholly or partially, before or after marriage, with or without consideration, by a written waiver signed by the surviving spouse.

(b) A waiver is not enforceable if the surviving spouse proves that:

(1) The waiver was not executed voluntarily; or

(2) The surviving spouse was not provided a fair and reasonable disclosure of the property and financial obligations of the decedent, unless the surviving spouse waived, in writing, the right to that disclosure."

Section 3. G.S. 29-30 reads as rewritten:

"§ 29-30. Election of surviving spouse to take life interest in lieu of intestate share provided.

(a) In lieu of the intestate share provided in G.S. 29-14 or 29-21, G.S. 29-21, or of the elective share provided in G.S. 30-3.1, the surviving spouse of an intestate or the surviving spouse who ~~dissents from the will of a testator~~ has petitioned for an elective share shall be entitled to take as his or her intestate share or elective share a life estate in one third in value of all the real estate of which the deceased spouse was seised and possessed of an estate of inheritance at any time during coverture, except that real estate as to which the surviving spouse:

(1) Has waived his or her rights by joining with the other spouse in a conveyance thereof, or

(2) Has release or quitclaimed his or her interest therein in accordance with G.S. 52-10, or

(3) Was not required by law to join in conveyance thereof in order to bar the elective life estate, or

(4) Is otherwise not legally entitled to the election provided in this section.

(b) Regardless of the value thereof and despite the fact that a life estate therein might exceed the fractional limitation provided for in subsection (a), the life estate provided for in subsection (a) shall at the election of the surviving spouse include a life estate in the usual dwelling house occupied by the surviving spouse at the time of

1 the death of the deceased spouse if such dwelling house were owned by the deceased
2 spouse at the time of his or her death, together with the outbuildings, improvements
3 and easements thereunto belonging or appertaining, and lands upon which situated
4 and reasonably necessary to the use and enjoyment thereof, as well as a fee simple
5 ownership in the household furnishings therein.

6 (c) The election provided for in subsection (a) shall be made by the filing of a
7 notice thereof with the clerk of the superior court of the county in which the
8 administration of the estate is pending, or, if no administration is pending, then with
9 the clerk of the superior court of any county in which the administration of the estate
10 could be commenced. Such election shall be made:

- 11 (1) At any time within one month after the expiration of the time
12 fixed for the filing of ~~a dissent~~, the petition for elective share under
13 Article 1A of Chapter 30 of the General Statutes, or
- 14 (2) In case of intestacy, then within 12 months after the death of the
15 deceased spouse if letters of administration are not issued within
16 that period, or
- 17 (3) If letters of administration are issued within 12 months after the
18 date of the death of the deceased spouse, then within one month
19 after the expiration of the time limited for filing claims against the
20 estate, or
- 21 (4) If litigation that affects the share of the surviving spouse in the
22 estate is pending, then within such reasonable time as may be
23 allowed by written order of the clerk of the superior court.

24 The notice of election shall:

- 25 (1) Be directed to the clerk with whom filed;
- 26 (2) State that the surviving spouse making the same elects to take
27 under this section rather than under the provisions of ~~G.S. 29-14 or~~
28 ~~29-21~~, G.S. 29-14, 29-21, or 30-3.1, as applicable;
- 29 (3) Set forth the names of all heirs, devisees, legatees, personal
30 representatives and all other persons in possession of or claiming
31 an estate or an interest in the property described in subsection (a);
32 and
- 33 (4) Request the allotment of the life estate provided for in subsection
34 (a).

35 The notice of election may be in person, or by attorney authorized in a writing
36 executed and duly acknowledged by the surviving spouse and attested by at least one
37 witness. If the surviving spouse is a minor or an incompetent, the notice of election
38 may be executed and filed by a general guardian or by the guardian of the person or
39 estate of the minor or incompetent spouse. If the minor or incompetent spouse has no
40 guardian, the notice of election may be executed and filed by a next friend appointed
41 by the clerk. The notice of election, whether in person or by attorney, shall be filed
42 as a record of the court, and a summons together with a copy of the notice shall be
43 served upon each of the interested persons named in the notice of election.

(d) In case of election to take a life estate in lieu of an intestate ~~share, share or elective share,~~ as provided in either G.S. 29-14, 29-21, or ~~30-3(a), 30-3.3(a),~~ the clerk of superior court, with whom the notice of election has been filed, shall summon and appoint a jury of three disinterested persons who being first duly sworn shall promptly allot and set apart to the surviving spouse the life estate provided for in subsection (a) and make a final report of such action to the clerk.

(e) The final report shall be filed by the jury not more than 60 days after the summoning and appointment thereof, shall be signed by all jurors, and shall describe by metes and bounds the real estate in which the surviving spouse shall have been allotted and set aside a life estate. It shall be filed as a record of court and a certified copy thereof shall be filed and recorded in the office of the register of deeds of each county in which any part of the real property of the deceased spouse, affected by the allotment, is located.

(f) In the election and procedure to have the life estate allotted and set apart provided for in this section, the rules of procedure relating to partition proceedings shall apply except insofar as the same would be inconsistent with the provisions of this section.

(g) Neither the household furnishings in the dwelling house nor the life estates taken by election under this section shall be subject to the payment of debts due from the estate of the deceased spouse, except those debts secured by such property as follows:

- (1) By a mortgage or deed of trust in which the surviving spouse has waived his or her rights by joining with the other spouse in the making thereof; or
- (2) By a purchase money mortgage or deed of trust, or by a conditional sales contract of personal property in which title is retained by the vendor, made prior to or during the marriage; or
- (3) By a mortgage or deed of trust made prior to the marriage; or
- (4) By a mortgage or deed of trust constituting a lien on the property at the time of its acquisition by the deceased spouse either before or during the marriage.

(h) If no election is made in the manner and within the time provided for in subsection (c) the surviving spouse shall be conclusively deemed to have waived his or her right to elect to take under the provisions of this section, and any interest which the surviving spouse may have had in the real estate of the deceased spouse by virtue of this section shall terminate."

Section 4. G.S. 30-15 reads as rewritten:

"§ 30-15. When spouse entitled to allowance.

Every surviving spouse of an intestate or of a testator, whether or not he has ~~petitioned for an elective share, dissented from the will,~~ shall, unless he has forfeited his right thereto, as provided by law, be entitled, out of the personal property of the deceased spouse, to an allowance of the value of ten thousand dollars (\$10,000) for his support for one year after the death of the deceased spouse. Such allowance shall be exempt from any lien, by judgment or execution, acquired against the property of

1 the deceased spouse, and shall, in cases of testacy, be charged against the share of the
2 surviving spouse."

3 Section 5. G.S. 31-5.3 reads as rewritten:

4 **"§ 31-5.3. Will not revoked by marriage; dissent from will made prior to marriage.**

5 A will is not revoked by a subsequent marriage of the maker; and the surviving
6 spouse may ~~dissent from such~~ petition for an elective share when there is a will made
7 prior to the marriage in the same manner, upon the same conditions, and to the same
8 extent, as a surviving spouse may dissent from petition for an elective share when
9 there is a will made subsequent to marriage."

10 Section 6. G.S. 31A-1(b) reads as rewritten:

11 "(b) The rights lost as specified in subsection (a) of this section shall be as follows:

- 12 (1) All rights of intestate succession in the estate of the other spouse;
- 13 (2) All right to claim or succeed to a homestead in the real property of
14 the other spouse;
- 15 (3) All right to ~~dissent from the will~~ petition for an elective share of
16 the estate of the other spouse and take either the elective intestate
17 share provided or the life interest in lieu thereof;
- 18 (4) All right to any year's allowance in the personal property of the
19 other spouse;
- 20 (5) All right to administer the estate of the other spouse; and
- 21 (6) Any rights or interests in the property of the other spouse which by
22 a settlement before or after marriage were settled upon the
23 offending spouse solely in consideration of the marriage."

24 Section 7. G.S. 31C-3 reads as rewritten:

25 **"§ 31C-3. Disposition of community property upon death.**

26 Upon death of a married person, one half of the property to which this Chapter
27 applies is the property of the surviving spouse and is not subject to testamentary
28 disposition by the decedent or distribution under the laws or succession of this State.
29 One half of that property is the property of the decedent and is subject to
30 testamentary disposition or distribution under the laws of succession of this State.
31 With respect to property to which this Chapter applies, the one half of the property
32 of the decedent is not subject to the surviving spouse's right to ~~dissent from the will~~
33 petition for an elective share under the provisions of Article 4 1A of Chapter 30, and
34 is not subject to the right to elect a life estate under the provisions of Article 8 of
35 Chapter 29."

36 Section 8. G.S. 84-5(2) reads as rewritten:

- 37 "(2) When any of the following acts are to be performed in connection
38 with the fiduciary activities of such a corporation, said acts shall be
39 performed for the corporation by a duly licensed attorney, not a
40 salaried employee of the corporation, retained to perform legal
41 services required in connection with the particular estate, trust or
42 other fiduciary matter:
- 43 a. Offering wills for probate.

- b. Preparing and publishing notice of administration to creditors.
- c. Handling formal court proceedings.
- d. Drafting legal papers or giving legal advice to spouses concerning ~~dissent from their spouses' will.~~ rights to an elective share under Article 1A of Chapter 30 of the General Statutes.
- e. Resolving questions of domicile and residence of a decedent.
- f. Handling proceedings involving year's allowances of widows and children.
- g. Drafting deeds, notes, deeds of trust, leases, options and other contracts.
- h. Drafting instruments releasing deeds of trust.
- i. Drafting assignments of rent.
- j. Drafting any formal legal document to be used in the discharge of the corporate fiduciary's duty.
- k. In matters involving estate and inheritance taxes, gift taxes, and federal and State income taxes:
 1. Preparing and filing protests or claims for refund, except requests for a refund based on mathematical or clerical errors in tax returns filed by it as a fiduciary.
 2. Conferring with tax authorities regarding protests or claims for refund, except those based on mathematical or clerical errors in tax returns filed by it as a fiduciary.
 3. Handling petitions to the tax court.
- l. Performing legal services in insolvency proceedings or before a referee in bankruptcy or in court.
- m. In connection with the administration of an estate or trust:
 1. Making application for letters testamentary or letters or administration.
 2. Abstracting or passing upon title to property.
 3. Handling litigation relating to claims by or against the estate or trust.
 4. Handling foreclosure proceedings of deeds of trust or other security instruments which are in default."

Section 9. G.S. 28A-28-6 reads as rewritten:

"§ 28A-28-6. Spouse's assumption of liabilities.

If Except as provided for in G.S. 28A-28-8, if the clerk grants the order for summary administration, the spouse shall be deemed to have assumed, to the extent of the value of the property received by the spouse under the will of the decedent or by intestate succession, all liabilities of the decedent that were not discharged by reason of death and liability for all taxes and valid claims against the decedent or the

1 estate. The value of the property is the fair market value of the property on the date
2 of death of the decedent less any liens or encumbrances on the property so received.
3 The spouse may assert any defense, counterclaim, cross-claim, or setoff which would
4 have been available to the decedent if the decedent had not died except for actions
5 listed in G.S. 28A-18-1(b). A spouse shall not be deemed to have assumed any
6 liabilities of the decedent that were discharged by reason of death."

7 Section 10. Article 28 of Chapter 28A of the General Statutes is
8 amended by adding a new section to read:

9 **"§ 28A-28-8. Optional notice to creditors.**

10 The surviving spouse may elect to give notice to creditors in accordance with G.S.
11 28A-14-1. Upon compliance with the provisions of G.S. 28A-14-1, claims against the
12 decedent's estate and claims against the surviving spouse under G.S. 28A-28-6 shall
13 be barred pursuant to G.S. 28A-19-3 unless a claim is presented to the surviving
14 spouse as set forth in G.S. 28A-19-1, in which event the provisions of Article 19 of
15 Chapter 28A of the General Statutes shall apply. In order to carry out the provisions
16 of this section, the surviving spouse shall be deemed to be the personal representative
17 of the decedent for purposes of G.S. 28A-17-12 and Article 19 of Chapter 28A of the
18 General Statutes."

19 Section 11. G.S. 31B-1 reads as rewritten:

20 **"§ 31B-1. Right to renounce succession.**

21 (a) A person who succeeds to a property interest as:

- 22 (1) Heir, or
- 23 (2) Next of kin, or
- 24 (3) Devisee, or
- 25 (4) Legatee, or
- 26 (5) Beneficiary of a life insurance policy who did not possess the
27 incidents of ownership under the policy at the time of death of the
28 insured, or
- 29 (6) Person succeeding to a renounced interest, or
- 30 (7) Beneficiary under a testamentary trust or under an inter vivos
31 trust, or
- 32 (8) Appointee under a power of appointment exercised by a
33 testamentary instrument or a nontestamentary instrument, or
- 34 (9) Repealed by Session Laws 1989, c. 684, s. 2.
- 35 (9a) Surviving joint tenant, surviving tenant by the entireties, or
36 surviving tenant of a tenancy with a right of survivorship, or
- 37 (9b) Person entitled to share in a testator's estate under the provisions
38 of G.S. 31-5.5, or
- 39 (9c) Beneficiary under any other testamentary or nontestamentary
40 instrument, including a beneficiary under:
 - 41 a. Any qualified or nonqualified deferred compensation,
42 employee benefit, retirement or death benefit, plan, fund,
43 annuity, contract, policy, program or instrument, either
44 funded or unfunded, which is established or maintained to

1 provide retirement income or death benefits or results in, or
2 is intended to result in, deferral of income;

3 b. An individual retirement account or individual retirement
4 annuity; or

5 c. Any annuity, payable on death, account, or other right to
6 death benefits arising under contract; or

7 (9d) The duly authorized or appointed guardian with the prior or
8 subsequent approval of the clerk of superior court, or of the
9 resident judge of the superior court, of any of the above.

10 (10) The personal representative appointed under Chapter 28A of any
11 of the above,

12 or the attorney-in-fact of any of the above may renounce in whole or in part the right
13 of succession to any property or interest therein, including a future interest, by filing
14 a written instrument under the provisions of this Chapter. A renunciation may be of
15 a fractional share or any limited interest or estate. Provided, however, there shall be
16 no right of partial renunciation if the decedent or donee of the power expressly so
17 provided in the instrument creating the interest.

18 ~~(b) In no event shall the persons who succeed to the renounced interest receive~~
19 ~~from the renouncement a greater share than the renouncer would have received.~~

20 (b1) The provisions of this Chapter apply to all renunciations of present and
21 future interests, whether qualified or nonqualified for federal and State inheritance,
22 estate, or gift tax purposes, unless expressly provided otherwise in the instrument
23 creating the interest.

24 (c) The instrument shall (i) describe the property or interest renounced, (ii)
25 declare the renunciation and extent thereof, (iii) be signed and acknowledged by the
26 person authorized to renounce."

27 Section 12. G.S. 31B-2(a) reads as rewritten:

28 "(a) ~~An~~ To be a qualified disclaimer for federal and State inheritance, estate, or
29 gift tax purposes, an instrument renouncing a present interest shall be filed within the
30 time period required under the applicable federal statute for a renunciation to be
31 given effect as a disclaimer for federal estate or gift tax purposes. If there is no such
32 federal statute the instrument shall be filed not later than nine months after the death
33 of the decedent or donee of the power."

34 Section 13. G.S. 31B-3(a) reads as rewritten:

35 "(a) Unless the ~~decedent or decedent~~, donee of the ~~power~~ a power of appointment,
36 or creator of an interest under an inter vivos instrument has otherwise provided in
37 the instrument creating the interest, the property or interest renounced devolves as if
38 the renouncer had predeceased the decedent or creator or, if the renouncer is
39 designated to take under a power of appointment exercised by a testamentary
40 instrument, as if the renouncer had predeceased the donee of the power, or, in the
41 case of the renunciation of a fiduciary right, power, privilege, or immunity, as if the
42 fiduciary right, power, privilege, or immunity never existed. A future interest that
43 takes effect in possession or enjoyment after the termination of the estate or interest
44 renounced takes effect as if the renouncer had predeceased the ~~decedent or decedent~~.

1 the donee of the ~~power~~. power, or creator, and that renunciation shall have the effect
2 of accelerating the possession and enjoyment of such future interests of persons that
3 are in esse at the time of the renunciation. A renunciation is effective when filed. A
4 qualified renunciation for federal and State inheritance, estate, or gift tax purposes
5 relates back for all purposes to the date of the death of the decedent or the donee of
6 the ~~power~~. power, or the date the renounced interest became a completed transfer for
7 federal or State inheritance, estate, or gift tax purposes."

8 Section 14. G.S. 31B-4 reads as rewritten:

9 "§ 31B-4. Waiver and bar.

10 ~~(a) The right to renounce property or an interest therein is barred by:~~

- 11 ~~(1) An assignment, conveyance, encumbrance, pledge, or transfer of~~
12 ~~the property or interest, or a contract therefor by the person~~
13 ~~authorized to renounce;~~
14 ~~(2) A written waiver of the right to renounce;~~
15 ~~(3) An acceptance of the property or interest or benefit thereunder, or~~
16 ~~(4) A sale of the property or interest under judicial sale made before~~
17 ~~the renunciation is effected.~~

18 (a1) The right to renounce property or an interest in property pursuant to this
19 Chapter is not barred by an acceptance of the property, interest, or benefit in the
20 property. However, an acceptance of the property, interest, or benefit in the property
21 may preclude that renunciation from being a qualified renunciation for federal and
22 State inheritance, estate, or gift tax purposes.

23 (b) The renunciation or the written waiver of the right to renounce is binding
24 upon the renouncer or person waiving and all persons claiming through or under
25 him.

26 (c) A fiduciary's application for appointment or assumption of duties as fiduciary
27 does not waive or bar the fiduciary's right to renounce a right, power, privilege, or
28 immunity.

29 (d) No person shall be liable for distributing or disposing of property in reliance
30 upon the terms of a renunciation that is invalid for the reason that the right of
31 renunciation has been waived or barred, if the distribution or disposition is otherwise
32 proper, and the person has no actual knowledge of the facts that constitute a waiver
33 or bar to the right of renunciation."

34 Section 15. (a) Sections 1 through 10 of this act become effective
35 October 1, 1998, with Sections 1 through 8 applying to estates of decedents dying on
36 or after that date, and Sections 9 and 10 applying to estates of decedents dying on or
37 after January 1, 1996.

38 (b) Sections 11 through 14 of this act become effective when they become
39 law and:

- 40 (1) Apply to renunciations executed on or after that date, whether
41 qualified or nonqualified for federal and State inheritance, estate,
42 or gift tax purposes;
43 (2) Do not apply to any renunciation executed before that date,
44 whether qualified or nonqualified for federal and State inheritance,

1 estate, or gift tax purposes, of an interest in a testamentary or inter
2 vivos trust, unless within six months after that date the trustee
3 executes and records an instrument accelerating the possession and
4 enjoyment of the renounced interest to persons in esse at the time
5 of the renunciation with the clerk of superior court of the county
6 in which probate proceedings have been commenced, if any, or the
7 county in which the property is located.

8 (c) This section is effective when it becomes law.

J-I
August 18, 1998

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

H

1

HOUSE BILL 1342

Short Title: Decedent's Safe-Deposit Box.

(Public)

Sponsors: Representatives Brawley, Cansler, Capps, Gray, Hill, Neely, Ramsey,
C. Wilson; and Morris.

Referred to: Judiciary II.

May 20, 1998

- 1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE THAT THE CLERK OF SUPERIOR COURT DOES NOT
3 HAVE TO INVENTORY A DECEDENT'S SAFE-DEPOSIT BOX IF A
4 QUALIFIED PERSON IS PRESENT AT THE OPENING OF THE BOX.
5 The General Assembly of North Carolina enacts:
6 Section 1. Article 15 of Chapter 28A of the General Statutes is amended
7 by adding a new section to read:
8 "§ 28A-15-13. Opening and inventory of decedent's safe-deposit box.
9 (a) Definitions. -- The following definitions apply to this section:
10 (1) Institution. -- Any entity or person having supervision or possession
11 of a safe-deposit box to which a decedent had access.
12 (2) Letter of authority. -- Letters of administration, letters
13 testamentary, an affidavit of collection of personal property, an
14 order of summary administration, or a letter directed to the
15 institution designating a person entitled to receive the contents of a
16 safe-deposit box to which the decedent had access. The letter of
17 authority must be signed by the clerk of superior court or by the
18 clerk's representative.
19 (3) Qualified person. -- A person possessing a letter of authority or a
20 person named as a lessee or cotenant of the safe-deposit box to
21 which the decedent had access.
22 (b) Presence of Clerk Required. -- Any safe-deposit box to which a decedent had
23 access shall be sealed by the institution having supervision or possession of the box.

1 Except as provided in subsection (c) of this section, the presence of the clerk of
2 superior court of the county where the safe-deposit box is located or the presence of
3 the clerk's representative is required before the box may be opened. The clerk or the
4 clerk's representative shall open the safe-deposit box in the presence of the person
5 possessing a key to the box and a representative of the institution having supervision
6 or possession of the box. The clerk shall make an inventory of the contents of the
7 box and furnish a copy to the institution and to the person possessing a key to the
8 box.

9 (c) An Inventory and the Presence of Clerk Not Required. -- Neither an inventory
10 nor the presence of the clerk of superior court or the clerk's representative is
11 required when the person requesting the opening of the decedent's safe-deposit box is
12 a qualified person.

13 (d) Testamentary Instrument in Box. -- If the safe-deposit box contains any writing
14 that appears to be a will, codicil, or any other instrument of a testamentary nature,
15 then the clerk of superior court or the qualified person shall file the instrument in the
16 office of the clerk of superior court.

17 (e) Release of Contents. -- Except as provided in subsection (d) for testamentary
18 instruments, the institution shall not release any contents of the safe-deposit box to
19 anyone other than a qualified person.

20 (f) No Tax Waiver Required. -- Notwithstanding the provisions in G.S. 105-24(a),
21 no tax waiver is required for the release of the contents of the decedent's safe-deposit
22 box."

23 Section 2. G.S. 105-24(b), (c), and (e) are repealed.

24 Section 3. This act becomes effective October 1, 1998, and applies to
25 estates of decedents who die on or after that date.

**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE**

No Tax

You are hereby notified that the Committee on **JUDICIARY I** will meet as follows:

DAY & DATE: **Thursday, August 20, 1998**

TIME: **8:30 AM (Notice this is a change from the regular time for J-I)**

LOCATION: **Room 1228/1327 LB**

The following bill will be considered (Bill # & Short Title):

HB 1342 Decedent's Safe-Deposit Box

Respectfully,

Representative N. Leo Daughtry, Co-Chairman
Representative Edwin Hardy, Co-Chairman

I hereby certify this notice was filed by the committee clerk at the following offices at
3:00 p.m. on August 18, 1998.

____ Principal Clerk
____ Reading Clerk - House Chamber

Bernice Bullard, Committee Clerk
Jackie Hamby, Assistant

**1998 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative(s) **Daughtry and Hardy** for the Committee on **JUDICIARY I.**

☐ Committee Substitute for

H.B. 1342 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT THE CLERK OF SUPERIOR COURT DOES NOT HAVE TO INVENTORY A DECEDENT'S SAFE-DEPOSIT BOX IF A QUALIFIED PERSON IS PRESENT AT THE OPENING OF THE BOX.

☐ 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.

☐ With a favorable report as to House committee substitute bill (# 1342), ☐ 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



North Carolina General Assembly
Legislative Services Office

J-I
August 20, 1998

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August 19, 1998

MEMORANDUM

TO: Representative Leo Daughtry and Edwin Hardy, Co-Chairs,
House Judiciary I Committee.

FROM: Karen Cochrane Brown, Committee Co-Counsel. *KCB*

RE: House Bill 1342 - Renunciation of Fiduciary Powers.
(Proposed Committee Substitute - H1342-CSRO-001)

The Proposed Committee Substitute for House Bill 1342 amends and clarifies the Renunciation of Property and Renunciation of Fiduciary Powers Act.

Section 1 of the bill amends the provision in the law which sets forth the capacities in which one may succeed to a property interest that may be renounced. The amendment clarifies that the right to renounce and the procedure for doing so set forth in Chapter 31B applies to all renunciations, whether qualified (a renunciation that is not treated as a taxable event of estate, inheritance and gift tax purposes) or nonqualified (one that does result in a taxable event). This section deletes the language in the present law which prevents a person who succeeds to a renounced interest from receiving a greater share than the renouncer would have received.

Section 2 of the bill amends the provision relating to the time and place of filing a renunciation, to provide that in order to be a qualified disclaimer for tax purposes, the renouncing instrument must be filed within the time required by federal statute, or if there is no federal statute, no later than nine months after the date the transfer of the renounced interest to the renouncer was complete for tax purposes.

Section 3 expands the provision which defines the effect of renunciation, to provide that unless the instrument creating the interest being renounced provides otherwise, the renounced property or interest devolves as follows:

1. If the renunciation is filed within the time set in G.S. 31B-2(a) the property or interest devolves as if the renouncer had predeceased the date the transfer of the renounced interest to the renouncer was complete for tax purposes;
2. If the renunciation is not filed within the time set in G.S. 31B-2(a), the property or interest devolves as if the renouncer had died on the date the renunciation is filed;

3. Any future interests that would take effect after the termination of the interest being renounced, will take effect as if the renouncer had died on the date determined under subdivision (1) or (2), and upon the filing of the renunciation any person living at the time the renouncer is deemed to have died who is entitled to succeed to the renounced property or interest will immediately become entitled to possession or enjoyment of the future interest.

Section 4 of the bill repeals subdivision (3) of G.S. 31B-4, which provides that acceptance of the property or interest or benefit is a bar to the right to renounce the property or interest.

Section 5 of the bill adds a new subsection to G.S. 31B-4, which provides that although the right to renounced is not barred by acceptance, an acceptance of the property, interest, or benefit may preclude the renunciation from being a qualified renunciation for tax purposes.

Section 6 provides that the act would become effective when it becomes law and apply to renunciations executed on or after that date, whether qualified or nonqualified for tax purposes. The act would not apply to any renunciation of an interest in a testamentary or inter vivos trust executed before the effective date, unless the trustee executes and records an instrument evidencing the acceleration of possession and enjoyment of the renounced interest to persons in being at the time of the filing of the renunciation, within six months after the effective date of this act. The act does not remove the rights of a current beneficiary who has received an interest in a trust between the date of the filing of a renunciation and the date of the filing by a trustee under the preceding sentence.

file
August 20, 1998

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 1342
Proposed Committee Substitute H1342-PCS3180-RO001

Short Title: Renunciation of Fiduciary Powers.

Favorable rpt.

(Public)

Sponsors:

Referred to:

May 20, 1998

- 1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND AND CLARIFY THE RENUNCIATION OF PROPERTY
3 AND RENUNCIATION OF FIDUCIARY POWERS ACT.
4 The General Assembly of North Carolina enacts:
5 Section 1. G.S. 31B-1(b) reads as rewritten:
6 "(b) ~~In no event shall the persons who succeed to the renounced interest receive~~
7 ~~from the renouncement a greater share than the renouncer would have received. This~~
8 Chapter shall apply to all renunciations of present and future interests, whether
9 qualified or nonqualified for federal and State inheritance, estate, and gift tax
10 purposes, unless expressly provided otherwise in the instrument creating the interest."
11 Section 2. G. S. 31B-2(a) reads as rewritten:
12 "(a) To be a qualified disclaimer for federal and State inheritance, estate, and gift
13 tax purposes, An an instrument renouncing a present interest shall be filed within the
14 time period required under the applicable federal statute for a renunciation to be
15 given effect as a disclaimer for federal estate and gift tax purposes. If there is no such
16 federal statute the instrument shall be filed not later than nine months after the ~~death~~
17 ~~of the decedent or donee of the power.~~ date the transfer of the renounced interest to
18 the renouncer was complete for the purpose of such taxes."
19 Section 3. G.S. 31B-3(a) reads as rewritten:
20 "(a) Unless the ~~decedent or~~ decedent, donee of the a power of appointment, or
21 creator of an interest under an inter vivos instrument has otherwise provided in the
22 instrument creating the interest, the property or interest renounced devolves as
23 follows:

- (1) If the renunciation is filed within the time period described in G.S. 31B-2(a), the property or interest renounced devolves as if the renouncer had predeceased the decedent or, if the renouncer is designated to take under a power of appointment exercised by a testamentary instrument, as if the renouncer had predeceased the donee of the power, date the transfer of the renounced interest to the renouncer was complete for federal and State inheritance, estate, and gift tax purposes, or, in the case of the renunciation of a fiduciary right, power, privilege, or immunity, the property or interest subject to the power devolves as if the fiduciary right, power, privilege, or immunity never existed. A future interest that takes effect in possession or enjoyment after the termination of the estate or interest renounced takes effect as if the renouncer had predeceased the decedent or the donee of the power. A Any such renunciation relates back for all purposes to the date of the death of the decedent or the donee of the power. the transfer of the renounced interest to the renouncer was complete for the purpose of those taxes.
- (2) If the renunciation is not filed within the time period described in G.S. 31B-2(a), the property or interest devolves as if the renouncer had died on the date the renunciation is filed, or, in the case of the renunciation of a fiduciary right, power, privilege, or immunity, the property or interest subject to the power devolves as if the fiduciary right, power, privilege, or immunity ceased to exist as of the date the renunciation is filed.
- (3) Any future interest that takes effect in possession or enjoyment after the termination of the estate or interest renounced takes effect as if the renouncer had died on the date determined under subdivision (1) or (2) of this subsection, and upon the filing of the renunciation the persons in being as of the time the renouncer is deemed to have died will immediately become entitled to possession or enjoyment of any such future interest."

Section 4. Subdivision (3) of G.S. 31B-4(a) is repealed.

Section 5. G.S. 31B-4 is amended by adding the following new subsection to read:

"(e) The right to renounce property or an interest in property pursuant to this Chapter is not barred by an acceptance of the property, interest, or benefit thereunder; provided, however, an acceptance of the property, interest, or benefit thereunder may preclude such renunciation from being a qualified renunciation for federal and State inheritance, estate, and gift tax purposes."

Section 6. This act is effective when it becomes law and applies to all renunciations executed on or after the effective date of this act, whether qualified or nonqualified for federal and State inheritance, estate, and gift tax purposes. This act shall not apply to any renunciation executed before the effective date of this section

1 whether qualified or nonqualified for federal and State inheritance, estate, and gift
2 tax purposes, of an interest in a testamentary or inter vivos trust, unless the trustee
3 within six months after the effective date of this act executes and records with the
4 clerk of court of the county in which probate proceedings have been commenced, if
5 any, or the county in which the property is located, an instrument evidencing the
6 acceleration of the possession and enjoyment of the renounced interest to persons in
7 esse at the time of the filing of the renunciation. This act shall not apply to remove
8 the rights of a current beneficiary who has received an interest in a trust between the
9 date of the filing of a renunciation and the date of the filing by a trustee pursuant to
10 the preceding sentence.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 1342

Short Title: Decedent's Safe-Deposit Box.

(Public)

Sponsors: Representatives Brawley, Cansler, Capps, Gray, Hill, Neely, Ramsey, C. Wilson; and Morris.

Referred to: Judiciary II.

May 20, 1998

- 1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE THAT THE CLERK OF SUPERIOR COURT DOES NOT
3 HAVE TO INVENTORY A DECEDENT'S SAFE-DEPOSIT BOX IF A
4 QUALIFIED PERSON IS PRESENT AT THE OPENING OF THE BOX.
5 The General Assembly of North Carolina enacts:
6 Section 1. Article 15 of Chapter 28A of the General Statutes is amended
7 by adding a new section to read:
8 "**§ 28A-15-13. Opening and inventory of decedent's safe-deposit box.**
9 **(a) Definitions. -- The following definitions apply to this section:**
10 **(1) Institution. -- Any entity or person having supervision or possession**
11 **of a safe-deposit box to which a decedent had access.**
12 **(2) Letter of authority. -- Letters of administration, letters**
13 **testamentary, an affidavit of collection of personal property, an**
14 **order of summary administration, or a letter directed to the**
15 **institution designating a person entitled to receive the contents of a**
16 **safe-deposit box to which the decedent had access. The letter of**
17 **authority must be signed by the clerk of superior court or by the**
18 **clerk's representative.**
19 **(3) Qualified person. -- A person possessing a letter of authority or a**
20 **person named as a lessee or cotenant of the safe-deposit box to**
21 **which the decedent had access.**
22 **(b) Presence of Clerk Required. -- Any safe-deposit box to which a decedent had**
23 **access shall be sealed by the institution having supervision or possession of the box.**

Except as provided in subsection (c) of this section, the presence of the clerk of superior court of the county where the safe-deposit box is located or the presence of the clerk's representative is required before the box may be opened. The clerk or the clerk's representative shall open the safe-deposit box in the presence of the person possessing a key to the box and a representative of the institution having supervision or possession of the box. The clerk shall make an inventory of the contents of the box and furnish a copy to the institution and to the person possessing a key to the box.

(c) An Inventory and the Presence of Clerk Not Required. -- Neither an inventory nor the presence of the clerk of superior court or the clerk's representative is required when the person requesting the opening of the decedent's safe-deposit box is a qualified person.

(d) Testamentary Instrument in Box. -- If the safe-deposit box contains any writing that appears to be a will, codicil, or any other instrument of a testamentary nature, then the clerk of superior court or the qualified person shall file the instrument in the office of the clerk of superior court.

(e) Release of Contents. -- Except as provided in subsection (d) for testamentary instruments, the institution shall not release any contents of the safe-deposit box to anyone other than a qualified person.

(f) No Tax Waiver Required. -- Notwithstanding the provisions in G.S. 105-24(a), no tax waiver is required for the release of the contents of the decedent's safe-deposit box."

Section 2. G.S. 105-24(b), (c), and (e) are repealed.

Section 3. This act becomes effective October 1, 1998, and applies to estates of decedents who die on or after that date.

VISITOR REGISTRATION SHEET

RULES, CALENDAR, AND OPERATIONS OF THE HOUSE - AUGUST 12, 1998

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

<u>NAME</u>	<u>FIRM OR AGENCY AND ADDRESS</u>
Amy Fullbright	Huntton Williams
John Rust	NCFPC
Kate Aronson	Senat P
David Simmons	ZOA, RA
Robert Brown	Jordan Powell
James Brady	Bole Call & Stroup
Monica Auermsky	State Department
Stephen Williams	NCCC 5
Henry Jones	Attorney Raleigh
Paul Kagan	Attorney Raleigh
Walter Skins	Charlotte Chamber
Jerome Phinell	CP4L
Jim Conroy Da	Speaker of House
DWIGHT EISENHOWER	MILITARY-INDUSTRIAL COMPLEX
Sharon Weiner	NCSBA
Kim Smith	NCLM
Dale Smyth	CAROLINAS ALC
Jessie Harrison	WCPBS
Nancy Bradley	NCCBS
Martha Glass	DOA
Gusman Markham	Egits
Louie DeWitt	DNR
John M. Smith	Conservation Council of NC
John P. Smith	AT&T
Ann Bulam	SPE
Bernard Allen	SOS
Phil Kubi	NCCBI

VISITOR REGISTRATION SHEET

Judiciary 1 August 20 1998

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY

1. Pamela Weaver Best	AEC
2. BILL SCOBGIN	NC BAR ASSOC
3. DAVID WARD	WARD & SMITH
4. BONNIE HINES	WARD & SMITH
5. Ruth Sappie	NC DOT
6. VL McBride	MTA
7.	
8.	
9.	
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MEMO

TO: REPRESENTATIVE DAUGHTRY
CO-CHAIRMAN OF JUDICIARY I COMMITTEE

DATE: September 30, 1998

**RE: A MEETING AROUND YOUR CHAMBER DESK FOR ACTION
ON THE SIX HOUSE BILLS REMAINING IN JUDICIARY I COMMITTEE**

Pursuant to House Rule 36, committee action is necessary (i.e.; "*Indefinite Postponement Report*") on the following bills:

HB 258	Service of Adm. Search Warrants	Sponsor- Rep. Tolson
HB 1042	Publication of Appellate Decisions	Sponsor - Rep. Black
HB 1144	Speeding in School Zones	Sponsor - Rep. Wood
HB 1317	Amend Contested Case Procedures	Sponsor - Rep. C. Wilson
HB 1389	Funding for Legal Services	Sponsor - Rep. Allred
HB 1400	Victim and Witness Assistants	Sponsor - Rep. R. Hunter

filed

**1998 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative(s) **Daughtry and Hardy** for the Committee on **JUDICIARY I.**

☐ Committee Substitute for

H.B. 258 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE ADMINISTRATIVE SEARCH WARRANTS TO BE SERVED AT HOURS OTHER THAN BETWEEN 8:00 A.M. AND 8:00 P.M. WHEN THERE IS PROBABLE CAUSE TO BELIEVE THAT THE ACTIVITY THAT JUSTIFIES THE ADMINISTRATIVE SEARCH WARRANT WILL OCCUR AT OTHER HOURS, 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.

☐ 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)

42-152

PUBLIC BILL

H.B. 258

CHAP. _____

A BILL TO BE ENTITLED

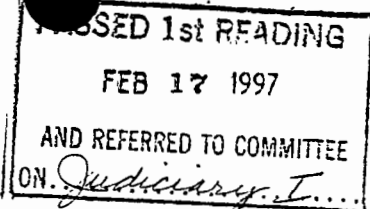
AN ACT TO AUTHORIZE ADMINISTRATIVE SEARCH WARRANTS TO BE SERVED AT HOURS OTHER THAN BETWEEN 8:00 A.M. AND 8:00 P.M. WHEN THERE IS PROBABLE CAUSE TO BELIEVE THAT THE ACTIVITY THAT JUSTIFIES THE ADMINISTRATIVE SEARCH WARRANT WILL OCCUR AT OTHER HOURS, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

Introduced by Representative(s)

Tolson

M. J. [Signature]

Principal Clerk's Use Only



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 258

Short Title: Admin. Search Warrants/When Served.

(Public)

Sponsors: Representatives Tolson; and Mitchell.

Referred to: Judiciary I.

February 17, 1997

1 A BILL TO BE ENTITLED

2 AN ACT TO AUTHORIZE ADMINISTRATIVE SEARCH WARRANTS TO BE
3 SERVED AT HOURS OTHER THAN BETWEEN 8:00 A.M. AND 8:00 P.M.
4 WHEN THERE IS PROBABLE CAUSE TO BELIEVE THAT THE ACTIVITY
5 THAT JUSTIFIES THE ADMINISTRATIVE SEARCH WARRANT WILL
6 OCCUR AT OTHER HOURS, AS RECOMMENDED BY THE
7 ENVIRONMENTAL REVIEW COMMISSION.

8 The General Assembly of North Carolina enacts:

9 Section 1. G.S. 15-27.2(e) reads as rewritten:

10 "(e) Any warrant issued under this section for a search or inspection shall be valid
11 for only 24 hours after its issuance, must be personally served upon the owner or
12 possessor of the property between the hours of 8:00 A.M. and 8:00 P.M. and must be
13 returned within 48 hours. However, if there is probable cause to believe that the
14 condition, object, activity, or circumstance that legally justifies the search or
15 inspection is occurring or will occur at times other than between the hours of 8:00
16 A.M. and 8:00 P.M., then the warrant may authorize the search or inspection to be
17 made during times in addition to the hours between 8:00 A.M. and 8:00 P.M., in
18 which case the times during which the search or inspection may occur shall be
19 specifically set out on the face of the warrant. If the warrant, however, was procured
20 pursuant to an investigation authorized by G.S. 58-79-1, the warrant may be executed
21 at any hour, is valid for 48 hours after its issuance, and must be returned without
22 unnecessary delay after its execution or after the expiration of the 48 hour period if it
23 is not executed. If the owner or possessor of the property is not present on the
24 property at the time of the search or inspection and reasonable efforts to locate the

1 owner or possessor have been made and have failed, the warrant or a copy thereof
2 may be affixed to the property and shall have the same effect as if served personally
3 upon the owner or possessor."

4 Section 2. This act becomes effective 1 October 1997.

**1998 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative(s) **Daughtry and Hardy** for the Committee on **JUDICIARY I.**

☐ Committee Substitute for

H.B. 1042 A BILL TO BE ENTITLED AN ACT TO PROVIDE PARTIES WITH THE
RIGHT TO THE PUBLICATION OF ANY OPINION ISSUED BY THE COURT OF
APPEALS.

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

3/25/98

S/012
PUBLIC BILL

1042

H.B. _____

CHAP. _____

A BILL TO BE ENTITLED

AN ACT TO PROVIDE PARTIES WITH THE RIGHT TO THE PUBLICATION OF ANY OPINION ISSUED
BY THE COURT OF APPEALS.

Introduced by Representative(s)	Black	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Principal Clerk's Use Only		
PASSED 1st READING APR 21 1997 AND REFERRED TO COMMITTEE <i>Judiciary, I. J.</i> <i>favorable, Appropriation</i>		

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 1042*

Short Title: Publication of Appellate Decisions.

(Public)

Sponsors: Representative Black.

Referred to: Judiciary I, if favorable, Appropriations.

April 21, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE PARTIES WITH THE RIGHT TO THE PUBLICATION
3 OF ANY OPINION ISSUED BY THE COURT OF APPEALS.

4 The General Assembly of North Carolina enacts:

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

7 "**§ 7A-6.1. Right to publication of Court of Appeals opinions.**

8 When a case is decided by the Court of Appeals without publication of an opinion
9 under Rule 30(e) of the Rules of Appellate Procedure, either party may, within 30
10 days of the issuance of the court's decision, pay to the Judicial Department an
11 amount equal to the cost of publication and providing storage for the publishing of
12 the opinion, and the court's opinion shall be published and treated in all respects as a
13 published opinion. The amount paid to the Judicial Department shall be set by the
14 Judicial Department based upon a methodology developed by the Department for
15 reflecting the actual cost of publication and storage of additional opinions, and may
16 not exceed the sum of five hundred dollars (\$500.00)."

17 Section 2. This act is effective when it becomes law and applies to
18 decisions issued on or after that date.

**1998 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative(s) **Daughtry and Hardy** for the Committee on **JUDICIARY I.**

☐ Committee Substitute for

H.B. 1144 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT THE DIVISION OF
MOTOR VEHICLES SHALL ENTER RECORDS OF SPEEDING IN SCHOOL ZONES
CHARGED AS VIOLATIONS OF LOCAL 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.

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

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

3/25/98

1144

H.B.

744

CHAP. _____

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE DIVISION OF MOTOR VEHICLES SHALL ENTER RECORDS OF
SPEEDING IN SCHOOL ZONES CHARGED AS VIOLATIONS OF LOCAL ORDINANCES.

Introduced by Representative(s)

Wood

*H. H. Long*Principal Clerk's Use Only

PASSED 1st READING

APR 21 1997

REFERRED TO COMMITTEE

ON *Transportation**If favorable, Judiciary I*

The Committee on *Transportation*
majority being present, having considered
this bill, recommend that it do ☒ pass

Rps. Buchanan & Sexton
For the Committee

and be re-referred to Judiciary I

REPORTED FAVORABLY APR 21 1997

re-referred to Judiciary I

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 1144

Short Title: Speeding in School Zones.

(Public)

Sponsors: Representatives Wood; and Hightower.

Referred to: Transportation, if favorable, Judiciary I.

April 21, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE THAT THE DIVISION OF MOTOR VEHICLES SHALL
3 ENTER RECORDS OF SPEEDING IN SCHOOL ZONES CHARGED AS
4 VIOLATIONS OF LOCAL ORDINANCES.

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 20-141.1 reads as rewritten:

7 "**§ 20-141.1. Speed limits in school zones.**

8 The Board of Transportation or local authorities within their respective
9 jurisdictions may, by ordinance, set speed limits lower than those designated in G.S.
10 20-141 for areas adjacent to or near a public, private or parochial school. Limits set
11 pursuant to this section shall become effective when signs are erected giving notice of
12 the school zone, the authorized speed limit, and the days and hours when the lower
13 limit is effective, or by erecting signs giving notice of the school zone, the authorized
14 speed limit and which indicate the days and hours the lower limit is effective by an
15 electronic flasher operated with a time clock. Limits set pursuant to this section may
16 be enforced only on days when school is in session, and no speed limit below 20
17 miles per hour may be set under the authority of this section.

18 The clerk of court shall send to the Division a record of a conviction for violation
19 of State law or local ordinance prohibiting speeding in a school zone in excess of the
20 posted school zone speed limit. The Division shall enter the conviction on the
21 driving record of the person who is convicted of the violation and shall assign to the
22 record of that person the number of points provided in G.S. 20-16(c) for conviction
23 of that violation."

24 Section 2. This act becomes effective December 1, 1997.

1998 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative(s) **Daughtry and Hardy** for the Committee on **JUDICIARY I.**

☐ Committee Substitute for

H.B. 1317 A BILL TO BE ENTITLED AN ACT 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.

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

3/25/98

PUBLIC BILL



1317

H.B. _____

SESSION LAW _____

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE PROCEDURES CONCERNING FINAL ADMINISTRATIVE DECISIONS IN
CONTESTED CASES HEARD BY THE OFFICE OF ADMINISTRATIVE HEARINGS.

Introduced by Representative(s)	C. Wilson	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Principal Clerk's Use Only

PASSED 1st READING
MAY 19 1998
REFERRED TO COMMITTEE
Judiciary I



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 1317*

Short Title: Amend Contested Case Proc.

(Public)

Sponsors: Representative C. Wilson.

Referred to: Judiciary I.

May 19, 1998

1 A BILL TO BE ENTITLED
2 AN ACT TO MODIFY THE PROCEDURES CONCERNING FINAL
3 ADMINISTRATIVE DECISIONS IN CONTESTED CASES HEARD BY THE
4 OFFICE OF ADMINISTRATIVE HEARINGS.

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 150B-2(5) reads as rewritten:

7 "(5) "Party" means any person or agency named or admitted as a party
8 or properly seeking as of right to be admitted as a party and
9 includes the agency as appropriate. This subdivision does not
10 permit an agency that makes a final decision, or an officer or
11 employee of the agency, to petition for initial judicial review of
12 that ~~decision.~~ decision, except as provided by G.S. 150B-43(b)."

13 Section 2. G.S. 150B-29(a) reads as rewritten:

14 "(a) In all contested cases, irrelevant, immaterial and unduly repetitious evidence
15 shall be excluded. Except as otherwise provided, the rules of evidence as applied in
16 the trial division of the General Court of Justice shall be followed; but, when
17 evidence is not reasonably available under the rules to show relevant facts, then the
18 most reliable and substantial evidence available shall be admitted. On the judge's
19 own motion, an administrative law judge may exclude evidence that is inadmissible
20 under this section. The party with the burden of proof in a contested case must
21 establish the facts required by G.S. 150B-23(a) by a preponderance of the evidence.
22 It shall not be necessary for a party or his attorney to object at the hearing to
23 evidence in order to preserve the right to object to its consideration by the

1 administrative law judge in making a recommended decision, by the agency in
2 making a final decision, or by the court on judicial review."

3 Section 3. G.S. 150B-34 reads as rewritten:

4 "**§ 150B-34. Recommended decision or order of administrative law judge.**

5 (a) Except as provided in G.S. 150B-36(c), in each contested case the
6 administrative law judge shall make a recommended decision or order that contains
7 findings of fact and conclusions of law. The findings of fact shall be supported by a
8 preponderance of the evidence admissible under G.S. 150B-29, 150B-30, or 150B-31."

9 Section 4. G.S. 150B-36 reads as rewritten:

10 "**§ 150B-36. Final decision.**

11 (a) (1) ~~Before the agency makes a final decision, it shall~~ After an agency
12 receives the official record in a contested case, the agency must
13 give each party an opportunity to the contested case 15 days to file
14 exceptions to the decision or order recommended by the
15 administrative law judge, judge and to present written arguments to
16 those in the agency who will make the final decision or order. If
17 none of the parties files exceptions to the recommended decision
18 or order within the 15-day period, the agency is considered to have
19 adopted the administrative law judge's recommended decision or
20 order as the agency's final decision or order.

21 (2) If a party files in good faith a timely and sufficient affidavit of
22 personal bias or other reason for disqualification of a member of
23 the agency making the final decision, the agency shall determine
24 the matter as a part of the record in the ~~case, and the~~ case. The
25 determination is subject to judicial review at the conclusion of the
26 case.

27 (b) (1) A final decision or order in a contested case shall be made by the
28 agency ~~in writing after review of~~ within the time set by G.S. 150B-
29 44. If the agency does not adopt as its final decision or order the
30 recommended decision or order made in the contested case under
31 subsection (a) of this section, it must make a written final decision
32 or order. In making its final decision or order, the agency may
33 consider only the official record as defined in G.S. 150B-37(a) and
34 the exceptions filed by a party. The final decision or order shall
35 include findings of fact and conclusions of law. The findings of
36 fact made in the contested case by the administrative law judge are
37 binding on the agency in making its final decision or order if they
38 are supported by substantial evidence admissible under G.S. 150B-
39 29, 150B-30, or 150B-31 in view of the entire record. Nothing in
40 this subdivision shall affect the policies and need determinations in
41 the State Medical Facilities Plan which have been adopted in
42 accordance with law and shall have the effect of law for this
43 purpose.

1 (2) If the agency does not adopt the administrative law judge's
2 recommended decision or order as its final ~~decision~~, decision or
3 order, the agency shall state in its decision or order the specific
4 reasons why it did not adopt the administrative law judge's
5 recommended ~~decision~~. ~~The agency may consider only the official~~
6 ~~record prepared pursuant to G.S. 150B-37 in making a final~~
7 ~~decision or order, and the final decision or order shall be~~
8 ~~supported by substantial evidence admissible under G.S.~~
9 ~~150B-29(a), 150B-30, or 150B-31.~~ decision or order. A copy of the
10 agency's decision or order shall be served upon each party
11 personally or by certified mail addressed to the party at the latest
12 address given by the party to the agency, and a copy shall be
13 furnished to ~~his~~ each party's attorney of record and the Office of
14 Administrative Hearings.

15 (c) The following decisions made by administrative law judges in contested cases
16 are final decisions:

- 17 (1) A determination that the Office of Administrative Hearings lacks
18 jurisdiction.
19 (2) An order entered pursuant to the authority in G.S. 7A-759(e).
20 (3) An order entered pursuant to a written prehearing motion that
21 either dismisses the contested case for failure of the petitioner to
22 prosecute or grants the relief requested when a party does not
23 comply with procedural requirements.
24 (4) An order entered pursuant to a prehearing motion to dismiss the
25 contested case in accordance with G.S. 1A-1, Rule 12(b) when the
26 order disposes of all issues in the contested case."

27 Section 5. G.S. 150B-37(c) reads as rewritten:

28 "(c) The Office of Administrative Hearings shall forward a copy of the official
29 record to the agency making the final ~~decision~~ and shall forward a copy of the
30 ~~recommended decision to each party.~~ decision."

31 Section 6. G.S. 150B-43 reads as rewritten:

32 "**§ 150B-43. Right to judicial review.**

33 (a) Any person who is aggrieved by the final decision in a contested case, and
34 who has exhausted all administrative remedies made available to him by statute or
35 agency rule, is entitled to judicial review of the decision under this Article, unless
36 adequate procedure for judicial review is provided by another statute, in which case
37 the review shall be under such other statute. Nothing in this Chapter shall prevent
38 any person from invoking any judicial remedy available to him under the law to test
39 the validity of any administrative action not made reviewable under this Article.

40 (b) An agency may seek judicial review of procedural errors made by the
41 administrative law judge in the contested case if the agency was required to adopt the
42 administrative law judge's findings of fact and the agency concludes that, although
43 the findings are supported by substantial evidence, the record contains significant
44 evidentiary errors."

Section 7. 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 8. 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~~ 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~~ If the agency did not adopt the recommended decision, the court shall determine whether the administrative law judge's findings of fact are supported by substantial evidence admissible under G.S. 150B-29, 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 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) If the agency did not adopt the recommended decision, the court shall determine whether the agency's decision states the specific

1 reasons why the agency did not adopt the recommended decision.
2 If the court determines that the agency did not state specific
3 reasons why it did not adopt a recommended decision, the court
4 shall reverse the decision or remand the case to the agency to enter
5 the specific reasons.

6 (b) Standard of Review. After making the determinations, if any, required by
7 subsection (a), the court reviewing a final decision may affirm the decision of the
8 agency or remand the case for further proceedings. It may also reverse or modify the
9 agency's decision if the substantial rights of the petitioners may have been prejudiced
10 because the agency's findings, inferences, conclusions, or decisions are:

- 11 (1) In violation of constitutional provisions;
- 12 (2) In excess of the statutory authority or jurisdiction of the agency;
- 13 (3) Made upon unlawful procedure;
- 14 (4) Affected by other error of law;
- 15 (5) Unsupported by substantial evidence admissible under G.S. 150B-
16 29(a), 150B-30, or 150B-31 in view of the entire record as
17 submitted; or
- 18 (6) Arbitrary or capricious."

19 Section 9. This act is effective when it becomes law. Sections 1, 4, 5, 6,
20 7, and 8 of this act apply to any recommended decision or order made by an
21 administrative law judge on or after the effective date. The remainder of the act
22 applies to contested cases commenced on or after the effective date.

1998 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative(s) **Daughtry and Hardy** for the Committee on **JUDICIARY I.**

☐ Committee Substitute for

H.B. 1389 A BILL TO BE ENTITLED AN ACT TO DEDICATE A PORTION OF COURT COSTS TO PROVIDE ACCESS TO CIVIL JUSTICE

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

3/25/98

50,56
PUBLIC BILL

1389

H.B. _____

SESSION LAW _____

A BILL TO BE ENTITLED

AN ACT TO DEDICATE A PORTION OF COURT COSTS TO PROVIDE ACCESS TO CIVIL JUSTICE.

Introduced by Representative(s) Allred

Beard

Don Davis

Poley

Luebke

(Sutton)

Principal Clerk's Use Only

PASSED FOR READING

MAY 21 1998

AND REFERRED TO COMMITTEE

Judiciary I

if favorable, Finance

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 1389*

Short Title: Funding for Legal Services.

(Public)

Sponsors: Representatives Allred; Beall, Cole, Davis, Luebke, and Sutton.

Referred to: Judiciary I, if favorable, Finance.

May 21, 1998

1 A BILL TO BE ENTITLED
2 AN ACT TO DEDICATE A PORTION OF COURT COSTS TO PROVIDE
3 ACCESS TO CIVIL JUSTICE.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 7A-304(a)(4) reads as rewritten:

6 "(4) For support of the General Court of Justice, the sum of sixty-one
7 dollars (\$61.00) in the district court, including cases before a
8 magistrate, and the sum of sixty-eight dollars (\$68.00) in the
9 superior court, to be remitted to the State Treasurer. The State
10 Treasurer shall remit a portion of each fee collected under this
11 subdivision, in an amount equal to that specified in the table
12 below, to the North Carolina State Bar for the provision of services
13 described in G.S. 7A-474.4:

<u>Fiscal year</u>	<u>Amount</u>
<u>1998-99</u>	<u>\$4.00</u>
<u>1999-00</u>	<u>6.00</u>
<u>2000-01</u>	<u>7.00</u>
<u>2001-02</u>	<u>8.00</u>
<u>2002-03</u>	<u>9.00</u>
<u>2003-04 and after</u>	<u>10.00."</u>

21 Section 2. G.S. 7A-305(a)(2) reads as rewritten:

22 "(2) For support of the General Court of Justice, the sum of fifty-five
23 dollars (\$55.00) in the superior court, and the sum of forty dollars
24 (\$40.00) in the district court except that if the case is assigned to a

magistrate the sum shall be twenty-eight dollars (\$28.00). Sums collected under this ~~subsection~~ subdivision shall be remitted to the State Treasurer. The State Treasurer shall remit a portion of each fee collected under this subdivision, in an amount equal to that specified in the table below, to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4:

<u>Fiscal year</u>	<u>Amount</u>
<u>1998-99</u>	<u>\$4.00</u>
<u>1999-00</u>	<u>6.00</u>
<u>2000-01</u>	<u>7.00</u>
<u>2001-02</u>	<u>8.00</u>
<u>2002-03</u>	<u>9.00</u>
<u>2003-04 and after</u>	<u>10.00."</u>

Section 3. G.S. 7A-306(a)(2) reads as rewritten:

"(2) For support of the General Court of Justice the sum of twenty-six dollars (\$26.00). In addition, in proceedings involving land, except boundary disputes, if the fair market value of the land involved is over one hundred dollars (\$100.00), there shall be an additional sum of thirty cents (30¢) per one hundred dollars (\$100.00) of value, or major fraction thereof, not to exceed a maximum additional sum of two hundred dollars (\$200.00). Fair market value is determined by the sale price if there is a sale, the appraiser's valuation if there is no sale, or the appraised value from the property tax records if there is neither a sale nor an appraiser's valuation. Sums collected under this ~~subsection~~ subdivision shall be remitted to the State Treasurer. The State Treasurer shall remit a portion of each fee collected under this subdivision, in an amount equal to that specified in the table below, to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4:

<u>Fiscal year</u>	<u>Amount</u>
<u>1998-99</u>	<u>\$4.00</u>
<u>1999-00</u>	<u>6.00</u>
<u>2000-01</u>	<u>7.00</u>
<u>2001-02</u>	<u>8.00</u>
<u>2002-03</u>	<u>9.00</u>
<u>2003-04 and after</u>	<u>10.00."</u>

Section 4. G.S. 7A-307(a)(2) reads as rewritten:

"(2) For support of the General Court of Justice, the sum of twenty-six dollars (\$26.00), plus an additional forty cents (40¢) per one hundred dollars (\$100.00), or major fraction thereof, of the gross estate, not to exceed three thousand dollars (\$3,000). Gross estate shall include the fair market value of all personalty when received, and all proceeds from the sale of realty coming into the hands of the fiduciary, but shall not include the value of realty. In

1 collections of personal property by affidavit, the fee based on the
2 gross estate shall be computed from the information in the final
3 affidavit of collection made pursuant to G.S. 28A-25-3 and shall be
4 paid when that affidavit is filed. In all other cases, this fee shall be
5 computed from the information reported in the inventory and shall
6 be paid when the inventory is filed with the clerk. If additional
7 gross estate, including income, comes into the hands of the
8 fiduciary after the filing of the inventory, the fee for such
9 additional value shall be assessed and paid upon the filing of any
10 account or report disclosing such additional value. For each filing
11 the minimum fee shall be ten dollars (\$10.00). Sums collected
12 under this ~~subsection~~ subdivision shall be remitted to the State
13 Treasurer. The State Treasurer shall remit a portion of each fee
14 collected under this subdivision, in an amount equal to that
15 specified in the table below, to the North Carolina State Bar for
16 the provision of services described in G.S. 7A-474.4:

<u>Fiscal year</u>	<u>Amount</u>
<u>1998-99</u>	<u>\$4.00</u>
<u>1999-00</u>	<u>6.00</u>
<u>2000-01</u>	<u>7.00</u>
<u>2001-02</u>	<u>8.00</u>
<u>2002-03</u>	<u>9.00</u>
<u>2003-04 and after</u>	<u>10.00."</u>

24 Section 5. This act becomes effective July 1, 1998, and applies to fees
25 paid on or after that date.

**1998 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative(s) **Daughtry and Hardy** for the Committee on **JUDICIARY I.**

- ☐ Committee Substitute for
H.B. 1400 A BILL TO BE ENTITLED AN ACT TO RESTORE PROVISIONS THAT
VICTIM AND WITNESS ASSISTANTS SHALL ONLY PROVIDE SERVICES FOR
VICTIMS OF CRIME AND WITNESSES IN CRIMINAL CASES.
- ☐ With a favorable report.
- ☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐
- ☐ With a favorable report, as amended.
- ☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on ☐ Appropriations ☐ Finance ☐
- ☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title,
unfavorable as to original bill (Committee Substitute Bill #), (and recommendation
that the committee substitute bill #) be re-referred to the Committee on .)
- ☐ With a favorable report as to House committee substitute bill (#), ☐ which changes
the title, unfavorable as to Senate committee substitute bill.
- ☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.
(PUBLIC BILLS ONLY)
- ☐ With an unfavorable report.
- ☐ With recommendation that the House concur.
- ☐ With recommendation that the House do not concur.
- ☐ With recommendation that the House do not concur; request conferees.
- ☐ With recommendation that the House concur; committee believes bill to be material.
- ☐ With an unfavorable report, with a Minority Report attached.
- ☐ Without prejudice.
- ☒ With an indefinite postponement report.
- ☐ With an indefinite postponement report, with a Minority Report attached.
- ☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

3/25/98

H.B. 1400

SESSION LAW _____

A BILL TO BE ENTITLED

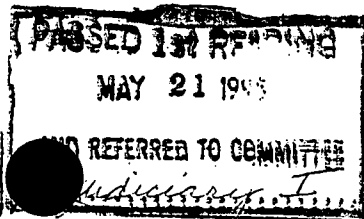
AN ACT TO RESTORE PROVISIONS THAT VICTIM AND WITNESS ASSISTANTS SHALL ONLY
PROVIDE SERVICES FOR VICTIMS OF CRIME AND WITNESSES IN CRIMINAL CASES.

Introduced by Representative(s)

R. Hunter

*B. Calpepper**McCrory**Hardy**Hitch**Balbon*

Principal Clerk's Use Only



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 1400

Short Title: Victim and Witness Assistants.

(Public)

Sponsors: Representatives R. Hunter; Baddour, Culpepper, Hardy, McCrary, Rayfield, and Sexton.

Referred to: Judiciary I.

May 21, 1998

1 A BILL TO BE ENTITLED
2 AN ACT TO RESTORE PROVISIONS THAT VICTIM AND WITNESS
3 ASSISTANTS SHALL ONLY PROVIDE SERVICES FOR VICTIMS OF CRIME
4 AND WITNESSES IN CRIMINAL CASES.
5 The General Assembly of North Carolina enacts:
6 Section 1. G.S. 7A-347 reads as rewritten:
7 "~~§ 7A-347. Assistants for administrative and victim and witness services.~~ Victim and
8 witness assistants.
9 ~~Assistant for administrative and victim and witness services~~ Victim and witness
10 assistant positions are established under the district attorneys' offices. Each
11 prosecutorial district is allocated at least one ~~assistant for administrative and victim~~
12 ~~and witness services~~ victim and witness assistant to be employed by the district
13 attorney. The Administrative Office of the Courts shall allocate additional assistants
14 to prosecutorial districts on the basis of need and within available appropriations.
15 Each district attorney may also use any volunteer or other personnel to assist the
16 assistant. The assistant is responsible for coordinating efforts of the law-enforcement
17 and judicial systems to assure that each victim and witness is provided fair treatment
18 under Article 45 of Chapter 15A, Fair Treatment for Victims and Witnesses and shall
19 ~~also provide administrative and legal support to the district attorney's office.~~ be used
20 for no other purpose, except as may be approved pursuant to G.S. 7A-348."
21 Section 2. G.S. 7A-348 reads as rewritten:
22 "~~§ 7A-348. Training and supervision of assistants for administrative and victim and~~
23 ~~witness services.~~ victim and witness assistants.

1 Pursuant to the provisions of G.S. 7A-413, the Conference of District Attorneys
2 shall:

- 3 (1) Assist in establishing uniform statewide training for ~~assistants for~~
4 ~~administrative and victim and witness services; victim and witness~~
5 ~~services;~~
6 (2) Assist in the implementation and supervision of this program; and
7 (3) With the Director of the Administrative Office of the Courts,
8 report annually to the Joint Legislative Commission on
9 Governmental Operations on the implementation and effectiveness
10 of this act, beginning on or before February 1, 1987."

11 Section 3. G.S. 15A-826 reads as rewritten:

12 "~~§ 15A-826. Assistants for administrative and victim and witness services. Victim and~~
13 ~~witness assistants.~~

14 ~~In addition to providing administrative and legal support to the district attorney's~~
15 ~~office, assistants for administrative and victim and witness services~~ Victim and witness
16 assistants are responsible for coordinating efforts within the law-enforcement and
17 judicial systems to assure that each victim and witness is treated in accordance with
18 this Article."

19 Section 4. This act becomes effective July 1, 1998.

**1998 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative(s) **Daughtry and Hardy** for the Committee on **JUDICIARY I.**

☒ House Committee Substitute for

S B 417 A BILL TO BE ENTITLED AN ACT TO AMEND THE LAW GOVERNING
HIGHWAY SMALL PROJECT BIDDING AND TO PROVIDE AN ALTERNATIVE
PROCEDURE FOR RESOLVING STATE CONTRACT DISPUTES.

- ☐ 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

J-I Meeting
unfavorable
rpt.

GENERAL ASSEMBLY OF NORTH CAROLINA

10-1-98

SESSION 1997

S

3

SENATE BILL 417

Commerce Committee Substitute Adopted 4/29/97
House Committee Substitute Favorable 5/28/97

Short Title: Highway Contract Bonding Req'ments.

(Public)

Sponsors:

Referred to:

March 18, 1997

- 1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE LAW GOVERNING HIGHWAY SMALL PROJECT
3 BIDDING AND TO PROVIDE AN ALTERNATIVE PROCEDURE FOR
4 RESOLVING STATE CONTRACT DISPUTES.
5 The General Assembly of North Carolina enacts:
6 Section 1. G.S. 136-28.10 reads as rewritten:
7 "§ 136-28.10. Highway Fund and Highway Trust Fund Small Project Bidding.
8 (a) Notwithstanding the provisions of G.S. 136-28.4(b), for Highway Fund or
9 Highway Trust Fund projects of ~~three hundred thousand dollars (\$300,000)~~ five
10 hundred thousand dollars (\$500,000) or less, the Board of Transportation may, after
11 soliciting at least three informal bids in writing from Small Business Enterprises,
12 award contracts to the lowest responsible bidder. The Department of Transportation
13 may identify projects likely to attract increased participation by Small Business
14 Enterprises, and restrict the solicitation and award to those bidders. The Board of
15 Transportation may delegate full authority to award contracts, adopt necessary rules,
16 and administer the provisions of this section to the Secretary of Transportation.
17 (b) The letting of contracts under this section is not subject to any of the
18 provisions of G.S. 136-28.1 relating to the letting of contracts. The Department may
19 waive the bonding requirements of Chapter 44A of the General Statutes and the
20 licensing requirements of Chapter 87 for contracts awarded under this section.
21 (c) The Secretary of Transportation shall report quarterly to the Joint Legislative
22 Transportation Oversight Committee on the implementation of this section."

Section 2. G.S. 143-135.3 reads as rewritten:

"§ 143-135.3. Adjustment and resolution of State ~~board construction~~ contract claim.

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

(1) Board. -- ~~The word 'board' as used in this section shall mean the State of North Carolina~~ The State 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.

(2) Construction contract. -- A contract for any of the following:

a. The construction or repair of buildings and appurtenances thereto, including, utilities, plumbing, heating, electrical, air conditioning, elevator, excavation, grading, paving, roofing, masonry work, tile work, and painting.

b. The construction or repair 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 capital improvement.

c. Architectural, engineering, or other professional services in connection with a contract described in this subdivision.

(3) Contract. -- A contract for goods, services, construction, or repair administered by the Department of Administration.

(4) Contractor. -- A person who submits a bid on or enters into a contract with a board.

~~"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 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) Uncompleted Construction Contract. -- A contractor who has not completed a construction contract with a board ~~for construction or repair work~~ and who has not received the amount ~~he~~ the contractor 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 The Director's decision is not a final decision of the Department of Administration under

1 subsection (d) of this section and a claim under this subsection is not a contested case
2 under Chapter 150B of the General Statutes.

3 (c) Completed Construction Contract. -- A contractor who has completed a
4 construction contract with a board ~~for construction or repair work~~ and who has not
5 received the amount ~~he~~ the contractor claims is due under the contract may submit a
6 verified written claim to the Director of the Office of State Construction of the
7 Department of Administration for the amount the contractor claims is due. The
8 claim shall be submitted within 60 days after the contractor receives a final statement
9 of the board's disposition of ~~his~~ the contractor's claim and shall state the factual basis
10 for the claim.

11 The Director shall investigate a submitted claim within 90 days of receiving the
12 claim, or within any longer time period upon which the Director and the contractor
13 agree. The contractor may appear before the Director, either in person or through
14 counsel, to present facts and arguments in support of his claim. The Director may
15 allow, deny, or compromise the claim, in whole or in part. The Director shall give
16 the contractor a written statement of the Director's decision on the contractor's
17 claim.

18 A contractor who is dissatisfied with the Director's decision on a claim submitted
19 under this subsection may commence a contested case on the claim under Chapter
20 150B of the General Statutes. The contested case shall be commenced within 60 days
21 of receiving the Director's written statement of the decision.

22 ~~(e1) A contractor who is dissatisfied with the Director's decision on a claim~~
23 ~~submitted under subsection (c) of this section may commence a contested case on the~~
24 ~~claim under Chapter 150B of the General Statutes. The contested case shall be~~
25 ~~commenced within 60 days of receiving the Director's written statement of the~~
26 ~~decision.~~

27 (d) Alternate Procedure. -- Notwithstanding the provisions of subsection (c) of this
28 section and of Chapter 150B of the General Statutes, in the case of any contract
29 dispute between a board and a contractor, if the contractor and the Department of
30 Administration cannot agree to a resolution through informal procedures, the
31 contractor may, in lieu of filing a petition for a contested case under Article 3 of
32 Chapter 150B of the General Statutes, As to any portion of a claim that is denied by
33 the Director, the contractor may, in lieu of the procedures set forth in the preceding
34 subsection of this section, within six months of receipt of the Director's final decision,
35 after a final decision by the Department of Administration, institute a civil action for
36 the sum he claims to be entitled to to determine the contractor's rights, duties, or
37 privileges under the contract by filing a verified complaint and the issuance of a
38 summons in the Superior Court of Wake County or in the superior court of any
39 county where the work under the contract was performed. The procedure shall be
40 the same as in all civil actions except that all issues shall be tried by the judge,
41 without a jury.

42 (e) Incorporation in Contracts. -- The provisions of this section are part of every
43 contract ~~for construction or repair work~~ made by a board and a contractor. A
44 provision in a contract that conflicts with this section is invalid."

1 Section 3. Section 2 of this act becomes effective January 1, 1998, and
2 applies to contract disputes arising on or after that date. The remainder of this act is
3 effective when it becomes law.

PUBLIC BILL

Little Ch...

Proposed House Committee Substitute For
S.B. 417

CHAP. _____

946

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW GOVERNING HIGHWAY SMALL PROJECT BIDDING AND TO
PROVIDE AN ALTERNATIVE PROCEDURE FOR RESOLVING STATE CONTRACT DISPUTES.

Introduced by Senator(s)

Shaw of Cumberland

Principal Clerk's Use Only

The Committee on Transportation
a majority being present, having considered
this bill, recommend that it do pass
Reps. Sutton & Buchanan
For the Committee

Home
FAVORABLE TO COMM. SUB.

UNFAVORABLE TO BILL

C.S.

MAY 28 1997

AND PLACED ON
CALENDAR FOR

3600

6/18/97

ON MOTION OF
REP. <u>Brawley</u>
WITHDRAWN FROM
<u>calendar</u>
JUN 18 1997
RECOMMITTED TO
<u>of I</u>

TITLE CHANGE